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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON LEE CORDER,

APPELLANT,

APPELLATE CASE NO. 2023-001543

RECORD ON APPEAL

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**[THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE’S EXHIBIT 7—(AUDIO OF CREECH BWC) FROM THE AUGUST 22, 2023
HEARING.]**

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 11
COUNTY OF LEXINGTON) DOCKET NOS. 2020-GS-32-1854
2020-GS-32-1857

STATE OF SOUTH CAROLINA,)
Plaintiff,)
versus)
BRANDON LEE CORDER,)
Defendant.)

H E A R I N G

PRESENT: Brandon Lee Corder
DATE: February 27, 28 and March 1, 2023
LOCATION: South Carolina Circuit Court 11
JUDGE: Debra McCaslin
TRANSCRIBED BY: Jeanne Meldrim

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Proceedings

1 court's ruling to do just that. And they're not allowed
2 to speak with you, so please don't try to talk to them if
3 you see them out somewhere. You're not allowed to talk
4 to any witnesses that have been on this witness stand.
5 I've had that happen. Don't do it. Do not talk to
6 anyone about this case or do any research about this case
7 at all. Am I missing anything?

8 MR. STITELY: No, ma'am.

9 THE COURT: What time do you want to start in the
10 morning?

11 MR. STITELY: Whenever you like, Judge. I'm
12 typically in the office about 7:30.

13 MS. FULLER: 9:30's okay.

14 THE COURT: Okay. (Unintelligible). We will start
15 at 9:30 in the morning. Please be in your jury room at
16 9:15.

17 Now, let me tell you this, if one of you --- just
18 one of you are late, we can't start. It holds up the
19 whole entire process. Because I'm going to tell all
20 jurors including the alternates to go forward.

21 Now I'm going to get the bailiff to take you to the
22 jury room so you'll know where to report in the morning.
23 He'll give you some further detail. I'll tell you, Mr.
24 Bowman, they'll have a special seat for you tomorrow as
25 foreman.

Proceedings

1 All right. Have a great day. Remember, no talking
2 about this case. And I will see you promptly at 9:30 in
3 the morning. Thank you.

4 (Jury exits courtroom)

5 THE COURT: Let me tell y'all that Josh Abrams,
6 juror number one, I know his girlfriend through --- and
7 I'll tell you how I know him. His mama and daddy are
8 friends of mine. Just not I hang out with their child or
9 him.

10 MR. STITELY: Judge, I don't see any problem with
11 that.

12 THE COURT: But I just thought I'd bring that to
13 your attention because he said, do I have to say that I
14 know you? And I had to stop and think about it. We ---

15 (Simultaneous speaking)

16 MS. FULLER: Oh, you know what? That wasn't a
17 question.

18 MR. STITELY: You don't ask if you know the judge.

19 THE COURT: I know. Is that any problem with
20 anybody?

21 MS. FULLER: Not from the State, Your Honor.

22 MR. STITELY: No.

23 THE COURT: Please let him know that he's fine.
24 We're keeping him.

25 MR. STITELY: That's an interesting theory. Because

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1 no judge does --- does anyone know me?

2 THE COURT: You know, you got to realize, y'all, I'm
3 a Chapin girl. I grew up in Lexington all my life. I
4 can't go anywhere without somebody knowing who I am.
5 It's scary. I stay away from the grocery stores.

6 Okay. Anything else concerning jury selection or my
7 instructions to the jury?

8 MS. FULLER: Nothing from the State, Your Honor.

9 MR. STITELY: Nothing from the defense.
10 (Unintelligible) one.

11 THE COURT: Well, I need to give us a time a little
12 bit longer than that. Let's start back at about quarter
13 to two.

14 Now, what --- y'all just give me an idea of what
15 we're doing. We're doing Jackson v Denno?

16 MS. FULLER: Yes, Your Honor. So we have Jackson v
17 Denno. The 911 call should be easy. (Unintelligible)
18 called 911.

19 (Simultaneous speaking)

20 THE COURT: And I've listened to the tape.

21 MS. FULLER: I sent a detailed list of the
22 statements we would go --- we would go through to the
23 coroners, to the (unintelligible). There was a polygraph
24 done. Obviously we'll get into that ---

25 MR. STITELY: We'll have some objections on that

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1 front.

2 MS. FULLER: We won't be mentioning polygraph, but
3 we'll do a Denno on the contents of his statement. And
4 one more --- oh, and then there's a full-length body cam
5 from (unintelligible) that we'll do a Denno on while
6 he's --- the whole duration of the time he was detained,
7 and transport to Lexington detention center.

8 Defense counsel just now asked me about an audio
9 recording where defendant says, I'll murder you. And I
10 think he may be moving to suppress. That --- and so
11 we'll take that up. And then I think we need to talk
12 about the law in terms of defensive accident
13 (unintelligible) included so we all know the landscape
14 of ---

15 THE COURT: On those two, I mean, don't we have to
16 wait until testimony before we even discuss those?

17 MR. STITELY: Yeah. (Unintelligible). I mean, the
18 only thing I'm going to be arguing voluntary
19 manslaughter, so that's ---

20 THE COURT: I got it.

21 (Simultaneous speaking)

22 MR. STITELY: --- where we're at.

23 THE COURT: Well, we'll just see what the testimony
24 brings on it.

25 MR. STITELY: Yes.

Proceedings

1 MS. FULLER: Yeah. And Your Honor, and we had
2 discussed this whether or not we'd discuss it, we --- we
3 (unintelligible) judge can't rule in advance.

4 (Simultaneous speaking)

5 THE COURT: (Unintelligible) testimony.

6 MS. FULLER: Right. It's just --- well, we weren't
7 sure of, you know, if the defense gets up and says it
8 then at the end of the case you don't charge it based on
9 the current case law and how it stands based on the stats
10 that we anticipate.

11 THE COURT: No, I mean, we'll discuss this before
12 closings.

13 (Simultaneous speaking)

14 MS. FULLER: --- opening ---

15 (Simultaneous speaking)

16 MS. FULLER: --- he's guilty of involuntary. Not
17 saying we're going to do that. I don't know
18 (unintelligible) but he's overcharged he's guilty of
19 involuntary, and then at the end of the trial you don't
20 charge involuntary based on the current case law as it
21 stands based on the current facts as we know them, the
22 State position is involuntary (unintelligible) wouldn't
23 even apply. And so ---

24 THE COURT: That's what you can argue.

25 MS. FULLER: Right. But we weren't sure --- we just

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1 want to lay that out --- lay that out there because we
2 anticipate having to argue that later in terms of that.

3 The other thing to discuss too, for defensive
4 accident to apply, the --- case law, the unlawful act
5 also discussed --- discussed for the Court.

6 And for the record, how we approach that for the
7 record should we go forward with defensive accident. If
8 he is prohibited from carrying a firearm,
9 (unintelligible) carrying a firearm. And so the
10 three-prong test is you can't be unlawfully
11 (unintelligible). And so we just have to discuss that
12 this afternoon. And anything else?

13 MR. STITELY: I think that's it. I mean, she's spot
14 on in her arguments.

15 MS. FULLER: Okay.

16 MR. STITELY: So it's not a surprise.

17 MS. FULLER: I --- I (unintelligible) I'm just, you
18 know ---

19 THE COURT: Okay.

20 MS. FULLER: --- just guessing.

21 MR. STITELY: Yeah, and then what I --- that one
22 tape we have a lot ---

23 (Simultaneous speaking)

24 MS. FULLER: --- this morning you asked about the
25 audio ---

Proceedings

1 MR. STITELY: Pictures. I think we're good on
2 pictures.

3 MS. FULLER: Okay.

4 (Simultaneous speaking)

5 MR. STITELY: Well, we're going to --- we're going
6 to sort.

7 (Simultaneous speaking)

8 MR. STITELY: We have one picture issue, but don't
9 even know it it's (unintelligible).

10 MS. FULLER: Right. Yeah. I'll bring that in
11 before ---

12 (Simultaneous speaking)

13 THE COURT: Well, let me ask y'all this, are we
14 going to be able to get through all of this this
15 afternoon?

16 MS. FULLER: Yes. Yes, Your Honor.

17 MR. STITELY: The only thing that I envision
18 (unintelligible) is going to be doing a lot of it. I
19 know I have a fight on the polygraph question situation.
20 It --- I mean, and I guess (unintelligible) the audio she
21 has some issues with Jackson v Denno part on one of the
22 body cams. So I don't envision it being like --- we
23 could probably argue the whole issue, and then you can
24 watch the whole video at you're leisure rather than watch
25 the two-hour video.

Proceedings

1 THE COURT: Okay.

2 MR. STITELY: Because I think she can clearly
3 address her problem, and then you can make a decision on
4 that and then go from there.

5 MS. FULLER: And we plan to make the entire
6 (unintelligible).

7 THE COURT: I didn't get ---

8 (Simultaneous speaking)

9 THE COURT: --- that one ---

10 MS. FULLER: --- part of the record.

11 THE COURT: --- video. If y'all can --- it was very
12 weird. Number one, I didn't (unintelligible) down
13 because I watched most --- three of them this weekend.
14 But one of them, the little box popped up that I needed a
15 code to get into from the Solicitor's Office. And then
16 when I tried to download it at home, it just kept
17 down --- trying to download. So I didn't get to see that
18 fourth video. I listened to the 911 tape. I listened to
19 the tape on Grey with the coroner with the defendant with
20 Grey from the coroner's office I listened to the one with
21 Sherman, but I hadn't ---

22 MS. FULLER: So you're missing two. We'll burn
23 them. We'll just review our court exhibit ones and give
24 you ---

25 THE COURT: Yeah, can we just send it to my

Proceedings

1 computer?

2 MS. FULLER: One --- it's a million kilobytes.

3 THE COURT: Oh my Lord. Am I going to have enough
4 time tonight to listen to it?

5 MR. STITELY: Well, I think, Judge, and I think at
6 least her position the defense ---

7 (Simultaneous speaking)

8 MR. STITELY: --- so if you agree with her the rest
9 is kind of, you know, superfluous. But I think if we get
10 past all of that, I don't know if you need to listen to
11 the entire videos today in the courtroom.

12 THE COURT: Okay. I can watch them on my own.
13 Perfect. Okay.

14 MS. FULLER: So it looks like we need to burn one
15 more --- the body cam, but here's Preach's interview, and
16 then you're missing one more after that.

17 THE COURT: Can my computer play that?

18 MS. FULLER: We can get you an external if you need
19 it.

20 THE COURT: Yeah. Well, I have probably one of the
21 securest computers around. I can't put a disc in it.
22 That's probably why it's secure.

23 (Simultaneous speaking)

24 MR. STITELY: They don't put them on computers
25 anymore.

Proceedings

1 MS. FULLER: You have ---

2 (Simultaneous speaking)

3 THE COURT: Are you sure (unintelligible) that
4 tonight?

5 MS. FULLER: Yeah, I'll bring you a copy to court.

6 (Simultaneous speaking)

7 MS. FULLER: And then the body cam ---

8 THE COURT: (Unintelligible). Okay.

9 (Simultaneous speaking)

10 THE COURT: If anything else --- all right. Let's
11 be back and 1:45.

12 MS. FULLER: Okay. Thank you, Judge.

13 (Off the record)

14 THE COURT: I'm ready. Okay. The State want to
15 tell me about their first motion?

16 MS. FULLER: Yes, Your Honor. Your Honor, I think
17 (unintelligible) order (unintelligible) the --- what I
18 propose in the e-mail for Denno. The first one ---

19 THE COURT: So we're going to do the 911 call first?

20 MS. FULLER: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. FULLER: I think that's a straight forward.

23 I --- (unintelligible) burnt to a disc to appear on the
24 overhead projector, everything that was sent via e-mail
25 and make it --- it's Court's 1 for the record. And so in

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1 terms of 911 call, he freely --- he freely called 911,
2 Your Honor. I doubt there was --- obviously this is a
3 contract with dispatch, and I would argue that it should
4 be permitted as an admission by the defendant.

5 (Court's Exhibit 1 marked)

6 MR. STITELY: Judge, if you don't mind, some of
7 these I'm going to handle, there's a bunch of different
8 ones (unintelligible). No problems with 911 tape. I
9 think it comes in.

10 THE COURT: Okay. And I agree. I listened to the
11 911 tape over the weekend that the State had supplied.
12 So without objection the 911 tape's going to be entered
13 in.

14 MR. STITELY: I mean (unintelligible) proper at the
15 time, but I don't have any particular objection to it.

16 THE COURT: Okay. All right. The 911 tape is in
17 as ---

18 MS. FULLER: Thank you, Your Honor. And then taking
19 it chronologically, the next (unintelligible) would be
20 what --- what was made to deputy investigator ---
21 apologize. He --- and he's prepared to take the stand
22 for testimony.

23 THE COURT: Okay. Are you ready, Mr. Stitely? Are
24 you agreeing that Investigator Gietz is ---

25 MR. STITELY: I think we need to hear what he says

Voir Dire Direct Exam Gietz

1 it's going to be, Judge.

2 THE COURT: I just thought I'd ask first. Okay.
3 (Unintelligible).

4 (Witness Sworn)

5 INVESTIGATOR JOHN GIETZ, HAVING BEEN DULY SWORN,
6 TESTIFIED AS FOLLOWS.

7 MS. FULLER: If you'll state your name --- spell
8 your last name for the record.

9 THE WITNESS: Investigator Gietz. Last name is
10 G-I-E-T-Z.

11 VOIR DIRE DIRECT EXAMINATION

12 BY MS. FULLER:

13 Q. And then just moving along for the purpose of this
14 hearing, are you employed at the Lexington County Sheriff's
15 Department?

16 A. Yes, ma'am.

17 Q. And how long have you worked there?

18 A. Ten years.

19 Q. And in what capacity?

20 A. Six years of it have been on the NET Team. Prior to
21 that I was a road deputy, then transferred to MPO. And
22 before that I worked in the detention center for about a
23 year and a half.

24 Q. And back on December 27th of 2019, did you --- did you
25 respond to [REDACTED] Valley Lane in Lexington County?

1 A. Yes, ma'am.

2 Q. And what was the nature of the call that you were
3 responding to?

4 A. It was a call for a GSW. Dispatch reported that the
5 girlfriend had committed suicide.

6 Q. Okay. And you were responding to this incident location
7 in response to a suicide?

8 A. That is correct.

9 Q. And once you arrived on scene, can you describe it so the
10 judge?

11 A. I cut off my blue lights right as I approached,
12 pulled into the driveway. From the driveway, I could see
13 a --- a burgundy slash maroon Honda Civic hatchback
14 parked in the back. I could see a --- what looked like a
15 female laying on the ground. And there was groups of
16 people in the front of the house and then also by the
17 side door of the house.

18 Q. And what did you do once you arrived on scene?

19 A. I began approaching where the --- looked like there
20 was a body laying. As I was --- as I was approaching
21 I --- I saw people motioning at the side door. And the
22 defendant exited the side door of the residence from
23 inside.

24 And said somebody informed him that the police were
25 there. Once he did that, he said, where are they at?

Voir Dire Direct Exam Gietz

1 Where are they at? He began looking around. And then we
2 made eye contact with each other. And then Mr. Corder
3 became visibly upset.

4 Q. Okay. And just to be clear as well, when you pulled up
5 on scene, you cut your blue lights, but were you in a marked
6 or unmarked car?

7 A. Unmarked car, ma'am.

8 Q. Okay. And how were you dressed?

9 A. In jeans and t-shirt, but I had a outer plate
10 carrier fixed with the words sheriff's department on the
11 front and the back as well as a metal badge affixed to
12 one side of my vest. Also a duty belt and a Glock 17
13 attached to my hip.

14 Q. Would you say it was apparent that you were the police?
15 Law enforcement?

16 A. Yes, ma'am.

17 Q. Okay. And did you identify yourself as law enforcement
18 to Mr. Corder?

19 A. I did.

20 Q. And you indicated that he came out the door, looked,
21 asking where they at? Referring to the law enforcement?

22 A. Yes, ma'am.

23 Q. And at that point, did you speak with him?

24 A. Not ---

25 Q. Or did you go look at the body like you were testifying

1 to --- previously testified to?

2 A. Yes, I --- I initially went to the body ---

3 Q. Okay.

4 A. --- Mr. Corder made some statements. He was saying
5 that she shot herself and then he was yelling that she's
6 dead. And that's when I approached the back yard. I
7 could see a female laying next to the vehicle.

8 Q. Okay. And then once you did that, did you later have an
9 opportunity to speak to Mr. Corder?

10 A. I did.

11 Q. And what did you ask --- what, if anything, did you ask
12 him?

13 A. Just asked him to kind of sum up what --- what had
14 happened. There were some things that were kind of
15 inconsistent that didn't seem necessarily matched up. So
16 I was just --- wanted to know what happened. We
17 responded to a suicide. Mr. Corder had already said that
18 she shot herself. So I was just asking what happened.
19 Then he told me they was chopping wood and he brought it
20 back to the residence. And then he was throwing wood on
21 the pile and he heard a shot and then saw her fall. He
22 said he tried to help her. And then I asked him where
23 the gun was. He said he didn't know.

24 Q. And what was purposes --- purpose of asking him where the
25 gun was?

Voir Dire Direct Exam Gietz

1 A. Well, at the time, I was investigating what I
2 believed to be a suicide.

3 Q. And in speaking with him, did you record the
4 conversation?

5 A. No, ma'am. I'm exempt from recording due to the
6 nature of my position.

7 Q. Okay. And --- and that would include no body cams?

8 A. That's correct.

9 Q. Physically? And in terms of speaking with him, did it
10 appear that he was under the influence of alcohol or drugs to
11 the extent that it would impair his ability to understand or
12 communicate with you?

13 A. No, ma'am.

14 Q. Did he appear to have any physical or mental
15 instabilities that would impair his ability to understand
16 simply being asked what happened, where the gun was?

17 A. No, ma'am.

18 Q. And when it was unsolicited, you arrived on scene, she
19 shot herself, that was unprompted, correct?

20 A. That's correct.

21 Q. And so anything that would appear to prohibit him from
22 being able to speak on his own?

23 A. No, ma'am. He ---

24 Q. Okay.

25 A. --- was speaking just fine.

Voir Dire Cross-Exam Gietz

1 Q. Okay. And just so it's clear for the record, since you
2 were responding to a suicide, he wasn't under arrest at this
3 time, nor in custody, correct?

4 A. That's correct.

5 Q. Any threats or promise exchanged for this brief
6 interaction?

7 A. No, ma'am.

8 Q. And I think that's essentially it. To the best of your
9 knowledge, were his statements made to you freely and
10 voluntarily?

11 A. Yes, ma'am.

12 MS. FULLER: No more --- no further questions at
13 this time. Please answer any questions of defense
14 counsel, or of the Court.

15 MR. STITELY: Please the Court.

16 VOIR DIRE CROSS-EXAMINATION

17 BY MR. STITELY:

18 Q. Investigator, what time did you get the call? Or was it
19 kind like an all call over dispatch?

20 A. It was toned out, meaning the call starts with tones
21 going over the radio, and they put out the brief details.
22 Just happened to be right around the corner, so I
23 responded to it.

24 Q. So pretty much shooting, anyone close get there?

25 A. That's correct.

Voir Dire Cross-Exam Gietz

- 1 Q. Okay. You were doing narcotics at the time, not this
2 kind of stuff, correct?
- 3 A. That's correct.
- 4 Q. You said you were driving an unmarked, no recording
5 equipment in that truck?
- 6 A. That's correct.
- 7 Q. And nothing on your body that records?
- 8 A. That's correct.
- 9 Q. How long were you there before a marked vehicle showed
10 up?
- 11 A. I couldn't answer that question. You would have to
12 look at the CAD notes. If you'd like I can do that.
- 13 Q. Oh, if you have them, that would be awesome.
- 14 (Investigator looking through notes)
- 15 A. Looks like a short time. It --- actually looks like
16 a 912 arrived at 15:17:30 seconds.
- 17 Q. 15:17:30? What was your unit number on this call?
- 18 A. Would have been 368.
- 19 Q. So you're the --- so you're 368. So if it says L368, en
20 route, that would been you calling or radio in saying I'm on
21 my way?
- 22 A. Yes, sir.
- 23 Q. Okay. And then it shows that you're L368 arriving at
24 15:15:48?
- 25 A. That's correct.

1 Q. Okay. It says the next officer responded that they
2 arrived at 15:17:30, correct? That's L912?

3 A. That looks correct. Yes.

4 Q. Do you know who that is?

5 A. I wouldn't know.

6 Q. What about just under two minutes after you got there?

7 A. That's correct.

8 Q. Okay. You said you responded to a suicide call. Did you
9 hear the call? The voice on the 911 that made that specific
10 call?

11 A. No, sir.

12 Q. So you wouldn't know if it was a Mr. Bowerman (phonetic)
13 who actually said there was a suicide, not my client on a 911
14 call?

15 A. No, sir.

16 Q. You're just responding to what dispatch tells you?

17 A. That's correct.

18 Q. So when you arrived, you were under the impression that
19 this was a potential suicide?

20 A. That's correct.

21 Q. Okay. At any point, did you conduct what I would call a
22 formal interview of my client?

23 A. No, sir.

24 Q. You never brought him to a room to talk about what
25 happened?

Voir Dire Cross-Exam Gietz

1 A. No, sir.

2 Q. And your responsibility at the scene pretty much ends
3 when the other unit showed up?

4 A. That's correct.

5 Q. Did you have any other follow-up with this case?

6 A. No, sir.

7 MR. STITELY: That's all the questions I have,
8 Judge.

9 THE COURT: Okay.

10 MS. FULLER: No redirect, Your Honor.

11 THE COURT: All right. Can I let the
12 (unintelligible) investigator down.

13 MS. FULLER: Yes, Your Honor, please.

14 THE COURT: All right. Now, that --- that concerns
15 this statement ---

16 MS. FULLER: That's correct, Your Honor.

17 THE COURT: --- and I'm assuming the statement is
18 she shot herself and she's dead is what you're wanting to
19 get in?

20 MS. FULLER: As well as the --- the narrative
21 portion when he asked what happened and where's the gun.

22 THE COURT: Okay. I'm glad to hear your arguments
23 on it.

24 MS. FULLER: Your Honor, I think the testimony is
25 the statements were freely and voluntarily --- freely and

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1 voluntarily made. At this point he wasn't in custody,
2 nor should he have been in custody at this point because
3 law enforcement --- you heard his testimony, was
4 responding to a suicide call.

5 (Unintelligible) as soon as he arrived on scene Mr.
6 Corder comes out the door and says she shot herself,
7 she's over there. Asked what happened. He said he
8 didn't know. The --- they were throwing the wood in the
9 pile. He heard shots. She goes down. Where's the gun?
10 I don't know. That's his essential nature of his
11 interaction. (Unintelligible) testify (unintelligible)
12 stood around on scene. But in terms of actual
13 interaction one-on-one with Mr. Corder, that would be the
14 extent of it.

15 THE COURT: Okay. Mr. Stitely.

16 MR. STITELY: No arguments as to admissibility
17 (unintelligible) I'll waive later. But I don't think we
18 have any argument as far as admissibility goes.
19 (Unintelligible).

20 THE COURT: All right. I'm going to allow it in. I
21 find it to be voluntary. His testimony that he wasn't in
22 custody that he didn't appear to be intoxicated, or any
23 drugs, and that --- that statement was freely and
24 voluntarily. So it's in.

25 MS. FULLER: Thank you, Your Honor.

Voir Dire Direct Exam Sherban

1 THE COURT: All right. Let's move on to the
2 statement with Investigator Sherban.

3 MS. FULLER: Yes, Your Honor.

4 THE COURT: Now, is this the one that's on the audio
5 that I was able to hear?

6 MS. FULLER: That's correct, Your Honor.

7 THE COURT: Okay. So I'm --- I'm familiar with this
8 statement.

9 MS. FULLER: Okay. And it's also all on Court's 1
10 just what I e-mailed just so it's part of the record.

11 THE COURT: Okay.

12 MS. FULLER: Investigator Sherban.

13 (Witness sworn)

14 INVESTIGATOR CAMERON SHERBAN, HAVING BEEN DULY
15 SWORN, TESTIFIED AS FOLLOWS.

16 CLERK: If you'll have a seat up there and state
17 your name and spell your last name for the record.

18 THE WITNESS: My name is Detective Cameron Sherban,
19 S-H-E-R-B-A-N.

20 VOIR DIRE DIRECT EXAMINATION

21 BY MS. FULLER:

22 Q. And for the purpose of this hearing, you're employed by
23 the Lexington County Sheriff's Department?

24 A. Yes, I am.

25 Q. And how long have you been employed there?

1 A. 11 years.

2 Q. In what capacity?

3 A. I started on the road as a deputy, was a master
4 deputy four years. So four years total on the road. And
5 three years as a (unintelligible) officer at
6 Brookland-Cayce High School. And then moved over to our
7 major crimes special victims unit in 2018. I've been
8 there ever since.

9 Q. Are you from the south?

10 A. No.

11 Q. Okay. Just asked because of that accent.

12 (Unintelligible).

13 On this particular day, December --- not December ---
14 December 27th, just jumping right along, did you respond to
15 [REDACTED] Valley Lane in Lexington?

16 A. Yes, I did.

17 Q. And what were you responding to?

18 A. Sergeant Creech had called me and let me know that
19 there was a GSW or gunshot wound victim at this address.
20 At the time the information that had been given and the
21 radio calls was that it had been a suicide.

22 Q. Okay. And did you ultimately arrive on scene?

23 A. I did.

24 Q. And did you --- go ahead and describe the scene when you
25 got there.

Voir Dire Direct Exam Sherban

1 A. So when I got there, there were a few deputies that
2 were already on scene. The --- there was crime scene
3 tape either being put up or it had already been put up.
4 I just --- I do remember that there were crime scene
5 tapes.

6 The house --- as you drive in the driveway, you ---
7 you've got the house faces the road, but like the
8 driveway is basically the entire yard. So I pulled in
9 and parked kind of near the road. I parked parallel to
10 the road. But I could look back in the back yard, I
11 could see that the --- the there was a vehicle in the
12 back yard, it was a red color car. And then there was a
13 body laying next to the car. As I started to walk back
14 towards that area, I realized that's where the crime
15 scene is, I'm not going to walk any further.

16 When I turned, I saw Mr. Corder kind of laying on
17 the front porch. And I approached him, he rolled over on
18 his and knees and started to --- to --- started to vomit.
19 I knew I wanted to try to speak with him. There was
20 a --- a --- some other folks out there that were still
21 trying to figure out what was going on on the scene. I
22 did not want to take him, you know, in the car to talk to
23 him because of this. After he was able to settle down
24 for a little bit, I took him back beside my car to --- to
25 try to speak with him.

1 Q. And so at this time, it's still daylight, correct?

2 A. Yes, it is.

3 Q. So there's lights and sirens around?

4 A. Yes.

5 Q. But he's not's not in custody at the point of your
6 interaction?

7 A. No.

8 Q. Is it still early on trying to determine what happened
9 based on the suicide call?

10 A. Yes, that's correct.

11 Q. And you said you didn't take him inside of your vehicle.
12 He was standing outside?

13 A. Yeah. We --- we gave him a little place to sit
14 down, he had a little stool that he was able to sit on.
15 I wanted to put him kind between --- between the vehicle
16 so if he threw up, people wouldn't have seen that.

17 Q. And in --- in your interaction with him, was it recorded?

18 A. It was.

19 Q. And by video or just audio?

20 A. It was audio recorded.

21 Q. Okay. And you had an opportunity to review that prior to
22 coming here today?

23 A. Yes, ma'am.

24 Q. And he spoke to you for a little over ten minutes or so?

25 A. Yes, we started that --- that recording, first one

Voir Dire Direct Exam Sherban

1 started at about 3:47 was the first when I start speaking
2 to him.

3 Q. And you made that recording. Was there a second time
4 that you recorded?

5 A. So while I was speaking with him, just about
6 15 minutes later, at 4:03, I had turned around and the
7 coroner the coroner had walked up, coroner Grey Gain.
8 And he said they wanted to speak with him. I said,
9 that's fine. I'm --- I'm going to stand by with you.
10 I'm going to go ahead and record this just in case I ask
11 any questions.

12 Q. And so for that recording you stood by. It's actually
13 your recorder that recorded that communication?

14 A. It is. Yes, ma'am.

15 Q. Okay. And at that time, was the defendant essentially
16 free to leave?

17 A. Yes.

18 Q. At that time, did you identify him as a suspect in this
19 case at all?

20 A. No. Not at that time.

21 Q. In speaking with him, did he appear to be under the
22 influence of alcohol or drugs to the extent that it would
23 impair his ability to communicate with you or understand that
24 he was communicating with law enforcement?

25 A. No.

Voir Dire Direct Exam Sherban

1 Q. Any physical or mental disabilities that was readily
2 apparent that would impact his ability to comprehend or
3 understand communications?

4 A. No, ma'am.

5 Q. And in terms of speaking with him, did you threaten him
6 or promise him anything?

7 A. No, ma'am.

8 MS. FULLER: For the record, Your Honor, this
9 recording is also labeled as Court's 1, and then was also
10 e-mailed to the Court. And Your Honor indicated you have
11 already listened to.

12 THE COURT: I have listened to it.

13 BY MS. FULLER:

14 Q. So not publishing if that's okay for the record here
15 today but in terms of the full content --- the full content of
16 that recording, that first one, to the best of your knowledge
17 were the defendant's statements made to you freely and
18 voluntarily?

19 A. Yes.

20 MS. FULLER: No further question, Your Honor. The
21 State's requesting that the entire recording be
22 admissible.

23 THE COURT: I'll be glad to hear from you.

24 VOIR DIRE CROSS-EXAMINATION

25 BY MS. YONGE:

Voir Dire Cross-Exam Sherban

1 Q. Hi, Investigator Sherban. How are you?

2 A. Hey. I'm good.

3 Q. When you interviewed --- or spoke with Mr. Corder, where
4 was he located?

5 A. So the --- of course you --- you have --- I
6 don't --- I don't have a map right in front to show
7 everything, but if you pull onto the property, the ---
8 the house is probably 50 feet off --- 50 to 100 feet off
9 the road. My car was parked up closer to the road
10 itself. And so I walked him up away from his house
11 sitting between two vehicles that had already been parked
12 there. So just kind of took him further from the scene.
13 Wanted to speak with him away from those people that were
14 present.

15 Q. Okay. And when you walk him --- walked him up there,
16 could you see the house from where you had him situated?

17 A. Yes.

18 Q. Okay. And was he sitting on a stool --- why --- why ---
19 did you say he was sitting down?

20 A. He was sit --- he --- he had been vomiting just a
21 moment ago. He --- he just --- I --- I thought that he
22 would have (background noise) sitting down as he was
23 talking, rather than trying to have to stand up with ---
24 I don't know what he --- like as I said, he was vomiting.
25 I don't --- I don't know what his physical state is at

1 this moment.

2 Q. So that's why you didn't put him in a police car?

3 A. Yes.

4 Q. But so if he had not been vomiting --- well, I guess you
5 didn't put him in the police car because he was vomiting, and
6 you took him away from the scene; that's correct?

7 A. Yes.

8 Q. Approximately 50 feet. I'm not going to hold you to
9 that, but ish. Okay. And he could see the home from where he
10 was?

11 A. Yes.

12 Q. But you testified you didn't want other people to be able
13 to see him vomiting. Where were these other people located?

14 A. So there were a few people up on the porch ---

15 Q. Okay. So from ---

16 A. --- of the house.

17 Q. --- from --- you couldn't see the porch from where he
18 was?

19 A. I could. I mean, he --- he --- if he had stood up,
20 he could have seen it. I mean, I just --- I was hoping
21 that people wouldn't be able to see him vomiting.

22 (Unintelligible).

23 Q. Okay.

24 A. At the time.

25 MS. YONGE: No further questions, Your Honor.

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1 MS. FULLER: No redirect, Your Honor.

2 THE COURT: All right. Can I let Investigator
3 Sherban down?

4 MS. FULLER: Yes, Your Honor.

5 THE COURT: All right. Any arguments on the
6 admissibility? I'll be glad to hear from you Ms. Fuller.

7 MS. FULLER: Yes, Your Honor. Your Honor, you have
8 listened to the recording. He wasn't in custody at this
9 point. Miranda was not necessary at this point. They
10 were still trying to determine what happened here.
11 And --- and at this point in the --- at this time, at the
12 scene, they were still operating under this was a suicide
13 and trying to determine what happened. The testimony is
14 that he was free to leave. This was (unintelligible) his
15 yard. He (unintelligible) you know, allowed to sit in a
16 comfy spot. Allowed him to scour himself. No threats or
17 promises made. And to the best of his knowledge the
18 statements were made freely and voluntarily. And so we
19 request that the entire recording be admitted --- be
20 admissible.

21 MS. YONGE: Your Honor, we would argue that
22 (unintelligible) interrogation that (unintelligible)
23 given his Miranda rights as Investigator Sherban
24 testified. He walked him away --- and didn't put him in
25 a car because he was throwing up. The implication being

proceedings

1 that if he hadn't been throwing up, he would have put him
2 in a car. He was removed from the scene, and his family
3 couldn't see him.

4 Furthermore, he was guided by the police over to
5 this place (unintelligible) putting him in their custody.
6 Now of course, it's not a subjective standard. It's not
7 whether Investigator Sherban thought he was putting him
8 in custody, or whether my client thought he was in
9 custody, but actually whether a reasonable person would
10 have thought that they have freedom to leave. And under
11 these set of circumstances I would argue that
12 (unintelligible).

13 THE COURT: Okay. I'm going to tell you all, I
14 listened to the audio recording. I'm going to find that
15 it was freely and voluntarily made, but in custody. He
16 was freely being --- the testimony wasn't a suspect.
17 There's also testimony that he didn't appear to be under
18 the influence of any alcohol, or drugs, or --- I'm going
19 to find --- I'm going to have it --- I'm going to rule
20 that it's admissible.

21 MS. FULLER: Thank you, Your Honor.

22 THE COURT: Okay. Now, let's move on to the
23 statement of Coroner Gain. Now, am I assuming that
24 this --- for some reason, I want to say Grey when I
25 listen to the ---

Voir Dire Direct Exam Gain

1 MR. STITELY: Correct.

2 THE COURT: Coroner Grey is what I remember hearing
3 in the recording.

4 MR. STITELY: Grey Gain.

5 MS. FULLER: Yeah.

6 THE COURT: Am I right? I just want to make sure
7 this is the recording that I listened to.

8 MS. FULLER: It is.

9 THE COURT: Okay.

10 MS. FULLER: Sorry, Your Honor. Earlier I called
11 him Gary. (Unintelligible) name. Coroner
12 (unintelligible).

13 THE COURT: Become Grey to the Court because I --- I
14 heard introduce himself as Grey.

15 (Witness sworn)

16 GREY GAIN, HAVING BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS.

18 MS. FULLER: State your name, spell your last name
19 for the record.

20 THE WITNESS: My name is Deputy Coroner Grey,
21 G-R-E-Y, Gain, G-A-I-N.

22 VOIR DIRE DIRECT EXAMINATION

23 BY MS. FULLER:

24 Q. And you're employed with the Lexington County Coroner's
25 Office; is that correct?

1 A. Yes.

2 Q. And how long have you been employed in that capacity?

3 A. Seven years.

4 Q. And as a deputy coroner, do you carry a firearm?

5 A. I do.

6 Q. And that is --- can you explain for the Court, the
7 purpose of carrying a firearm?

8 A. We carry firearms. Our office is actually an
9 optional and we're optionally allowed to carry firearms
10 for our own protection on scenes ---

11 Q. And that's while ---

12 A. --- in performance of our duties.

13 Q. While performing your duty.

14 On this particular day, you heard Investigator Sherban
15 testify that he recorded a conversation that you had with the
16 defendant in his presence; is that accurate?

17 A. Correct.

18 Q. And during this conversation, can you explain to the
19 Court what was your purpose of speaking with the defendant
20 that day on scene?

21 A. So my purpose is we conduct an investigation any
22 time there is a death involved, to determine cause and
23 manner of death.

24 Q. Okay. And when you spoke with --- I already stated, but
25 you --- were you aware that Investigator Sherban was recording

Voir Dire Direct Exam Gain

1 that conversation?

2 A. Yes.

3 Q. Okay. And have you had an opportunity to listen to the
4 recording?

5 A. I have.

6 Q. And does that fairly summarize, or is that an accurate
7 recording of your conversation with Mr. Corder?

8 A. Yes.

9 Q. And when you were speaking with him ---

10 MS. FULLER: And I apologize Your Honor, for the
11 record, that's also on Court's 1 and we'll e-mail to the
12 Court that you were just referring to that ---

13 THE COURT: Okay.

14 MS. FULLER: --- previously listened to. So not
15 publishing here for the record which you've already
16 listened to.

17 THE COURT: Okay.

18 BY MS. FULLER:

19 Q. When speaking with him, where did that conversation take
20 place?

21 A. So I received notification from dispatch to --- that
22 there was a deceased individual. I responded --- arrived
23 on the scene, it was about 10 minutes to 4:00 in the
24 afternoon. By the time I got on scene, they'd already
25 secured the scene --- the sheriff's department had

1 already secured the scene.

2 I arrived, checked in with the deputy of the head
3 crime scene log and went to Investigator Sherban. And he
4 was towards the front part of the yard near the road. He
5 was conducting an interview with an individual and once
6 he completed his, I stepped into mine.

7 Q. Okay. And in speaking with him, did he appear to be
8 under the influence of drugs or alcohol to the extent they
9 would impair his ability to understand that he was
10 communicating with you about what happened?

11 A. No, ma'am.

12 Q. Anything that you noted in terms of any physical or
13 mental disability that would impair his ability to
14 understand --- this appears on the recording that you just
15 asked follow-up questions to everything (unintelligible)?

16 A. Yes, nothing I saw that would impair him.

17 Q. Okay. And at the time he wasn't under arrest at all,
18 correct?

19 A. No, ma'am.

20 Q. And then (unintelligible) just trying to determine what
21 happened since it was a suicide call?

22 A. Yes, ma'am.

23 Q. Did you threaten him or promise him in any way?

24 A. No.

25 Q. Is the full extent of your communication with him on that

Voir Dire Cross-Exam Gain

1 recording?

2 A. Yes, ma'am.

3 Q. And to the best of your knowledge, were any of the ---
4 were the defendant's statements made to you freely and
5 voluntarily?

6 A. Yes, ma'am.

7 MS. FULLER: Your Honor, for the purpose of this
8 hearing that's the extent of my questions.

9 Please answer any questions from defense counsel or
10 the --- Your Honor may have.

11 THE COURT: Mr. Stitely.

12 MR. STITELY: Briefly.

13 VOIR DIRE CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q. Coroner, were you briefed at all before you came into
16 questioning on this case? I say, "briefed," had you gotten
17 any information --- any additional information about what you
18 were walking into?

19 A. The only information that I had obtained was to
20 respond to that location in reference to the death of an
21 individual involving a gunshot.

22 Q. Okay. So you're --- the first thing you learn about this
23 case is your interactions when you sit there with the
24 investigator speak to Mr. Corder?

25 A. Yes, sir.

Voir Dire Cross-Exam Gain

1 Q. Okay. So you didn't have any additional information
2 prior to that?

3 A. No, sir.

4 Q. And you arrived about 35 minutes after the first
5 responding officer, but you had not been told anything about
6 what they found out so far?

7 A. No, sir.

8 MR. STITELY: Nothing further.

9 THE COURT: Okay. Okay. Thank you. May I let
10 Coroner Grey down?

11 MS. FULLER: Yes, Your Honor. Thank you.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: Be glad to hear your argument.

14 MS. FULLER: Thank you, Your Honor. Your Honor, for
15 the purposes of whether or not his statement's freely and
16 voluntarily, you heard Investigator Sherban as well as
17 benefit of the coroner that this communication was
18 essentially back-to-back. The same setting in the front
19 of the yard. Free to leave. And he testified that he
20 didn't see anything that would impair his ability to
21 understand who he was communicating and what he was
22 communicating about. And that the statements were made
23 freely and voluntarily.

24 And so the state would request that the entire
25 recording be admissible.

Voir Dire Direct Exam Creech

1 THE COURT: Mr. Stitely.

2 MR. STITELY: No arguments.

3 THE COURT: All right. I'm going to find it is
4 admissible. There was no coercion, no testimony about
5 any drugs or alcohol. No physical or mental disability.
6 He was not under arrest, there were no threats or
7 promises. I listened to the tapes. They're almost
8 identical in statement-wise.

9 MR. STITELY: For the record, say Judge, I should
10 say no objections (unintelligible) Ms. Young --- sorry
11 made the first part of this conversation. So it's along
12 those same rulings, no further objections.

13 THE COURT: All right. So I --- I just find that
14 it's freely and voluntarily. It will be admitted.

15 Now we're going to move on the statement from
16 Investigator Creech, which I have not reviewed.

17 MS. FULLER: That's correct, Your Honor. We'll go
18 ahead and publish it.

19 THE COURT: Okay.

20 MS. FULLER: (Unintelligible).

21 (Witness sworn)

22 ANTHONY ADAM CREECH, HAVING BEEN DULY SWORN, TESTIFIED AS
23 FOLLOWS.

24 MS. FULLER: And just state your name and spell your
25 last name for the record.

Voir Dire Direct Exam Creech

1 THE WITNESS: I'm Sergeant Anthony Adam Creech.

2 Creech is C-R-E-E-C-H.

3 VOIR DIRE DIRECT EXAMINATION

4 BY MS. FULLER:

5 Q. And you're employed with the Lexington County Sheriff's
6 Department?

7 A. I've been with the Lexington County Sheriff's
8 Department for 13 and a half years.

9 Q. And in what capacity?

10 A. I've been started as a patrol deputy. I was a field
11 training officer, a master deputy, since July of 2014
12 I've been in --- in major crimes --- in major crimes unit
13 doing criminal investigations since roughly October of
14 2017. I've been a sergeant (unintelligible).

15 Q. Okay. And on this particular --- as it related to this
16 case, did you have an opportunity --- did you respond to [REDACTED]
17 Valley Lane on December 27, 2019?

18 A. I did.

19 Q. And can you describe for the Court the --- describe the
20 scene when you arrived?

21 A. Certainly. (Unintelligible) we were responding and
22 I don't think I actually (inaudible) the direct call.
23 (Unintelligible) I think we heard the radio traffic, so
24 we dispatched our car (background noise) suicide.

25 When I got on scene, deputies had already responded

Voir Dire Direct Exam Creech

1 and Detective Sherban was actually like two minutes ahead
2 of me. I think I got there about 3:43 p.m. is what I
3 have noted. Then I started to kind of secure the crime
4 scene, which is in this --- his mother and neighbor were
5 on scene. I saw --- I was told that he vomited prior to
6 me getting there. I saw the sidewalk (unintelligible)
7 vomit on the porch. The defendant appears to be upset
8 about whatever has taken place.

9 Q. Okay. And when you --- when you saw him, did you speak
10 to him outside of what's in the recording?

11 A. So --- so very briefly, so they first had directed
12 Detective Sherban to go ahead and start speaking with
13 him. They were having their initial interaction. And I
14 walked up at one point just to observe some of it. And
15 then I kind of went to do other things. I was supervisor
16 on the scene, so I was kind of --- especially that
17 initial response, I was kind of bouncing all over the
18 place, touching base with different officers
19 (unintelligible) plan what we would do.

20 Q. Okay. Dealing now first with when you first spoke with
21 him, can you describe to the Court where he was when you first
22 spoke with him prior to the recording?

23 A. Prior to the recording?

24 Q. Yes.

25 A. (Unintelligible) Detective Sherban.

1 (Unintelligible) where they were speaking at. But I did
2 have a (unintelligible) direction (unintelligible) Mr.
3 Corder. He was actually lying in front of some of the
4 patrol cars on his back in a grassy area up from the
5 house. (Unintelligible) close to when Detective Sherban
6 (unintelligible).

7 And I recall kind of talking to him (unintelligible)
8 down, not quite on my knees, but crouched down to talk
9 with him. He was telling me something along the same
10 lines of what he told Detective Sherban. He didn't go
11 into a lot of detail. He just said that he wasn't sure
12 what had happened. He asked me (unintelligible).

13 He was lying on his back. He --- he had his eyes
14 closed (unintelligible) he was talking to.
15 (Unintelligible) conversation. At some point in the
16 conversation, I don't know what I was doing before, but I
17 got distracted and wandered off (unintelligible) cell
18 phone (unintelligible).

19 He had inquired about me after I wandered off and
20 then I ended up coming back and re-approaching him a
21 short time later. And actually asked him if he would sit
22 in the front seat of my car so we could talk some more.
23 Q. Okay. And so --- so sir, for the Court, you spoke with
24 him outside of the recording shortly after he spoke with
25 Detective Sherban?

Voir Dire Direct Exam Creech

1 A. Correct.

2 Q. And he told you essentially the same --- similar things
3 that what he said, he didn't know what happened and along
4 those lines ---

5 A. Yes.

6 Q. --- correct?

7 To you (unintelligible) Sherban?

8 A. Yes.

9 Q. And that part's not recorded?

10 A. It's on the ---

11 Q. (Unintelligible)?

12 A. (Unintelligible).

13 Q. But this recording, this was later and that took place
14 inside of your vehicle; is that correct?

15 A. Yes, ma'am. That's correct.

16 Q. And can you describe to the Court at this point what was
17 the purpose of you speaking to him again?

18 A. So I'd been inside. The process of going inside to
19 get his clothing. (Unintelligible). (Unintelligible)
20 inside the residence I asked his mom about access to
21 firearms, and she eventually admitted that --- that he
22 had a similar handgun that she had seen before. She
23 didn't know where it was at, what kind of gun it was,
24 whether it was even a real gun. So I started to --- kind
25 of ask --- and (unintelligible) closer to the victim's

1 body and (unintelligible) been able to move her and
2 confirm that she had had handgun underneath her. Because
3 we had heard at this point, we heard reference that it
4 had possibly been a suicide. And we heard reference it's
5 possible she (unintelligible). And so as we working the
6 scene things just weren't making as much sense.

7 I started to have personal concerns that we possibly
8 had a loaded handgun unsecured on the property somewhere.
9 So when I went back and re-approached Mr. Corder, I asked
10 him if he would speak with me further in the front seat
11 of my car.

12 Q. Okay. And just so it's clear, this was after the
13 victim's body was moved, and there was no firearm found
14 underneath her body; is that correct?

15 A. That is correct.

16 Q. Do you know approximately what time this recording began?

17 A. I believe it started about 5:19 p.m.

18 MS. FULLER: Okay. Your Honor, I guess at this
19 time, we'll go ahead and publish the recording. I do
20 want to --- I gave this to the defense counsel earlier,
21 and I (unintelligible) while listening. State obviously
22 is seeking a ruling that the entire statement is
23 admissible.

24 However, on the recording you will hear some things,
25 and I have different arguments, in --- in terms of what

Voir Dire Direct Exam Creech

1 should be redacted in terms of what's appropriate. The
2 character evidence as well as some suggestion of him
3 having a prior bad acts, and the possible sentence. But
4 I've highlighted in the approximate time of where you
5 would see it on the recording that request was
6 highlighted be redacted, but the entire thing as a whole
7 be ruled admissible. (Unintelligible) follow along.

8 THE COURT: Okay. You all are planning on redacting
9 what's in yellow?

10 MS. FULLER: That's my proposed. I requested of
11 counsel (background noise) requests, but I'm sure as he
12 listened to now, of course if there's anything that
13 concerns the Court as well as counsel, we haven't burned
14 the final one. But we would need to do that tonight.

15 THE COURT: We're listening to ---

16 (Simultaneous speaking)

17 MS. FULLER: The entire thing.

18 THE COURT: Okay. I gotcha.

19 (Audio playing)

20 MS. FULLER: Couple questions about that and
21 then ---

22 BY MS. FULLER:

23 Q. And when you began speaking with him, we indicated that
24 this was approximately 5:14 --- 5:19; is that correct?

25 A. Roughly. Yes, ma'am.

1 Q. Okay. At this point, and just so it's clear for the
2 record, you were still trying to determine what happened at
3 this scene, correct?

4 A. Correct.

5 Q. At this point in speaking with him, Brandon Corder was
6 not a suspect at that time, correct?

7 A. No, he was not.

8 Q. Okay. At this point, you were still trying to --- you
9 knew that he was present and you knew that if the --- what you
10 had so far was a suicide with a gun; is that correct?

11 A. (Unintelligible). Yes, ma'am.

12 Q. But then --- well, what was reported was a suicide ---

13 (Simultaneous speaking)

14 A. Yes, that's correct.

15 Q. During your interview with him, he eventually stated, I
16 didn't do it, I didn't kill her. I was pulling it out ---
17 pulling it out to take it off of me, and it went off in my
18 hand.

19 A. At that point, you said before we talk any more,
20 you're not under arrest right at this moment, but because
21 we're going into the territory, I'm going to read you
22 your rights.

23 Q. Just so it's clear at this --- just so it's clear for the
24 record now, my testimony --- at this point in the interview he
25 was not under arrest, correct?

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1 A. He was not.

2 Q. Was he in custody at this point?

3 A. He was not.

4 Q. Okay. At this point he was still free to leave, correct?

5 A. He was sitting in the front seat of my car

6 (unintelligible) parked close to the roadway and I think

7 all the other officers were up near the house and

8 (unintelligible).

9 Q. Okay. And no handcuffs, correct?

10 A. No handcuffs.

11 Q. And then when he made that comment prior to Miranda, he

12 asked you a question about are y'all going to arrest me? When

13 you made your statement that there was a possibility that he'd

14 be arrested was that just in response to his question?

15 A. It was. There was certainly a possibility

16 (unintelligible) absolutely yes.

17 Q. Okay. For the purposes of this hearing was that a threat

18 that if you don't talk to me I'm going to arrest you?

19 A. No, absolutely not.

20 Q. Okay. That was simply in response to him asking you are

21 you going to arrest me?

22 A. Correct. And at this point, as I said, my --- my

23 concern was (unintelligible) unaccounted for firearm.

24 This was a fairly populated area, there's a lot of foot

25 traffic. Also an area we know to be high crime with the

1 sheriff's department. So once he indicated that the gun
2 was on scene, it was located in the house, then at that
3 point, you know, I --- that was --- that was the
4 big initial concern was (unintelligible).

5 Q. And so even though he was not in custody, so Miranda
6 wasn't necessary, you still went ahead and advised him of his
7 rights anyway; that correct?

8 A. Correct. And I felt like if we kept speaking we
9 would (unintelligible) situation where he make admission
10 to then change that.

11 Q. Okay. And prior to Miranda, he cuts you off and said it
12 was a complete accident. And you'd indicated I want to ask
13 you about that. Before we do that, you have the right --- and
14 then he said, I'm scared, and then you were eventually able to
15 issue Miranda; is that correct?

16 A. Correct. Yes, ma'am.

17 Q. And what --- do you use a card, or how did you
18 (background noise)?

19 (Simultaneous speaking)

20 A. --- keep a card in my wallet (unintelligible) just
21 so I don't get it wrong.

22 Q. And then we heard on the recording, but just to confirm,
23 you indicated that you can and will --- anything you say can
24 and will be used against you in a court of law. You have the
25 right to talk to an attorney. And you recite all of his

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1 rights. And you asked him if he understood those rights. And
2 he says no; is that correct?

3 A. That's correct. He said no, he's testified that he
4 didn't understand the first everything that he said could
5 be used against him.

6 Q. And then he asked you a question about his rights,
7 correct?

8 A. He did.

9 Q. And then did you answer and clarify for him what that
10 meant?

11 A. Yes, I explained what that "right" meant.

12 (Unintelligible).

13 Q. And that's what we heard on the recording, correct?

14 A. Correct.

15 Q. And then ---

16 (Simultaneous speaking)

17 A. And then we asked him specifically if he wished to
18 (unintelligible).

19 Q. Okay. I apologize, I didn't mean ---

20 (Simultaneous speaking)

21 A. Don't worry.

22 Q. And once you explained to him at that point, did you
23 then --- and at that point you asked him if you keep those
24 rights in mind, are you good to explain to me what happened?
25 Did he acknowledge that he understood his rights and was

1 willing to speak with you after you had clarified his question
2 about his rights?

3 A. Yes, he did.

4 Q. Okay. And then so it's clear at this time, not in
5 custody, correct?

6 A. Correct.

7 (Simultaneous speaking)

8 Q. Not under arrest?

9 A. I --- I even told him he wasn't under arrest.

10 Q. Not formally detained, correct?

11 A. Correct.

12 Q. Or not the detained, period? He was free to leave?

13 A. Correct.

14 Q. And then he proceeded to communicate with you; is that
15 correct?

16 A. Correct.

17 Q. And speaking with him, we know, and you point out that he
18 seems to be very emotional, was there anything about his
19 (unintelligible) mental state, or (unintelligible) mental
20 disability that --- that --- that you saw? We just have an
21 audio, but that you saw that impaired his ability to
22 understand his rights, or understand that he was communicating
23 with law enforcement?

24 A. No, he --- he was upset and we appeared to
25 understand each other. And we had a very detailed

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1 dialogue, I would say.

2 Q. Okay. And did he appear to be under the influence of
3 alcohol or drugs to the extent that would impair his ability
4 to understand or comprehend that he was speaking with you and
5 to comprehend his rights?

6 A. Not that I could discern.

7 Q. In fact, he asked you to clarify one of his rights; is
8 that correct?

9 A. Correct. Yes, ma'am.

10 Q. And he then waived those rights, correct?

11 A. He did.

12 Q. He verbally --- did his body language also indicate to
13 you a waiver of the rights --- of his rights?

14 A. You know, audio recording I don't recall if he gave
15 me specific ---

16 Q. Well, while you were there ---

17 (Simultaneous speaking)

18 Q. --- was there anything about his demeanor that indicated
19 he did not want to speak with you?

20 A. No, he ---

21 Q. Okay. And did he ever provide a written statement?

22 A. He did not.

23 Q. So all we have is the recording here?

24 A. Yes, ma'am. That's correct.

25 Q. To the best of your knowledge, were defendant's

Voir dire Cross-Exam Creech

1 statements to you made freely and voluntarily?

2 A. I believe they were, yes.

3 MS. FULLER: Okay. No further questions at this
4 time.

5 THE COURT: Ms. Williams --- Ms. Williams, y'all ---

6 (Simultaneous speaking)

7 THE COURT: --- calling you Ms. Yonge yet.

8 VOIR DIRE CROSS-EXAMINATION

9 BY MS. YONGE:

10 Q. Hi, Investigator Creech. How are you?

11 A. Doing okay, ma'am. How about yourself?

12 Q. I'm all right. Just two questions: You said --- what
13 time did you say you arrived on scene?

14 A. I think it should have been about 3:43 p.m.

15 Q. Okay. And then at what time did you say you started the
16 interview process?

17 A. About 5:19 p.m.

18 MS. YONGE: Okay. That's all the questions I have,
19 Your Honor.

20 THE COURT: Any redirect?

21 MS. FULLER: No redirect, Your Honor.

22 THE COURT: May I let Sergeant Creech down?

23 MS. FULLER: Thank you, Your Honor.

24 THE COURT: Thank you, Sergeant Creech.

25 All right. Let me --- let me hear the arguments.

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1 MS. FULLER: Okay. Thank you, Your Honor.
2 Obviously and I'll do a full argument for this one, since
3 he was actually in the police car.

4 Your Honor, in order for a suspect to be entitled to
5 (unintelligible) privileges set out in Miranda, he would
6 need to be both in custody and subject to law enforcement
7 interrogation and that's State v Lynch.

8 Miranda defines that custodial interrogation is
9 questioning initiated by law enforcement after a person
10 has been taken into custody, or otherwise deprived of his
11 freedoms in a significant way.

12 Custody requires arrest or restraint comparable to a
13 formal arrest and a (unintelligible) according to a
14 reasonable person (unintelligible).

15 Obviously the subjective intent is irrelevant. So
16 here you have the testimony that he still was not a
17 suspect. They knew something was fishy, didn't make
18 sense, but he was not a suspect at that time. And the
19 case law is even if an officer intends to arrest a
20 suspect an unarticulated plan has no bearing on the
21 question of whether the suspect was in custody at a
22 particular time.

23 So what we're left with here, since there was
24 obviously there was no --- at this point, he said he was
25 concerned about an unsecured firearm, since there was no

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1 weapon found under her body.

2 And he began that recorded interview at 5:19 p.m.
3 But at this point, custody would require the use of
4 arrest or restraint. His testimony is that he was free
5 to leave at that point.

6 Miranda --- also the fact that Miranda warnings were
7 given does not convert a non-custodial situation into a
8 custodial one, and that's California v Beheler.

9 Miranda does not apply simply because an
10 investigation has focused on a particular suspect, or
11 simply because a person is being questioned in a police
12 vehicle. And that's Sanford v California, Oregon v
13 Mathiason.

14 So Your Honor, even though his interview took place
15 in the police vehicle, he was free to leave. He was not
16 in handcuffs, he was not detained, and he was not in
17 custody for the purposes of Miranda. So if I guess,
18 technically this would still be (background noise) fall
19 in line with in camera (background noise) Miranda was
20 appropriate. A Miranda did not need to be given in this
21 situation, but also the fact that it was did not change
22 the nature of the interaction to custody.

23 He was not taken into custody. You heard the entire
24 recording. The whole recording ended with, I don't know
25 what you're going to be charged with. I don't know

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1 what's happening next. We are still at the point of
2 determining what --- what's going to happen.

3 Either way, Miranda was provided. He had a question
4 about his rights. Sergeant Creech, clarified and
5 explained to him what his rights were, or what they
6 meant. And he still went ahead and waived his rights
7 and --- and gave a statement to law enforcement.

8 Your Honor, so at this time, I would believe --- oh,
9 and he also indicated that to the best of his knowledge
10 the statements were freely and voluntarily made. That
11 when defendant asked him if he was going to be arrested,
12 in response to his question, he said there's a
13 possibility, but his testimony is at that time, there was
14 nothing --- it was nothing at that time to arrest him.

15 And that's --- that was testimony is clear from the
16 timeline of where we are at 5:19, all they know is
17 there's a missing gun and there's a --- a --- the victim
18 is deceased in the yard.

19 So, Your Honor, at this time, Your Honor, I believe
20 that in terms of ruling on whether a Miranda needs to be
21 given, Miranda didn't need to be given is the State's
22 position and that his statements were freely and
23 voluntarily made. And we'll just request that they be
24 admitted and be ruled admissible should the state choose
25 to introduce them.

1 THE COURT: Okay.

2 MS. YONGE: All right. Your Honor. For the
3 purposes of discussing this motion. Obviously, defense
4 would assert that none of these statements are
5 admissible. Particularly, we would state that the entire
6 (unintelligible) custody or interrogation. And it's
7 easier --- and it's easier to look at these right up into
8 two statements, both pre and post-Miranda.

9 So we'll start with the first statement. The
10 burden, of course, is on the State. That under a
11 totality, the circumstances they must prove that he was
12 not in custody. And the factors that you can use to
13 determine this are location, purpose, length --- length
14 of interrogation, and whether the suspect was free to
15 leave the place of questioning. As the (unintelligible)
16 stated yes, it is a reasonable person's standard.

17 Now, interestingly, the officer's subjective view is
18 weightless regarding whether or not the person held is
19 free to leave. In fact, it is --- it is --- it is
20 described as being irrelevant under US v J.D.B. So the
21 subjective views --- the subjective views of
22 investigating officers and the person being questioned
23 are irrelevant. It is a reasonable person standard.

24 So, Your Honor, with him --- he arrived on scene,
25 and then hour and a half later is when he began

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1 interviewing my client. At that point, he had gathered
2 additional information. The gun wasn't underneath the
3 body. He'd spoken with the coroner, he'd spoken with the
4 mom. The mom states that she's seen Brandon with a gun.
5 All of these things lead one to go from it being a
6 information gathering exercise to a custodial
7 interrogation.

8 In State v Hill, which is a 2018 South Carolina
9 case, they state that if the police convince the
10 defendant that he's a suspect by doubting his version of
11 the events, or presenting alternative versions based on
12 other evidence they have collected, the atmosphere of the
13 interrogation can objectively change to the point a
14 reasonable person would think his freedom was restricted.

15 Would a reasonable person think they had freedom to
16 leave? And throughout this --- what I'm going to call it
17 first statement, Your Honor, he states, (unintelligible)
18 to do the right thing. (Unintelligible) making you look
19 a lot worse.

20 Let's see. We know from what we've seen so far,
21 that it's not possible that somebody shot her from the
22 woods. Somebody closer. Let's see. So he --- he is
23 implying that the defendant did not --- is not telling
24 the truth. And that switches the nature of the
25 interrogation from it being an information-gathering

1 exercise to an interrogational one. So Your Honor, we
2 would first submit that that first statement was
3 custodial in nature and Miranda should have been given.
4 Also, he was in a police vehicle. So ---

5 (Simultaneous speaking)

6 THE COURT: (Unintelligible) some kind of statement
7 in there that things aren't adding up to the point he
8 goes, so why did you shoot her? I've heard that. I made
9 notes of that, and I know it was before Miranda.

10 MS. YONGE: Yes, Your Honor. As Officer Creech
11 stated so why did you shoot her? I don't think it's
12 because you are a cold-hearted individual.

13 I think it's just --- I didn't shoot her, I didn't
14 shoot her, I didn't shoot her.

15 So Your Honor, we would submit that it was
16 completely and totally an interrogation and Miranda
17 should have been given. That would be for the first
18 part.

19 We would use that same argument ---

20 THE COURT: And your first part is before Miranda?

21 MS. YONGE: Before Miranda. Yes, Your Honor.

22 THE COURT: Okay. I want to make sure.

23 MS. YONGE: And then regarding the second statement,
24 or second half. Obviously that same argument we would
25 apply to the second half (unintelligible).

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1 Secondly, we would state that we believe it's a
2 Siegel violation. There is a technique called questions
3 and Miranda in Missouri v --- get this right.
4 (Unintelligible). Here we go. Missouri v Seibert,
5 S-E-I-B-E-R-T.

6 (Simultaneous speaking)

7 MS. YONGE: I was obviously mispronouncing it.

8 THE COURT: --- E ---

9 MS. YONGE: I-B-E-R-T.

10 THE COURT: Okay.

11 MS. YONGE: And it --- this is a particular type of
12 Miranda violation. The United States Supreme Court found
13 four factors to consider when you're finding this. And
14 this is the type of case where the officer --- there was
15 a technique that was developing, Your Honor, and this
16 is --- indicates this.

17 So I'm just going to give you some background where
18 an officer questions to the point of getting a
19 confession, then give Miranda, and then gets the
20 post-Miranda statement confession in. So it was seen as
21 a way to get around Miranda. And so there are four
22 factors to see if this is in play.

23 First, the completeness --- completeness and detail
24 of the questions, answers, in first round of
25 interrogation.

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1 Second, the timing and setting of the first
2 questioning and the second.

3 Third, continuity of police personnel.

4 And fourth, the degree to which the interrogator's
5 questions treated the second round as continuous ---
6 continuous with the first.

7 Your Honor, we would argue that these were --- these
8 were the same questions that were being asked again for
9 the second time, they were immediately after each other.
10 There was no break, there was no --- so once he gave
11 Miranda, there was --- it was just one long continuous
12 session where he didn't even leave the car for the
13 20-minute period, you could hear it.

14 Continuity of the police personnel, obviously it was
15 Creech who began and Creech who ended the entire process.
16 And the degree to which the questions treated the second
17 round in continuance. Well, Your Honor, one 20-minute
18 clip we just listened to right here.

19 And in fact, interestingly, the lack of a break in
20 there is of note, because in State v Nagy, which is a
21 2010 case in South Carolina, they comment that the
22 respondent was permitted a supervised cigarette break,
23 then given Miranda warnings with interrogation by the
24 same officer resuming immediately.

25 So in that case in State v Nagy, they interviewed

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1 him, he gave the information, they paused, they let him
2 have a cigarette break. They gave him Miranda, they
3 continued --- they found that was a violation, Your
4 Honor, with the pause for a cigarette break. There was
5 no pause here. So that would be our second point
6 regarding the second violation. The first, it was
7 custodial, Miranda needed to be given, the secondly, it's
8 a Seibert violation.

9 And third, Your Honor, I apologize for the being
10 long-winded.

11 THE COURT: No, you go right ahead. I'm listening.

12 MS. YONGE: His Miranda --- he did not knowingly
13 waive his Miranda rights. I believe Creech states, do
14 you understand each of these rights I have explained to
15 you?

16 Brandon: No. I don't understand the first one
17 where you said that everything I say will be used ---
18 can, and will be used against me. How is this going to
19 be used against me if I'm telling you it was a complete
20 accident?

21 And then Creech: Yes, that's what I'm saying.

22 Brandon: Used against me.

23 Creech: What I'm saying is things you say can be
24 repeated, that's what that means.

25 Brandon: You said it can and will --- and will.

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1 Creech: If this goes into a court of law,
2 regardless of what somebody says, whether there's a
3 witness, a person in your position or otherwise, the
4 things they say are going to get repeated. That's what
5 that means. If everybody ---

6 Brandon: I loved her. I loved her with all my
7 heart, man. We're talking about ---

8 Creech: (Unintelligible) in mind. Are you good to
9 explain to me what happened now? And then the interview
10 continued.

11 So, Your Honor, Brandon expressed that he did not
12 understand his rights. Creech attempts to clarify what
13 he believes that right to be, but in his right that he
14 didn't understand was everything I say can and will be
15 used against me. And the explanation was what you say
16 can be repeated in court which, Your Honor, I would put
17 forth is not sufficient explanation of that right.

18 And then he does not further clarify do you
19 understand these rights? Instead, just saying having
20 these rights in mind, are you good to explain to me what
21 happened now?

22 He never expressed that he understood his rights at
23 all. He did not say it. You know, in fact he did not at
24 all understand them. And, Your Honor, the burden is on
25 the State to prove that he did.

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1 That was my (unintelligible) --- so first --- in
2 sum, you know, first statement definitely custodial
3 interrogation. We would argue the second part is too and
4 so the Miranda was necessary. But that the Miranda is
5 faulty, because it's a Seibert violation, and it's also
6 my client did not knowingly waive his rights. And I have
7 the case if you need it.

8 THE COURT: I do.

9 MS. FULLER: And in response --- thank you, Your
10 Honor. The first in terms of taking --- just for the
11 record, so Creech testifies to two statements and they're
12 splitting up the --- the recording in two. So I just
13 want the record to be clear because remember, prior to
14 playing the recording, I indicated that he spoke to
15 Brandon and it was definitely while he was laying on the
16 ground. And so that's all encompassed in his Denno.

17 And then the recording is what defense counsel split
18 into two. I just wanted to be ---

19 THE COURT: Yeah, she just took the recording ---

20 (Simultaneous speaking)

21 MS. FULLER: The recording is split into two.

22 THE COURT: --- statement ---

23 MS. FULLER: (Unintelligible).

24 THE COURT: --- and divided it to ---

25 MS. FULLER: And that's why ---

1 THE COURT: --- pre-Miranda and ---

2 MS. FULLER: Uh-huh.

3 THE COURT: --- post Miranda.

4 MS. FULLER: Correct.

5 THE COURT: So since I didn't hear any argument on
6 the first statement, I'm not going to respond to what I
7 call the first thing, his laying on the --- him laying on
8 the ground.

9 MS. YONGE: That's fine, Your Honor.

10 MS. FULLER: Okay. And so just solely looking at
11 the recording is what her --- major of her arguments is.

12 Your Honor, respectfully, I --- I disagree with
13 the --- the facts that Creech Seibert violation here.
14 What that case was concerned with was a true
15 interrogation going into getting the defendant to the
16 point where he ultimately confessed.

17 You listened to a recording here. We all listened
18 to it. His statement was not a confession. And if
19 anyone thought that that --- that's not what it is.
20 Prior to Miranda, if we're splitting up the statement, he
21 indicated that it was an accident. It was an accident
22 man, it was a pure accident. That's not a confession.

23 Also what the courts have recognized is a public
24 safety concern here. Even this is just a secondary
25 argument here. But Creech testified that after they

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1 moved the body, they were concerned (unintelligible) a
2 loaded firearm about the premises, because people were
3 around, and they couldn't find the firearm.

4 And so in that case, New York v Quarles,
5 interrogation prompted by concern for public safety ---
6 safety, need for answers in a situation posing a threat
7 to public safety outweighs need for the rule protecting
8 right against self-incrimination.

9 I'm not saying that there was a violation here
10 anyway. That's my argument here. But we do have a true
11 public safety concern here. And to suggest that law
12 enforcement should just --- I don't want to suggest
13 defense counsel is saying to turn a blind eye to a loaded
14 firearm being here when there has been multiple calls to
15 911, which you haven't had a benefit of.

16 That fellow committed suicide, or there was a
17 shooting in the woods, they moved their body and there's
18 no gun. Law enforcement would have the duty to find that
19 gun. And so to suggest that he can't ask questions like
20 hey, where's the gun? This isn't adding up.

21 THE COURT: And you know, I agree with you about the
22 public safety, but explain to me the very next breath why
23 did you shoot her? Things aren't adding up here. We
24 can't find the gun. I mean, if you're so concerned about
25 public safety, there --- there was only one thing about

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1 I'm concerned about a loaded gun lying around. Things
2 aren't adding up. Why did you shoot her?

3 MS. FULLER: Let me find that portion in here, Your
4 Honor. Because I believe that came after where he says I
5 didn't say it came from the woods. He says where it came
6 from. Said bang, bang, I don't know where it came from.
7 He says somebody (unintelligible) to her. Corder says my
8 side of the story, I loved her. He then says I'd never
9 hurt her. And then that's when Creech says, because he
10 says purposeful. And so in follow up to that --- because
11 he says, I'd never hurt her. I wouldn't do that
12 purposefully. I have never have done nothing like that.

13 So then the conversation changes --- well, the key
14 there is purposeful. And so just like when he asked
15 about his rights. Just like when he asked are going to
16 be arrested? This was a conversation which was prompted
17 by the defendant. And so he makes a comment law
18 enforcement's going to follow up on. Now you're
19 switching --- now you're getting closer to --- okay,
20 more --- there's more to the story here. He said he
21 would never purposely hurt her. I've never done nothing
22 like that. And so the conversation, that's what's there,
23 Your Honor. That's the portion that you're ---

24 (Simultaneous speaking)

25 THE COURT: --- read Miranda then?

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1 MS. FULLER: He ---

2 THE COURT: --- getting into a bunch of other stuff,
3 probably a confession. Why not stop there and --- I
4 mean, I'm just curious.

5 MS. FULLER: And I --- I understand that. But
6 obviously, hindsight is 20/20, but we have a defendant
7 cutting you off and going back interaction. You have the
8 benefit of the --- transcribing this was terribly hard,
9 I'm sure defense counsel attempted to, but Creech spent
10 hours ---

11 (Simultaneous speaking)

12 THE COURT: --- people have rights.

13 MS. FULLER: Correct, Your Honor. And but looking
14 at Miranda, Miranda requires custody. And at this point
15 he was not in custody, Your Honor. All they had was
16 Joanie deceased. They had no weapon, and all they had
17 was other 911 callers and his that it was a suicide. A
18 shot came from the woods. And no gun on property to rule
19 out the suicide. And then the witness is saying the shot
20 came from close by. You know?

21 And so it's either he knows what happened, and
22 they're getting that information to find the gun, or he's
23 involved. But at this point, at 5:19, mere suspicion is
24 not enough for an arrest. It certainly isn't at this
25 point to say, hey, we're going to take you into custody.

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1 That would be (unintelligible) but, you know, taking him
2 down --- I mean, obviously there's some case law that say
3 you can detain him.

4 But in this situation, I believe they acted
5 appropriately. They're still at his house. And you'll
6 see from the body cam footage, it's three hours
7 long. They accommodated him beyond --- from smoking the
8 cigarette (unintelligible) the argument, they were nice
9 to him. They were not disrespectful. I commended when
10 the officer, he just stood there listening to him go on
11 and on and on after this. But if we look at where we are
12 at this point at 5:19, there is nothing --- no evidence
13 at that moment to charge anybody with anything --- with
14 anything. He's not in custody.

15 And before, you know, that case Seibert looked at
16 making inculpatory statement. He said it was an
17 accident. He would make anything --- he didn't make ---
18 he didn't say anything --- he didn't confess to a crime.
19 But before we go there and before Creech could even
20 finish reading ---

21 (Simultaneous speaking)

22 THE COURT: --- say it's an accident, that sounds
23 like a confession to me.

24 MS. FULLER: Oh, well it's not for me.

25 (Unintelligible) do more work.

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1 THE COURT: (Unintelligible).

2 MS. FULLER: No, if --- if I (unintelligible) this
3 all the time. Because I get reports that say defendant
4 confessed, and I looked into it it's the statement of
5 self-defense, or accident, or a (unintelligible), or
6 something. That's not a confession. That is not saying
7 I did this and this is why I did it. To me that's not a
8 confession, and I don't think the case law supports that
9 being a confession. This is a statement ---

10 (Simultaneous speaking)

11 THE COURT: Well, I mean he goes as far as to
12 describe how the gun went off.

13 MS. FULLER: Well, that's after Miranda.

14 THE COURT: Oh. But let me ask this, I notice y'all
15 looking through a transcript. Are y'all sharing it? Can
16 I get a copy of the transcript?

17 MS. FULLER: Oh, defense counsel, are you providing
18 me with a copy?

19 MS. YONGE: Mine is marked up, Your Honor.

20 (Simultaneous speaking)

21 MR. STITELY: --- clean one, Judge.

22 THE COURT: Thank you. Then, because I'm going to
23 take it under advisement. I'll be glad to hear anything
24 else y'all have to say. But I think I'm going to ---

25 (Simultaneous speaking)

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1 THE COURT: --- go back and listen to this tape.
2 I've already ---

3 (Simultaneous speaking)

4 THE COURT: --- the report of it.

5 MS. FULLER: Okay. I can get --- I have a clean
6 copy.

7 MR. STITELY: Judge, we can give you just a copy of
8 Creech's entire report.

9 MS. FULLER: You can keep yours.

10 MR. STITELY: Creech wrote it out in his report.
11 And I don't think we that disagree for the most part of
12 how it's written in here, you can hear it
13 (unintelligible).

14 MS. YONGE: Your Honor, that is what I was reading
15 from. Would you mind if I briefly reply to Ms. Fuller?

16 (Simultaneous speaking)

17 THE COURT: I wasn't finished.

18 MS. YONGE: Oh. I --- I apologize.

19 THE COURT: I just didn't know if she was finished.
20 I interrupted her.

21 MS. FULLER: Creech, is your copy clean?

22 (Simultaneous speaking)

23 THE COURT: Would you give it to my law clerk, and
24 he can --- he'll run a copy of it right quick.

25 MS. FULLER: And, Your Honor, in response to the

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1 second part of her statement, was in terms of the
2 Miranda --- no, custody. I do want to make sure that my
3 argument is clear that I don't believe that being in
4 the --- and the case law supports this --- being in the
5 police vehicle does not mean custody. He was not put in
6 custody, he was not in handcuffs, he was free to leave.
7 At any point he was free to leave.

8 They had no murder weapon, they had no witnesses, he
9 was free to leave. And so, Your Honor, I think if we're
10 separating those two portions, the first part Miranda
11 wasn't necessary, it wasn't required by law at all for
12 the pre-Miranda statement. I believe every question that
13 Creech asked was in follow up to a statement he made,
14 which is totally appropriate interrogation.

15 He says, I wouldn't purposely do it. Well
16 (unintelligible). I mean, he didn't say, okay, well
17 let's talk about (unintelligible). No, he's in a
18 naturally --- and then the --- to the point where he was
19 like you might be going a little far, let me stop you and
20 Miranda. And he's interrupting because audio, he didn't
21 even finish the --- the Miranda.

22 The last point she made was in term --- I apologize,
23 defense counsel made was in terms of Miranda, and I had a
24 case for that in terms of the waiver. (Unintelligible)
25 statement the --- obviously, he's not silent, but he said

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1 yes to the waiver. And I want to make sure I find that
2 because you'll have that when you look at the transcript.

3 He asked --- when asked do you understand each of
4 these rights I explained to you? Corder says, no I
5 don't. I don't understand the first one. That's
6 important because he didn't say I don't understand all
7 five of them --- six of them. He says --- he said, no I
8 don't. I don't understand the first one. The first one
9 was the only one that he was confused about.

10 And that was the only one that Creech clarified
11 because that's what he said he was confused about. And
12 so upon clarifying, Corder kept trying to talk before he
13 gets a waiver. He's going with the natural flow of the
14 conversation. I think the audio's important to show
15 that.

16 Then he says, oh, well, having these rights in mind,
17 because he's talking. He's like I loved her. I loved
18 her. He couldn't even finish confirming, well, now it's
19 a case --- it's the first of that issue. He clarified
20 it. Corder has no more questions. He doesn't have any
21 more questions. He switches to I loved her. I loved her
22 with all my heart. I was --- he's like, okay, having
23 these mind --- having these rights in mind, are you good
24 to explain to me what happened now? Yes. Then he
25 continues because he kept talking.

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1 I mean, there's only so much we --- we can ask an
2 officer to do when a defendant is clearly to me this
3 suggests his willingness to speak. He couldn't stop
4 talking. And if you --- once we get to the body cam
5 next, you'll understand. He couldn't stop talking. And
6 so I think that's important for the Court and for the
7 analysis and what the case law supports here.

8 THE COURT: Okay. All right. Ms. Yonge.

9 MS. YONGE: Thank you, Your Honor.

10 THE COURT: I need to just stick with Ms. Williams.
11 I'm sorry.

12 MS. YONGE: I don't recognize Ms. Yonge, honestly,
13 Your Honor. And Ms. Williams ---

14 THE COURT: You might not answer if I call you Ms.
15 Yonge.

16 (Simultaneous speaking)

17 THE COURT: All right. Ms. Williams. Go ahead.

18 MS. YONGE: Your Honor, I believe there was some
19 conflation of the concept of arrest and custody, that he
20 wasn't under arrest. He wasn't under arrest. He was
21 wasn't in custody and I would just reiterate that custody
22 is a objective when a reasonable person believes they
23 were able to leave. It has nothing do with whether you
24 are under arrest. It's --- that is something that is
25 probative. It goes towards the totality of

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1 circumstances. Obviously if you're under arrest it is
2 likely you don't feel like you can leave.

3 I also wanted to mention that some body-worn camera
4 was brought up briefly, and that's not in evidence yet on
5 here. But if Your Honor would ---

6 (Simultaneous speaking)

7 MS. FULLER: It's in Court's 1. It's all in there.

8 MS. YONGE: Okay. Perfect. Then in the body-worn
9 camera; minute seven, he attempts to get up and go see
10 his mother. He's outside with Sherban. So and he says,
11 no, no. You can't go over there. He attempts to leave
12 the scene to go see his mom and Officer Booth restrained
13 him. And that would be in the three-hour --- the
14 three --- she says it's in evidence. It's minute seven
15 in a three-hour by camera of Booth, which is prior to him
16 being interrogated by Creech. And you can see that in
17 the video. If not, it's after he was interrogated by
18 Creech.

19 MS. FULLER: I wound it up.

20 MS. YONGE: You did? Okay. Well maybe I'm
21 mistaken. I thought so ---

22 THE COURT: After he has been detained?

23 MS. FULLER: That's correct, Your Honor. Creech's
24 interview ends at 5:42. You'll see it's on the CAD
25 report as 5:43, Booth is going through then searching.

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1 He's got put in the car and he said now you're detained.
2 He radios in one detained and it's at 5:43 p.m., So this
3 is after.

4 THE COURT: Is that when Sergeant Creech gets out of
5 the car ---

6 MS. FULLER: Yes ---

7 THE COURT: --- I heard that on the tape ---

8 (Simultaneous speaking)

9 MS. FULLER: And then once you get to the body cam,
10 it mirrors up and I confirmed it. The time is at
11 5:43 p.m. It is like kind of the transfer.

12 THE COURT: Okay.

13 MS. FULLER: Starts at 5:42 ---

14 (Simultaneous speaking)

15 THE COURT: And at that time he was detained?

16 MS. FULLER: And he was clearly told he was detained
17 and Booth radioed ---

18 (Simultaneous speaking)

19 THE COURT: I heard him say ---

20 MS. FULLER: --- that he was detained.

21 MS. YONGE: (Unintelligible) Your Honor,
22 (unintelligible) we have the video because I would ---
23 I'm not 100 percent. I --- I --- I think that there is
24 some indication --- I'm not sure. The answer is I'm not
25 sure, Your Honor. But I am pretty sure that when Booth

1 (unintelligible) detained him at some point. But she
2 said they were being very ---

3 THE COURT: But he comes towards the end.

4 MS. YONGE: Yes, but to her point that he was
5 allowed to go get cigarettes, at this point, which is ---
6 which is after the statement, so after he gives the
7 statement he's allowed to go get cigarettes, and they're
8 very solicitous of him. At one point Booth just says no,
9 no, you can't go over there. So for what that is
10 (unintelligible).

11 But so it wouldn't be relevant for either one of us
12 in that case.

13 90 minutes later, he's already discussed it with
14 Sherban, he's discussed with the mom. He's discussed it
15 with the coroner. So all of that again, points towards
16 interrogation. In fact, there was testimony that the
17 crime scene tape was already up at this point. So
18 regarding it being a public emergency or emergency if
19 there's a crime scene tape up and they've already got it
20 quartered off and things like that. That would indicate
21 being less of a public concern and more of a --- they ---
22 they've got the scene locked down, we need
23 (unintelligible) scene so it's not a danger to the public
24 at that point, because there is crime scene tape.

25 At some point the solicitor stated that in

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1 conversation which does meet that language is indicative
2 of interrogation. And she also stated that every
3 question was in follow up which is standard during
4 interrogation.

5 So that meets with the words again, I think would
6 point towards interrogation. Is burden shifting to state
7 that, you know, there's only so much a cop can do.
8 There's only so much he can, you know, hindsight's 20/20,
9 things like that. The burden's on the State to prove
10 their case, especially this point by preponderance of the
11 evidence. And I don't think that they have done that.

12 And finally, Your Honor, with regards to whether he
13 didn't understand the first one and he only didn't
14 understand one of them, well, I don't know of any case
15 that says it's okay to understand four, but not five.

16 MS. FULLER: Well, Your Honor, respectfully, that
17 point was he --- the question was, do you understand
18 these rights? And his answer was I don't. The first one
19 I had questions on. And Creech at the time did clarify,
20 and answer, and direct those concerns. And he
21 clearly --- they clearly were addressed, because then he
22 continued to talk before he could even ask the final
23 question; do you understand these rights?

24 And so that was my whole argument in --- in terms of
25 that. And my whole point is in terms of smoking a

1 cigarette, being there's other body cam that wasn't
2 introduced.

3 And he is free to roam. His mom brings him
4 cigarettes. This is before and after this portion here.

5 You'll see in this --- your trial book, but I'll
6 just mention to the Court here now, law enforcement 911
7 called at 3:09. He doesn't leave the scene until 7:43.
8 In a --- in a sense of this wasn't a rush to judgment
9 situation. This wasn't a --- I think law enforcement did
10 what we want them to do. They didn't just go on scene
11 like, okay, you're the last one here. We'll lock you up
12 and we'll prove it later.

13 This wasn't that situation. They had a public
14 safety concern as well as trying to determine what
15 happened. And once he said it was an accident, let's
16 determine if this is was an accident. Let's look at what
17 we have before charge anyone. And then he ultimately
18 was.

19 And just to clarify and I'll double-check it again
20 too tonight, because I don't want to misspeak, but I'm
21 almost positive Booth's body cam looked like 5:0 ---
22 (unintelligible) at 5:43 is when I looked just prior to
23 coming in here. The overlap on Creech's towards the end
24 he says --- okay. When you --- when he says I'm not a
25 criminal, and on that language you don't have to pull a

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1 gun on me, that's sort of the end of his. And then you
2 hear that on Booth's body cam and 5:43. Y'all guns, I'm
3 not dangerous. It's business. It's not personal.
4 Someone's explaining that to him. And then
5 Creech's audio ---

6 (Simultaneous speaking)

7 MS. FULLER: Right. My timestamps for Booth's body
8 cam is 5:43 p.m. So this would be after. Just want that
9 to be clear. So that's not indication. And in terms of
10 the case law for what custody is, setting aside the
11 objective standards under Berkemer v. McCarty, 468 U.S.
12 420 (1984) US Supreme Court case. Custody requires
13 arrest or restraint comparable to a formal arrest, and is
14 judged according to reasonable persons in the suspect's
15 shoes.

16 It's --- despite what we want to say, or what's
17 being argued, custody, custodial, meaning custody
18 requires a formal right. The case law says not being in
19 the police vehicle is not in custody. I --- I think
20 that --- I don't want to say it's --- I know that the
21 Court has acknowledged --- what case is this? There's
22 difficulty sometimes in --- in determining whether a
23 suspect is in custody.

24 And so the case laws walks you through it at what
25 point on an objective standard are you in custody. And

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1 he was free to leave. He wasn't --- it wasn't until he
2 was detained and then he wasn't arrested formally till
3 later on when he was transported to the detention center.

4 THE COURT: Okay. I'm going --- I'm going to take
5 this under advisement.

6 Can we take a quick break and then we're going to
7 come back and do the body cam. And then I guess we're
8 going to deal with the polygraph. And then is that it?

9 MS. FULLER: In terms of Denno, yes, Your Honor.
10 And then we have the other things to work through --- the
11 other motions.

12 MS. YONGE: (Unintelligible) I think Booth would
13 be --- because I was mistaken it comes afterwards, I
14 think everything we just argued would apply to Booth,
15 because I don't believe that Miranda was ever --- he was
16 ever Remirandized.

17 So Your Honor, I don't know that we need to go
18 through the exercise arguing Booth, unless --- I'm ---
19 I'm not trying to --- I was trying to state it's a
20 three-hour video after this. I don't think Miranda was
21 ever regiven, so we would say that everything here has
22 the same argument.

23 MS. FULLER: Yes, that's correct, Your Honor. And
24 the Miranda that Creech gave, that was the Miranda. Then
25 he was taken into custody and he was in the custody of

Proceedings

1 Booth at that point. And he made a bunch of statements.

2 (Simultaneous speaking)

3 MS. FULLER: Unprompted.

4 THE COURT: Are you trying to introduce those?

5 MS. FULLER: I would --- I would like a --- a ruling
6 that they're admissible. Yes, Your Honor.

7 THE COURT: Okay. Well then I'd like to hear what
8 they are.

9 MS. FULLER: All --- all right, Your Honor. That's
10 my --- my argument would be the same. But ---

11 THE COURT: Okay. Do I have that on ---

12 MS. FULLER: Your Honor, earlier I dropped it off
13 with ---

14 (Simultaneous speaking)

15 THE COURT: --- that's the other CD?

16 MS. FULLER: Yes, Your Honor.

17 THE COURT: All right. Let me make sure I write
18 that down that I'm listening to Creech's, and I'm going
19 to listen to Booth.

20 MR. STITELY: The legal arguments can remain the
21 same.

22 THE COURT: And the legal arguments the same. I've
23 got it. Let's just let me listen to it. Does that
24 include the --- also Booth's body watch camera?

25 MS. FULLER: That what his body cam --- body watch

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1 cam is the formal name. Body watch camera.

2 THE COURT: Is --- is the statement's on there?

3 MS. FULLER: Yes, Your Honor.

4 THE COURT: Okay. I got it.

5 MS. FULLER: It's the whole length. If you hear
6 silence, it's because he silenced the camera. But it's
7 not while --- I think it's when he walked away or
8 something like that.

9 THE COURT: Okay.

10 MS. FULLER: But there is some periods of time where
11 there's just no audio.

12 THE COURT: Okay. All right. Let's take a quick
13 little break.

14 (Off the record)

15 THE COURT: All right. Now we're going to move on
16 to these statements with Special Agent Beeler.

17 MS. FULLER: Your Honor, just for the record, since
18 we --- I was going to take one --- two minutes of
19 testimony from Booth ---

20 (Simultaneous speaking)

21 THE COURT: Okay.

22 (Simultaneous speaking)

23 THE COURT: --- and then I'll listen to his.

24 MS. FULLER: Yeah.

25 THE COURT: And --- and watch his body cam.

Proceedings

1 MS. FULLER: Yes, Your Honor. I apologize for this.

2 THE COURT: No. No. No.

3 MS. FULLER: Okay.

4 (Witness sworn)

5 BENJAMIN BOOTH, HAVING BEEN DULY SWORN, TESTIFIED AS
6 FOLLOWS.

7 MS. FULLER: State your name, spell your last name
8 for the record.

9 THE WITNESS: Yes, ma'am. Deputy Benjamin Booth,
10 B-O-O-T-H.

11 VOIR DIRE DIRECT EXAMINATION

12 BY MS. FULLER:

13 Q. And you're employed with the Lexington County Sheriff's
14 Department, correct?

15 A. Yes, ma'am.

16 Q. We've heard testimony already you responded to assist at
17 [REDACTED] Valley Lane on December 20, 2019; is that correct?

18 A. Correct.

19 Q. And when you arrived on scene, the defendant --- you
20 arrived on scene, the --- where was the defendant when you
21 arrived on scene?

22 A. He was speaking with another officer. I don't know
23 who at first.

24 Q. Okay. And we just discussed roughly around 5:43, he was
25 transferred into your custody; does that sound correct?

- 1 A. Correct. That was the --- 5:43 was the time that I
2 walked up to the side of Creech's patrol unit.
- 3 Q. Okay.
- 4 A. Yes, ma'am.
- 5 Q. And at the point --- at that point in terms of you had an
6 opportunity to watch your whole body cam, it's about over
7 three hours long; is that correct?
- 8 A. Three --- about three and a half-ish.
- 9 Q. And from the point that you took custody of the
10 defendant, at that point, he was detained; is that correct?
- 11 A. Yes, ma'am.
- 12 Q. Did you issue Miranda?
- 13 A. No, ma'am.
- 14 Q. Did you have any understanding if Miranda was --- had
15 already been given?
- 16 A. I believe I was aware.
- 17 Q. You said you don't?
- 18 A. I don't --- I don't know if I was aware or not.
- 19 Q. Okay. But in terms of your interaction with him, the
20 statements that he made to you, were they just free random
21 (unintelligible) statements made by him?
- 22 A. Yes, ma'am.
- 23 Q. Were --- anything in terms of questions about what
24 happened, did you ask any of those questions on your body ---
25 that we --- you know, your body cam, did you question him at

Voir Dire Direct Exam Booth

1 all about what happened?

2 A. The only questions I asked were from another officer
3 for clarification. Like maybe they were further away and
4 he couldn't quite hear him over an engine or something
5 (background noise). I repeated it, but I didn't ask him
6 these questions.

7 Q. No, because your job was just to basically keep him in
8 custody --- keep him detained and then you transported him to
9 Lexington detention center; is that correct?

10 A. Correct. I was --- crime scene --- I had a crime
11 scene log. And then I was with him just
12 (unintelligible).

13 Q. Okay. At any point could --- in your interaction with
14 him --- keeping him, did you threaten him or make any
15 promises?

16 A. No.

17 Q. Did he make statements in your presence, the other
18 officers, in response to their questions freely and
19 voluntarily?

20 A. Yes, ma'am.

21 Q. Did he appear to be under the influence to the extent
22 that he didn't understand that he was in custody?

23 A. He understood he was in custody. But he --- he made
24 numerous statements.

25 Q. Okay. And --- and those were unprompted that you didn't

Voir Dire Cross-Exam Booth

1 ask questions like about what happened or about Joanie or
2 anything like that; is that correct?

3 A. Correct.

4 MS. FULLER: No further questions, Your Honor. And
5 for the record, the recording is also collectively on
6 Court's 1 and we provided Your Honor a copy as well that
7 you indicated you'll review.

8 THE COURT: Right. Thank you. And that --- this
9 all is e-mailed to me.

10 MS. FULLER: That's correct, Your Honor.

11 THE COURT: Okay. Go ahead Mr. Stitely.

12 MR. STITELY: Thank you.

13 VOIR DIRE CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q. Deputy Booth, what time did you arrive on scene?

16 A. I don't know the specific --- specific time. In my
17 report I have 4:30 to 4:40, somewhere in that time frame.

18 Q. So you --- you were there for a good 40 or 50 minutes
19 before Creech had him in his vehicle, correct?

20 A. Correct.

21 Q. You said 5:19, to somewhere in the 30, 40-minute range?

22 A. Okay.

23 Q. What was Creech's vehicle?

24 A. I have no --- it was a Tahoe, I believe.

25 Q. Like one of those unmarked Tahoes like police-looking

Voir Dire Cross-Exam Booth

1 Tahoes?

2 A. Yes, I believe it was (unintelligible).

3 Q. What was that (unintelligible)?

4 A. (Inaudible).

5 Q. Your position at this point is you're just kind of
6 holding him and you're not --- you're not investigating where
7 you're pretty much place-holding him until everyone's clear of
8 the scene, correct?

9 A. Yes, sir.

10 Q. You said you had the evidence log before, did you
11 transfer that to someone else?

12 A. It was transferred to me from Deputy Seboe. I
13 believe it was Master Deputy Seboe who had it originally.
14 So (unintelligible) it was about an hour before his shift
15 was over. He had supervisor stuff. He had to review
16 reports and stuff.

17 Q. When you got there, how many police cars and how many
18 police officers, coroners, and all other entities do you
19 believe were there?

20 A. I'm going to say about --- see in the log.

21 Q. Can you ballpark it? Two cop cars? A lot of cops?
22 Whole bunch of cops?

23 A. There was already about --- (unintelligible) it was
24 three patrol cars in the front yard, a couple on the
25 street and I was (unintelligible). (Unintelligible)

Voir Dire Cross-Exam Booth

1 reasonably six or seven (unintelligible).

2 Q. Okay. Was the area taped off?

3 A. I --- I don't recall. In the very beginning I don't
4 recall when I first got there. I know tape was put up
5 later. But (unintelligible).

6 Q. Could I have just walked up as a civilian and seen what
7 was going on? Like walk straight in past all those police
8 officers?

9 A. I passed --- went past several patrol cars, sure.

10 Q. And on the flip side, if I was an individual who was
11 being questioned, could I have just walked away through all
12 those police cars and got in my car and drove away?

13 A. I think his vehicle was in the back yard.

14 Q. Did he have the ability to drive it out of that back
15 yard?

16 A. The back yard was a crime scene.

17 Q. Okay. So he was not ---

18 (Simultaneous speaking)

19 A. --- taped off at the side of the house.

20 Q. So he was not allowed to leave that crime scene as you
21 described it, correct?

22 A. I was sitting with him. I never told him he
23 couldn't leave. I just asked him to hang out ---

24 (Simultaneous speaking)

25 Q. Sure. But 40 minutes ---

Voir Dire Redirect Exam Booth

1 (Simultaneous speaking)

2 Q. But 40 minutes before his initial interview, it was
3 already a crime scene that was all kinds of blocked off,
4 correct?

5 A. It was (inaudible).

6 MR. STITELY: No other questions.

7 THE COURT: Okay. Any redirect?

8 VOIR DIRE REDIRECT EXAMINATION

9 BY MS. FULLER:

10 Q. So just to clarify, your vehicle was outside of the crime
11 scene; is that correct?

12 A. Correct. It was ---

13 Q. On the right. Closer to the right?

14 A. --- several cars on the street.

15 Q. Okay. But in front of the defendant's home?

16 A. It was just at the edge of the front of the house.

17 MS. FULLER: Okay. Thank you. (Unintelligible).

18 THE COURT: And can I let Sergeant Booth down?

19 MS. FULLER: Yes, Your Honor. Thank you.

20 THE COURT: Thank you, Sergeant Booth. Step down.

21 Okay. Let's move on to Special Agent Beeler.

22 MR. STITELY: Judge, just real quick. There was
23 just one thing to emphasize, the arguments remain the
24 same and the problem being when you get the initial
25 non-interview non-interrogation, it opens the door, and

1 then all that thereafter is (unintelligible) poisonous
2 tree. He comes at him right away accuses him of lying,
3 gets a statement, then Mirandized him. Then anything
4 thereafter, I think everything should be suppressed,
5 everything from the second they put him in that car on.

6 THE COURT: Well, let --- let --- let me ask both of
7 you this: You don't think I can --- the Court can
8 suppress the first statement and allow the second
9 statement in?

10 MR. STITELY: As far as --- are we --- real quick,
11 when you're speaking about the one on the 20-minute
12 video, I believe everything --- and as does Ms.
13 Williams --- for a number of reasons, everything about
14 that one. The initial comment that Creech said when he
15 was laying on the ground, we don't --- that's fine. But
16 once he put him in that patrol car, everything from then
17 on out, we argue should be suppressed. Every single
18 statement from that point on. Because at that point ---

19 THE COURT: She broke it down into two statements.

20 MR. STITELY: We believe ---

21 THE COURT: Pre-Miranda, post Miranda. What I'm
22 asking is then you --- do you not think the Court has the
23 authority after listening to it to suppress the
24 pre-Miranda and allow the post-Miranda in? I'm --- I'm
25 just asking.

Proceedings

1 MR. STITELY: We think you have the authority. The
2 problem, of course, Judge, is we would argue that she
3 didn't clarify under that abuse of Miranda. If you think
4 the first part was inappropriate ---

5 THE COURT: Then she's going to take the Seibert
6 case ---

7 MR. STITELY: Yes, ma'am.

8 THE COURT: --- because it was continuous?

9 MR. STITELY: Yes, ma'am.

10 THE COURT: I got --- I got the argument.

11 MS. FULLER: Your Honor, the --- the case is
12 escaping me right now, but if --- there is a case where
13 the officer mentioned --- maybe the (unintelligible) at
14 some point. It was the court --- (unintelligible)
15 citation, but off the cuff right now, I can't think of
16 it. What the Court did was sever the statement. And
17 they said anything that was --- that violated ---

18 (Simultaneous speaking)

19 THE COURT: --- happens all the time ---

20 MS. FULLER: Right.

21 THE COURT: (Unintelligible).

22 MS. FULLER: --- so the simple answer is yes. I
23 guess the --- what would be different here is that the
24 offending --- the alleged offending language is after
25 Miranda. And so I guess I haven't been in a situation

1 where the first portion is admitted --- yes, I have.
2 Hold on. Yes, I have. Yes, long story, yes, you
3 have --- yes, you can.

4 Yes, in terms of --- in terms of additional argument
5 on Booth's body cam, when you listen to it you'll get
6 a --- a better grasp of what I was trying to get out of
7 booth is that at this point, he is detained and his
8 questions are --- his statements are just random
9 statements. He's asking questions, he is making
10 comments. He is just --- just rambling. And --- and so
11 I think you --- you're going to a different area of the
12 law here when this is unprompted, not discussed
13 (unintelligible) of an interrogation, period. His
14 questions.

15 Now, what Booth was responding --- referring to when
16 he was relaying ---

17 (Simultaneous speaking)

18 THE COURT: --- with the other ---

19 MS. FULLER: --- questions was, I guess I think at
20 some point when they were looking for the gun, he --- or
21 said something (unintelligible) something and he will
22 relay. And then he may respond. And so I guess there
23 would be some analysis there in terms of if Your Honor
24 has any issues with Creech's, any portion of it, then we
25 would have to go through and parse through what portions

Proceedings

1 of the body cam, if you rule that if there's some
2 offending --- if --- if you rule that he violated the
3 Constitutional rights. Then we would have ---

4 THE COURT: Let me ask, is this where he comes in
5 and says it's not in my bedroom, it's in the guest
6 bedroom on the right-hand of the closet; is that what
7 we're looking at?

8 MR. STITELY: That and there's some additional ---
9 that Creech is asking about the holster ---

10 MS. FULLER: The gun --- the --- they couldn't find
11 the holster. And so he --- and that's not on audio,
12 because his --- his --- his defense is that he was
13 holstering the firearm and he hid the holster. Obviously
14 that's a --- a big issue in this case. And no holster
15 was recovered. So --- and so they were searching for it
16 and he's still answering where it is. I put in the same
17 spot and all that stuff.

18 But Your Honor, we --- I think the case law and the
19 State's position --- obviously the defense made their
20 argument, and they're arguing against, and I'm arguing
21 for. I don't believe it was a violation of
22 Constitutional rights. But if the statement needs to be
23 severed and if Your Honor needs more argument in the
24 morning or need anything additional, I'll be happy to
25 submit ---

Voir Dire Direct Exam Beeler

1 (Simultaneous speaking)

2 THE COURT: We're going to talk about it in the
3 morning, I just want to read some case law while it ---

4 MS. FULLER: Thank you, Your Honor.

5 THE COURT: And I'll --- I'll listen to the video
6 again. But I understand what your argument is for both.

7 All right. Can we move on to Special Agent Beeler.

8 MS. FULLER: Thank you, Your Honor.

9 (Witness sworn)

10 BRAD BEELER, HAVING BEEN DULY SWORN, TESTIFIED AS
11 FOLLOWS.

12 MS. FULLER: Please state your name and spell your
13 last name for the record.

14 THE WITNESS: Brad Beeler, spelled B-E-E-L-E-R.

15 DIRECT EXAMINATION

16 BY MS. FULLER:

17 Q. Where are you employed?

18 A. I'm a special agent with the United States Secret
19 Service.

20 Q. And can you describe for the judge what your title is,
21 your responsibilities, and what you primarily do?

22 A. I'm currently a polygraph examiner, Secret Service,
23 and I'm assigned to the National Center of Credibility
24 Assessment, which is the Federal polygraph school at Fort
25 Jackson, South Carolina.

Voir Dire Direct Exam Beeler

1 Q. And how long have you been employed in that capacity?

2 A. I've been with the Secret Service for approximately
3 24 years. I've been with the Federal polygraph school
4 for the last six and a half years.

5 Q. And --- and are --- and an instructor?

6 A. Yes. I teach polygraph and interview technique,
7 yes.

8 Q. And what does that entail?

9 A. We have 31 Federal agencies that come through there,
10 their personnel and they're there for 12 to 13 weeks, and
11 I provide instruction during that time.

12 Q. Okay. And as --- and part of your duties, do you also
13 assist other agencies with interviews?

14 A. I do.

15 Q. And as it relates to this case, were you contacted to
16 assist?

17 A. Yes.

18 Q. And can you explain to the Court the nature of that
19 (unintelligible)?

20 A. I was contacted by Detective Creech who asked me if
21 I could come assist with his investigation.

22 Q. Okay. And in what way were you called upon to assist?

23 A. To conduct a polygraph examination.

24 Q. And who was --- sorry.

25 A. I'm sorry. On the defendant.

1 Q. Okay. And that's Brandon Corder?

2 A. Yes.

3 Q. And did you ultimately conduct the polygraph examination
4 on the defendant?

5 A. I did.

6 Q. And when did that take place?

7 A. It was on the 17th of December 2021.

8 Q. And at this point, where did the interview take place?

9 A. I believe they call it Interview Room 1 at Lexington
10 County Sheriff's Office. It's just the first one on the
11 left is the only way I can remember it.

12 Q. Okay. And in terms of the defendant's custody status,
13 was he in custody or out of custody at the time of this
14 interview?

15 A. He was in custody.

16 Q. And how was he dressed when he came to the interview?

17 A. I don't recall.

18 Q. Okay. Was he in handcuffs?

19 A. He was not. He may have been brought over in
20 handcuffs, but I did not speak with anyone while they're
21 in handcuffs.

22 Q. Okay. Was this interview recorded?

23 A. No, per our policy.

24 Q. And for "our policy," whose policy is that?

25 A. The United States Secret Service.

Voir Dire Direct Exam Beeler

1 Q. And can you go ahead and describe for the Court the room
2 setup, what it takes to conduct the polygraph, and just run
3 through generally how a polygraph is conducted?

4 A. Sure. Our room was probably --- and this is a gross
5 estimate, probably the size of a bedroom. So maybe a
6 rectangular 14 by 16.

7 THE COURT: I'm familiar with the room.

8 THE WITNESS: Okay. Yes, ma'am. All right.

9 And we would have probably arrived --- my partner
10 and I, Special Agent Shiplett, 45 minutes or so before to
11 set up our polygraph equipment.

12 We would have had a desk which we would have set up
13 our polygraph equipment on, and two rolling chairs.

14 The individual, Mr. Corder, would have been for the
15 pre-test portion of the polygraph would have been across
16 from us with a clear line of sight to the door, which was
17 unlocked throughout the duration.

18 We would have done a brief overview of what we were
19 going to do for the day. We would have then conducted
20 our Miranda warnings, consent to take a polygraph.

21 I would have gotten brief medical information,
22 biographical information, explained the polygraph
23 process, talked about the case acts, calibrated the
24 instrument through an acquaintance test where we
25 determine what the body looks physiologically when you

1 tell the truth. And also when we have him lie to us on
2 one question.

3 At that point, we would have reviewed all the
4 polygraph questions, which were based upon his statement,
5 to determine if he --- if his version of events were
6 correct and to how he had outlaid it.

7 We conducted the examination and then we evaluated
8 the examination.

9 Q. Did you generate a summary or report after your encounter
10 with Mr. Corder?

11 A. We did.

12 Q. Okay. And is that what you're also referring to and
13 relying on as well?

14 A. Yes, I do have the report here in front of me.

15 Q. Okay. What time did your interview begin with Mr.
16 Corder?

17 A. I believe it started just after 1:50 p.m. on the
18 17th.

19 Q. And how long did it last?

20 A. I think we finished up at approximately 5:00. I
21 think I have 5:01 on my report.

22 Q. And in terms --- and in that length of time,
23 approximately over three hours, was everything you described
24 as taking place in that time frame?

25 A. Correct. The --- the polygraph pre-test is --- is

Voir Dire Direct Exam Beeler

1 very lengthy, an hour 15 to hour 30. So explaining the
2 instrument, rapport-building, collecting biographical
3 data, it does take quite a bit of time.

4 Q. Okay. Did --- were you aware of the fact that defendant
5 requested this polygraph?

6 A. That was my understanding, the defense counsel
7 requested the polygraph.

8 Q. And did he also --- during that pre-test or the beginning
9 part prior to the test, did he --- was he advised of his
10 Miranda rights and give consent?

11 A. Yes.

12 Q. Okay. I'm going to hand you what's been marked as
13 Court -- as Court's 2 and 3. And ask if you recognize those?

14 (Court's Exhibits 2 and 3 marked)

15 A. I do.

16 Q. And what are those?

17 A. The first statement that I'm holding is our standard
18 Miranda warning and consent to speak form. And the
19 second form is our consent to take a polygraph.

20 Q. Okay. I'm going to hand these to the judge. You also
21 have a copy of them free in front of you that you can refer
22 to.

23 A. Okay.

24 Q. Looking at the first form, on Court's 2, can you describe
25 that for the Court?

1 A. Yeah, that's a Miranda warnings and rights form that
2 I will go through before every polygraph examination with
3 the --- the examinee.

4 Q. Okay. And can you go ahead and publish into the record
5 what you explained to him and how you explained it to him?

6 A. Sure. Before I ask you any questions, you must
7 understand your rights. You have the right to remain
8 silent. Anything you say can be used against you in
9 court or other proceedings.

10 You have the right to talk to a lawyer for advice
11 before I question you and have them with you during
12 questioning. If you cannot afford a lawyer and want one,
13 one will be appointed to you by the court. If you decide
14 to answer questions now without a lawyer present, you
15 will still have the right to stop questioning at any
16 time.

17 Q. On the form, I --- I note a couple words that are
18 underlined. Can you explain that to the Court?

19 A. I just --- any time I do a polygraph, I want to make
20 sure that this person had --- is informed that even after
21 they sign this form, they can still discontinue the
22 process at any point. So that's why I basically made
23 sure I emphasize you still have the right to stop
24 questioning at any time.

25 Q. And did he understand that?

Voir Dire Direct Exam Beeler

1 A. He did. And he read the following two statements.

2 Would you like me to read those?

3 Q. Please.

4 A. I have read the statement of my rights, and it has
5 been read to me. And I understand what my rights are. I
6 voluntarily waive my rights and I'm willing to answer
7 questions now at this time.

8 Q. And the initial next to the (unintelligible), whose
9 initials are those?

10 A. The defendant's.

11 Q. And there are some signature lines and date and time at
12 the bottom, can you publish and explain to the Court whose
13 signatures those are?

14 A. Yes. These are on the left side. The first witness
15 would be myself, the second witness would be Special
16 Agent Ryan Shiplett. Our case number is our file number,
17 so that would be for a fiscal year --- for that fiscal
18 year which starts in October 1st. And then on the right
19 side the defendant's name and then he published the date
20 for 12/17/21. He asked me for the time which I provided
21 him and he wrote down 1:57 p.m.

22 Q. Okay. Now, referring to the second form, can you explain
23 that form to the Court?

24 A. Yes. This is a standard consent form that we do for
25 all our polygraph examinations. We put down who we're

1 talking to, the reason that we're talking, and then we go
2 through a number of different things regarding our
3 expectations and to establish their informed consent.

4 Q. Okay. Can you publish this into the record?

5 A. I, Brandon Corder, of my own free will voluntarily
6 and without threats --- threats or promises, consent to
7 be interviewed and submit to a polygraph examination in
8 connection with an investigation concerning the shooting
9 of Joanie Youmans.

10 I understand that the questions to be asked on the
11 test will be approved to me prior to the examination.

12 I represent that I'm in good mental and physical
13 condition and know of no mental or physical problem that
14 would impair my ability to be examined by polygraph.

15 I also understand that I do not have to take this
16 polygraph examination, and even after consenting to do so
17 I can stop the interview and the test at any time.

18 Q. Yes.

19 A. And he reads the following statement.

20 Q. And can you publish those as well?

21 A. I agree that I will not attempt to manipulate any of
22 the physiological response data being collected during
23 this polygraph examination. I also understand that any
24 intent to alter any physiological data may result in the
25 early termination of this exam. This examination room

Voir Dire Direct Exam Beeler

1 does not contain any audiovisual devices for monitoring.

2 Q. And similar to the previous form, is that also signed,
3 witnessed, and dated?

4 A. That's correct. Myself, Agent Shiplett, and our
5 case number on the left side in that order. The
6 defendant on the top right, I provided him the date and
7 the time as well.

8 Q. Okay. So you obtained written consent as well as verbal?
9 Was there any indication throughout the entire polygraph that
10 he did not want to speak with you?

11 A. No.

12 Q. Did he freely and voluntarily speak with you?

13 A. Yes.

14 Q. You indicated a pre-test, can you describe for the record
15 and to the Court how many parts of a polygraph are there?

16 A. So all polygraphs consist of three parts, a
17 pre-test, and in-test, and a close-test. So regardless
18 if that's a passing test, an inconclusive test, or
19 excepted, indicated, or failing test, we will always
20 conduct some portion of those tests.

21 Q. And during the pre-test, does that include reviewing some
22 of the facts as you --- as you know it?

23 A. Yes.

24 Q. And in this case, did you cover the facts as relayed to
25 you by police --- Creech with the defendant?

1 A. I did.

2 Q. And what would have been the factors you know that you
3 would have reviewed with him?

4 A. My understanding was while attempting to reholster a
5 silver revolver, that his --- his hand stuck, it went
6 off, striking the deceased.

7 Q. Okay. And did he acknowledge that --- that statement to
8 you that that's what's reported to law enforcement?

9 A. Yes.

10 Q. Prior to the test, did he also write out a statement?

11 A. Yes. We --- we do what's called a statement test,
12 where we have him write out a couple of things that he is
13 contending are the facts and then we test him on that
14 statement. (Background noise) provided three detailed
15 things that we were testing him on.

16 Q. And what were those three detailed things?

17 A. I did not intend to aim that gun at her that day. I
18 did not intend to shoot her with that gun. And I was
19 placing the gun in the holster when it went off.

20 Q. During the pretest, you --- can you --- do you also your
21 rapport building, gather information --- basic information on
22 a worksheet?

23 A. I do.

24 Q. Okay. And that's just a standard?

25 A. Yes.

Voir Dire Direct Exam Beeler

1 Q. Okay. Was he ultimately tested in the case?

2 A. He was.

3 Q. And what were the results of the test?

4 A. We called it deception indicated. So a failure is
5 what traditionally what most people would think of that.

6 Q. And at that point, did you move into the post-test phase?

7 A. We did.

8 Q. And that is standard in all polygraphs, correct?

9 A. Yes.

10 Q. And during the post --- post-test phase, did he indicate
11 he --- he did not --- he wanted to end the polygraph?

12 A. No.

13 Q. Can you explain to the Court what took place in the
14 post-test phase?

15 A. At that point, we spoke with him regarding his
16 failure to the statement that he had provided. Over the
17 course of, I would say, the next approximately hour, the
18 story changed a couple of different times, regarding him
19 retrieving a weapon, pointing it at the deceased. Then
20 changing that to him pulling the hammer back, then him
21 firing the weapon. He said he never pulled the trigger,
22 but that it he pulled the hammer back, placed his hand on
23 the trigger and that the gun went off. So over the
24 course of that hour, we kind of went through that fact
25 pattern, and that was pretty much the totality of our

1 interaction.

2 Q. Okay. Did he also describe what was happening --- any
3 discussion or argument that took place prior to the shooting?

4 A. I think he phrased it more as frustration. I don't
5 believe he ever used the word, "argument." But he was
6 frustrated evidently was that a relationship that the
7 deceased was having with another man.

8 Q. Okay. Did he during the process acknowledge or admit
9 that the previous story that he --- about how the victim was
10 shot was not true?

11 A. Yes, he did.

12 Q. And in looking at your report, can you --- what you
13 reported in terms of his frustration, can you go ahead and
14 publish that, or inform the Court of that?

15 A. Sure. During the series run post-test, in summary,
16 Corder admitted the previous story of how the victim was
17 shot was fabricated. Corder stated that on the day in
18 question, he was frustrated that the victim had been
19 seeing another man named Fred.

20 Corder stated he retrieved the gun from underneath
21 the seat in his car, and walked around the rear of the
22 vehicle and trailer. At this point, he removed the gun
23 from the holster, pointed it at the victim, pulled back
24 the hammer. He said he placed his gloved finger on the
25 trigger and the gun fired.

Voir Dire Direct Exam Beeler

1 He said he was only trying to flex, posture, and
2 scare the victim. Corder stated I wanted to let her know
3 that I was mad. He said he was hoping that by pointing
4 the gun at her it would signal to her to stop playing
5 with me.

6 Q. And in your report you noted that you summarized your
7 conversation with Corder to Creech; is that correct?

8 A. That's correct.

9 Q. And then did Corder acknowledge that the statement that
10 you recorded was accurate?

11 A. So throughout my summary to Creech as to the
12 statements changing, he nodded his head each time I came
13 to a point. However, when I got to the point of flex, he
14 corrected me and said that's not the case. He said it
15 was a posture instead of a flex. He kind of --- when he
16 showed it to me originally, it was more puffing his chest
17 out as far as the word "flex."

18 But he was very adamant with two things, one that it
19 was not a flex, it was a posture. And two, that he did
20 not intentionally pull the trigger.

21 Q. Okay. And --- and so at the end of this interview, your
22 understanding was that he was just posturing when he pulled
23 the hammer back and put his hand on the trigger and then the
24 gun went off?

25 A. Correct.

1 Q. Let me make sure I didn't miss anything.

2 Okay. I do have something else in my notes. It looks
3 like this happened during the pretest. He indicated that
4 after the shooting, he hid the revolver and holster in a spare
5 bedroom closet under pillows; does that sound accurate?

6 A. Yes.

7 Q. Okay. I think that's the only additional thing.

8 Okay. And then just so it's clear for the record, in
9 terms of all of that in terms of placing the gun in the
10 holster, hiding the holster and the revolver, he admitted to
11 you in post-test that all of that was false that he
12 (unintelligible) law enforcement?

13 A. Correct.

14 Q. And just so it's --- I know I'm beating a dead horse
15 here, statements were freely and voluntarily made, correct?

16 A. Yes.

17 Q. Even though he was detained at this time, you did cover
18 Miranda and obtained consent for the interview, correct?

19 A. I did.

20 Q. And he was brought to you in handcuffs, but the interview
21 was not done in handcuffs?

22 A. Correct.

23 Q. You indicated that chairs were set up, was he in the same
24 chair during the entire interview?

25 A. No, he would been in an interview chair and then he

Voir Dire Cross-exam Beeler

1 would have been in our polygraph chair in the polygraph.
2 And then in the post-test, we would have put him back in
3 the original interview chair.

4 Q. So what is the purpose of doing that?

5 A. I --- I would never want to talk to someone --- yes
6 or no questions with the polygraph, I would want to have
7 (unintelligible). I wouldn't want to do follow-up
8 questioning with him (unintelligible) test. So
9 (unintelligible) felt like they weren't free to --- to
10 move about.

11 Q. Okay. And so after the polygraph the post-test was
12 taken, and he was --- I'm going to just say detached from
13 the --- the instrument?

14 A. Correct.

15 MS. FULLER: Okay. No further questions at this
16 time. Please answer any questions from defense counsel
17 or the Court.

18 VOIR DIRE CROSS-EXAMINATION

19 BY MR. STITELY:

20 Q. Special Agent --- Special Agent Beeler?

21 A. Yes.

22 Q. Special Agent Beeler, Ben Stitely. I don't think we've
23 met before.

24 A. No, sir.

25 Q. No. I do a lot of Federal cases now so I get to go to

Voir Dire Cross-exam Beeler

1 the FBI and play with their (unintelligible) on occasion.

2 Just a couple of procedural questions I guess more than
3 anything. You said your policy does not allow it to be audio
4 or video recorded, correct?

5 A. That's correct.

6 Q. Is it safe to say I wouldn't have been allowed to come
7 record it?

8 A. We would not allow any recording, correct.

9 Q. And law enforcement doesn't --- local law enforcement
10 can't record your poly as well, correct?

11 A. Nobody can record it.

12 Q. I'm not allowed in that room while you're polygraphing
13 him, correct?

14 A. Nobody can be in that room.

15 Q. Law enforcement never even come in that room?

16 A. (Inaudible).

17 Q. Would I have been able to knock on the glass and say
18 stop, we're done here once you get started?

19 A. I --- I don't know. I --- I've never had that
20 situation present itself.

21 Q. I mean, I asked every time I go to the Feds, I walk my
22 client in, I say, we'll get results in a couple weeks and
23 that's the end of it, pretty much how it goes, correct? I
24 mean, you wouldn't know my side, but you wouldn't let me in
25 the room with you?

Voir Dire Cross-exam Beeler

1 A. I --- I don't understand. Can you explain that?

2 Q. You would not let his attorney come into that polygraph
3 room, correct?

4 A. I --- I have had attorneys come into the polygraph
5 room, but not during the polygraph process.

6 Q. Sorry, during the testing part. Sorry.

7 A. Correct.

8 Q. All right. So the pretest is where you set up where
9 you're going and how the test is going to go down, correct?

10 A. Yes, sir.

11 Q. And you establish a set of questions that are going to be
12 the operative questions for the polygraph?

13 A. Yes, sir.

14 Q. And this one, there were three, correct?

15 A. Just one question. There were three substatements
16 within that.

17 Q. Sorry, there were three things that were addressed ---

18 A. Correct.

19 Q. --- specifically? And this is almost an hour and a half
20 into the process when you finally would get to those three,
21 correct?

22 A. Approximately.

23 Q. Okay. And then I guess this is where I kind of --- I'm
24 differing from my past experience in polygraphs, so he
25 finishes the polygraph portion of the --- the actual, physical

1 attached-to-the-machine portion. Then you moved him to the
2 other chair?

3 A. Correct.

4 Q. At that point, did you tell him that you detected
5 deception?

6 A. Yes.

7 Q. Okay. And then I guess my --- this is kind of where I've
8 never seen this before, I've always gotten a report weeks
9 later that has told me what the results were. And my clients
10 have always said, well, how did I do? How did I do? And I'm
11 waiting weeks to tell them the answer.

12 Is it your standard policy to always tell them right then
13 what happened?

14 A. Everybody that walks out of my room knows how they
15 did.

16 Q. Okay. And I guess here's --- this is not a --- maybe a
17 argument for you, but I'm not there at this point to say, hey,
18 you said he failed we're done here let's go. You continued on
19 with what you called your post-test?

20 A. Uh-huh.

21 Q. Is that a question and answer? Are you --- how does that
22 go down? Did you ask him to justify why he had failed
23 results?

24 A. I guess, yes. In --- in some ways, you had a
25 problem on the test.

Voir Dire Redirect Exam Beeler

1 Q. Okay. So then you went ahead and asked why did I get
2 those results, or what --- what's different, or something
3 along those lines?

4 A. What was causing your body to respond.

5 Q. Okay. And you're not doing this under direction from
6 anyone local or from the solicitor's correct?

7 A. Correct.

8 MR. STITELY: I have no other questions at this
9 time. Thank you.

10 MS. FULLER: Your Honor, just briefly.

11 VOIR DIRE REDIRECT-EXAMINATION

12 BY MS. FULLER:

13 Q. Now, you indicate that you are an instructor; do you
14 teach other agencies and special agents how to conduct a
15 polygraph?

16 A. I do.

17 Q. And is this three-part course --- test? Is that how it's
18 taught?

19 A. That's --- that is the standard that we teach.

20 Q. And how is --- how long has it been done that way?

21 A. Since the beginning of polygraphs in the 1930s.

22 Q. Okay. And so when an individual requests a polygraph,
23 and they submit themselves to a --- subject themselves to a
24 polygraph, does it always include the same three-part test?

25 A. If there's --- if you Google phases of a polygraph,

1 they would list three phases of a polygraph. Three tests
2 (unintelligible).

3 Q. Okay. Were you ever given any instruction or direction
4 to end the conversation?

5 A. I was not.

6 Q. Okay. Is that even typical?

7 A. Not in my experience, but ---

8 Q. And how many years have you been doing this?

9 A. I've been a polygraph examiner for 17 years.

10 Q. And in --- and so in terms of the --- the
11 (unintelligible) interrogation here, did you advise him of his
12 rights?

13 A. I did.

14 Q. At any point did he indicate that he wanted to invoke his
15 rights?

16 A. He did not.

17 Q. And did he freely and voluntarily go through all three
18 phases of the polygraph?

19 A. He did.

20 MS. FULLER: No further questions at this time.

21 MR. STITELY: Nothing redirect.

22 THE COURT: Okay. Well, I got a question.

23 I don't know. I've been to a bunch of polygraphs
24 too with my clients back in the day. Can you tell me how
25 it is that you grade your polygraph? You know, they too

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1 had to send mine off. There were a point system?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Three below, three above, then I'd get a
4 summary back. I too was never allowed into a polygraph
5 at all. In fact, it was about all I could do to get the
6 questions beforehand. Do you let the lawyers know
7 beforehand what the questions are?

8 THE WITNESS: Yes, sometimes I will need some
9 consultation as far as what questions we're going to ask.
10 My understanding in this case was that that was the
11 motivation was that I didn't intentionally shoot her and
12 I did it while I was placing the holster in the gun
13 [sic].

14 So that seemed to be what was kind of up in the air.
15 So that's why we did the statement test, because it is
16 hard to test intent.

17 After the polygraph, I believe he --- when he was
18 being --- was going back to his detainment, I believe he
19 asked well, can you test on intent? You know, did I
20 intend to pull the trigger? We don't really test people
21 on that. Okay? I'm going to test you on the --- the
22 three subfacts of the test.

23 You mentioned plus three, minus three. Obviously
24 you --- you've had some polygraphs. You know, most
25 people don't use that terminology. So the way I'm going

1 to do it is I've got my partner with me, so we've got two
2 sets of eyes when we score it. So we feel very good that
3 we've got two senior examiners scoring the reactions.
4 And his reactions were very clean. And we were able to
5 make a determination right then. Sometimes when it's
6 close, you'll have to send it off to quality control.
7 That was not the case here is that we were able to
8 definitively see the --- see the reactions.

9 THE COURT: Okay. Let me ask you this, did you
10 discuss with anyone the questions that you were going to
11 ask him?

12 THE WITNESS: I don't know if I spoke with Creech.
13 I --- I may have said I'm going to just do a statement
14 test, you know, and that the relevant questions on this
15 test were did you falsify --- I have to look in our
16 report. Or at least I believe it was did you falsify the
17 information in today's statement and any information in
18 today's statement about that shooting?

19 So that's why we took the three bulleted point
20 aspect. Because that was really at the core of what the
21 individual the defendant was stating. I'm putting this
22 gun in a holster, I didn't intend to shoot her, it was an
23 accident.

24 THE COURT: Then that one statement would cover the
25 whole incident?

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Because, you know, I was always taught
3 you can't ask an open-ended question.

4 THE WITNESS: Right.

5 THE COURT: Because somebody's mind --- they're not
6 going to pass the polygraph if you do that.

7 THE WITNESS: Yeah, we --- we want it to be yes or
8 no. Yes, ma'am. It needs to be very black and white ---

9 (Simultaneous speaking)

10 THE WITNESS: Yes.

11 THE COURT: Straightforward. So whether he
12 falsified, I mean, did --- I'm just trying to picture
13 this in my mind, did y'all read him the little paragraph
14 and then the question that he was going to be polygraphed
15 on is, did you falsify anything in this report?

16 THE WITNESS: What we did, ma'am, is we had him
17 write out a statement. And by --- by his own writing, he
18 wrote I didn't intend to aim the gun at her. I didn't
19 intend to shoot her with that gun. And I was placing the
20 gun in a holster when it went off.

21 So our belief in the polygraph arena that that day,
22 was that if he had problems with any of those statements,
23 that it means he was not being truthful to law
24 enforcement. If he passed that test, that led us to
25 believe what he was saying as far as putting the gun in a

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1 holster, could have, in fact, happened. So that was the
2 best way we could kind of make a yes or no answer, was do
3 the statement test.

4 THE COURT: Would somebody's emotions of feeling
5 guilt play into the polygraph?

6 THE WITNESS: Usually with the way we calibrate it,
7 I tested mothers that have lost children. We've tested a
8 lot of people in very emotionally charged incidents hours
9 or sometimes days after an incident happened. And we're
10 able to kind of clear through that clutter.

11 In this situation when you've got years, and I think
12 by taking a long pre-test and lowering the temperature
13 and getting to know them, I think we can get around a lot
14 of that. I don't think emotions played into his
15 polygraph results. These were very clean charts
16 physiologically and I felt very comfortable with the
17 result.

18 THE COURT: Is it still plus three, minus three?

19 THE WITNESS: Yes it is, ma'am.

20 THE COURT: Oh, was he a minus three? Minus six?

21 THE WITNESS: I would have --

22 (Simultaneous speaking)

23 THE WITNESS: --- I think he was like a minus five
24 or minus six, ma'am.

25 THE COURT: Okay. Just curious. I'm sorry. I just

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1 had my own questions that I wanted --- at that time was
2 he represented?

3 (Simultaneous speaking)

4 MR. STITELY: By me, Judge. Yes, ma'am. All right.
5 So to clarify, she can answer it. I asked specifically
6 to have poly tested on those issues, and Ms. Fuller set
7 it up.

8 THE COURT: Okay.

9 MR. STITELY: And he --- we have it if you want a
10 copy for your file. I don't think she offered it ---

11 (Simultaneous speaking)

12 MS. FULLER: No, I didn't.

13 MR. STITELY: --- I'll offer it to the Court. If
14 you want a copy of the questions --- or the statement of
15 his.

16 THE COURT: Yeah, let me look at that.

17 (Simultaneous speaking)

18 THE COURT: All right. Anything --- I'm sorry as I
19 was asking questions.

20 MS. FULLER: Yeah, I wasn't sure if I need to go
21 into the --- the science behind the polygraph.

22 THE COURT: Well, no. I just happened to be ---

23 MS. FULLER: Oh.

24 THE COURT: --- very familiar ---

25 MS. FULLER: Okay.

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1 THE COURT: --- with it and I --- I just wanted to
2 know what the questions were based from. I apologize,
3 but I --- I just wanted to know.

4 MR. STITELY: (Unintelligible) questions
5 (unintelligible) discussion on it (unintelligible).

6 MS. FULLER: And if there's anything else that I can
7 ask of him to clarify or I'll do that now. Or he might
8 be excused until we have arguments with anything else
9 (unintelligible) covered.

10 THE COURT: Well let me just keep him right there,
11 just (unintelligible).

12 MS. FULLER: Okay. Thank you.

13 THE COURT: All right. So let me get this straight.
14 Y'all want to introduce the post part of the polygraph.

15 MS. FULLER: Your Honor, our intention is to just
16 refer to it as an interview. Obviously (unintelligible)
17 we're not going to mention polygraph. We're not going to
18 mention that he failed. But I think an interview took
19 place --- this is how I see it --- interview took place
20 on this date and during the interview, this was
21 discussed. This is what he said. During the interview,
22 he changed his statement and this was said.

23 And so it would be a --- encompass his statement
24 throughout the entire portion is what we plan to
25 introduce, or want a ruling on that it is admissible

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1 should we want to introduce.

2 THE COURT: Mr. Stitely.

3 MR. STITELY: Judge, my --- my --- once again, if
4 you're going to admit it, I think that that's the proper
5 way that it should be done. Because then we take the
6 words out of what --- how we got there. My problem is,
7 Judge, and is this coming from my 17 years of doing this,
8 12 years of doing Federal work, I have asked repeatedly
9 to be there to sit with my client to be in the room when
10 they're doing polygraphs. I ---

11 THE COURT: Did you ask this time?

12 MR. STITELY: I --- I --- I --- well, I be able to
13 go stay in the polygraph? And they said no, you can't go
14 to the polygraph test. The answer always --- and I think
15 he would agree, I can't sit in there, I can't prep my
16 client, I can't cut them off in the middle of ---

17 THE COURT: Well, I would agree they never let any
18 of the lawyers sit in on --- on the polygraph. I never
19 got to.

20 MR. STITELY: And --- and Judge ---

21 (Simultaneous speaking)

22 MR. STITELY: --- and I'll be the first to admit, we
23 asked for the polygraph on the --- and we talked about
24 what we --- I (unintelligible) this is the issue of the
25 case. We asked to be polygraphed. My problem is when

1 you go ahead and --- and call it an interview afterwards,
2 and I'm not disagreeing at all that I'm sure he followed
3 every procedure. But when you look at even on his little
4 sheet and he talks about what they do, it says this is an
5 understanding, the questions will be asked when on the
6 test it will be reviewed by me prior to this evaluation.
7 That's line one of his polygraph.

8 The statements that you see are the ones I thought
9 they would review. And, you know, if it came back he was
10 less --- whatever the detection --- a deception detected
11 we could take that out to the different situation. There
12 was no ability for his lawyer to even step in and say
13 this is done or I'm done here. That's my problem with
14 it.

15 THE COURT: Well, let me ask you this, Agent Beeler,
16 I have had this happen to me. I've had the polygrapher
17 go over the questions and say this is what we're going to
18 ask (unintelligible) the lawyer; have you ever done that?

19 MR. STITELY: I have done that sometimes, Your
20 Honor.

21 THE COURT: And then I have also had --- because
22 they're not going to let me in the room, I've sat outside
23 and then the polygrapher would come out and say well, you
24 know Debbie, your client didn't do so well. Do you want
25 him --- want me to talk to him some more? Sometimes I

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1 would say yes, sometimes I would say no all depending on
2 the case itself. Have you ever done that?

3 MR. STITELY: I have never done that personally. I
4 I've heard of that being done, but I've never done it.

5 And --- and the only other caveat, Judge, and this
6 is we were initially told it would be on Monday they
7 ended up doing it on a Friday. One thing --- I asked for
8 the polygraph. So I am not saying any way, shape, or
9 form, this was some --- and --- and as you heard, he had
10 no input from these --- these --- the solicitor or these
11 officers about following up on it.

12 But in --- in --- in the --- I could say probably
13 not as many as you, Judge, but I've had at least close to
14 a dozen clients polygraph, I've never been able to input
15 what I wanted done, stop them, continue them, and we've
16 always gone over this is the issue we're addressing, and
17 that's what we're addressing. And that's it. So I have
18 some problems with anything beyond that. That's all.

19 MS. FULLER: And obviously, Your Honor, Court's 2
20 and 3, defendant waived his rights. And I think we're
21 stuck here with purely legal issue here. And legally, he
22 was in custody. I'm just reciting the case law.
23 Custodial interrogation requires Miranda. Miranda was
24 given. He wasn't threatened or promised anything.
25 He --- nothing impaired his ability to communicate or

1 understand what was going on. And he made the statements
2 freely and voluntarily. And I believe that is the ---
3 the threshold that is what Denno requires and that's what
4 Miranda requires. And I think that all was done in this
5 case.

6 Your Honor, just so the record is clear, about the
7 date change, I actually remember exactly where I was, I
8 was downtown when I got the call that he can do --- I
9 know it was a Friday (unintelligible) Christmas
10 (unintelligible). And they were like, I think one of his
11 interviews got canceled, hey can you do this now? I may
12 have text --- we were texting, I believe. And --- and I
13 was like hey, they can do it. He was like go ahead and
14 do it.

15 And so it was --- it wasn't a situation where we
16 last minute brought up. It was just their schedule. And
17 he can explain that too. Their schedule became
18 available. Like hey, it's available. He didn't ask me
19 for for months. At this point, I intentionally didn't
20 schedule it because I wanted to be sure he's serious.
21 And then he kept asking for it. The client wanted to do
22 a polygraph. And I'm like, are you sure?

23 And so that's how it came about, Your Honor. I
24 respectfully didn't care one way or another if he was
25 polygraphed. And then he --- he (unintelligible) and

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1 then he changed (unintelligible).

2 THE COURT: (Unintelligible).

3 MS. FULLER: We won't say that.

4 THE COURT: The minus five, or --- or minus six is
5 not good.

6 MS. FULLER: And then he kept on talking and when
7 you watch the body cam, I can only imagine how he kept on
8 talking. And for him to have talked for ---

9 (Simultaneous speaking)

10 THE COURT: --- admitted --- admissible in this
11 court.

12 MS. FULLER: Right. It wouldn't come in.

13 (Simultaneous speaking)

14 MS. FULLER: It wouldn't come in, but he admitted
15 those statements that he said were --- that he lied the
16 polygraph confirmed he lied.

17 But, Your Honor, that's not what I'm here for.
18 That's not what we're arguing. We're arguing ---

19 THE COURT: Right.

20 MS. FULLER: --- the admissibility in --- in line
21 with our case law. As he waived Miranda, this was an
22 admission. (Unintelligible) opponent and we would
23 respectfully request a ruling that it's admissible should
24 we choose to introduce it. And freely and voluntarily
25 made should he testify that we cross-examine him on it.

1 THE COURT: All right. Just one last question.
2 Were any of the Lexington County law enforcement present?

3 MR. STITELY: Mr. Creech --- Detective Creech was
4 not in the room, so nobody was in the room. And they
5 don't have outside monitoring, I believe. He might have
6 been able hear. I believe he could hear through the door
7 probably some things, but no, they weren't present.

8 THE COURT: Anybody from the Solicitor's Office
9 present?

10 MR. STITELY: I don't believe so.

11 THE COURT: Okay. That's all I have. Can I ---

12 MR. STITELY: Nothing further ---

13 (Simultaneous speaking)

14 THE COURT: Special Agent Beeler go down?

15 MS. FULLER: Yes, Your Honor.

16 THE COURT: Thank you. Okay. I'll take that under
17 advisement. Anybody have any case law on it?

18 MS. FULLER: Your Honor, the case law Denno,
19 Miranda, all of the case law, it's just another
20 interview. We know polygraph, the word "polygraph"
21 doesn't come in in that standard and we're not
22 introducing or saying --- we're not telling the jury he
23 failed a polygraph.

24 THE COURT: Right.

25 MR. STITELY: Yes, ma'am. I think I just

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1 (unintelligible) --- that I think that it extended beyond
2 what we would have anticipated as what would have been
3 the questions that were targeted in the polygraph. And
4 that's what we object to the rest. Because he wouldn't
5 have had an opportunity or I wouldn't have had a
6 opportunity to stop anything at this point.

7 I mean, I know it says that you have a right to an
8 attorney, but you can't --- I can't even come in the
9 building, so that's my position on that.

10 THE COURT: But not anything that we don't know
11 already. Okay. All right. What's next for a motion?

12 MS. FULLER: Your Honor, just respectfully, do you
13 think you'll rule tonight via e-mail, or in the morning
14 on that one? Just so ---

15 THE COURT: I'll rule in the morning.

16 MS. FULLER: In the morning? Okay. Next, I think
17 is defense's motion.

18 MR. STITELY: (Unintelligible).

19 MS. FULLER: I'm offering it.

20 MR. STITELY: Okay. I guess I have the motion,
21 Judge.

22 THE COURT: Okay. Let me see counsel just for a
23 second.

24 (Bench conference)

25 THE COURT: All right. I've got the jury coming in

1 at 9:30. Let me have the lawyers here at 9:00 so we can
2 finish these. I'm putting these rulings on the record.

3 Okay. I think we've got it all --- put on my
4 rulings on (background noise) in the morning. All right..
5 I'm going to --- all right. Just before I let y'all go,
6 these are the things that I'm working on. I am working
7 on the Creech and Beeler statements. I'm going to watch
8 that video. The polygraph statement, the possession of a
9 gun, and the --- the prior threats, which is a video and
10 a witness, right?

11 MR. STITELY: One's an audio recording.

12 THE COURT: Audio. Okay.

13 MR. STITELY: And one is just a witness saying he
14 made threats to the victim in his presence.

15 THE COURT: Okay. So the prior threats. Got one
16 more on my mind. Oh, the accident and his voluntary ---
17 whether he's entitled to those defenses because he is ---
18 I think y'all are telling me, a felon and not ---

19 MR. STITELY: He has no felony convictions, Judge.

20 THE COURT: Okay. (Unintelligible) illegal act is
21 what's states --- saying he shouldn't have a gun to start
22 with.

23 MS. FULLER: Yes, Your Honor.

24 (Simultaneous speaking)

25 THE COURT: And it precludes him from using the

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1 defense of accident.

2 MS. FULLER: That's correct, Your Honor.

3 MR. STITELY: Right.

4 MS. FULLER: And (unintelligible) also trigger the
5 analysis for involuntary under 18 U.S. C 922(a)(g).
6 Under one --- I won't argue three and nine. So convicted
7 of a crime (unintelligible) the year. Three, the
8 unlawful user of controlled substance. But I'm not sure
9 if defense can go with that. And then misdemeanor crime
10 of domestic violence. And it specifically says to ship,
11 transport, possess, or receive a firearm.

12 MR. STITELY: And what I just --- I sent your clerk,
13 Judge, is actually --- on June 21, 2019, the Supreme
14 Court came down seven to two, on redefining 18 U.S.
15 922(g) to include an active and --- affirmative knowledge
16 of a Federal bar as a requirement to proceed under that
17 statute.

18 And I can tell you now, if you were to go do a plea,
19 there is a forth element added on every plea agreement
20 for every plea in the Federal Court that defendant
21 acknowledges he has actual knowledge of a Federal firearm
22 violation if they want to argue that. And under South
23 Carolina law if you possess a firearm.

24 So their whole argument is based on the 922(g)
25 analysis. That law is no longer what it is. And

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1 that --- that has been changed in ---

2 THE COURT: If you're saying at the time there was
3 no ---

4 MR. STITELY: They would ---

5 THE COURT: --- prohibition of a firearm under the
6 DV 30 ---

7 MR. STITELY: Beyond that.

8 THE COURT: --- 2019.

9 MR. STITELY: And beyond that they would have to
10 prove affirmatively that he had had actual knowledge that
11 he was going to become a 922(g) violator if they intended
12 to have that become a Federal firearm problem, which is
13 the only theory in which he can have a gun.

14 MS. FULLER: Well, Your Honor, respectfully, I think
15 it's still per the statute, we're not here to go per the
16 statute. It's still unlawful for him to possess, period.
17 I understand what the law is on ---

18 (Simultaneous speaking)

19 THE COURT: Because ---

20 MS. FULLER: --- sentencing and all that to happen.
21 I've had to deal with that in some of my cases, but that
22 doesn't change the fact that it is a violation of the
23 law.

24 THE COURT: But you're saying --- but at the time,
25 DV 3rd --- what you're saying the failure to stop for a

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1 plea by what?

2 MS. FULLER: The --- I'm saying both the
3 (unintelligible) and DV 3rd violate the law. I think
4 both of them trigger.

5 MR. STITELY: But it requires an affirmative
6 knowledge in order to even charge someone to go forward
7 on a 922(g). You have that affirmative knowledge from a
8 Federal prohibitage. And if I can't prove that, you
9 can't proceed under the theory that they are Federally
10 prohibited. That's --- that's pretty much what the
11 Supreme Court's saying.

12 MS. FULLER: But --- but ---

13 MR. STITELY: The State shares an ultimate burden of
14 proving that they had affirmative knowledge that they
15 could not possess a firearm under Federal law. And the
16 way they do that and can you look now, every single
17 release from probation, every single release from
18 Department of Corrections, and every Federal ---

19 (Simultaneous speaking)

20 MR. STITELY: --- statute says ---

21 THE COURT: --- probation for the failure to stop
22 for illegal act in the DV 3rd?

23 MS. FULLER: No, Your Honor. That's
24 (unintelligible) evidence.

25 THE COURT: Okay.

1 MS. FULLER: Your Honor, just -- just in terms of
2 anything we can prove it circumstantially, that he was
3 aware, he did purchase his firearm illegally. He
4 purchased it illegally, he stole the firearm. We're not
5 getting into that. But if we needed to go there, he ---

6 (Simultaneous speaking)

7 MS. FULLER: --- I'm being told it's a very
8 expensive revolver for 300 bucks off the street that was
9 sold down the street. So he clearly knew he couldn't
10 purchase a firearm.

11 MR. STITELY: And I guess to clear all this up
12 and --- Ms. Yonge (unintelligible). I don't know that my
13 intent is to argue for absolute acquittal on an accident.
14 I intend to argue involuntary manslaughter which at the
15 end of the day, even if you were to make some kind of
16 determination he unlawfully couldn't possess a firearm,
17 we can still argue involuntary manslaughter on the basis
18 that the illegal act itself was not an absolute precursor
19 to murder.

20 The fact that he possessed a firearm maybe
21 unlawfully does not mean he automatically commits a
22 murder with that firearm. So I think if that's really
23 the thing, I don't intend to argue for not guilty on the
24 basis of accident. I am moving ---

25 (Simultaneous speaking)

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1 THE COURT: Okay.

2 MR. STITELY: --- arguing involuntary ---

3 THE COURT: Accident's out the window.

4 MR. STITELY: Well, I'm going to say ---

5 (Simultaneous speaking)

6 MR. STITELY: --- it's an accident in the context
7 that you're doing something this is not your deliberate
8 intent. So there's no malice formation. That it was an
9 accident, nothing else, I guess would be the way I'm
10 marketing. Not for a straight-up not guilty on the basis
11 it was an accident. I'm going to say he was probably ---
12 depending on the ruling, he was handling a firearm
13 inappropriately, and it discharged. And it caused a
14 death. And South Carolina has a statute for that, it is
15 involuntary manslaughter.

16 MS. FULLER: The same logic that was taken out of
17 the realm of defensive action takes it out of
18 involuntary. So involuntary is the unintentional killing
19 of another while engaged in either an unlawful act that
20 is not a felony, or a lawful act committed with a
21 reckless disregard for the safety of others. It's
22 neither. It's --- it's an unlawful act, or if it's a
23 lawful act, that he's unlawfully in possession. So it
24 doesn't go into the second prong either. So the same
25 thing that was taken out defense of accident, takes him

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1 out of involuntary manslaughter, period.

2 So it's either an unlawful act that that's not a
3 felony tending to cause death or great bodily harm, or a
4 lawful act committed with reckless disregard for the
5 safety of others. It doesn't fall under that because he
6 used illegal possession of a firearm.

7 So even if you believe that he was holstering, you
8 got to step back. He shouldn't have had a gun to begin
9 with. It's still an unlawful act. And you go under the
10 first category of involuntary, and it's an unlawful act
11 but it has to be one that is not --- that is not a felony
12 or naturally intending to cause death or great bodily
13 injury. He's handling a firearm.

14 THE COURT: Well, I think that's what he's saying,
15 that it was unlawful for him to have it. I think that's
16 what Ben is saying and he meets all his criteria. He's
17 saying that he --- he didn't intend to kill her is what
18 his argument's going to be.

19 (Simultaneous speaking)

20 THE COURT: --- just what you read to me.

21 MS. FULLER: No, it says involuntary is an unlawful
22 act ---

23 (Simultaneous speaking)

24 MS. FULLER: --- that is not one that can cause
25 death or great bodily harm.

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1 MR. STITELY: So the unlawful act ---

2 (Simultaneous speaking)

3 MS. FULLER: So it can't --- it's not a felony.

4 Can't be a felony.

5 MR. STITELY: He's not charged with a felony. There
6 is no felony in South Carolina for what he did. So if
7 the unlawful act would be carrying a firearm, lawfully
8 trying to holster it which is the act that ---

9 (Simultaneous speaking)

10 MR. STITELY: --- without --- proximate basis for
11 always murdering someone. I think that's exactly what
12 the statute says.

13 Now, they may have a different theory of the case
14 and we'll argue that and that's my theory. But it falls
15 under the first criteria. And if --- if you determine he
16 is lawfully allowed to have a pistol, I can argue the
17 second prong, which is during any act that --- and
18 (inaudible). What we need is a full jury charge. But
19 I --- I think the language is exactly how I argued it.

20 THE COURT: Okay. All right. I'll see y'all 9:00
21 in the morning. Thank you y'all.

22 (END 2-27-23)

23 (BEGIN 2-28-23)

24 THE COURT: All right. Are we ready?

25 MR. STITELY: They said he's almost dressed.

1 THE COURT: Oh. Okay.

2 MR. STITELY: But we --- we can start ---

3 (Simultaneous speaking)

4 THE COURT: No, I'll --- I'll wait (unintelligible).

5 (Off the record)

6 THE COURT: All right. Let's go on the record and I
7 want to rule on these.

8 MS. FULLER: Your Honor, I just want to make --- if
9 it's okay, the --- at this morning we went ahead and
10 pulled the domestic violence conviction. Just wanted to
11 make it part of the record. I --- I confirmed ---
12 because I didn't have a response to what he said
13 yesterday. (Unintelligible) talk to him downstairs ---
14 in terms of what the level of proof is Federally.

15 And speaking with a USA, all they have to do is
16 prove that he (unintelligible) are toward domestic
17 violence. I was --- it looked like for state he was
18 prohibited until two months prior to this murder. The
19 argument still is that he was prohibited Federally and
20 the level of proof, what the case --- what that case in
21 2019 did was essentially, you have to prove that the
22 defendant was aware of their status, which means that
23 they were aware that they pled guilty to the charge.

24 (Unintelligible) Federal Court (unintelligible) good
25 response to that part. I had to phone a friend to

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1 understand what the burden of proof would be in Federal
2 Court and it would be essentially pulling defendant's
3 sheet and proving that he signed it.

4 MR. STITELY: I --- I still disagree. Actually
5 we've had to go through that. And the thing I sent in
6 kind of talks about it. They have to have an affirmative
7 proof that they have an actual knowledge of the Federal
8 922(g) provision. That's what it --- that's what it says
9 under the new Supreme Court decision.

10 MS. FULLER: It --- it says proof of their status.
11 So and the --- the issue ran into, my understanding is
12 the crimes that carry over a year is that the issue was I
13 didn't know it carried over a year.

14 And so proving that they pled guilty to a crime that
15 carried over a year, it didn't really impact the domestic
16 violence portion of the statute in my understanding. And
17 so what a USAs do to prove it is pull the defendant's
18 sheet, prove that he signed it, and that he would have
19 been aware that he was pleading guilty to domestic
20 violence.

21 MR. STITELY: But still you have to prove that the
22 judge said because of this, you are Federally prohibited.
23 We can --- you know, once again, I really don't even care
24 about that part because I still don't think it changes
25 even if you were unlawfully possessing a pistol under the

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1 first part ---

2 (Simultaneous speaking)

3 THE COURT: I'm --- I'm going to get to that. Okay?

4 MR. STITELY: Yes. Okay.

5 THE COURT: I'm going to get to that.

6 MS. FULLER: Mark this as a Court Exhibit
7 collectively, 4.

8 (Court's Exhibit 4 marked)

9 THE COURT: All right. On the record. All right.
10 Yesterday I decided on the 911 call, the statement made
11 to Officer Geitz, the statement made to Investigator
12 Sherban, and to Coroner Gain. I found all of those were
13 admissible. The only one that I had not ruled on is
14 Officer Booth and Creech.

15 Now, the statement to Special Agent Brad Beeler,
16 this is a post-polygraph statement. Miranda was clearly
17 given. In fact, Court's Exhibit Number 2 that was
18 introduced, he waived his Miranda. This is going to be
19 treated as any other statement. It --- I call it the
20 post-polygraph statement, because he talked to the agent,
21 his Miranda rights, he consented to talk to him. I'm
22 admitting that statement. I believe it's admissible. I
23 couldn't find that he was coerced or anything else in
24 that statement.

25 In fact, he's the one who asked to be polygraphed.

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1 It's my understanding that the defendant wanted to be
2 polygraphed and asked his lawyer to set this up. That
3 statement's admissible.

4 Prior threats, my understanding there's a witness
5 and there is a audio recording. I think it is well
6 settled law that evidence of threats by defendant is
7 admissible to show malice.

8 I'm not real sure I know the time length that these
9 were made, but it's my understanding this relationship
10 went on for --- off and on for six months. So in
11 relation to time, neither threat was (unintelligible) to
12 make it irrelevant. Because the time between the threats
13 and the death relates to the weight of the evidence
14 rather than it's admissibility. And I find that the
15 probative value of this evidence is not outweighed by any
16 danger of unfair prejudice.

17 So the threats come in as long as the audio --- a
18 proper foundation is laid.

19 MR. STITELY: Judge, just (unintelligible) put an
20 argument on the record on that. Can I put a little bit
21 of argument out whenever you're done with that part of
22 it?

23 THE COURT: We argued about it yesterday.

24 MR. STITELY: We did (unintelligible) though. We
25 didn't do that part on the record.

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1 THE COURT: Okay. Go ahead.

2 MR. STITELY: For --- for what it's worth, Judge. I
3 just want to make sure the record's preserved. So in my
4 understanding, and I guess we'll kind of have to consider
5 this almost like (unintelligible). I think you said it
6 right. There was a statement made by a third-party
7 witness allegedly that's going to come forward, saying my
8 client made some form of threats. We don't know the form
9 in which it comes. There may be hearsay objections to it
10 as well, but I want to say he's going to say he heard
11 from someone else that he said this. So there might be
12 other objections within it. We'll get to those when we
13 get there.

14 And then the audiotape, I have several problems with
15 late discovery. It was turned over within two weeks of
16 the trial that's been pending for four years after no
17 less than four hearings in open court as well as several
18 other matters, this miraculously shows up. We wouldn't
19 have had the time to analyze it ourselves. There's no
20 proof of authenticity. Once again, we have no chain of
21 custody to it aside from allegedly it came from
22 something. We don't know.

23 So I have a lot of other objections to that. As far
24 as the actual use of threats as --- the solicitor said
25 they intended to cite State v Beck and State v Plyler. I

1 read both those cases. They don't stay legally close to
2 the situation. In State v Beck, it's a question of a guy
3 who says I'm going to rob a store, gives a plan, and then
4 three months later robs a store.

5 In State v Hawes, they look back and I think the
6 Hawes is a 2018 opinion. They said that the only time
7 you can bring in situations the like that, particularly a
8 threat to commit a crime against a person was impeaching
9 them if they got up and said, I did not make threats
10 against that person. It goes up and they were overturned
11 on letting the statements in saying they would only be
12 admissible as impeachable hear --- as impeachable
13 testimony, not in the State's case directly.

14 Additionally, as far as the State v Plyler, that one
15 talks about threats made three days in advance. And the
16 Court even talks about how they were --- they were close
17 in time and made sense. In the unpublished opinion that
18 came out in 2015, State v Thomas, they put once again
19 there's a lot of questions about that and there needs to
20 be an additional amount of time to consider if they're
21 impeachable, what the context was and all of those lines.

22 So, Judge, in a nutshell I don't know that we've
23 gotten to the point where really we can argue about this
24 one way or another. I think you're going to have to hear
25 how they come along. But unless he was to put up

1 something saying I did not make the threat, I think Hawes
2 stands for the position that you can't just throw it out
3 there as some pre-emptive attempt to burden-shift to make
4 him have to disprove some six months-earlier
5 conversation.

6 THE COURT: Okay. Ms. Fuller, or (unintelligible).

7 MR. MCNAIR III: Like you said, this was a statement
8 of express malice. I think that is always relevant and
9 admissible in a murder case. We have two sources --- we
10 have Fred Wine who is a witness who will testify that
11 when Joanie Youmans was with him, the defendant called
12 and threatened to blow her head off multiple times.

13 They were only together for about six months. He
14 said this happened in the months leading up to the
15 murder. The recording he's mentioning was a recording
16 made by the deceased victim Joanie Youmans herself, that
17 after she made the recording she played it for, what I
18 would call her daughter-in-law, Mariah Erickson.

19 Mariah Erickson then recorded Joanie's recording.
20 And she will testify --- so she --- she got a recording
21 from Joanie, recorded it off of Joanie's phone onto her
22 phone. And she can identify Mr. Corder's voice on that
23 recording and Joanie Youmans's voice.

24 And Mr. Corder on that recording says I will f'ing
25 murder you you stupid bitch. That's again a statement of

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1 express malice that is admissible in a murder case.

2 State v Beck is not a robbery of a convenience
3 store. That's a case out of Richland that Judge Tommy
4 Cooper presided over. The defendant murdered an escort
5 in that case.

6 The facts were that four months prior to the murder
7 of the escort the defendant had told his roommate that he
8 planned to call escort services for dates to have sex and
9 rob them. So he didn't even tell the roommate he was
10 going to murder them. He wanted to have sex and rob
11 them.

12 The court said that was highly probative as a
13 statement of intent. This is not Lau evidence, because
14 Lau concerns bad acts and other crimes not statements of
15 intent.

16 In addition, I think in this case we have a more
17 specific threat to a specific victim making it even more
18 probative, especially in a case where the defendant is
19 claiming lack of malice and accident. That makes it more
20 relevant.

21 The court concerning the four-month time period
22 between the threat and the murder, is a matter bearing on
23 the weight of the evidence for --- for which the jury is
24 to determine. Is says that the temporal attenuation
25 between the making of that statement and the crime in

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1 this case is of no moment in assessing its admissibility.
2 So here at most we have six months between the threat and
3 murder. I think clearly that's within the relevant time
4 frame. That's not (unintelligible) motive based on the
5 case law.

6 THE COURT: Well, I think I've addressed the
7 (unintelligible) issue. I mean it was a six-month
8 relationship, I'm not sure exactly what the dates are but
9 if it happened in the six months, again, you know, the
10 jury can give it the weight that they see --- that they
11 want to give it. I don't believe the time period relates
12 to the admissibility of it.

13 I do believe that it's admissible to show malice.
14 And as I said, if you can lay a proper foundation for it,
15 it comes in. Okay? If we are have to proffer it
16 beforehand, y'all let me know.

17 So that takes care of the prior threats.

18 Let me address Sergeant Creech's testimony. And I'm
19 going to briefly read (unintelligible) yesterday ruling
20 and explain today's rulings. Yesterday, I ruled the 911
21 call to the responding officer, to Investigator Sherban,
22 to Coroner Gain, and the initial statement made
23 Investigator Creech. That was the very first statement.

24 I know there's two statements. I know we broke the
25 second statement down into two parts. But the very first

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1 statements were all admissible. These statements were
2 made voluntarily, knowingly, and outside of custody.

3 Yesterday's argument surrounding the statements made
4 to Investigator Creech and Deputy Booth revolved in a
5 large part around when Miranda warning should have been
6 given and if they were effective. After reviewing the
7 relevant case law and arguments of counsel, I find that
8 the defendant was not in custody when Investigator Creech
9 began his questioning. Therefore, the statements made
10 pre-Miranda are admissible. Additionally, the statements
11 post-Miranda are admissible as well, because the Miranda
12 warnings were effective.

13 This case is different from State v Nagy in that
14 this interrogation was much less formal than in Nagy
15 where the defendant was interrogated for almost three
16 hours at police headquarters.

17 Additionally, our Supreme Court endorses Justice
18 Kennedy's concurring opinion found that not every Miranda
19 violation would require suppression, including cases
20 where the officer may not have realized that a suspect is
21 in custody.

22 Therefore, even if I were to find a Miranda
23 violation, Investigator Creech's good faith efforts to
24 understand what happened and to locate a missing gun as
25 opposed to efforts to incriminate the defendant would not

1 require suppression of the statements made in this case.
2 The moment the interrogation became custodial when Creech
3 developed a reasonable suspicion of criminal activity and
4 informed the defendant that there was greater than
5 average chance of --- of arrest.

6 Creech read him his Miranda rights. There was
7 further argument from the defense that the rights were
8 not effective because the defendant did not acknowledge
9 that he understood the rights. The defendant initially
10 acknowledged that he understood all of the rights except
11 for the warning that any statements can and will be used
12 against him in a court of law.

13 Investigator Creech clarified the right and asked
14 the defendant --- and asked the defendant if he willing
15 to speak with him. Though Investigator Creech's
16 explanation of the warnings may not have been perfect, it
17 was sufficient to put the defendant on notice and the
18 defendant's continued submission to questioning was
19 implicit consent in the absence of an explicit statement.
20 Those statements will come in.

21 MS. FULLER: Thank you, Your Honor.

22 MR. STITELY: Judge, can I put one additional thing
23 on the record. I understand your ruling, just one more
24 point just for, you know, protection sake.

25 And it was the last thing you said as far as that he

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1 did --- as you described it, explained further or
2 whatever. We would argue that was a diminishing of
3 Miranda where he said they'll be played back, or they'll
4 be reheard.

5 I think that that truly --- I think that turned a
6 lot of DUI case law (unintelligible) is cheapening
7 Miranda. You have to inform a client of the Miranda
8 warnings because it is a Constitutional right they're
9 giving up. The right to remain silent is one of the most
10 sacred rights we have. And just by saying we --- they
11 might be used again, they might be played again, I think
12 cheapens it, and encourages a involuntary statement.
13 That's all.

14 THE COURT: I understand. So noted for the record.
15 However, you know, I stand by my ruling. And it wasn't
16 perfect by no means. But I think it was sufficient
17 enough to put the defendant on notice.

18 MS. FULLER: Your Honor, I don't know if malice is
19 (unintelligible) on this one --- the Court identifying
20 any portions that you would look redacted before the jury
21 hears it or you want to judge after you
22 (unintelligible) ---

23 THE COURT: You mean Creech's statement?

24 MS. FULLER: Uh-huh. I know I submitted this and we
25 hadn't had a formal ruling.

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1 THE COURT: Right. Can I ask, I --- I believe Ms.
2 Williams was going to look over and see if there was
3 anything additional that she would like, or even if she
4 agreed with that redaction.

5 MS. FULLER: I apologize. I just wanted to
6 (unintelligible).

7 THE COURT: No, you're fine.

8 MS. YONGE: Your Honor, I did review it. There were
9 additional redactions and some disagreements that I would
10 propose. I --- for things I would add, I would add in
11 the first portion, she said she was done with this guy
12 Fred (unintelligible) and then I would continue on to
13 agree that Ms. Fuller that (unintelligible) et cetera
14 until the end of the paragraph.

15 THE COURT: Okay. So I'm following along with you.
16 I've got my copy.

17 MS. YONGE: Okay. So ---

18 (Simultaneous speaking)

19 THE COURT: (Unintelligible) having our own family
20 and getting our place, you know. And she said she was
21 done with this guy Fred. At which ---

22 MS. YONGE: At --- yes, Your Honor. And so I would
23 propose --- I actually, and this may be easier to start
24 with that I spend the rest of my life in prison for an
25 accident portion.

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1 THE COURT: Well, that's what she's going -- says
2 she's going to take out.

3 MS. YONGE: (Inaudible) Your Honor. We think that
4 it goes towards his state of mind and the voluntariness
5 portion, which the jury is allowed to consider. They can
6 weigh whether it was voluntary. It goes to the state
7 of --- speaks to a state of mind, what he was --- I
8 scared --- I'm scared. I was afraid I was going to spend
9 the rest of my life in prison.

10 And I know that initially when I read that, I go we
11 can talk what possible consequences (unintelligible) Your
12 Honor, I --- I --- I can't find (unintelligible) I'm sure
13 she was doing this type (unintelligible) much longer than
14 I have. I don't know where we ever find that a victim,
15 or a --- a witness --- or defendant can't speak to that.
16 I know his attorneys were not allowed to get up and say,
17 well, you know, if you send him back there, he could
18 spend forever in prison.

19 But I think that this statement speaks to a state of
20 mind and in theory and why he lied. And helps explain,
21 I'm scared, I was scared, I didn't want to spend the rest
22 of my life in prison so I lied. As opposed to being any
23 real commentary on the potential consequences of the
24 charges.

25 THE COURT: All right. Ms. Fuller, let me hear from

1 you.

2 MS. FULLER: Yes, Your Honor. The --- I believe the
3 same logic and case law that suggests you cannot put
4 defendants before the jury would apply here. And
5 certainly the state would not be introducing the
6 potential punishment here. And that's what the objection
7 would be putting on the State. And I --- I --- we would
8 not. And so his stating I would spend the rest of my
9 life in prison, I believe is properly should be redacted.
10 His state of mind is still there. It's for them to
11 argue. I was scared, I was scared. But I believe it's
12 appropriate.

13 And in prior cases where I've had this issue come up
14 we've redacted any comment on the defendants and it
15 hasn't been a problem. (Unintelligible) we'll settle in
16 the case law that defendant does not go before the jury.

17 MS. YONGE: Your Honor, I couldn't find it and could
18 be that I didn't look hard enough. I mean --- I looked
19 to try and find case law that says that a witness cannot
20 comment on the sentence and what I found was I can't
21 remember the name. I --- that it --- there was some
22 cases where a codefendant would get in the stand, and you
23 could not question them about their potential sentence,
24 because, like, oh, well you got this many years, right?
25 Because you're up here, that kind of thing. You're not

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1 allowed to question in that circumstance about
2 defendant's sentence. But I think here it's not even him
3 commenting on the potential sentence, it's really his
4 fear is that he's going to spend the rest of his life in
5 prison.

6 He has not been charged yet, Your Honor. So he
7 couldn't be commenting on potential sentence, because he
8 hadn't been arrested.

9 MS. YONGE: I --- I stand by --- I believe it's
10 improper. It appeals to passion and --- and that's what
11 the whole purpose of not introducing the sentence is
12 it --- it's soliciting an emotion from the --- the jury.
13 But (unintelligible) if we convict and he's going to
14 spend the rest of his life in prison, I don't know how
15 you cut around that.

16 And so I still stand by the position that it ---
17 it's properly removed and it's not permissible in the
18 state (unintelligible) introduce it.

19 THE COURT: All right. We're looking it up. What
20 else? Let's move on.

21 MS. YONGE: All right. Your Honor. We would
22 propose redacting in that same paragraph, she said she
23 was done with this guy Fred. And then it continues on
24 Ms. Fuller suggests removing that (unintelligible) for
25 the rest of the paragraph. We agree with Ms. Fuller on

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1 that part. And the she said she was done with we figured
2 was the hearsay. So ---

3 THE COURT: Okay. Are you okay with that, Ms.
4 Fuller?

5 MS. FULLER: The ---

6 THE COURT: To start redaction at ---

7 (Simultaneous speaking)

8 MS. FULLER: --- she said ---

9 THE COURT: She said she was done with this guy
10 Fred.

11 MS. FULLER: Your Honor, that's going to come in.
12 Because he --- the whole thing is that he, that night, he
13 starts talking about Fred. It's not just in this
14 statement, it's in other statements too.

15 And so here in terms of it's --- not --- the --- the
16 hearsay section would be the state of mind of the victim.
17 And it goes toward his state of mind as well because we
18 know the ultimate conclusion is the polygraph where he
19 talks about he was frustrated about her being with Fred.

20 So it all connects together, goes to his state of
21 mind as well as hers, but mainly his. Is she said she
22 was done with this guy Fred. And then he switches, it's
23 almost like even here is he was ready to say what the
24 problem was with his --- (background noise) which is
25 opposite on the record his statements were we weren't

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1 arguing there was no problem. And so I definitely
2 believe it is probative and it's a hearsay discussion.

3 MS. YONGE: Your Honor, we're thinking that it is
4 hearsay (unintelligible). And also that at that point to
5 his state of mind, then of course it comes out
6 (unintelligible) to his state of mind, and we should just
7 put all of it in.

8 MS. FULLER: I --- I respectfully disagree.

9 THE COURT: Okay. The next one.

10 MS. YONGE: In the second paragraph, we would
11 propose an additional redaction, which is along the same
12 lines in argument as the previous one. About halfway
13 through, it says she was with Fred one time and Fred got
14 mad because she was --- had been with me, you know, a
15 couple of days before that. And then we would agree with
16 Ms. Fuller's additional redaction. So we would, again,
17 same logic there for that additional redaction, Your
18 Honor.

19 MS. FULLER: Same argument, Your Honor. It all ---
20 it all connects throughout his statement.

21 THE COURT: Are you starting about talking from her
22 and Fred?

23 MS. FULLER: Yes, Your Honor. So he said her and
24 Fred, not her, she didn't do it. But --- and then at
25 that point I would propose redacting she was with Fred

1 one time and Fred got mad because she was --- had been
2 with me, you know, a couple days before that. And then
3 we would agree with Ms. Fuller's additional redactions.

4 THE COURT: Ms. Fuller, that's kind of like chopping
5 the sentence in half, and putting it the way you want.
6 This is a full sentence.

7 MS. FULLER: I guess, Your Honor, here he is
8 explaining --- he is --- and what's next in --- because
9 you have (unintelligible) into all these statements.
10 He's explaining the problem. The problem is Fred. It's
11 part of why he wanted to posture and scare her. So I'm
12 not chopping here.

13 What the reason why my argument for removing the ---
14 that character as to Fred is because --- I have
15 (unintelligible) rule on that. Let me make sure I put it
16 correctly. But in terms of the character on Fred, I
17 don't believe it's permissible. And so looking at 608,
18 you're talking about either opinion, or reputation, or
19 specific instances of conduct. But even then it has to
20 go to the character for truthfulness and untruthfulness.

21 So 608 is the reason why I'm removing his commentary
22 on Fred, because I don't believe it's properly
23 admissible. And that's --- that's --- that's my
24 argument.

25 So that's why that. It's not that I'm chopping it

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1 up, it's that character evidence. Should he testify, he
2 couldn't be cross-examined on that. We haven't received
3 any notice that we --- that he would be.

4 And so that would be --- that --- that's the basis
5 of removing that character evidence on Fred.

6 MS. YONGE: And Your Honor, we agree with removing
7 that character evidence on Fred. I think our
8 disagreements would be the additional hearsay that she
9 was with Fred one time and Fred got mad. I'm not sure
10 how he would know that Fred got mad, or anyone would.
11 And so we think that there is no reason to include that
12 hearsay.

13 THE COURT: All right. Next one.

14 MS. YONGE: We would disagree with in the third
15 paragraph, her proposed redaction regarding I don't want
16 to spend my life in prison for something that wasn't
17 even. Under the same theory as our earlier disagreement
18 regarding in the following paragraph, we agree with Ms.
19 Fuller in redacting the entirety of the statement.

20 MS. FULLER: And the basis for that, Your Honor,
21 the --- removing the anything that suggests the prior bad
22 acts of the defendant is the reason why I proposed that
23 (unintelligible) so that the record's (unintelligible).

24 (Simultaneous speaking)

25 THE COURT: Y'all are agreeing on that?

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1 MS. YONGE: We clearly agree with Ms. Fuller on
2 that.

3 THE COURT: Okay.

4 MS. YONGE: And then on the last one, again, we
5 would disagree with Ms. Fuller. We believe that people
6 served their whole lives in prison over something they
7 didn't even do should come in. Even that one --- that
8 doesn't even speak to his sentence specifically, Your
9 Honor. That just speaks to people spend their whole
10 lives in prison over something they didn't do, which is
11 non-specific to Mr. Corder. I don't believe that there
12 is any reason to remove that from the statement.

13 MS. FULLER: And Your Honor, respectfully, on that
14 one, people --- same way that they can't hear and talk
15 about a fictitious third person, or go with an opening
16 thing like people, this is about Brandon Corder, and so
17 even generalizing about people isn't permissible as well
18 as, I think it still goes towards the feelings of passion
19 (unintelligible) putting the sentence before them.

20 THE COURT: Okay.

21 MS. YONGE: Would --- would Your Honor like me to
22 make my (unintelligible) pink highlights being my
23 redactions.

24 THE COURT: Sure. I --- you can do that. I've ---
25 I've got it written on my copy and I'll look at it.

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1 MS. FULLER: And Your Honor, just to be --- do you
2 have any additional outside of what I've ---

3 MS. YONGE: Just the --- they were the two sheets at
4 once that we talked ---

5 MS. FULLER: No, no. I'm talking about throughout
6 the whole statement, was there anything I missed?

7 MS. YONGE: Not that I caught.

8 MS. FULLER: Okay. I don't want to, like, play in
9 where, like, oh and then have to stop it during court.

10 MR. STITELY: I think she had some (unintelligible)
11 but we haven't gotten through all that yet. (Inaudible).

12 MS. FULLER: I just want to give just enough time to
13 make the --- create the redacted ---

14 MS. YONGE: Yes. (Unintelligible).

15 THE COURT: All right. I'm --- I'm looking up ---
16 I'm looking ---

17 (Simultaneous speaking)

18 THE COURT: --- trial. I don't --- I don't need to
19 rule on this before openings, do I?

20 MS. FULLER: No, Your Honor. Not (unintelligible).

21 THE COURT: All right. Just my law clerk's
22 looking --- do the research.

23 All right. Is there anything else beside
24 involuntary and accident that I need to discuss or move
25 on? Anything else from the State?

1 MS. FULLER: Can we approach on one thing?

2 THE COURT: Sure.

3 (Bench conference)

4 THE COURT: All right. As far as --- as far as
5 involuntary and accident, I think the Court's going to
6 need a little more information. I am not sure I know
7 what the defense's argument is at this point.

8 I will tell you that I'm going to ask y'all to look
9 at --- there are two cases that I looked at last night.
10 And one was State v Cabrera-Pena 361 South Carolina 372,
11 it's a 2004 case.

12 The other was an unpublished opinion that I read was
13 Hough, H-O-U-G-H versus State. That was opinion number
14 215-UD-071. Now, it distinguishes on how involuntary
15 comes in. And I haven't heard what the defense is in
16 this case, so I'm going to have to wait to rule on that.

17 There's obviously two ways to get it in, but I can't
18 rule till I know how they're trying to get it in. So I'm
19 just going to have to listen to the testimony and we can
20 bring this up at any time. But if any lawyers want to
21 talk about it, because I really don't know until I hear
22 testimony.

23 MS. FULLER: Thank you, Your Honor. In terms of
24 that, in proving the unlawful act, I guess the State's
25 position is that proving that he is prohibited a firearm

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1 would be part of us advancing our theory.

2 In terms of putting that before the jury, I --- I
3 guess a limited instruction of calling hope to the stand
4 that --- that he had this conviction of --- I haven't
5 moved before in court to argue against the defense of
6 accident. And so just might have been how to do is
7 looking at the cases that I submitted ---

8 THE COURT: Well, it's my understanding from
9 yesterday Mr. Stitely said they were not proceeding on
10 accident, but more involuntary.

11 MS. FULLER: He left it open. And --- but even in
12 terms of accident and involuntary, the unlawful act is
13 still --- is still my argument for both.

14 And so I still believe and stand by that being
15 convicted of being prohibited from possessing a firearm
16 is the nexus of probative --- the --- the not probative,
17 the proximate cause of Joanie's death. I think the case
18 law, the two cases I gave --- gave your law clerk, I
19 think I (unintelligible) not sure. Yesterday Burton and
20 Wharton go ---

21 THE COURT: I read about them.

22 MS. FULLER: --- go towards that. He ---
23 there's --- I would be --- (unintelligible) that he armed
24 himself in self-defense, which would make the unlawful
25 act then lawful for State for involuntary, but I've seen

1 nothing of that, and I don't know.

2 THE COURT: And --- and that's ---

3 (Simultaneous speaking)

4 THE COURT: --- don't know, Ms. Fuller.

5 MS. FULLER: My reading of the case law is that the
6 only way to turn his unlawful possession of that firearm
7 to fit the statute is that he says he armed --- armed
8 himself in self-defense. That is the only exception that
9 I can find and I read several cases on this.

10 Phoned several --- you know, just to make sure I was
11 interpreting this correctly, since I haven't had to
12 actually legally battle out in court involuntary defense
13 of accident before.

14 (Unintelligible) the Court on that, but that's just
15 my interpretation in reading just how I actually present
16 that to the jury that he is convicted of this which he a
17 prohibited. I guess is not something I would seek to do
18 today. But I obviously before we rest, I would have to
19 introduce his prior conviction that he was prohibited
20 from possessing a firearm (unintelligible) unlawful act.

21 THE COURT: Okay. Mr. Stitely.

22 MR. STITELY: Once again, I think a lot of that's
23 irrelevant. You can be --- the only thing that would bar
24 you from arguing the --- according to the case law,
25 involuntary manslaughter's appropriate is if the unlawful

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1 act had a proximate --- was a proximate cause for the
2 murder. I.e. armed robbery, i.e. even if it was like
3 pointing ---

4 (Simultaneous speaking)

5 THE COURT: If there's any --- read the cases,
6 and ---

7 (Simultaneous speaking)

8 MR. STITELY: --- but that's not --- that's not what
9 the State, they don't have a charge, we're not on trial
10 for that today. So the actual statute, 16360, defines
11 involuntary manslaughter as criminal negligent
12 manslaughter, with regard to the crime of involuntary
13 manslaughter. Criminal negligence is defined by the
14 reckless disregard of the safety of others.

15 A person charged with the crime of involuntary
16 manslaughter may be convicted only upon a showing of
17 criminal negligence as defined. A person convicted can
18 be sentenced not more than five years.

19 The statute talks about his criminal negligence in
20 Pena it talked about that. And I would --- and I'll give
21 you a copy of that. I have State v Leahy, which is one
22 of about 20 cases where the courts have been overturned
23 for not charging involuntary manslaughter.

24 And it says --- and this one I think is particularly
25 interesting. It says although the petitioner has several

1 inconsistent stories, he was entitled to a charge of
2 involuntary manslaughter because one of those theories
3 fit the --- fit the content for a reckless act. And this
4 was a self-defense case. They said self-defense is one
5 thing, involuntary manslaughter is one thing, they're not
6 together. They can be, but they also can be mutually
7 exclusive.

8 And it doesn't matter how many stories you have just
9 like any jury charge, if there is evidence in the record
10 sufficient to warn a charge, even if it's the less
11 likely, if there is evidence in the record, you're
12 entitled to that charge. And that's State v Light the
13 2008 case.

14 And the reason I got to it is it actually was citing
15 some of the other cases that were previously mentioned.
16 So I have that if you want it.

17 THE COURT: I've read it, thank you.

18 MR. STITELY: Okay.

19 THE COURT: I have that issue come up in a case that
20 I tried.

21 MR. STITELY: And --- and --- and that's the way I
22 describe it is --- is you ---

23 THE COURT: And I think that if there's just a
24 scintilla of the evidence that he's entitled to the
25 charge. However, I'm going to tell the rest of you

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1 again, I haven't heard the testimony yet. I think it's
2 premature for me to rule and say, we are going to charge
3 involuntary manslaughter, because I don't know what the
4 story is, or what your client's defense is. Let's hear
5 the testimony.

6 I understand, Ms. Fuller, about the record what you
7 want to put on, but before you do that, we're going to
8 bring this back up again. Let's get through some
9 testimony, see where we're going, so I can make an
10 intelligent ruling.

11 MS. FULLER: Yes, Your Honor. And --- and the only
12 reason why I brought it up in advance, I wasn't
13 anticipating the ruling. I just wanted the whole
14 discussion on the record. And whatever defense goes
15 forward with, (unintelligible) and that's where we are
16 just to protect --- yes. So that's my purpose is ---

17 THE COURT: I got it.

18 MS. FULLER: --- to have an open discussion on the
19 record. And everyone is on --- on notice of what I found
20 in my view and we'll go from there. I wasn't expecting
21 the Court to rule, I just wanted to bring it to your
22 attention, so you ---

23 THE COURT: Right.

24 MS. FULLER: --- knew what you were dealing with.

25 THE COURT: Okay.

1 (Simultaneous speaking)

2 MR. STITELY: To that effect, I don't intend to
3 argue the defense of accident, so I don't know that we'll
4 ever have to come to a situation where we have to talk
5 about whether the possession of a firearm is lawful or
6 not. We will be arguing the recklessness element. So I
7 guess we'll hear how it goes. But that's kind of my
8 thought is, I don't know that ---

9 (Simultaneous speaking)

10 MR. STITELY: --- we're ever going to even have to
11 get to that point, if I somehow tell I want the
12 affirmative defense not guilty based on this, I think
13 that becomes an argument. But I --- I don't intend to do
14 that.

15 And the evidence, I think, like I said, you've heard
16 all the statements, we're going to hear all of them
17 assuming they come in, but we don't know if they'll even
18 end up offering them. So we don't know.

19 THE COURT: All right. Well, let's see where the
20 testimony leads us and we'll go from there. All right.
21 Now, let me ask you the only thing left for me to rule on
22 besides what we just discussed, is Officer Booth's ---

23 MS. YONGE: Yes, Your Honor, and I believe that
24 since you ruled that Creech is in, Booth would then be
25 in. But I do believe we have a proposed redaction in

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1 concert with Ms. Fuller.

2 (Simultaneous speaking)

3 MS. FULLER: The only thing that (unintelligible) so
4 far is when he talks about his --- his dad ---

5 MS. YONGE: His dad dying.

6 MS. FULLER: --- and I wouldn't --- I would --- you
7 know, it might suggest something else. I wouldn't leave
8 that in. And we have time on Booth, it just depends on
9 where we're going with the case. I don't anticipate
10 handling Booth today.

11 (Simultaneous speaking)

12 THE COURT: --- look at it. If I need to rule on
13 anything, or if y'all disagree ---

14 MS. FULLER: Uh-huh.

15 THE COURT: --- then I'll do Booth. So then really,
16 the only thing left is the testimony to decide on the
17 involuntary charge. Perfect. Good job, lawyers.

18 All right. Now, there's one thing that I wanted
19 to --- I thought about it last night. When we picked the
20 jury yesterday, and I was excusing them, the juror is
21 number one, Joshua Abrams stated that he knew me. And it
22 took me a minute to realize who he was. And I told y'all
23 yesterday, he dates the daughter of a friend of mine. I
24 really --- I don't even think I've said probably four
25 sentences to the young man. I don't know him all that

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1 well. I know who he is. Based on (unintelligible) they
2 would keep him on.

3 But out of abundance of caution, I think I need to
4 ask him, could he --- knowing me, can he be fair and
5 impartial to both sides. So if you don't mind, I'm going
6 to bring Mr. Abrams in just to ask him.

7 MS. FULLER: Your Honor, if you want to. I don't
8 believe you --- you need to, or I don't know if you want
9 to do that in every case, but it's up to you. I think
10 we're fine, but ---

11 (Simultaneous speaking)

12 MS. FULLER: --- if it will let you sleep better
13 because I know you're (unintelligible) some nights.

14 THE COURT: I am. Just, you know, I didn't give him
15 the opportunity. I ask everybody else ---

16 MS. FULLER: Uh-huh.

17 THE COURT: --- when they said they knew somebody.
18 It wasn't even a question. It could --- could they be
19 fair and impartial. I just think I --- it would make me
20 feel better to know that he's a fair and impartial juror.
21 This is an important case.

22 MS. FULLER: No problem from the State, Your Honor.
23 We have no issues.

24 MR. STITELY: (Unintelligible) Judge.

25 THE COURT: Okay. Can I ask the bailiff to bring me

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1 Joshua Abrams.

2 THE COURT: Do you all need a few minutes before I
3 bring the jury in?

4 MS. FULLER: Yes, Your Honor. If I can just have
5 ten, is that okay? Okay.

6 (Off the record)

7 (Mr. Abrams enters the courtroom)

8 THE COURT: Good morning Mr. Abrams.

9 MR. ABRAMS: Good morning.

10 THE COURT: Mr. Abrams, I just wanted to ask you, I
11 told the lawyers that you knew me. I know your
12 girlfriend's parents very, very well. But I want to ask
13 you, just knowing me, sitting at a juror, can you be fair
14 and impartial to both the State and the defense?

15 MR. ABRAMS: Yes, I can.

16 THE COURT: I'm keeping you.

17 Let's take a ten-minute break.

18 (Off the record)

19 THE COURT: Okay. State ready?

20 MS. FULLER: State's ready to proceed.

21 THE COURT: Defense ready?

22 Bring the jury in.

23 (Jury enters courtroom)

24 THE COURT: All right. Mr. Foreman, the jury ready?

25 FOREMAN: Yes, Your Honor.

1 Mr. Foreman, it is your added duty to preside in the
2 jury room and be the jury's spokesperson here in court.
3 It will also be your duty to write the verdict, but I
4 will give you further instructions about that at the
5 conclusion of the case.

6 In order to preserve everyone's rights, I'll give
7 the parties an opportunity to object to anything I have
8 said, any exceptions of anything that I've said to the
9 jury by the State.

10 MS. FULLER: None from the State, Your Honor.

11 THE COURT: By the defendant.

12 MR. STITELY: No, ma'am.

13 THE COURT: We will now begin this case.

14 MR. MCNAIR III: Thank you, Your Honor. May it
15 please the Court.

16 THE COURT: Yes, sir.

17 MR. MCNAIR III: Brandon Corder had threatened
18 Joanie Youmans, multiple times before --- blow her head
19 off. And on December 27th of 2019, that's exactly what
20 he did. He shot her in the head with his 357-magnum
21 right above her right eye and blew a chunk of her skull
22 out the back. She died instantly.

23 You see Joanie had been in an off-and-on
24 relationship with Mr. Corder. During the times they were
25 off, she would see a guy named Fred Wine. And as you

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1 could expect, Mr. Corder didn't like that. In fact,
2 multiple times before when Joanie was with Mr. Wine, he
3 would call and threaten to blow her head off.

4 Now, about a week prior to this incident, she had
5 actually --- Joanie, had broken up with Mr. Corder. He
6 assumed she went back to Mr. Wine's house. Now, for
7 whatever reason the day after Christmas, December 26th of
8 2019, Joanie came back to Mr. Corder's house, where he
9 lived with his mother at [REDACTED] Valley Lane. She spent the
10 night at the house on the 26th. The next day on the 27th
11 she went with Mr. Corder to cut down a tree somewhere off
12 of Old Orangeburg Road, and they were bringing the limbs
13 and whatnot back to Mr. Corder's house to put in a burn
14 pile.

15 Now, we don't know exactly what they talked about
16 that day, or exactly what Joanie said, but based on the
17 defendant's own statements to law enforcement, what we
18 know is that they talked about the status of their
19 relationship. We know Joanie told Mr. Corder she just
20 wanted to be friends. And we know they had an argument
21 about her relationship with Fred.

22 Now, it wasn't long after they got back on the 27th,
23 got back to put limbs in the burn pile that neighbors
24 heard a shot ring out in Mr. Corder's back yard. They
25 then heard him yelling for his mama.

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1 Lee Bowerman, a neighbor, the neighbor who heard
2 that, he called 911 and he walked over to Mr. Corder's
3 residence to ask --- to see what was going on. And
4 you're going to hear from Mr. Bowerman and other officers
5 who arrived on scene that Mr. Corder starts making
6 different statements about what happened. He initially
7 told Mr. Bowman that Joanie had shot herself.

8 Mr. Corder then called 9111 himself and tells
9 dispatch I just heard a shot, I don't know where it came
10 from, and she went down.

11 When the first officer got on scene, he tells that
12 officer, she shot herself. But then later on when other
13 officers get on scene, he starts telling them the shot
14 came from somewhere in the woods.

15 Now, officers spy on Joanie's body in his back yard,
16 beside the defendant's vehicle near this burn pile, shot
17 through the head.

18 But what's puzzling to them is that if this was a
19 suicide, where is the gun? There is no gun beside her
20 body, which you would expect if she shot herself. This
21 wood story doesn't make sense. The sniper in the woods.

22 They then turned over Joanie's body just to confirm
23 whether or not there was a gun under her body, and sure
24 enough, there's no gun under her body.

25 So this isn't making sense to these officers. So

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1 Sergeant Creech goes to talk to him again, about these
2 stories. And he ultimately admits that he did shoot her
3 with his 357 revolver, but it was an accident.

4 His gun was in his car, he said. And he thought, I
5 need to get it out of my car and go put it up in my
6 house. So he gets his gun out of his car he's walking
7 back to his house, tried to put it in his holster and his
8 finger got caught and it went off and just happened to
9 shoot her in the head.

10 The problem with that story other than it just
11 doesn't make sense, there's no holster found anywhere on
12 his property. They searched everywhere. There's no
13 holster to be found. They found his gun in a closet in a
14 spare bedroom, with one fired round in it, but there's no
15 holster.

16 So he's arrested for murder that day. But that
17 wasn't the last statement he gave. There's a fourth
18 statement he gave about two years after he was arrested,
19 he talked to law enforcement again, told them a fourth
20 story. And I think in this story he's inching closer to
21 the truth. He admits he was frustrated about Joanie's
22 relationship with this guy named Fred Wine. He admits
23 they had an argument about Fred that day. But he says,
24 he just pointed the gun at her with the hammer pulled
25 back and his finger on the trigger because he wanted to

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1 scare her so that she knew he was serious and to stop
2 playing around with him.

3 He said he was wearing gloves. When he put his
4 gloved finger on the trigger it just went off. It was an
5 accident.

6 He also admitted that that other story he told about
7 the holster, that was fabricated. That was false.

8 So now, there's three options you don't have to
9 consider in this trial. She didn't shoot herself,
10 there's no sniper in the woods, and the holster story is
11 not true by his own admission.

12 So we're down to two options, number one, he did
13 exactly what he said he would do if she didn't quit
14 fooling around with Fred Wine or else. Or number two, he
15 pointed a loaded firearm at Joanie with the hammer pulled
16 back to threaten her.

17 And your decision is easy (unintelligible) --- under
18 either one of those options, he's guilty of murder. You
19 can't point a load the firearm at somebody with your
20 finger on the trigger to threaten them and say, oops, I
21 didn't mean to shoot. That's not the law.

22 Under either one of those options the only two
23 options left, he's guilty of murder. And that's what
24 he's charged with, murder is the malice, the killing of
25 another person with malice aforethought.

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1 What is malice? It's ill will, hostility, hatred,
2 extreme indifference to the value of human life. Isn't
3 the that what this is? It doesn't require premeditation
4 like most people think, it doesn't require preplanning.
5 You can have malice in your heart at the very moment you
6 pull the trigger, and that's all that's required. And
7 you have evidence of express knowledge in this case. All
8 those threats of the threats to blow your head off.

9 Now, I want to talk to you a little bit about
10 reasonable doubt before I sit down, because everybody
11 knows that's the burden of proof in a criminal case. A
12 lot of people have misconceptions about what that really
13 means. I was talking to a neighbor of mine the other day
14 about another case, and she made the comment that a jury
15 has to a hundred ten percent convinced before they can
16 convict somebody. That's not the standard. We're not
17 required to prove things to you to an absolute certainty,
18 because there's very few things in this world we can ever
19 know to an absolute certainty. This isn't some
20 impossible standard. It doesn't mean that we have to
21 prove to you things beyond any doubt you may have, or
22 every possible doubt that you may have. It simply
23 requires that you be firmly convinced of the guilt.
24 Firmly convinced is the same standard you would use in
25 making any important life decisions. Okay.

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1 So be reasonable in what you expect. Justice for
2 Joanie, is why we're here. That's a very cliché thing to
3 say but it's true. We can't undo what's been done. We
4 can't bring Joanie back. But we can deliver justice.
5 And that power is in your hands. Only your hands. And
6 we entrust you with that. We picked you for a reason.
7 At the end of this trial, we'll come back before you and
8 we will ask you to deliver justice for Joanie in this
9 case. Find him guilty. Guilty of murder. Thank you.

10 MR. STITELY: I have a matter of law to take up
11 before we go to my opening. If I could approach, we can
12 do it right there.

13 THE COURT: Sure.

14 (Bench conference)

15 THE COURT: Mr. Foreman, Ladies and gentlemen of the
16 jury, I'm going to send you back to your jury room and
17 let me take up a matter of law with the lawyers.

18 Okay. And Mr. Foreman and Ladies and Gentlemen of
19 the jury, you ought have a pad --- a notepad. Do they
20 have a notepad? If you need to communicate with me, it
21 needs to be written. So if you please write down that
22 issue, I will take care of it before I bring you back in.
23 Okay? Sign your name to it. Thank you.

24 Remember, no talking about the case just yet.

25 (Jury leaves courtroom)

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1 to do it, so it doesn't seem like it's artificially in
2 the middle of the trial.

3 THE COURT: Okay. I am going to sit Jason Burgess,
4 first alternate and it's juror number 24. When he comes
5 back in, I'll notify him.

6 All right. Let's bring the jury in.

7 (Jury enters courtroom)

8 THE COURT: All right. Mr. Foreman, the jury ready?

9 FOREMAN: Yes, Your Honor.

10 THE COURT: All right. Before we proceed, juror
11 number 24.

12 JUROR: Yes, Your Honor.

13 THE COURT: You are now part of the jury. You're
14 juror number 12.

15 All right. Mr. Stitely.

16 MR. STITELY: My name is Ben Stitely. I work across
17 the street along with me this is Anna Williams Yonge.
18 She is one of my law partners. And we represent Brandon
19 Corder.

20 You have come and sit in a jury on a murder trial.
21 And I'm sorry to say this isn't going to be a whodunit.
22 It's not going to be a game of clues that's going to tell
23 you it was the candle stick in the broom closet, by Mr.
24 Pink.

25 I agree with almost everything the solicitor said in

1 their opening statement. On the 27th of December 2019, a
2 woman lost her life. And that happened by a gun that was
3 discharged by Brandon Corder. Not a secret. Not
4 something we're going to hide from. Those are the facts.

5 I was a --- looking at things last night, you know,
6 because you get to be a lawyer you think of all these
7 creative things you can say. And I came across a
8 Facebook post that was (unintelligible). And it's
9 something that Sebastian sang to area Ariel in the Little
10 Mermaid. It said the human world, it's a mess.

11 We are lucky to live in Lexington County. We have
12 wonderful law enforcement officers.

13 Mr. Corder gave a number of different statements.
14 His story changed dynamically. And eventually, he ---
15 he --- he told four, five different stories. The real
16 question is the determination made by you the jurors as
17 to what the facts are. Was this a murder? A crime of
18 malice aforethought? Or was it something else?

19 We do have something in South Carolina that allows
20 for the negligent killing of another individual. You can
21 be doing something recklessly and cause the death of
22 another human being. You can be guilty of something,
23 it's not murder. We have something called involuntary
24 manslaughter. You'll hear about it as the trial goes on.

25 What's most interesting about this case, and it's

Proceedings

1 kind of interesting, is the fact that you the jurors, you
2 don't get to see what happens. You don't get to see that
3 moment. Nobody does. There's no video cameras, there's
4 no recordings. But you do get to hear a 911 call within
5 seconds after it happened, a second 911 call within a
6 minute. And police on the scene thankfully within about
7 two minutes of that call coming in. And you get audio
8 and body cams from those officers as they'll start
9 rolling up. You don't get to see what happened, but you
10 get to see the aftermath.

11 The State is asking you to say as a jury that the
12 facts say this was a crime of malice aforethought.
13 You're going to hear some not nice things about both the
14 decedent, Ms. Youmans, and about Mr. Corder. They
15 weren't perfect people. You're going to hear that. They
16 had their problems. You're going to hear that. But
17 you're also going to see and hear Mr. Corder within
18 minutes after it happened.

19 As the solicitor told you, the first thing the
20 neighbor heard was someone screaming for their mom.
21 Screaming for help. Not running, not fleeing, screaming
22 for help and then calling 911. You're going to get to
23 see that person. And you're going to get to make the
24 determination whether you think this was a reckless act
25 or something with malice in one's heart.

1 Just listen. Thank you.

2 THE COURT: Thank you Mr. Stitely. All right.
3 Ladies and Gentlemen of the jury, it was mentioned during
4 the opening that you the jury have the duty to find
5 justice. And I'm reminding you that it is your duty to
6 decide from the evidence what the facts are. You and you
7 alone are the judges of the facts. You will hear the
8 evidence, decide what the facts are, and then apply those
9 facts to the law which I will give to you. That is how
10 you meet your burden of proof. Any ---

11 MR. MCNAIR III: Nothing from the state, Your Honor.

12 THE COURT: --- objections?

13 MR. STITELY: (Unintelligible) Judge.

14 THE COURT: Thank you. All right. You may call
15 your first witness.

16 MR. MCNAIR III: Your Honor, can I have one minute
17 to step outside, grab the next witness?

18 THE COURT: Sure can.

19 MS. FULLER: State calls Angie Gunter.

20 (Witness sworn)

21 ANGIE GUNTER, HAVING BEEN DULY SWORN, TESTIFIED AS
22 FOLLOWS.

23 CLERK: Once you're seated speak up loud and clear,
24 state your full name, spelling your last, please.

25 THE WITNESS: Angela Gunter, G-U-N-T-E-R.

Direct Exam Gunter

1 DIRECT EXAMINATION

2 BY MS. FULLER:

3 Q. Where are you currently employed?

4 A. Lexington County (unintelligible) 911 Communications
5 center.

6 Q. And can you describe to the jury your role and
7 responsibility there?

8 A. I am the deputy chief of communications I am over
9 operations on the 911 board.

10 Q. And how long have you been employed in that capacity?

11 A. I've been at the center over 17 years. I've been
12 over a year in this position.

13 Q. And in that position, are you responsible or have access
14 to the 911 call reports and --- and 911 calls?

15 A. Yes.

16 Q. And are they maintained in a normal course of business?

17 A. Yes.

18 Q. And as you prepared for that case, did you have an
19 opportunity to review those records?

20 A. Yes.

21 Q. As well as the 911 calls?

22 A. Yes.

23 Q. All right. I'm going to ask you a few questions about
24 them. If you can, how many calls as it relates to this
25 incident was received?

1 A. (Unintelligible).

2 Q. Okay. And I think in preparing, one of them was a
3 hang-up call?

4 A. Correct.

5 Q. And what was the date and time of the first call?

6 A. It was at 3:09 on 12/27/19.

7 Q. So December 27, 2019, at 3:09 p.m.?

8 A. Correct.

9 Q. And who placed that first call?

10 A. Lee Bowerman.

11 Q. And ---

12 A. Bowerman.

13 Q. Okay. And what was the incident location?

14 A. [REDACTED] Valley Lane.

15 Q. And is that in Lexington County?

16 A. In Lexington County, yes, ma'am.

17 Q. Now, when a call comes in, how are they actually stored?

18 A. Well, they come in, the call taker over dispatch
19 will answer it and we use our CAD, our computer-aided
20 dispatch software, put all the information in. And then
21 it is stored (unintelligible).

22 Q. Okay. And the CAD is --- I'll refer to it as CAD ---

23 A. CAD.

24 (Simultaneous speaking)

25 Q. --- computer aided ---

Direct Exam Gunter

1 A. Dispatch.

2 Q. Dispatch. And does the CAD con --- contain all of the
3 information that's received by 911?

4 A. It will --- it --- whoever is taking the call, they
5 will type in the information that is given from the
6 caller.

7 Q. And then also preserved by recording?

8 A. Correct.

9 Q. In terms of nature of the call, is that recorded on the
10 CAD?

11 A. It is.

12 Q. And what was the nature of the call?

13 A. This one --- the first one was shot fired.

14 Q. And what was reported?

15 A. The caller was saying that he heard shots fired in
16 the area at first from the Lee Bowerman.

17 Q. Okay. And then what was the nature of the call?

18 A. A shooting.

19 Q. And what kind?

20 A. A GSW.

21 Q. Okay.

22 A. And he was saying as far as whenever he got on scene
23 he went up there and seen that a female had been shot.

24 Q. Okay. And did it --- did the --- what was reported in
25 terms of how she was shot?

- 1 A. Committed suicide.
- 2 Q. Okay. And what time did --- does the CAD also contain
- 3 regarding law enforcement activity to and from the scene?
- 4 A. Yes, ma'am. It does.
- 5 Q. And does the --- do the records contain the information
- 6 of what time law enforcement first arrived on scene?
- 7 A. Yes, ma'am, at 3:15.
- 8 Q. Okay. And in preparing for today, based on your review
- 9 of the records of the calls, were you able to determine that
- 10 Brandon Corder called 911?
- 11 A. Yes, ma'am, he did.
- 12 Q. And at what time?
- 13 A. That call was at 15:12.
- 14 Q. And so that would be 3:12 p.m.?
- 15 A. Sorry, 3:12 p.m., yes.
- 16 Q. No problem. I'm going to hand you what's been premarked
- 17 for ID, as State's Exhibit 1. I'm going to ask you if you
- 18 recognize it?
- 19 A. Yes, I do.
- 20 Q. And how do you recognize this?
- 21 A. Because I initialed it and dated it.
- 22 Q. Okay. And what's contained on this disk?
- 23 A. The 911 tape ---
- 24 Q. And did they ---
- 25 A. --- call.

Direct Exam Gunter

1 Q. I apologize, sorry. And when you say, "911 tape," are
2 those all the calls that you referred to before?

3 A. Yes.

4 Q. Including the hang-up?

5 A. Yes.

6 Q. Did they appear to be altered in any way?

7 A. No.

8 Q. And I think that's all my questions (unintelligible).

9 MS. FULLER: Your Honor, at this time the State
10 seeks to introduce State's Exhibit 1 into evidence.

11 MR. STITELY: Without objection.

12 THE COURT: It's admitted.

13 (State's Exhibit 1 admitted)

14 BY MS. FULLER:

15 Q. I'm going to hand you what's been marked for ID for
16 State's Exhibit 2. Just so you have it now. I'll have some
17 questions for you shortly after we publish the call.

18 MS. FULLER: Your Honor, I have a copy for the
19 Court. May I approach?

20 THE COURT: You may. This is for ID only?

21 MS. FULLER: I'll move it in shortly. State's 2.
22 Or request to move in.

23 THE COURT: Any objection?

24 MS. FULLER: We're not there yet, Judge. Just want
25 to gently note.

1 BY MS. FULLER:

2 Q. And again for the record, what time was it Brandon Corder
3 called 911?

4 A. (Inaudible).

5 (Audio playing)

6 Q. And there's some dead time here, but that's the extent of
7 the call?

8 A. Yes, ma'am.

9 Q. And the --- the extra time was just the 911 just keeping
10 the line open?

11 A. Yes.

12 Q. Okay. In looking at State's 2 that I handed you, did you
13 have an opportunity to review that?

14 A. Yes, I did.

15 Q. Okay. A couple more questions about the record. Did the
16 record also include at what point and what time Brandon Corder
17 was detained?

18 A. Yes, at 5:43.

19 Q. And did it contain also when he was taken into custody?

20 A. At 7:36 p.m.

21 Q. Okay. And in terms of Brandon Corder's report to law
22 enforcement, can you generally publish what we just heard was
23 recorded on that exhibit? Do you ---

24 (Simultaneous speaking)

25 Q. --- recognize that as being on the call?

Direct Exam Gunter

1 A. Yes.

2 Q. And what did he report to 911?

3 A. That the --- someone was shot. And not sure where
4 it came from --- the bullet came from.

5 Q. Okay. And looking at State's 2, does that fairly and
6 accurately represent a summary of the calls and as well as the
7 records that you reviewed?

8 A. Yes, ma'am.

9 MS. FULLER: At this time, Your Honor, the State
10 seeks to introduce into evidence State's Exhibit 2.

11 THE COURT: Any objection?

12 MR. STITELY: I do have an objection, Judge in ---
13 in --- do you have copy in front of you?

14 THE COURT: I do.

15 MR. STITELY: In looking at it, the last two things,
16 I think those would be arguable dealing with other issues
17 that will come up later as far as voluntariness. So I
18 don't think this is a proper exhibit. I don't think that
19 it --- those two items are proper as an exhibit. I think
20 the State can argue those are theories, but I don't
21 believe they are something that has been proven at this
22 point under an exhibit to be entered in as fact.

23 THE COURT: Let me hear from you Ms. Fuller.

24 MS. FULLER: So, Your Honor, I -- I believe my
25 questions to this witness was is this the record

1 containing the time that the defendant was detained and
2 when he was in custody. And I believe she was able to
3 answer that based on the records and what's reported in
4 the records.

5 THE COURT: The CAD record, right?

6 MS. FULLER: That's correct.

7 THE COURT: I'm going to allow it.

8 (State's Exhibit 2 in evidence)

9 MS. FULLER: Thank you, Your Honor. Permission to
10 publish?

11 THE COURT: You may.

12 BY MS. FULLER:

13 Q. And in just reviewing the State's 2 for the jury, Ms.
14 Gunter, can you see this, or ---

15 A. (Unintelligible). Well, that's a little bit better.

16 Q. I'll Zoom in and just scroll down ---

17 (Simultaneous speaking)

18 A. Okay.

19 Q. Okay. At the top of this, is that the date that you
20 indicated the call came in?

21 A. Yes, ma'am.

22 Q. And I'll just point my pen, December 27, 2019?

23 A. Correct.

24 Q. And you indicated this was a summary of the 911 call.
25 There's information in that in arrival time on --- at [REDACTED]

Direct Exam Gunter

1 Valley Lane, Lexington County?

2 A. Yes, ma'am.

3 Q. And at 3:09. Can you publish into the record what's
4 listed there?

5 A. At 3:09 report of shooting made by the Lee Bowerman.
6 Someone's girlfriend had committed suicide and shot
7 herself.

8 Q. And then at 3:12 p.m., can you publish what was reported
9 there?

10 A. Report of shooting made by a friend.

11 Q. (Unintelligible)?

12 A. Joanie, she's --- there's a bullet, there's a
13 gunshot, she got hit in the head. I don't know where the
14 bullet came from. She's lying here dead.

15 Q. And that's certain excerpts from the 911 call ---

16 A. Yes, ma'am.

17 Q. --- correct?

18 A. Uh-huh. Right.

19 Q. And then (unintelligible) got there, there was another
20 911 call that's already on the disk; is that correct?

21 A. Yes.

22 Q. And that's what we talked about the hang-up call?

23 A. Yes.

24 Q. And can you publish what was reported there?

25 A. A report of shooting made by hang-up caller heard a

1 male neighbor shoot his gun.

2 Q. Okay. And then the next line at 3:15?

3 A. Law enforcement arrived at [REDACTED] Valley Lane
4 Lexington, South Carolina, Lexington County.

5 Q. And then at 5:43?

6 A. Brandon Corder detained.

7 Q. And then I'll scroll up to the last line. At 7:36?

8 A. Brandon Corder taken into custody.

9 Q. Okay.

10 MS. FULLER: No further questions.

11 THE COURT: Mr. Stitely.

12 CROSS-EXAMINATION

13 BY MR. STITELY:

14 Q. Ms. Gunter, how are you this morning?

15 A. I'm all right.

16 Q. A couple of questions.

17 A. Uh-huh.

18 Q. I know --- I know the State has their exhibit up here.
19 Do you have your reports summarizing the calls in front of
20 you?

21 A. I haven't gotten reports from the officers.

22 Q. Okay. So and just for clarification, the CAD report is
23 whoever took the call has kind of typed an interpretation as
24 to what they're hearing, correct?

25 A. No, they ask questions. There's certain questions

Cross-Exam Gunter

1 that we ask. Yes, they're standard questions that we
2 ask, then they will type down what the caller gives you
3 information. Yes.

4 Q. And I actually had a different case, we were fighting
5 over what the written CAD report said versus what the audio
6 said. But this is pretty much just the CAD is a summation
7 from your individual of what they're hearing as it's going on?

8 A. Correct.

9 Q. What was the phone number associated with the hang-up
10 call?

11 A. Hang on one second for me. I mean I have
12 several ---

13 (Simultaneous speaking)

14 Q. Oh, yes.

15 A. (Unintelligible).

16 Q. No problem.

17 A. Well, one of the hang-up calls came in and it
18 showed --- actually showed the phone number,

19 [REDACTED]-6404.

20 Q. Is that the one at 3:15?

21 A. That was the one at 3 --- no, that was at 3:12. Or
22 no, I'm sorry, 3:15.

23 Q. Okay. And you said, one of, is there a second?

24 A. Well, (unintelligible) I have to look at --- no, it
25 was just --- hang on before I answer that one. There was

1 another one call --- hold on. There was one I don't have
2 the phone number for.

3 Q. Okay. What time was that one?

4 A. That was at the 3:15. And that was a female caller.

5 Q. Okay. So you had two hang up calls around 3:15, one from
6 a male, one from a female?

7 A. I would say.

8 Q. Okay. Do you know whose number that [REDACTED]-6404 is?

9 A. Yes.

10 Q. What's the name or the info of that phone?

11 A. Well, I don't know whose number it belongs to, but
12 the name came up as Sandra Corder.

13 Q. Okay. And you said that was a male voice or a female
14 voice?

15 A. That was one that somebody was Brandon Corder on
16 this call.

17 Q. Okay.

18 A. That's what originally showed on that. It came
19 in --- that's the only phone number I have for that call.

20 Q. Okay.

21 A. I don't have the other for the hang-up call. I
22 don't have that phone number in my CAD system.

23 Q. Okay. That's --- sorry.

24 A. (Unintelligible) sorry.

25 (Simultaneous speaking)

Cross-Exam Gunter

1 Q. So the hang-up one we don't have the phone number?

2 A. Correct.

3 Q. Sorry, I wrote down --- you're good. And we listened to
4 it obviously ---

5 A. Uh-huh.

6 Q. -- and the Solicitor's picked out what --- what she put
7 on her thing. But in the call received from Mr. Bowerman,
8 what time did he tell you it was a suicide? Does your CAD
9 report indicate what time on the actual call that statement
10 was made?

11 A. Sorry I've got the whole (unintelligible) same call
12 (unintelligible) got to read between the lines on it.

13 Q. -- no problem.

14 A. (Unintelligible) emergency services. I don't see
15 where he said --- you said where Brandon stated that?

16 Q. No. No. No, where Mr. Bowerman stated that?

17 A. I see. I see that now. That's on the original
18 (unintelligible). That was at 15:13.

19 Q. At 15:13?

20 A. Uh-huh.

21 Q. So that would be ---

22 A. 15:13 caller said that someone's girlfriend had
23 committed suicide and shot herself.

24 (Simultaneous speaking)

25 COURT REPORTER: (Unintelligible) down a little

1 slower, please.

2 THE WITNESS: I'm sorry, yes. Caller stating that
3 someone's girlfriend had committed suicide and shot
4 herself.

5 BY MR. STITELY:

6 Q. Okay. And Brandon called and we hear him on the line
7 with you for a full almost minute and 42 seconds, correct?

8 A. I don't know how long it was. But yes, he did call.

9 Q. And (unintelligible)?

10 A. I don't know how long of a phone call it was. I
11 didn't look at that one.

12 Q. I think it's a minute 44, but that would be on the tape
13 when we look at it correct?

14 A. Yes.

15 Q. Okay. So Mr. Bowerman independently said it was a
16 suicide while you were on the phone with Brandon, and we heard
17 Brandon's call correct?

18 A. Uh-huh. Correct.

19 Q. Okay. He didn't say that on his call, he said the shot
20 came, she went down, correct?

21 A. Correct.

22 Q. Okay. And did he say please hurry up at least three or
23 four times?

24 A. Yes.

25 Q. Did he give his name?

Cross-Exam Gunter

- 1 A. Yes.
- 2 Q. His phone number?
- 3 A. Yes.
- 4 Q. And the address where they were located?
- 5 A. Correct.
- 6 Q. He didn't give you a different name?
- 7 A. No.
- 8 Q. A different place to go?
- 9 A. No.
- 10 Q. And the first words out of his mouth pretty much were
- 11 please hurry up?
- 12 A. Correct. Yes.
- 13 Q. Okay. And that was at 3:12?
- 14 A. Correct.
- 15 Q. All right. And Mr. Bowerman at 3:13 was saying suicide,
- 16 at the same time Mr. Corder was on the phone with y'all?
- 17 A. Because there --- I think there's more than one 911
- 18 operator there --- yes.
- 19 Q. Okay.
- 20 A. There are multiple.
- 21 Q. So two knew --- two 911 operators could have been talking
- 22 to two different people?
- 23 A. Three or four for that, yeah.
- 24 Q. Okay. Very good. And what time was police dispatched?
- 25 A. They were dispatched at 15:14.

Cross-Exam Gunter

1 Q. Okay. So within five minutes of Mr. Bowerman's call,
2 three minutes after Mr. Corder calls --- or two minutes after
3 Mr. Corder calls, police are dispatched, correct?

4 A. Correct.

5 Q. And the first officer arrives how many minutes after
6 that?

7 A. They arrive at 15:15.

8 Q. So within a minute ---

9 A. Yes.

10 Q. --- dispatch?

11 A. Uh-huh.

12 Q. Okay. And how did the dispatch call go out? What was
13 reported from dispatch to law enforcement as they were heading
14 out to the scene?

15 A. Well, on this type of call, I can't tell you. I
16 mean, I just don't know exactly how they gave it out.
17 (Unintelligible) caller reported shots fired or GSW.

18 Q. There wouldn't have been a call for suicide on the line?

19 A. What do you mean?

20 Q. When you dispatched law enforcement out, someone would
21 have said call in of suicide?

22 A. No, we would say a GSW.

23 MR. STITELY: Okay. Thank you, ma'am.

24 THE WITNESS: Your welcome.

25 MR. STITELY: No further questions.

Redirect Exam Gunter

1 THE COURT: Any redirect?

2 MS. FULLER: Yes, to clarify a few things.

3 REDIRECT EXAMINATION

4 BY MS. FULLER:

5 Q. Looking at the CAD and looking at my page number 37 of
6 82, at the top.

7 A. Okay.

8 Q. Counting 13 lines down, one, two, three --- 13 lines
9 down. Are you there?

10 A. Okay. Yes, (unintelligible).

11 Q. And caller stating?

12 A. Yes, ma'am.

13 Q. And what does that say?

14 A. Caller stating that male GS had shot herself, was
15 his girlfriend.

16 Q. And what time is that?

17 A. That is at 15:12.

18 Q. Is that 3:12?

19 A. Yes, ma'am.

20 Q. Okay. I think defense counsel questions on those --- the
21 suicide, that --- the word suicide is actually typed at 15:13,
22 correct? At 3:13?

23 A. Correct.

24 Q. Okay. In terms of the CAD, let's go ahead and explain
25 that system to the jury a little bit.

1 When you indicated that law enforcement connected and I
2 think and defense counsel you're, like, I have to look
3 through ---

4 A. Yes.

5 Q. --- fire, EMS. Explain that.

6 A. Okay.

7 (Simultaneous speaking)

8 Q. --- connected into CAD?

9 A. Sorry, whatever certain nature of calls --- certain
10 natures of calls come in, is it, like, certainly like
11 cardiac, or a GSW ---

12 (Simultaneous speaking)

13 A. I'm sorry.

14 Q. Go ahead. Slow down for Ms. Bethany. Sorry.

15 A. When it comes in to the system, use the 911 line
16 (unintelligible) you pick it up. Depending on the nature
17 of the call, would depend on which agency respond to.
18 And that's the CAD. CAD --- that's the computer aided
19 dispatch. That's why it helps us dispatch certain
20 things.

21 Say that there's a shooting incident where someone
22 has been shot, a GSW, then you would need police, fire,
23 and EMS to respond. That's why that's going to have all
24 of those calls, it's all in one jumbled up.

25 Q. And now as the notes are entered into the CAD, we see

Redirect Exam Gunter

1 lines, then we see different call takers and their names ---

2 A. Yes.

3 (Simultaneous speaking)

4 Q. --- is that correct?

5 A. That is correct.

6 Q. And so starting at the bottom, chief complaint indicates
7 shots fired, correct?

8 A. Correct.

9 Q. And there's a date and a time that was entered; is that
10 correct?

11 A. It is, but where --- which one are you on right now?

12 (Simultaneous speaking)

13 Q. And in terms of all the agencies that are connected to
14 the CAD, who can see these notes when it was entered?

15 A. The dispatchers who were dispatching the agencies of
16 police, fire, or EMS, and the dispatchers.

17 Q. Okay.

18 A. Or the call taker who's in that (unintelligible).

19 Q. Okay. And then what about law enforcement and EMS; do
20 they have ---

21 A. They do.

22 Q. --- call (unintelligible)?

23 (Simultaneous speaking)

24 A. They do. Some agencies do. Sheriff's Department,
25 they do.

1 Q. So there's the Lexington County ---

2 A. The Lexington County Sheriff's Department.

3 (Simultaneous speaking)

4 Q. And this is Lexington County ---

5 A. Correct.

6 Q. --- communication? And so as an officer, and we'll ask
7 other witnesses, they will access the CAD to know what they're
8 responding to, correct?

9 A. They can. Yes.

10 Q. And what does "toned out" mean?

11 A. Toned out means if it's --- depending on the serious
12 type of call, as in a GSW, an armed robbery, we will hit
13 a tone. And it literally makes the tone noise like a
14 (descriptive sound). It alerts the officers that is an
15 important nature of a call.

16 Q. Okay. So it's not words ---

17 (Simultaneous speaking)

18 A. No, it's --- it's a (descriptive sound) tone.

19 Q. (Descriptive sound)?

20 A. Yeah, it's a tone.

21 Q. And so an officer who is responding will recognize --- is
22 there a cheat sheet --- sorry random question, I don't know
23 the answer. Is there a cheat sheet for the tones? Like does
24 a --- how does the officer know that this tone means GSW?

25 A. They don't know what it means at first. They just

Redirect Exam Gunter

- 1 know it's a serious call.
- 2 Q. (Unintelligible)?
- 3 A. We hit the tone and it alerts the officers, and then
- 4 we tell them respond GSW, or respond armed robbery.
- 5 Q. Sorry. I've never asked that question before ---
- 6 (Simultaneous speaking)
- 7 A. Yeah.
- 8 Q. --- so it's interesting to know.
- 9 Okay. So once it's --- now I'm --- walk through this.
- 10 So once it's toned out ---
- 11 A. Uh-huh.
- 12 Q. All the officer knows is this a tone, this is serious ---
- 13 A. Correct.
- 14 Q. So for them to know what's going on, what do you have to
- 15 do?
- 16 A. It alerts them and then --- well, they have to
- 17 listen for one. And then --- then they will go en route.
- 18 And most of the time they just respond to --- we give
- 19 them the address, the nature of the call, and then we
- 20 give them further information as they're already en
- 21 route.
- 22 Q. And the information that's being provided to them, would
- 23 come from the notes in the CAD?
- 24 A. Correct.
- 25 Q. Okay. So at 3:12, when it looks like your dispatcher, or

1 call taker Kelly, enters the male's girlfriend just shot
2 herself, and you indicated law enforcement arrived at 3:15.
3 But law enforcement had access to the time the note was ---
4 the note as it was entered into the CAD? As the officer's
5 responding?

6 A. They could, if they ---

7 (Simultaneous speaking)

8 Q. Okay. They would have ---

9 (Simultaneous speaking)

10 A. Correct.

11 Q. And so if an officer says they were aware prior to
12 arrival, then they're responding to a ---

13 A. Yes.

14 Q. --- suicide, it would come from where?

15 A. They could --- their CAD, their mobile --- it will
16 come from our CAD reports ---

17 Q. Okay.

18 A. --- to their system in their vehicle, where they
19 could also see it.

20 Q. That they would have access to?

21 A. Correct.

22 Q. I think that clarifies it.

23 MS. FULLER: No further questions at this time.

24 MR. STITELY: Just briefly, because, could we replay
25 that sound?

Recross-Exam Gunter

1 RECROSS-EXAMINATION

2 BY MR. STITELY:

3 Q. And I guess, she actually asked if it --- I'm going to go
4 even one stop --- clarification, and you don't --- you weren't
5 here to hear what else officers said, because you don't have
6 anything to do with the field, correct?

7 A. No, I do not.

8 Q. So it's entirely plausible that dis --- so you actually
9 said, "her," Lexington County sheriff's dispatch will take
10 your CAD and talk directly to their deputies, correct?

11 A. Correct.

12 Q. So it's possible that one of them read suicide somewhere
13 and dispatched a deputy using those words, correct?

14 A. They will dispatch off of the nature of the calls.
15 It happens --- the nature populates to their system and
16 the address before they see any notes.

17 Q. Okay.

18 A. It's instantly.

19 Q. But there is a second person out there who can be
20 communicating, specifically the actual sheriff's department's
21 dispatchers ---

22 (Simultaneous speaking)

23 Q. --- which is not your office?

24 A. No. No. That's my people.

25 Q. Okay.

Direct Exam Bowerman

1 A. We dispatch for the sheriff's department.

2 Q. Okay.

3 A. Communications team.

4 Q. All right. And when it pops up, they can read what the
5 brief synopsis is in their notes?

6 A. When they get it, yes.

7 MR. STITELY: Okay. Perfect. Thank you.

8 THE WITNESS: Uh-huh.

9 THE COURT: May I excuse Ms. Gunter?

10 MS. FULLER: Will I have another chance? No? No,
11 I'm good. Thank you.

12 (Simultaneous speaking)

13 MS. FULLER: That's good.

14 MR. MCNAIR III: Your Honor, the State calls David
15 Bowerman.

16 (Witness sworn)

17 DAVID BOWERMAN, HAVING BEEN DULY SWORN, TESTIFIED AS
18 FOLLOWS.

19 CLERK: Once you're seated, speak up loud and clear.
20 State your full name, spelling your last.

21 THE WITNESS: Dave Lee Bowerman, B-O-W-E-R-M-A-N.

22 DIRECT EXAMINATION

23 BY MR. MCNAIR III:

24 Q. Mr. --- Mr. Bowerman, would you please tell the jury
25 where you live?

Proceedings

1 (BEGIN 3-1-23)

2

3 THE COURT: I don't believe that Wharton case
4 applies. But I'm reading the Brewton case; have you read
5 it?

6 MR. STITELY: Yes, Judge. And there's several
7 distinctions as well.

8 THE COURT: They talk about ---

9 MR. STITELY: Fighting over the gun, they talk
10 about ---

11 THE COURT: His intoxication ---

12 MR. STITELY: And that's actually --- and you read,
13 that's an action called the statute. We actually have
14 a --- well, it's a --- once again, misdemeanor felony.
15 We have a charge in South Carolina for possessing a
16 firearm or holding a firearm while intoxicated. It is
17 23-31-400. Which specifically says it is unlawful for a
18 person who is under the influence of alcohol or a
19 controlled substance to use a firearm in the state.

20 They don't use the statute in the case, but they
21 specifically say he admitted to being under the influence
22 while he was using a firearm. Which these were wrestling
23 over, which is a completely different scenario and
24 that's --- if you read earlier in the case they're
25 talking about how wrestling over it creates some problems

1 when you're dealing with the self-defense element.

2 But I --- I would not (unintelligible). And here's
3 the honest truth, Judge. I think if she wanted to stop a
4 involuntary manslaughter charge, she opened that door
5 when she put Creech's tape in. Because now we have a
6 in-the-record argument of an accident while doing
7 something which inherently is not a proximate cause of
8 murder in holstering a firearm. If she didn't want us to
9 go down that road, I she should have not put Creech's
10 tape in, but now it's in, the jury's heard it. I think
11 we're going to be entitled to the charge.

12 THE COURT: So you think the accident charge?

13 MR. STITELY: No. No. Involuntary manslaughter ---

14 THE COURT: (Unintelligible).

15 MR. STITELY: --- that --- because I --- I still
16 think I --- I still --- no I still think I have a problem
17 with accident as a lawful affirmative defense. But I
18 think we can get the involuntary manslaughter --- for the
19 evidence that she just put in.

20 THE COURT: I mean, I think it's clear that the
21 Brewton case talks about the self-defense. No doubt
22 about it. But it doesn't say that is the only time that
23 it is allowed. I think it --- it sets case law clear
24 for --- precludes it from self-defense. But, you know,
25 it --- it goes on to say that the --- dispositive

Proceedings

1 question of this issue is whether Brewton's illegal
2 possession proximately caused the death. And in this
3 case they determined that it did and then they lay, out
4 all these other reasons why, he was drunk, he wasn't
5 supposed to have a gun.

6 And --- and it's --- it's not clear that it's the
7 possession of a gun that he had been convicted of is the
8 only reason they did it. Because they outlined all these
9 other things, the five and a half pounds of trigger
10 pressure. And that he had been on illegal drugs and was
11 intoxicated at the time. They added all this other stuff
12 in.

13 MS. FULLER: So I guess, Your Honor, with dealing
14 with where I am and know and foreshadow where I'm going
15 with the case. And I need this in the record for what's
16 coming with my next two to three witnesses to build upon
17 my argument against involuntary.

18 And obviously, you said the Court's not going to
19 rule on what's to come, but I guess just foreshadow what
20 would build up to get you to Brewton.

21 THE COURT: So what you're trying to do is ---

22 MS. FULLER: Because the issue ---

23 (Simultaneous speaking)

24 THE COURT: --- he went supposed to have a gun. And
25 then whenever ---

Proceedings

1 MS. FULLER: All my other factors to get there.

2 THE COURT: I don't know what your other factors are
3 but ---

4 MS. FULLER: So and the issue is Cabrera is that was
5 that --- was that little thing was not in the record.
6 And so ---

7 THE COURT: Okay.

8 MS. FULLER: --- I mean, we can do it. There's
9 other ways to do it I guess. Taking judicial notice. I
10 don't want the Court in that position. I think if we
11 maybe later call the clerk up and swear that there's
12 these two convictions. But he would be the one to
13 testify that his familiarity with the statute and
14 unlawful possession. Because like the case law says, he
15 does not need to be charged with the --- he doesn't need
16 to be charged with pointing and presenting or
17 intoxication, or being high with it for the trigger ---
18 the analysis.

19 THE COURT: Well ---

20 MS. FULLER: So I don't need an indictment for
21 pointing and presenting. I don't need an indictment for
22 intoxication. But I would --- I would venture off to say
23 our court is not going to say that you can violate
24 Federal law in the State of South Carolina.

25 So I get what he's saying about, you know, his

Proceedings

1 convictions don't trigger State statute. Obviously the
2 conviction to DV 3rd. He is --- his prohibition ended
3 two months prior to the murder.

4 THE COURT: Well, I think he concedes that he was
5 unlawfully handling it.

6 MS. FULLER: No. No. I'm --- I'm talking strictly
7 about the --- I don't know if he concedes that. Because
8 if he concedes that, then it --- if he can't concedes
9 unlawfully ---

10 THE COURT: I just ---

11 MS. FULLER: --- handling it.

12 THE COURT: --- think his argument is is that did it
13 proximately cause the natural death of the decedent?

14 MR. STITELY: Under her theory then, if I'm
15 prohibited from owning a firearm. There's a firearm in
16 my house, I punch a dude, he dies. I can't argue
17 involuntary manslaughter because I had a gun back at my
18 house. That's --- that's a flat-out further
19 extrapolation of her argument.

20 THE COURT: Well ---

21 (Simultaneous speaking)

22 MR. STITELY: That because I have ---

23 THE COURT: You'd never --- nobody would ever be
24 entitled to the self-defense.

25 MR. STITELY: Ever.

1 MS. FULLER: That's different.

2 THE COURT: Ever. So I --- I think what he's
3 arguing is he knows it's unlawful. He's not supposed to
4 have a gun. But did it lead to the proximate natural
5 cause his actions to the death? Because if not, how
6 would you ever, ever bring up self-defense in the Brewton
7 case if it was un --- he wasn't supposed to have a gun
8 period.

9 MS. FULLER: No. But no. That's --- that's ---
10 that's well settled like in terms of self-defense, that's
11 literally where the Court has carved out a lesser army to
12 defend yourself if we can't argue that. That's stand
13 your ground. That's --- that's well settled. I'm not
14 arguing that. But in this case he's not arguing
15 self-defense. There's --- there's a simple analysis
16 if --- if he's arguing self-defense, I can't say, well,
17 he was in illegal possession.

18 THE COURT: I don't --- but I don't think Brewton
19 also states that this is the only time.

20 MR. STITELY: And --- and Judge, as far as the other
21 thing, she's held three witnesses up during pretrial to
22 say he was not under the influence, he was clear, he was
23 understanding, he was able to give his Miranda or
24 whatever. She actually put three people up to say that
25 he had no impairment.

Proceedings

1 THE COURT: Okay. Well ---

2 MS. FULLER: I didn't ---

3 THE COURT: --- let's talk about how she wants to
4 put in --- I understand his record. I also don't want to
5 prejudice the defendant. He has a right to take the
6 stand or not to take the stand.

7 MR. STITELY: The only things that, Judge ---

8 THE COURT: And I'm ---

9 MR. STITELY: --- would be, I guess arguing even if
10 we ---

11 THE COURT: I'm not inclined to go ---

12 MR. STITELY: --- failure to stop and a 2018 DV are
13 it. DV 3rd, misdemeanor level.

14 THE COURT: Yeah, I'm not inclined to put something
15 into the record when he hasn't testified about it. I
16 think that's prejudicial to him. Can we not take
17 judicial notice of his record if that's what you want to
18 argue? I just don't know that he's going to testify or
19 not.

20 MS. FULLER: I mean, if the court is going to take
21 judicial notice that his record prohibits him Federally
22 from possessing a firearm, then I don't need to go
23 through proving it. It is a matter of public record. It
24 will be a hearsay exception anyway for anyone to get up
25 and say it, I --- I made a court exhibit of the DV 3rd

1 certified conviction which would trigger it.

2 And so if the Court takes judicial notice that there
3 is a Federal statute that prohibits anyone convicted of a
4 domestic violence in this country and/or of a crime
5 punishable by more than a year, from being in possession
6 of a firearm purchasing a firearm, selling a firearm.

7 And so if that's what we're going to do, that's
8 fine. But what --- what --- the testimony that's coming
9 is going to go to the trigger pull. The testimony that's
10 coming is going go to he admitting to pulling the hammer
11 back and pointing the gun at her. I'm building up to get
12 there, but the analysis needs to be unlawful activity
13 coupled together with this.

14 The Court does give you --- the Court and Brewton
15 outlines that. I'm not arguing intoxication. I don't
16 know where that came from. But in terms of the illegal
17 possession being proximate cause in --- in this case, it
18 is. He admitted that his holster story was a lie.

19 And ---

20 THE COURT: But we haven't gotten to that yet.

21 MS. FULLER: We haven't gotten there yet.

22 THE COURT: I haven't gotten there yet.

23 MS. FULLER: Right. We haven't gotten there yet.

24 THE COURT: All this testimony that I have not heard
25 yet ---

Proceedings

1 MS. FULLER: I know, but ---

2 THE COURT: --- it's impossible for me to rule on
3 this.

4 MS. FULLER: Right. And Your Honor, I'm --- that's
5 why I wasn't asking to rule on it, but I need to put this
6 in the record, or I have to recall him to put in the
7 record, or call the clerk in terms of flow of this case.

8 THE COURT: Okay.

9 MS. FULLER: Once that is in, but I can't ask that
10 person if he's familiar with his record. He is. So I
11 can have him explain it.

12 But I can recall Creech after I put that testimony
13 in. I can just recall him, Judge.

14 MR. STITELY: It's still irrelevant unless he's
15 testifying to put in his prior record. Judge, she's
16 still reading 922(g) wrong as well as to the 2019 change
17 to the Supreme Court. Well we --- if you --- if we need
18 to argue that one out, that's --- I --- I send your clerk
19 a copy of the Supreme Court's new opinion that you have
20 to have an affirmative ---

21 MS. FULLER: No.

22 MR. STITELY: Yeah.

23 MR. MCNAIR III: And you did --- you did say
24 that --- I'm sorry.

25 MR. STITELY: Anyway, but and actually, I can pull

1 the actual case and show you, but there's a fourth
2 additional element that a gift of actual notice ---

3 MS. FULLER: Of your status.

4 MR. STITELY: Correct. So ---

5 MS. FULLER: (Unintelligible).

6 MR. STITELY: That's not enough. They said you have
7 to have notice that it creates a 922(g) provision that
8 you signed. Anyway ---

9 MS. FULLER: (Unintelligible).

10 THE COURT: --- all that aside. And here, I guess
11 we're arguing toward pretend the evidence comes in that a
12 5th story, a 7th story, a 24th story comes out that
13 changes it. The testimony ---

14 MR. STITELY: --- that's now in the record.

15 THE COURT: --- there were four different stories
16 here in the jury ---

17 MR. STITELY: Sure.

18 THE COURT: --- it is their duty to decide what
19 they're going to believe.

20 MR. STITELY: You're absolutely right. And she just
21 put in a story ---

22 (Simultaneous speaking)

23 MR. STITELY: Excuse me?

24 COURT REPORTER: I can only take one person talking
25 at a time.

Proceedings

1 THE COURT: At a time. Yes, please.

2 MS. FULLER: Sorry.

3 MR. STITELY: She just put in a story that fits the
4 fact pattern for involuntary manslaughter. It will be a
5 jury question then ---

6 (Simultaneous speaking)

7 THE COURT: Let me --- let me talk to the lawyers
8 just for a second. I've got an idea.

9 (Bench conference)

10 THE COURT: Okay. Back on the record. After
11 talking about the lawyers, I'm not inclined to let
12 Sergeant Creech testify about the defendant's criminal
13 history. I understand where the State's coming from. I
14 certainly understand the defendant's argument. I think
15 the better choice is to --- if we need the record we will
16 confirm it through the clerk's office through certified
17 copies of his record. And --- and this is just if need
18 be.

19 But I'm certainly not going to allow it now. I
20 think it is prejudicial and somewhat shifts the burden.
21 So we're going to listen to --- I know the testimony they
22 tell me is going to be --- I think he's told three or
23 four different stories. I want all the stories in the
24 record and then we'll decide on jury charges. And then
25 if we need his record in the record we'll put it in

Proceedings

1 through the clerk of court's office. Okay?

2 All right. I'm going to take a break. It's ten
3 till 12. I need a break. Can y'all just give me about
4 ten minutes of the then we'll bring the jury back in.

5 (Missing audio)

6 (3-1-23 PROCEEDINGS CONCLUDED)

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1 STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT OF
2) THE ELEVENTH JUDICIAL CIRCUIT
3) 2020-GS-32-01854 & 01857
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STATE OF SOUTH CAROLINA,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
BRANDON LEE CORDER,)
Defendant)

March 2, 2023

Lexington, South Carolina

B E F O R E:

HONORABLE DEBRA R. MCCASLIN, JUDGE

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

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Lisa G. Amick
Official Court Reporter

1

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1 THE COURT: Alright. Is the State ready?

2 MS. FULLER: The State's ready, Your Honor.

3 THE COURT: Defense?

4 MR. STITELY: Yes, ma'am.

5 THE COURT: Let's bring the jury in.

6 (Jury entering Courtroom.)

7 THE COURT: Alright. Good morning. Mr. Foreman, the
8 jury ready?

9 MR. FOREMAN: Yes, ma'am.

10 THE COURT: Alright. Let me ask you, has anybody
11 read anything, watched anything on tv, did any research on the
12 internet about this case? Has anybody tried to approach you
13 about this case, or have you talked to anyone about this case?
14 If so, please raise your hand. Very good. Call your next
15 witness.

16 MS. FULLER: Thank you, Your Honor, the State calls
17 Dr. Erin Presnell.

18 CLERK: Raise your right hand, please. Do you swear
19 or affirm the testimony you give the Court is the truth, the
20 whole truth, and nothing but the truth so help you God?

21 DR. PRESNELL: Yes, ma'am.

22 CLERK: Thank you. If you'll have a seat, please.
23 State your name and spell your last, please, for the record.

24 DR. PRESNELL: Good morning. My name is Susan Erin
25 Presnell, it's P-r-e-s-n-e-l-l.

DIRECT EXAMINATION

1
2 BY MS. FULLER:

3 Q Let me go ahead and have you introduce yourself to the
4 jury. Where are you currently employed?

5 A I am a forensic pathologist that works in Charleston at
6 the Medical University of South Carolina.

7 Q And can you describe just your job, your role, your
8 responsibilities there?

9 A Well, primarily I'm a forensic pathologist, so I do
10 forensic autopsies referred to us by coroners in different
11 counties. We are an academic institution, so there's also a
12 lot of teaching that goes on as well.

13 Q And how long have you been employed there?

14 A I have been on faculty there since 1999, so 24 years.

15 Q And how long have you worked in the field of forensic
16 pathology?

17 A That's how long, that's where I started my career and I'm
18 still there.

19 Q And can you describe to the jury for the record your
20 training and experience, certifications as it relates to this
21 field?

22 A Alright. So to get to be a forensic pathologist, I went
23 to Clemson for undergraduate school. After that, I went to
24 medical school at MUSC in Charleston and, again, that's where
25 I've stayed ever since. After I finished medical school, I

1 chose pathology as my field versus, like, pediatrics or family
2 medicine. A pathology residency or training period for that
3 time is five years, so I did that at MUSC. And then I did my
4 additional year in subspecialty or forensic pathology training,
5 and then after that I stayed on as faculty. During this
6 process, I had a medical license to practice medicine in South
7 Carolina, and I'm board certified in anatomic or general
8 pathology as well as forensic pathology.

9 Q And what is the purpose of a forensic autopsy?

10 A Well, there's actually lots of purposes. You know, one's
11 to determine cause of death, but another is interpret injuries,
12 diagnose disease, basically, you know, look into why somebody
13 passed away.

14 Q Okay. And approximately, I don't know if you know the
15 exact answer, how many autopsies have you performed throughout
16 your career?

17 A So underestimating, the easy estimate would be 200 a year,
18 so I've been doing it since '98, so around 5000.

19 Q And that's underestimating?

20 A Yeah.

21 Q And have you testified in Court before as an expert in
22 this field?

23 A Yes. In forensic pathology.

24 Q And approximately how many times?

25 A Again, approximate maybe 150, 200, I'm not exactly sure.

1 MS. FULLER: Your Honor, at this time, the State
2 would introduce Dr. Erin Presnell as an expert in the field of
3 forensic pathology.

4 THE COURT: Any objection?

5 MR. STITELY: No, but if I may?

6 THE COURT: You may.

7 BY MR. STITELY:

8 Q Dr. Presnell, you went to medical school like any doctor
9 would, correct?

10 A I did.

11 Q And your licensed to practice medicine, generally, in the
12 State of South Carolina, correct?

13 A Correct, yes.

14 MR. STITELY: I'd ask that she also be qualified just
15 as a medical doctor.

16 THE COURT: Any objection?

17 MS. FULLER: I never had that done before. I'm
18 processing. I guess that's fine.

19 THE COURT: Alright. Well, let me tell the jury.
20 This witness has been qualified as an expert in pathology,
21 forensic pathology, and she's also a doctor. I told you
22 yesterday that normally a witness can only testify to
23 what they see, heard, or what they did. In this case the
24 exception is an expert, and they can offer their opinion. That
25 does not mean you must accept it, but it's evidence

1 for you to use any way you see fit, okay? Go ahead.

2 MS. FULLER: Thank you.

3 Q Can you describe to the jury how exactly you go about
4 performing an autopsy?

5 A Well, there's the basic process and then you kind of, you
6 do additional stuff depending on what type of case it is. But
7 basically, in South Carolina we're a coroner death
8 investigation state, so a coroner would call and schedule a,
9 like a, the coroner would call about a death and schedule an
10 autopsy if he or she chose to do so, and so that's what
11 happened with Ms. Youmans. And any how, the body would be
12 transported to MUSC, so we do the autopsy there. At the
13 autopsy, we're going to document, you know, how the body
14 arrived, you know, diagrams, photographs, and then we would
15 undress them and clean them so we could evaluate any marks or
16 trauma. Again, more photographs and diagrams. Depending on
17 the type of case, for example, a gun shot wound, we're going to
18 call down radiology so they can get an x-ray to see if there's
19 still a bullet or bullets inside, so we'll know where to get
20 the bullets. After that, we go inside the body, so we'll do a
21 complete autopsy, we look at everything, all the organs,
22 including the brain. During this time, we also get fluids,
23 usually blood for drug and alcohol testing. And then depending
24 on the type of case, we might take pieces to look at under the
25 microscope. Ultimately, all this information is put together

1 in an autopsy report. Any outstanding information like
2 toxicology results could come in if they would affect the
3 autopsy report. Again, we put it all together in a final
4 autopsy report.

5 Q Okay. And on what day did you perform the autopsy as it
6 relates to this case on Joanie?

7 A This was January 1st, 2020.

8 Q So that's New Year's Day?

9 A Yes.

10 Q And when, at the time of this autopsy, what was Joanie's
11 height?

12 A She was 65 inches which is 5'5.

13 Q And what was her weight?

14 A A hundred and nineteen pounds, approximately.

15 Q And after performing your autopsy, were you able to
16 determine a cause of death in this case?

17 A Yes. Ms. Youmans had a perforating meaning that she had a
18 gun shot wound to the head, it was a single gun shot wound and
19 it went into the front of her head and out the back of her
20 head.

21 Q Okay. And so you pointed to the front and that would be
22 considered the entrance wound, is that correct?

23 A Yes. She had an entrance wound that entered right around
24 the left eye area, it went through the eye, through the skull,
25 and into the left side of the brain over to the right side of

1 the brain as well as passing through the brain stem which is
2 the part of the, that's the section that connects the brain to
3 the spinal cord, to the right side of the brain and then out
4 the back of the right head.

5 Q What were her chances of survival?

6 A This is a nonsurvivable injury.

7 Q Even if she was at the operating table, on the operating
8 table?

9 A Right. So the, the damage went through the brain stem and
10 once that's destroyed, there's no way to survive.

11 Q So for all intensive purposes, she was pretty much
12 deceased on the scene from where she was shot?

13 A Yes, she would have died pretty fast, soon, seconds
14 afterwards.

15 Q Okay. Were you able to determine the path that the bullet
16 traveled?

17 A Right. So, and diagrams might help, but again, it turns
18 into the left eye area, it's going from her left to her right,
19 obviously, front to back, and it's going in an upward
20 direction. As it goes in through the eye, left side of the
21 brain, brain stem, right side of the brain and out the back of
22 the right head.

23 Q I'm going to show you what's been premarked as State's 39
24 and ask you if you recognize it.

25 A This is a copy of a diagram that you asked me to do

1 with just the gunshot wound featured on it.

2 MS. FULLER: At this time, Your Honor, the State
3 seeks to introduce into evidence State's 39.

4 MR. BEN: No objection.

5 THE COURT: It's admitted.

6 (Whereupon a diagram was submitted as State's Exhibit
7 Number 39 for identification and entered into evidence.)

8 Q There should be a laser pointer up there. If you could
9 point out to the jury the entrance wound as well as the exit
10 wound?

11 A Alright. So just like I was saying, near the right eye,
12 or excuse me, the left eye, that's the entrance wound on the
13 left side of the face and here's the exit wound on the back of
14 the right side of the head.

15 Q What is soot and stippling?

16 A Soot and stippling have to do with what actually comes out
17 the end of the, the barrel of the gun when it's fired. So for
18 a bullet, you have the projectile, the piece that is flying
19 through the air, but you also have the casing, and so those two
20 are together when that's put into the gun. Inside the casing,
21 there's gunpowder, so I kind of like to think of it as little
22 grains of sand, sorry if I'm oversimplifying it all. But when
23 the trigger's pulled, the bullet is struck, and it ignites that
24 gunpowder. So that gunpowder, when it ignites propels the
25 bullet down the barrel, right? So the projectile, the bullet

1 part is coming off the end of the barrel, soot, like a big poof
2 of smoke is also coming out the end of the barrel. And then
3 you also have some of the gunpowder particles, like little
4 pieces of sand that come out the end of the barrel as well. So
5 this relates to, one of the things that we try to do is
6 interpret injuries. So for gunshot wounds, we look at them as
7 by contact, a close range, or distant range gunshot wound. So
8 if a gun is against the skin then we see a hole in the skin,
9 but we also see for a contact wound, soot, like a sooty rim
10 deposited around that entrance. If the gun is further away
11 from the skin, that soot may or may not hit the skin and stick
12 to it, but those gunpowder particles can hit the skin and
13 actually cause little scratches, so that's called stippling or
14 little pinpoint scratches. And then as the gun is further away
15 that soot is not going to get to the skin, the gunpowder won't
16 get to the skin and create any marks, and so you just have a
17 simple, it's not simple, a single hole with no extra deposits
18 around it.

19 Q As it relates to Joanie in this case, did you determine or
20 identify any soot or stippling?

21 A No, she has no soot or stippling.

22 Q And what would that indicate in terms of the distance?

23 A Well, so for each individual gun, to figure out how far
24 back it has to be before nothing will strike the skin, the best
25 way would be to test fire it with that gun and the same

1 ammunition. But to include most handguns, by the time it's a
2 yard away, that soot's not going to make it and the gunpowder
3 won't make it. So anywhere from a yard, like 36, 42 inches and
4 beyond would create a hole without any soot or stippling around
5 it.

6 Q And so would that be considered as what you would say a
7 distance shot?

8 A Yeah, that's a distant gunshot wound.

9 Q And so at least 36 inches away?

10 A 36, again, you would narrow it down more if you could
11 examine that gun.

12 Q In terms of preparing for Court here today, did you also
13 at State's request, utilize an anatomical diagram, full length
14 diagram to show to the jury the actual angle of the bullet
15 going through?

16 A The dummy? This will be my first dummy, yes, by the dummy
17 putting the, a rod through the direction of the gunshot.

18 MS. FULLER: Your Honor, at this time, for just
19 demonstrative purposes, we're going to bring that in. We'll
20 continue to speak a little bit... Permission for Dr. Presnell to
21 step down?

22 THE COURT: Yes, please.

23 Q When we're looking at, we call her Pat, when we're looking
24 at her, does this still look fairly accurate to what you
25 brought in for us?

1 A It does, but I will take a moment to point out that
2 this is the beauty, I guess, of this particular prop is
3 that my autopsy is going to tell you where the bullet
4 entered and where it exited, but it doesn't tell what
5 position her head is in. And so it depends what position
6 her head is in as to where that bullet's actually
7 coming from.

8 Q Okay. And that's because you can't account for body
9 movement at the scene, either the deceased could have been
10 moving or the shooter could have been moving?

11 A Right. So at autopsy, we look at them as they're in
12 anatomical position which is like this, and you know, that's
13 not necessarily the same.

14 Q Okay. But what we can say from this and based on the
15 entrance wound is that the time that Joanie sustained that
16 injury to the front of her face, her face would have been
17 facing the barrel of the gun, at least her face would have
18 been?

19 A Right. So the bullet's coming in this direction, so it,
20 obviously, would be going towards her face.

21 MS. FULLER: And Judge, for the record, this is just,
22 this is not a real firearm, but just going to be using this for
23 demonstration.

24 THE COURT: Any objection?

25 MR. STITELY: No, ma'am.

1 THE COURT: Okay. Go ahead.

2 Q Okay. So in terms of the barrel of the gun, that would be
3 at least 36 to 42 inches away from her head at the time that
4 she sustained that injury, correct?

5 A Right.

6 Q And based on your autopsy and what you're pointing out
7 here is that the gunshot had to follow, essentially, the barrel
8 of that gun, correct?

9 A Right. So depending on where her head is.

10 Q Okay. We can't say her body was turned this way, correct?
11 But she could have just at least turned her head towards the
12 barrel of the gun?

13 A Yes.

14 Q Okay. Just want to walk through a couple things. I'm
15 putting up on the overhead we have what's already in evidence,
16 State's 14 which is a crime scene diagram of where the, Ms.
17 Youmans was found. If an individual is walking away from that
18 vehicle in that diagram and holstering a firearm crossbody,
19 walking and has the benefit of the house being that direction,
20 walking with the firearm in the right hand and the holster in
21 the left hand and it accidentally discharged, what angle would
22 you expect -- or I'll ask a better question. Is that
23 consistent with what you determine at autopsy in terms of the
24 angle of the defect in her face?

25 A So again, it comes back to what is the position

1 of the gun.

2 Q Okay.

3 A Depending on the holstering movements, you know,
4 obviously, down in a downward direction, you know, re-envision
5 like this, if it was some other type of movement, you know, it
6 depends on how the gun was angled.

7 Q Okay. We'll agree that that angle is going upward,
8 correct?

9 A It is.

10 Q So tell me this, is this consistent with someone walking
11 away holstering the firearm, maybe, I guess, in this random
12 position like this, this could potentially be consistent with
13 that angle, correct?

14 A Right, yes.

15 Q You'd have to be holstering going upward?

16 A Right. Also depending on, you know, where she is, if
17 she's standing, yes.

18 Q Okay. In terms of if the holster was on their side or
19 on their right side walking away, tell me whether or not
20 that is consistent if the gun accidentally went off from
21 holstering on my hip, is that consistent with her
22 injury?

23 A Well, you're pointing it down, so no.

24 Q Okay. And that's what I'm getting at. If I'm standing at
25 the end of the trailer or beyond the trailer and I point the

1 gun right at her head, is this, can you tell me if this is
2 consistent?

3 A Yes, that could be consistent.

4 Q Okay. In terms of if she was, and I'll put exhibit 11 on,
5 we know from testimony that it appeared that she was shot in
6 the apex of that doorway, what were her, for purposes of this,
7 but ---

8 MR. STITELY: Your Honor, I object to that
9 characterization. We don't know anything. She could say that
10 there's, and once again, that's kind of pitting other witnesses
11 against, so I'm going to object to that testimony.

12 MS. FULLER: That's part of my question, going into
13 my question, there's testimony that she was shot ---

14 THE COURT: But what he's saying, that is not a fact,
15 that's a question for the jury. So ---

16 MS. FULLER: It's an opinion, she's an expert, Your
17 Honor, so I'm saying ---

18 THE COURT: If she was ---

19 MS. FULLER: --- if she was shot in the apex ---

20 THE COURT: If she was is allowable.

21 MS. FULLER: Okay. Thank you, Your Honor.

22 Q So if she was shot in the apex of that doorway, for
23 her to have sustained this injury, for example, if she
24 was sitting in the car, correct? If you're walking away
25 and holstering, would that be consistent with someone

1 standing up crossbody holstering and her sitting down, that
2 angle?

3 A Well, that would have her down lower, and again, it's
4 going up, her trajectory is going up.

5 Q So you would have to holster on the ground to get that
6 upward angle, correct?

7 A And whatever position that would put the gun angle upward
8 like that. I mean, unless she, you know, some strange reason,
9 you know, her head was tilted all the way back or ---

10 Q Okay. So for some strange reason her head is tilted back
11 inside the car, correct?

12 A Well, okay, I said that, but let's see, if it was tilted
13 all the way back then maybe it's more, not all the way back,
14 but tilted back maybe it's a more straight on shot, and for
15 some reason like that, it would be coming from even higher.

16 Q Okay. Well, if we keep it like that for a second, can you
17 put it straight back, and I think you had it a little bit
18 further back. Just to be clear, based on this direction, the
19 barrel would still have to be in line with that angle, correct?

20 A Right.

21 Q Okay. And I didn't do this for the record, but here is
22 this ruler here. Were you able to confirm that this
23 approximate height would have matched up with the height at
24 autopsy of ---

25 A Yeah, see that's 65 inches where that black tape is.

1 Q Okay. And in terms of -- let me make sure I covered -- in
2 terms of at autopsy, are you able to determine -- or let me ask
3 you this. Approximately how many, I don't know if you know the
4 answer, cases that you've performed autopsies on that resulted
5 in suicide?

6 A How many suicides have I done?

7 Q (Nonverbal response).

8 A It's about 10 percent of our workload ---

9 Q Okay. And ---

10 A --- so 500.

11 Q --- in terms of a gunshot wound as it relates to a
12 suicide, what would you be expecting and what would you look
13 for?

14 A Well, with a gunshot suicide, I would expect a
15 contact gunshot wound, gunshot wound with soot around the
16 ---

17 Q So you would have ---

18 A --- entrance.

19 Q --- soot or stippling here if it was a suicide and she
20 would be the one shooting herself, correct?

21 A I would expect soot, not necessarily stippling.

22 Q Okay. Soot. Based on your autopsy, was this gunshot
23 wound consistent with a suicide?

24 A No. I prospect this as a homicide meaning death at the
25 hands of another.

1 Q Okay. I believe that is it for now, you can take your
2 seat, if I think of something else... At autopsy you indicated
3 that an x-ray was done. Do you recall collecting any
4 fragments?

5 A So when the bullet went through the head, it left little,
6 small pieces of shrapnel, we gathered one of them that we got
7 from the scalp.

8 Q Okay. This is already in evidence, but I'm going to ask
9 you if you recognize it as what you collected?

10 A So this is our little envelope from autopsy with our
11 autopsy labeled and the writing on it. And yes, it looks like
12 the little, small piece of projectile fragment that we
13 recovered.

14 Q Okay.

15 MS. FULLER: And beg the Court's indulgence. I think
16 that's it for now, thank you.

17 THE COURT: Okay. Mr. Stitely?

18 MR. STITELY: Can I play with your gun?

19 THE COURT: Y'all be careful, I know that thing's not
20 real, but I swear it makes me nervous.

21 MR. STITELY: It's plastic, it's plastic.

22 CROSS EXAMINATION

23 BY MR. STITELY:

24 Q Dr. Presnell, hey, Ben Stitely, how are you today?

25 A Good, thanks.

1 Q We haven't met before. But real quick, I'm going to ask
2 you about our individual here, and I think you made it very
3 clear, I just want to clarify. The angle of passthrough was
4 this direction?

5 A Yes.

6 Q If someone was looking this way, the shot would have come
7 from this?

8 A Correct.

9 Q And if someone was looking even slightly up, it could have
10 been like this?

11 A Yes.

12 Q If you heard a loud noise and turned your head to look,
13 you could have done this and ---

14 A Right, yes.

15 Q --- caught an unlucky happenstance? The solicitor
16 wanted to ask you several times, from any angle here
17 depending on what the angle of the person's head at that exact
18 second, you can't say how high or how low a gun was,
19 correct?

20 A Right. I can't account for the variable of her position
21 of her head.

22 Q Which way she was looking?

23 A Right.

24 Q I mean, if she was looking at a bird in the sky, you
25 couldn't tell?

1 A No, she's not going to tell me that.

2 Q So all this told you was this is the angle from
3 front to back not laterally or vertically in any other
4 way?

5 A Well, it's the angle or trajectory through the head, so I
6 do know the laterality is going from her left to her right,
7 front to back and upward.

8 Q Correct. But you can't account for which way she was
9 facing?

10 A I can't account for her head movement.

11 Q So you went to med school?

12 A I did.

13 Q Might have been a minute ago because you said you've been
14 doing the pathology thing? In your rotations do you pass
15 through psychology?

16 A Psychiatry.

17 Q Psychiatry, excuse me.

18 A Yes, I did.

19 Q Are you familiar with what psychological shock is?

20 A No ---

21 MS. FULLER: Your Honor ---

22 A --- out of my area of expertise.

23 MS. FULLER: --- that's not what she is qualified
24 in.

25 MR. STITELY: She's qualified as a medical doctor.

1 THE COURT: If she knows, she can answer. She just -

2 --

3 MS. FULLER: Not psychiatry. Okay.

4 THE COURT: --- stated she, it's not in her
5 expertise.

6 Q I'm not saying to the point that I want to give you a full
7 clinical diagnosis, but are you familiar with that medical
8 term?

9 A No.

10 Q How about acute stress disorder?

11 A I know post-traumatic stress disorder.

12 Q Okay. Let's talk about post-traumatic stress disorder.
13 What are some of the immediate signs of someone who suffered an
14 event that would be post ---

15 MS. FULLER: Objection, Your Honor, relevance. 401.

16 MR. STITELY: We can approach if you want, but, I
17 mean, I ---

18 THE COURT: I'm going to allow it. I mean ---

19 MS. FULLER: 401, but ---

20 THE COURT: I'm going to allow it, go ahead.

21 A Alright. So I am absolutely not going to step on, out of
22 that into, outside that, of my own area of expertise into
23 psychiatry.

24 Q But I mean, you went through this, I'm just asking, if you
25 saw, if someone saw a traumatic event, if you don't know that's

1 fine, but I'm, I just, I asked if you went through med school,
2 you passed through these rotations, if I brought up a Grey's
3 Anatomy and read you some terms, could you define those as a
4 known treatise?

5 A It depends on what term you ask about. I mean, I haven't
6 gone through the nerves of the arm in a long, long, long time.
7 So I mean, it's not irrelative, but, I mean, as far as
8 psychiatry is concerned, yeah, I did my rotation and I passed
9 my board, or not board, but the little rotation exams and I
10 qualified through the different, three different steps of the
11 medical licensure board. As far as delving into that area of
12 expertise, then I would have expected to go to some rotations
13 in psychiatry as a MD, as a resident in that area. I mean,
14 people handle shock and traumatic defense differently, so I,
15 you know, again, I'm not stepping out into there to give you my
16 opinion on what that term ---

17 Q And I'm not asking for your opinion on specifically what
18 someone's signs and symptoms are, I'm just asking if you're
19 familiar with PTSD or acute stress disorders and what's some of
20 the signs that you would see?

21 A I am familiar with the entity, PTSD, but again, it's not
22 something I've read up on recently, so I'm not going to list
23 off some of the signs or symptoms that I can recall off the top
24 of my head.

25 Q Okay. The term dissociation, are you familiar with it?

1 A I know in general the term dissociation.

2 Q What is dissociation as far as a medical term?

3 A And I said I know in general the term dissociation meaning
4 like a separation. But again, you're stepping into the field
5 of psychiatry, it's not something that I did post-graduate
6 education in.

7 Q Okay. I'll leave it alone. But as far as what happened
8 that day, you can't speak to where exactly someone was standing
9 at what height they were, at what distance except for that you
10 could say they were probably more than three feet away?

11 A Right. I can't speak to what was going on at the scene, I
12 can speak for what happened to the body.

13 Q Thank you, ma'am.

14 **REDIRECT EXAMINATION**

15 BY MS. FULLER:

16 Q And just to clarify or make it very clear. When Joanie
17 was shot in the head, she was facing the gun? Her head was
18 facing the gun?

19 A Well, you can see where the entrance is, so yes, that is
20 where the bullet is coming from.

21 Q And that is consistent with what you determined at autopsy
22 in terms of the bullet path?

23 A Yes, that is what happened.

24 Q And just so it's clear, this is a upward angle?

25 A Through her head, yes.

1 Q Were you able to determine a degree?

2 A It's a, you know, I estimated 30 degrees which is, you
3 know, a small upward angle, but it's a complete estimate
4 because there's so many fractures and whatnot in the skull,
5 it's hard to find, you know, exactly where did the one, the
6 largest fragment exit.

7 Q But it's going from left to right and it's upward,
8 correct?

9 A Yes.

10 MS. FULLER: No further questions.

11 THE COURT: Okay.

12 RECROSS EXAMINATION

13 BY MR. STITELY:

14 Q Once again, ma'am, the travel angle is 30 degrees, but if
15 the head was facing down, it would be 30 degrees down, correct?

16 A Not through her head, but yes, in the scene.

17 Q Okay. So you're saying that the angle is from this point
18 to this point, but you cannot say which way the head was facing
19 at the time it happened.

20 A Correct. Except it's left to right ---

21 Q Yes, ma'am.

22 A --- not right to left.

23 MR. STITELY: Thank you.

24 THE COURT: Okay. Can I let the doctor be excused?

25 MS. FULLER: Yes, Your Honor.

1 THE COURT: Doctor, thank you for coming.

2 DR. PRESNELL: Thank you.

3 THE COURT: Alright. State can call their next
4 witness.

5 MS. FULLER: Thank you, Your Honor. At this time,
6 the State rests their case.

7 THE COURT: Okay. Mr. Foreman, ladies and gentlemen,
8 the State's rested. I need to take up a legal matter with them
9 right quick and I'll have you back into the Courtroom, okay?
10 Remember, no talking about this case, we're getting close.

11 (Jury exiting Courtroom.)

12 THE COURT: Okay. Any motions from the State?

13 MS. FULLER: The State?

14 THE COURT: Yeah. I'm just asking, any motions?

15 MS. FULLER: I'll respond to their motion.

16 THE COURT: Okay. I'll take that as a no. Let me go
17 to the Defense.

18 MR. STITELY: Motion for a directed verdict, Your
19 Honor. The evidence in the light most favorable to the
20 State's insufficient matter of law to proceed forward at this
21 time.

22 THE COURT: Okay. I'll be glad to hear your
23 response.

24 MS. FULLER: Thank you, Your Honor. In terms of a
25 directed verdict motion at this time, obviously, there was

1 enough evidence in the record to submit to the jury. We're
2 concerned with the existence or nonexistence of evidence and
3 not its weight. And I'll stop there since Defense counsel's
4 argument wasn't that long.

5 THE COURT: Okay. I'm going to deny your motion. I
6 believe that the State has presented enough evidence that this
7 case can go to the jury. Now, anything else from the State
8 before I move on?

9 MS. FULLER: Your Honor, the only other thing is the,
10 the issue that we requested judicial notice of in terms of his
11 record should involuntary manslaughter be charged.

12 THE COURT: Okay. I'm not going to take that up
13 right now. Right now I want to get into, I understand that
14 that's the only thing that's left to decide, but the Defendant
15 has a right to testify ---

16 MR. STITELY: Can we do colloquy?

17 THE COURT: --- if there's any defense.

18 MR. STITELY: I'd like to do the full colloquy,
19 please, Judge.

20 THE COURT: Yes, I will. Alright. Mr. Corder, at
21 this time I'm going to explain to you certain of your rights.
22 If you do not understand anything I say, please let me know.
23 If you want me to explain anything in more detail, please let
24 me know, do you understand?

25 MR. CORDER: Yes, ma'am.

1 THE COURT: Alright. We have now reached the stage
2 of the trial where you may present your defense. You have the
3 right to claim the protections given to you by the Fifth
4 Amendment to the Constitution of the United States. This
5 amendment states in part no person shall be compelled in any
6 criminal case to be a witness against himself. This means that
7 you cannot be required to testify in the case. You have the
8 right to testify on your own behalf, however, no one can make
9 you testify. This is a personal right, and no one can waive
10 this right except you. If you decide to testify, you will be
11 subject to the same rules that governed other witnesses and you
12 may be examined and cross examined on any relevant issue in
13 this case. In addition, if you have any convictions involving
14 dishonesty or false statements or for crimes punishable by
15 imprisonment for more than one year and this Court determines
16 that the probative value of admitting this evidence outweighs
17 its prejudicial effect to you, the solicitor will be able to
18 introduce your record to attack your credibility. Let me ask
19 at this time, is there anything in his record that would come
20 in if he chose to testify?

21 MR. STITELY: Judge, I don't think that even the
22 things that she's talking about will be impeachable priors
23 because neither one of them are felonies, neither one of them
24 are the crime of moral turpitude.

25 THE COURT: It didn't carry over a year?

1 MR. STITELY: Failure to stop for a blue light does,
2 but I don't think that is in any way a probative question.

3 THE COURT: Let me hear from you, Mr. McNair.

4 MR. MCNAIR: It's admissible, it carries over a year,
5 he has two shopliftings, one from 2014 and one from 2019, and
6 of course ---

7 THE COURT: Were those magistrate charges?

8 MR. MCNAIR: Yes, ma'am. But they're crimes of
9 dishonesty. And he has a domestic violence third degree from
10 2018.

11 MR. STITELY: But that's a 90 day, well, back then it
12 was a 30 day misdemeanor, but it's not a crime of moral
13 turpitude.

14 MR. MCNAIR: But that's relevant to his possession to
15 carry a firearm.

16 MR. STITELY: But once again, that's not to impeach
17 his creditability, that's a different standard.

18 THE COURT: Alright. I think ---

19 MR. MCNAIR: I think I could cross him on whether he
20 was lawfully in the possession of a firearm.

21 MR. STITELY: I think it's possible.

22 THE COURT: I think he's right. I want you to
23 understand that, Mr. Corder, that the shoplifting and the
24 failure to stop for a blue light, depending on how I rule, they
25 could cross examine you on that should you take the stand. If

1 you decide to testify, this decision on your part must be
2 freely, voluntarily, and intelligently made with knowledge of
3 the protections given to you by the Fifth Amendment and the
4 consequences of your decision to testify. If you decide not to
5 testify, I will instruct the jurors that they cannot give the
6 fact that you did not testify any consideration whatsoever and
7 that there is to be absolutely no prejudice to you because you
8 did not testify, it is left entirely up to you whether or not
9 you testify. You may talk with your attorney, your family,
10 friends, or anyone else, but the final decision will be left
11 entirely up to you. Do you understand what I've explained to
12 you?

13 MR. CORDER: Yes, Your Honor. .

14 THE COURT: Do you have any questions about what I've
15 explained to you?

16 MR. CORDER: No, Your Honor.

17 THE COURT: Have you discussed with your attorneys
18 whether or not you should testify?

19 MR. STITELY: We need a little bit more time on that,
20 Judge.

21 THE COURT: Okay. And I also noticed ---

22 MR. STITELY: His mom had a medical emergency,
23 she was here this morning, but she was having some kind
24 of reaction so she, we think she'll be back, but she's
25 not here at the moment, if that's what you're going

1 towards.

2 THE COURT: Right. You know I always give them the
3 opportunity ---

4 MR. STITELY: And Judge, if need be, I'm sure. I can
5 ask the bailiffs, I can get his mom on the phone, I don't think
6 they'll have a problem with that.

7 THE COURT: If you want to speak with your mom, we'll
8 get your mom on the phone for you. I mean, it's an important
9 decision, Mr. Corder, I just want to make sure that you
10 understand the protections given to you by the Fifth Amendment
11 and also the consequences of your decision to testify. So
12 let's take a 20 minute break, I'm going to give you the
13 opportunity to talk to your attorneys. Mr. Stitely, Ms.
14 Williams, if you need additional time, please let me know
15 because like I stated, this is a very important decision, okay?
16 And you only get to make it once.

17 MR. STITELY: Thank you, Judge.

18 THE COURT: Okay. Thank you. We're going to be in
19 recess.

20 (Off the record.)

21 THE COURT: Alright, y'all because I've got this
22 jury out, and I've got lunch for them. Let me ask you,
23 Mr. Corder, have you had enough time to speak with your
24 lawyers?

25 MR. CORDER: I have, Your Honor.

1 THE COURT: Alright. And at this time I'm going to
2 ask you, do you wish to testify?

3 MR. CORDER: No.

4 THE COURT: Okay. Thank you. Let me ask you,
5 Mr. Stitely, any other witnesses you intend to put up?

6 MR. STITELY: No, ma'am. So what I would actually
7 like, if you intend to do the judicial notice, maybe you could
8 take it now and then I will rest on the record and I'll say
9 right now, as I rest, I would renew my previous motions as the
10 evidence in the light most favorable. We can go either
11 straight in or if you want to break at that point, I don't
12 know, but I'm ready to roll right away.

13 THE COURT: Okay. So am I. And I'll let you say
14 that, if you're going to be, I don't think it was anything
15 ---

16 MR. STITELY: No, no, I would just say, I renew my
17 previous objections at this point as the case is now concluded.

18 THE COURT: Okay. Alright. And I'll be prepared to
19 rule on that. Alright. So let me go on the record about this
20 judicial notice. During this trial we had a sidebar, and I
21 think it might even be in the record, we started out in the
22 record, ended up in a side bar about taking judicial notice of
23 the Defendant's criminal history, I think, specifically the one
24 charge ---

25 MR. STITELY: He has a failure to stop for a

1 blue light, Judge, which is a three year misdemeanor and he
2 has a domestic violence, neither which would trigger a
3 South Carolina law, but would probably trigger a
4 922G.

5 THE COURT: Which would prohibit him from owning a
6 gun.

7 MR. STITELY: Yes, ma'am.

8 THE COURT: And we were waiting to see whether the
9 Defendant was going to testify, and the State asked me to take
10 judicial notice and I am, but at this time, Ms. Fuller
11 ---

12 MR. STITELY: Or we could just stipulate that those
13 are in fact convictions, Judge, we've seen the clerk's files,
14 he does have those convictions on his record.

15 THE COURT: Okay. You've reviewed them?

16 MR. STITELY: That's correct and ---

17 THE COURT: And they're certified, they showed
18 them to me, I saw that they were certified, if y'all
19 stipulate, that would be good. I'll read something to the
20 jury that the parties stipulate that he has a prior record
21 that prohibits him from having a gun. This is for the
22 involuntary manslaughter charge that the Defense is seeking in
23 this case as to why this is important.

24 MS. FULLER: And Your Honor, I sent, I emailed
25 your clerk the proposed judicial notice. It doesn't

1 say record, and I thought that would be clear.

2 THE COURT: Okay. Let me read it right now.

3 MS. FULLER: So that way we don't trigger a -- I'll
4 let you read it.

5 THE COURT: Okay. Well, at this time, they're going
6 to stipulate to it. Are you okay stipulating to it?

7 MS. FULLER: I am. I just thought it would be
8 clearer not to mention record because as I was writing it, I
9 thought the jury might be wondering what is his criminal record
10 and it might be broader than, you know, and so ---

11 THE COURT: Well, he hasn't testified, and I don't
12 want him to be prejudiced.

13 MS. FULLER: So that's why I wasn't, that's why in my
14 proposal it doesn't have the word, criminal record.

15 THE COURT: Okay. So let me ready it, let me read it
16 and this is the way ---

17 MS. FULLER: I quoted the statute.

18 THE COURT: --- the State proposes because I'm going
19 to tell the jury that the parties have stipulated. It is
20 unlawful pursuant to federal law for the Defendant, Brandon
21 Corder, to possess or receive any firearm or ammunition. Any
22 objection to that stipulation being read to the jury when they
23 come back in?

24 MS. FULLER: That's my proposal.

25 MR. STITELY: No, ma'am. I think that's, from

1 where we are to allow that charge, I think that's appropriate.

2 THE COURT: Okay. So I'll bring the jury back in,
3 I'm going to read them the stipulation ---

4 MR. STITELY: I'll stand up and say we close.

5 THE COURT: I'm going to call on you, Mr. Stitely,
6 you can make your objections. Now, let me ask because, then
7 we'll go into closings. Let's talk about the jury charges for
8 a moment. I'd like to -- everybody have a copy?

9 MS. FULLER: Yes, Your Honor.

10 THE COURT: Okay. Any problems with page 2?

11 MS. WILLIAMS: Not from the Defense, Your Honor.

12 MS. FULLER: Is there an updated one or just the one
13 from yesterday?

14 THE COURT: The one from yesterday.

15 MS. FULLER: Okay.

16 THE COURT: Are y'all just reading it for the first
17 time?

18 MS. FULLER: No, I read it last night, I just had to
19 open it back, I closed it.

20 THE COURT: Okay.

21 MS. FULLER: No, just the, what I suggested as the
22 singular.

23 THE COURT: That's been fixed.

24 MS. FULLER: Okay.

25 THE COURT: Okay. Page 3, presumption of innocence,

1 that is my normal charge. Page 5, reasonable doubt, that is my
2 normal charge. The duties of jury and Trial Judge, normal
3 charge. Direct and circumstantial evidence is my normal
4 charge. Criminal intent is my normal charge.

5 MS. WILLIAMS: No objections from the Defense, Your
6 Honor.

7 MS. FULLER: I have no objections, Your Honor.

8 THE COURT: Alright. Credibility of witnesses and
9 the expert witnesses is pages 11 through 13, those are my
10 normal charges that I charge in every case. The statement of
11 the Defendant is my normal charge when I have statements, any
12 objection?

13 MS. FULLER: None from the State, Your Honor.

14 THE COURT: And then I have the murder charge. Any
15 objections?

16 MS. FULLER: Your Honor, the only thing I had a
17 question about, and I meant to look this up this morning, was
18 the inference of a gun.

19 THE COURT: We can't do that.

20 MS. FULLER: He's not claiming self-defense. But I'm
21 going to argue, because I think Belcher says when it's self-
22 defense ---

23 THE COURT: Where do you see that?

24 MS. FULLER: I don't see it, I didn't see it in the
25 charge. I wasn't sure if ---

1 THE COURT: You want it in there?

2 MS. FULLER: The if, that you can infer malice from,
3 by using a gun. I thought Belcher says you remove that part of
4 the standard charge if he is claiming self-defense.

5 MS. WILLIAMS: I mean, Your Honor, we are fine with
6 the current version, obviously, I'm not sure what additional
7 support the State would have for requesting the additional
8 language concerning inference of malice.

9 THE COURT: Is it in the Anderson ---

10 MS. FULLER: It's in the standard, I still use the
11 one when I was clerking, so it's in the standards charge, you
12 remove that portion if it's pursuant to Belcher, the case
13 triggers Belcher.

14 MR. STITELY: We have Judge Anderson's, but we're
15 double checking.

16 THE COURT: So is my law clerk.

17 MS. FULLER: So it's malice may be inferred with
18 conduct showing a total disregard. After that sentence for
19 human life. Then there's a sentence that says inferred malice
20 may also arise when the deed is done with a deadly weapon. And
21 the caution in the charge book is State v. Belcher where
22 evidence is presented that would reduce, mitigate, or excuse or
23 justify homicide, juries will not be charged on that malice
24 inference. And then it goes into what's a deadly weapon, a
25 deadly weapon is any article, instrument which is likely to

1 cause death or great bodily harm. And then it goes through the
2 following examples are examples of a deadly weapon, and it's a
3 pistol, shotgun, revolver. A gun may be a deadly weapon even
4 if not operable but, so I'm reading from the standard charge
5 jury instruction that the judges have.

6 THE COURT: But to bring in an involuntary charge,
7 does that not prohibit it?

8 MS. FULLER: Involuntary is not an affirmative
9 defense, and so I would think it would trigger who was, an
10 affirmative defense to excuse or justify the homicide. I
11 didn't think lesser included triggered that since it's not an
12 affirmative defense.

13 THE COURT: Let me hear from you, Ms. Williams.

14 MS. WILLIAMS: Your Honor, in, in, Your Honor, I
15 don't like the language for obvious reasons, however, I don't
16 think the word gun can come into the charge, but I do believe
17 that, and I'm reading from the book, and Your Honor knows that
18 I'm a big believer in the book. It states, the law says if one
19 intentionally kills another with a deadly weapon, so the word,
20 intentionally needs to be in there, the implication of malice
21 may arise. And so if one intentionally kills another, and then
22 it goes on to discuss that a deadly weapon is any article,
23 instrument or substance which is likely to cause death or great
24 bodily harm. And the law says, if one intentionally kills
25 another, so I do believe there's enough evidence in the record

1 to show that they're, well, actually, I don't know if there's
2 any evidence, I don't know that anyone has testified that he
3 intentionally killed her. There has been evidence that he has
4 threatened her, but that the actual act itself, I don't believe
5 there has been any testimony to support that he intentionally
6 killed her.

7 MS. FULLER: That's a question for the jury.

8 MS. WILLIAMS: Even if, my co-counsel is helping me
9 out here, Your Honor.

10 THE COURT: I hear that.

11 MS. WILLIAMS: And even in his worst, we're going to
12 say worst is subjective, but even in the statement of facts
13 that is, it would seem would be most negative to my client, he
14 pulled the trigger, and the gun went off and he didn't mean to
15 do it. So there's been no testimony supporting intention. And
16 I think you can still get murder from that, Your Honor, but
17 we're reserving all of our previous objections.

18 THE COURT: Alright. Under Belcher, I'm reading
19 the Belcher case, okay? Under our policy making role
20 in the common law, we hold that the use of a deadly
21 weapon implied malice instruction has no place in a
22 murder or assault and battery with intent to kill.
23 Prosecution where evidence is presented that would
24 reduce, mitigate, excuse, or justify the killing or the
25 alleged would be okay. If we're, you don't think that

1 includes a lesser included charge of involuntary? It says
2 reducing.

3 MS. WILLIAMS: Your Honor, I believe we are having a
4 sidebar conference ---

5 MS. FULLER: Yeah, beg the Court's indulgence.

6 MS. WILLIAMS: --- begging the Court's indulgence
7 just one moment, so sorry.

8 THE COURT: No. Yeah, I'm not sure that I'm going to
9 use a deadly weapon.

10 MS. FULLER: Yes, Your Honor. I'm looking, I'm
11 reading Belcher, I know, obviously, in self defense cases we'll
12 remove it, I'm just...

13 THE COURT: You know, I'm ---

14 MS. FULLER: I don't believe we, I mean, I'm skimming
15 it but it's around self-defense, but since you are charged with
16 the lesser included, I think it's, it says not to charge it.

17 THE COURT: Yeah. I don't think it's proper. Okay.
18 So let's go back to the murder charge. Do we have an objection
19 to it?

20 MS. WILLIAMS: Not from the Defense, Your
21 Honor.

22 MS. FULLER: None from the State.

23 THE COURT: Okay. Now, the involuntary, I know that
24 Ms. Fuller ---

25 MS. FULLER: Objects to it, yes, Your Honor.

1 THE COURT: --- objects to it. And the basis for
2 your objection is I know that you wrote your own involuntary
3 manslaughter, which I think you did an excellent job on. I
4 just, what is your basis for the objection?

5 MS. FULLER: My basis, Your Honor, is that as an
6 attorney, I don't understand the charges written. I think it
7 causes confusion in terms of the standards and it suggests to
8 the jury the way it's phrased right now that there are multiple
9 levels of negligence and recklessness when it's all, it's all
10 just criminal negligence. And so my suggestion was to cut it
11 down where it's still clear, but all of these, it's kind of
12 like, so at the top we have a person charged with a crime --
13 let me tell you where I'm at, hold on. On page 2 of the
14 involuntary charge ---

15 THE COURT: On page 19.

16 MS. FULLER: Okay. So page 19. We talk about
17 criminal negligence there, so with regard to the crime of
18 involuntary manslaughter, criminal negligence is defined as the
19 reckless disregard of the safety of others, right?

20 THE COURT: And then the next paragraph ---

21 MS. FULLER: But it's ---

22 THE COURT: --- goes into the reckless disregard ---

23 MS. FULLER: So ---

24 THE COURT: --- defines it ---

25 MS. FULLER: So my issue is that you don't,

1 you don't get the term criminal negligence until page 2 of the
2 charge when by statute, criminal negligence is -- you know, and
3 so it's kind of like, so you read, you read the law here, if
4 you find the State's failed to prove their burden included with
5 the offense of involuntary manslaughter, and I guess that's
6 with the involuntary manslaughter should be defined as the
7 unintentional killing of another without malice, expressed or
8 implied, involuntary, blah, blah, blah. And then on page 2 it
9 says, criminal negligence. It suggests to the jury that
10 there's two different things here and not understanding that
11 involuntary defined as criminal negligence, criminal negligence
12 is. So it's truly the order and I think that's where the
13 confusion because you're thinking there's two different legal
14 theories, maybe even three based upon the structure, because
15 then you go into recklessness again, and willfulness then
16 wantonness. And I know this is in the standard charge book,
17 it's been that way for over a decade, at least when I was a law
18 clerk, I didn't like it then, I still don't like it now because
19 it's confusing, it's wordy, it's verbose, it just felt like,
20 oh, this case law came up, let's through this law into it, this
21 came up and they were talking about the doctor, like, it just
22 gets so confusing and when you look at the involuntary case
23 law, I think it's appropriate to charge the statute and explain
24 the terms, but I think early on in the charge the, they need to
25 understand that to constitute involuntary manslaughter, the, I

1 don't say mens rea, is criminal negligence. And so, like, kind
2 of give it to them early directly, and so it makes sense.
3 Obviously, I'm not fighting for the charge because I don't
4 believe in fighting, but if we're going to charge it, like, if
5 it could be just a little clearer and more direct and straight
6 to it. And the statute is involuntary manslaughter's criminal
7 negligence, criminal negligence is the reckless disregard ---

8 THE COURT: Well, how about if we take, follow me on
9 this, if this makes you feel better. I mean, because this is
10 usually my regular charge on involuntary, but if you'd like, if
11 you look on page 20, the first paragraph, criminal negligence
12 is defined within the law as a reckless disregard of the safety
13 of others. If I take that sentence, move it over to page 19
14 and put it before paragraph 2 so it would read, criminal
15 negligence is defined within the law as a reckless disregard
16 of the safety of others. A reckless disregard for the safety
17 of others signifies, and it goes through and explains. And
18 then we would pick up on page 20, mere negligence will not
19 suffice to support a conviction of involuntary manslaughter.
20 Does that keep all the criminal negligence and then the
21 definition of recklessness regard underneath it? And it tells
22 you that mere negligence is not enough and then we go into
23 proximate cause.

24 MR. WILLIAMS: We have no objection to that page,
25 Your Honor.

1 MS. FULLER: I'm still not a fan. Like, it still,
2 it, it ---

3 THE COURT: I understand, but I'm not using your
4 charge, I'm just telling you that.

5 MS. FULLER: No, I completely understand that.

6 THE COURT: Change this for me right quick and then
7 just print the, I think it would read so much, probably better
8 to know that we're talking about criminal negligence, it's
9 recklessness and it defines it and then it tells you what's not
10 enough, mere negligence is not enough, and then we go into
11 proximate cause. So if we change that, let the lawyers look at
12 it and see if that reads a little easier. Yes, just the
13 involuntary charge. Give me just a second and we're going to
14 get that to you.

15 MS. FULLER: So, so Judge, so looking at page 18,
16 there's a highlighted sentence, and so, like, I know, I'm not
17 talking about my charges, but just going through this one. So
18 some of the sentences are repetitive, so then if you, when the
19 jury gets this, do you still send your charge back?

20 THE COURT: That's something I was going to ask
21 y'all, if you want it to go back.

22 MS. FULLER: I have no problem with it going back.

23 THE COURT: When I send a jury charge back, I send
24 back 12, I don't want any one juror having a copy of the law
25 and telling the other 11 jurors what the law is. So I send 12

1 copies back so each juror will have their own copy and then I
2 collect them at the end. If there's something repetitive ---

3 MS. FULLER: So starting from, the, on page 18 the
4 second paragraph ---

5 THE COURT: Okay.

6 MS. FULLER: --- so included in the offense of murder
7 is the lesser offense of involuntary manslaughter, then there's
8 a highlighted sentence ---

9 THE COURT: Yeah, that should be ---

10 MS. FULLER: --- but then the next sentence says the
11 same thing, so it's kind of like that sentence could be removed
12 ---

13 THE COURT: I gotcha.

14 MS. FULLER: --- because it's repetitive.

15 THE COURT: Okay.

16 MS. FULLER: It has the unintentional. So then
17 looking at the third paragraph ---

18 THE COURT: But the problem with that is it goes into
19 the steps, one and two.

20 MS. FULLER: And I think that's perfectly
21 appropriate. Like, so the manslaughter's defined as the
22 unlawful killing of another without malice. Involuntary
23 manslaughter is the unintentional killing of another with
24 malice. You're saying, I know ---

25 THE COURT: Alright. So you want me to take ---

1 MS. FULLER: --- the only difference is unlawful
2 versus unintentional ---

3 THE COURT: You want me to take, I don't know, I
4 think both of them say something different because involuntary
5 manslaughter is defined as the unlawful killing of another
6 without malice, expressed or implied. Involuntary manslaughter
7 is the unintentional killing of another without malice while
8 engaged in an unlawful activity that is not a felony. It goes
9 into the statute itself, that tends to cause death or the
10 unintentional killing of another without malice.

11 MS. FULLER: Well, I guess since we're not charging
12 voluntary, because, like, I get doing the distinction because,
13 you know, once you get into manslaughter it's without malice
14 for both. And then voluntary and involuntary can be
15 distinguished, so I guess ---

16 THE COURT: Well, we're not doing voluntary
17 ---

18 MS. FULLER: We're not. And so it's kind of to
19 quantify manslaughter and then, I just thought we could go
20 straight into what involuntary is, but I understand. So then
21 looking at the third paragraph, Your Honor, I'm trying to see
22 where we, okay, so the law defines involuntary as the
23 unintentional killing without malice, and so we're saying it
24 again, constituting criminal negligence. Could we say that
25 more directly because now we're adding in what the mens rea is,

1 the criminal negligence. And so that's, that's where -- I'll
2 stop, I don't want to frustrate the Court. I ---

3 THE COURT: Well, no, I'm open to suggestions by all
4 means. I just don't know, what is it that you'd like changed?

5 MS. FULLER: Then in terms of the rest of the
6 charges, the other sections, Your Honor, I don't think there's
7 anything, it looks like your standard, sympathy, and duty to
8 deliberate ---

9 THE COURT: Right. Ms. Williams, the Defendant's
10 right to remain silent, the duty to deliberate, sympathy, I do
11 the jury verdict, I do need to add a copy of the charge in the
12 jury room if y'all agree to that.

13 MS. FULLER: I have no problem with it, Your Honor.

14 MS. WILLIAMS: Your Honor, I'm always for giving them
15 instructions, Your Honor, we have no objections to the rest of
16 your standard charges.

17 THE COURT: Okay. Alright. Okay. So back to the
18 involuntary manslaughter, you printed them a copy?

19 LAW CLERK: Yeah, they've got it.

20 THE COURT: You've got it, and see if that makes it
21 easier to read. I just don't know how I can get out of those
22 two sentences right there at the first because one is
23 involuntary manslaughter is defined as the unlawful killing of
24 another without malice, expressed or implied, it's telling you
25 without malice. And then the other involuntary manslaughter,

1 it lays it out as the unintentional killing of another without
2 malice while engaged in an unlawful activity, then we go into
3 where we're going and or number 2, the unintentional killing of
4 another without malice. I don't know how I get away from
5 explaining the law.

6 MS. WILLIAMS: And Your Honor, Defense would note
7 that every case be read, literally, every case be read on
8 involuntary manslaughter did have the two-prong approach.

9 THE COURT: The two-prong, and I think they get the
10 two-prong. Then the next paragraph, the law defines
11 involuntary manslaughter as the unintentional killing of
12 another without malice express -- why does that say express, do
13 I have the right, no, I'm missing a page 19. Express or
14 implied by some act or omission constituting criminal
15 negligence with regard to the crime of involuntary
16 manslaughter. Criminal negligence is defined as the reckless
17 disregard, and I'm going to say that again, but then I'm going
18 to go into what reckless disregard is, because this says, he
19 may only be convicted upon the showing of criminal negligence
20 and then it's going to say, criminal negligence is defined, so
21 we go into that as reckless disregard and then we go into what
22 reckless disregard is, when it exists. And then on page 20,
23 you know, that sentence is taken out, that very first real
24 paragraph of that page, and then we put mere negligence will
25 not suffice to support, it probably flows a little bit better.

1 MS. WILLIAMS: Your Honor, it mirrors mere presence
2 language to me, so I think that works.

3 THE COURT: Okay. And then we go into proximate
4 cause. Alright. Ms. Fuller, let me hear from you.

5 MS. FULLER: I have nothing further, Your Honor.

6 THE COURT: You sure?

7 MS. FULLER: (Nonverbal response).

8 THE COURT: Alright. I'm going to get these printed,
9 Lisa, we will give you a copy of the jury charges. Alright.
10 I'm going to bring the jury back in, are we ready for closings
11 or y'all need a quick break right quick?

12 MS. FULLER: I just need to run to the restroom.

13 THE COURT: Yes. Let's take a quick break then I'll
14 bring the jury in, we'll do closings then I'll charge.

15 (Off the record.)

16 THE COURT: Alright. Y'all ready for me to bring the
17 jury in?

18 MS. FULLER: The State's ready, Your Honor.

19 MR. STITELY: Yes, ma'am.

20 THE COURT: Let's bring them in.

21 (Jury entering Courtroom.)

22 THE COURT: Alright. Mr. Foreman, the jury ready?

23 MR. FOREMAN: Yes, Your Honor.

24 THE COURT: Okay. Let me talk to the jury just for a
25 moment. The parties have stipulated and when they stipulate,

1 that is evidence, and you are to treat it as a true fact. The
2 stipulation is, it is unlawful pursuant to federal law for the
3 Defendant, Brandon Corder, to possess or receive any firearm or
4 ammunition, okay? Alright. State's rested. Let me
5 turn to the Defense, you may, but you certainly are not
6 required to present a defense.

7 MR. STITELY: Ma'am, the Defense rests.

8 THE COURT: Alright. Thank you. Any motions?

9 MR. STITELY: Judge, we renew our pretrial motions,
10 motions during the trial and the subsequent motion made after
11 the State's case with the caveat now all evidence is in the
12 record.

13 THE COURT: Okay. And as my previous ruling, that
14 motion is denied and all your objections are preserved for the
15 record, thank you. We're going to move to closing arguments.
16 Is the State ready?

17 MS. FULLER: The State's ready, Your Honor. May I
18 proceed?

19 THE COURT: Yes, ma'am.

20 MS. FULLER: Brandon Corder told Joanie that he would
21 blow her head off and that's exactly what he did. That man,
22 Brandon Corder, threatened Joanie not once, not twice, but you
23 heard the testimony, a couple of times that he will murder her,
24 his words, that he will blow her head off, his words. Just
25 because you love someone, just because you may cry and vomit

1 after you've killed them does not mean you get away with it.
2 Love and killing are not mutually exclusive, period. You can
3 love someone, and you can kill them, it's not a defense,
4 period. Now, you heard the testimony, we weren't here long,
5 it's not like on TV or in Lexington where cases go on for a
6 long time, but you've gotten and received all of the evidence
7 in this case and the Judge will charge you on that. You got to
8 hear the witnesses, you've gotten to receive this, and you'll
9 have all of this back in the jury room with you. The Judge
10 will tell you that you are the judges, the sole judges of the
11 credibility and the believability of each and every witness
12 that takes that stand, not the State, not the Defense, and
13 respectfully, not even the Judge, and she'll tell you that.
14 You all get to decide what the facts are, you all get to say
15 what happened. No, we're not saying you were there, and you
16 witnessed it, but you all get to decide based on what you
17 heard, what you saw, what you believe, you all get to determine
18 what happened. Now, you heard different things, different
19 statements from the Defendant, and I know this trial was long
20 and you just heard them, but I have to go over them again. The
21 reason is once I sit down, I can't get back up, once you go
22 back out there, go in there, I know you might, saw us a couple
23 times, like, oh, one more question, I can't come knock on the
24 door and say, hey, I forgot to tell you this. So please be
25 patient with me and bear with me as I go through this, I won't

1 be long. So you heard this happened on December 27, you saw
2 this, this will be in evidence for you to have and look at.
3 3:09 is when the 911 call came in, and it's reported by Lee,
4 you saw Lee Bowerman, the neighbor down the street. He didn't
5 want to be here, that was obvious by his body language. You
6 guys get to say that, you guys get to judge that. He testified
7 that he told 911 what Brandon said, and in the recording, he
8 tells them the other statement Brandon said, but he said,
9 Brandon said his girlfriend just shot herself, committed
10 suicide. Then he said he doesn't know where the shot came
11 from. Lee has no reason to come in here and make that up, he
12 had no reason to make it up that day on the phone with 911 and
13 he had no reason to come in here and tell you all that again.
14 Now, Defense attorney's questions are not evidence, you guys
15 remember that, okay? Just because he asked a question doesn't
16 mean it's evidence in the case. What is evidence, the answers
17 that you heard out the mouth of the witnesses, that is
18 important. Why is that important? Because there's times when
19 he asked a question, kind of just throwing something out there,
20 the answer was no, or suggesting something in his question,
21 that's not evidence in this case. The evidence is the words,
22 yeah, the words coming out of the witness's mouth, so you all
23 get to determine if you believe Lee. Then Brandon calls 911,
24 we put that in, didn't keep it from you, we put in his
25 statement, you heard it all, okay? He said there's a gunshot,

1 she got hit in the head, I don't know where the bullet came
2 from, his words, his words which we know turned out to be a
3 lie, not true, his words. Now, what we didn't point out or
4 overemphasize, but I want you guys to think about this, the gun
5 was later found inside, remember that, right? So you mean to
6 tell me that short timeframe from you heard Billy Dowd, his
7 neighbor, walk around the fence, come out and he sees Brandon
8 going in that side door and he comes back out or he's in the
9 doorway somewhere, in that short amount of time you saw the
10 diagram of the house, he walked and hid the gun. Why? Why?
11 He hid the gun, but he's crying and he's vomiting, and he's
12 upset, and I'm not saying he's not upset, I played it, you all
13 heard it, but that tells you what kind of man he is. And you
14 know what kind of man that is? A selfish man, he only cared
15 about himself. Before calling 911, you have a neighbor down
16 the street that was able to call at 3:09, walking, and you
17 could hear him walking on the phone. But he took the time to
18 go hide the gun when he could have immediately just dialed 911.
19 And we might, you know, you might hear, oh, it's just two
20 minutes later, it's just three minutes later, but set your
21 watch, I will stand here for 10 seconds. Sorry, it's been 11.
22 That's a long time after you've just witnessed or didn't mean
23 to do something to not get in the house and call 911. In that
24 situation, two to three minutes may not seem like a long time,
25 oh, he eventually called, he called, he tried to call, there

1 was some discussion about maybe a hang up and a call back, but
2 it was still, still nearly three minutes after Lee Bowerman who
3 was down the street called 911. That is a long time. When you
4 get back there, set your clock for three minutes, actually, I
5 apologize, you're not allowed to even do that. But if you just
6 sit there and think about it, you know what that time feels
7 like. But he took the time to try and protect himself. You
8 heard from both Billy and Elyce. They said they recognized the
9 shot immediately, 3:57, they knew exactly what kind of gun it
10 was. Why? Because Brandon Corder shot the gun before.
11 Billy's testimony, I believe, was every other day. He knew the
12 sound of that 357, the gun is right here, the testimony says
13 it's 2 pounds, I think 2.7 or 75, but it's not, it's a big gun.
14 They heard this shot, and they knew exactly where it was coming
15 from and so did Lee when he walked down the street. He knew
16 how to handle that gun, you heard some of the questions
17 suggesting to the SLED expert, remember that, you know, going
18 through that, you wonder why they were asking those questions,
19 not evidence, remember that, but if I'm anticipating to
20 subject, well, he's not an expert in guns, he's not a gun
21 expert, he doesn't know the cardinal rules. Give me a break.
22 They teach you gun safety since you're a kid, simple. As
23 society, we don't point loaded guns at people, period. You
24 don't need to be an expert in anything to know not to do that.
25 Elyce and Billy said they heard the shot, Elyce, on her 911

1 call says, I heard my male neighbor, I hear my neighbor shot in
2 the backyard and he's screaming out to mama. They thought
3 maybe, I don't know, maybe something happened to his mom, but
4 he's calling for his mom to help to come open the door, and she
5 does. But then why take so long to report it, why take the
6 time to go hide the gun if you did nothing wrong, like he wants
7 y'all to believe. Law enforcement gets on scene, he then tells
8 the officer, she shot herself. Okay. So let's say Defense
9 doesn't want you to believe Lee, that Lee made up the suicide
10 call, the police didn't, they weren't responding really to a
11 suicide, that Lee made that up. Then why did the, why did he
12 tell the officer the same thing? Then in the same breath say,
13 suggesting he doesn't know where it came from, just shortly
14 after that. He's making it up as he goes, he didn't commit to
15 one. He said we're chopping wood right back here, I'm setting
16 the wood in the pile, I heard a shot and then I heard her fall.
17 I tried to help her, I mean, there was blood on his hands, I'm
18 not saying he didn't try, he didn't run over to her body, never
19 argue that, won't argue that. You know the question was like,
20 why wasn't this recorded, he explained his role, he doesn't
21 have a camera. But this was an officer just responding to a
22 scene, he didn't know who, what, where, when anybody did
23 anything, and he testified he documented his report. He had no
24 reason to make up that Brandon Corder said she shot herself,
25 none. Then Cameron Sherban, you heard from him, he's speaking

1 to Corder under the pretense that this is a suicide, that's the
2 conversation. He may not have said that to start the
3 conversation, but that's what they were responding to. And
4 then once he starts, and you listen to the audio, once he
5 starts getting there, Brandon says, no, she didn't hurt
6 herself. And then he says at some point in the conversation
7 I'm thinking maybe the bullet came from somewhere from down the
8 road or through the woods, or something, I don't know, that's
9 the only thing I could think of. Then he said something like I
10 saw her kind of turn a little bit, she went over to the car to
11 get cigarettes, never found these cigarettes, and I saw her
12 turn and that's when I heard the bang. When she looked at me,
13 I saw it, she was going down to the ground and I didn't really
14 know what happened at that point, and this is early in the
15 investigation. Then he talks about Fred, did you think why you
16 were listening to that why's he bringing up Fred, what's Fred,
17 of all the people in the world, why's he talking about Fred?
18 I'll get to that shortly. Because Fred was on his mind, Fred
19 was in his heart, that's why he was talking about Fred, just
20 rambling on, he was, like, well, Fred, I guess she went back to
21 him. During that interview, and you have it back there if you
22 need to listen to it again. He said we were going to work
23 things out. He said, I don't know why this would happen to
24 her, and he said, why to me, why to me, I don't know if you
25 caught that when you listened to it. That's a selfish person.

1 Joanie is dead, and he was worried about why it happened to
2 him, something he caused, something he did. You know, after
3 they moved the body or they realize there's no gun, this guy
4 had a story going back and forth, they were, like, we have to
5 rule it out, let's see, maybe, based on how she fell, maybe the
6 gun is under her body, you know, they have to make sure they
7 rule it all out. Then shortly after, Seargent Creech goes and
8 talks to him, he was like, I didn't do it, I didn't kill her, I
9 didn't kill her, I didn't, I didn't, I was pulling it out, I
10 was pulling it out to take it off of me and it went off in my
11 hand. And Seargent Creech, and what did you understand that to
12 mean? That it was on his person. And in the same
13 conversation, it changes, I was pulling it out to take it off
14 of me and it went off in my hand. Now, I know this might not
15 be something easy to look at, but this is where common sense
16 comes into play. Taking the gun off, pulling it out, taking it
17 off of me and it went off in my hand, let's say he was facing
18 her pulling it out, how does that work? How do you get this?
19 And we know, Joanie's head could have been in any direction,
20 she could have had it up, bodies move. But pulling it out and
21 it went off in my hand. The gun is still facing the ground,
22 how does that create an upward angle in her head? So no. He
23 said they weren't arguing, he's been adamant about that, and
24 then he says we were getting wood out the car, he's, there's a
25 burn pile, not disputing that. I was going to put the gun

1 inside its holster, I went to go put it in the holster, my
2 finger got clipped, it got caught on the side part of the
3 holster and when I pushed on it, it pulled the trigger, it's
4 always it pulled the trigger. So let's look at that, let's say
5 he's facing Joanie, he goes to do whatever, I went to go put it
6 in the holster, my finger clipped, still holding it down, okay?
7 So we're holstering this way, still this way. Now, if you
8 holster a firearm like that, and you guys choose to believe
9 that, again, y'all are the judge of the facts, but I submit to
10 you this is not a normal way to holster a firearm. So why is
11 your finger even close to the trigger? And you heard about the
12 trigger pull weight, yeah, yeah, I never put standing evidence
13 before, but I don't want you guys to be misled, don't, don't do
14 weights with it. Hold it out and pull back, don't act like
15 you're lifting weights, that's not it, that's now what we're
16 saying. Hold it out and you pull back, and you'll feel the
17 amount of pressure that he had to put on that trigger to take
18 Joanie's life, okay? Let's say he's not familiar with guns, he
19 didn't know the hammer was cocked, you wouldn't, the testimony
20 from Creech, you wouldn't holster a gun with the hammer pulled
21 back, right? But if it is, at that point, single action, so
22 don't pull up, hold it out, and pull the trigger, pull and feel
23 it, still, it's easier with the, the hammer. You heard the
24 testimony of Suzann Cromer, the hammer block, the hammer block
25 works, no matter how many different ways he tried to ask the

1 question, the hammer block worked. And now you wonder why that
2 video was up there, so that you got to see the inter-mechanisms
3 of how the revolver works, you cannot take it for granted. I
4 don't know how many of you use guns, but to show that you have
5 to be able, you have to pull the trigger, and that was the
6 testimony from the expert. He says he was walking towards the
7 house, and that's the one that kind of, to really make that
8 work that means his back is to Joanie. We know where her body
9 was, there was a question by Defense, like, he could have moved
10 her body, look at the photos, there's no dragging in front of
11 the house to the back, that didn't happen, okay? Because
12 that's what, that would have had to happen for him to be, with
13 her back to the car, remember that. His back to the car,
14 walking away to put it up and was going to put it in his
15 holster, still that way or down, not to Joanie. Then he said
16 in the trigger guard area while he was holstering. I can't
17 tell you if it's possible to get your finger that's with a
18 glove inside of a holster keeping your finger, I don't know, we
19 never found the holster to test it that he claims he had, never
20 found it. But if you can get your gloved hand inside of the
21 holster while it's on the trigger, while the hammer is back,
22 you guys tell me what the facts are, they say he had his gloves
23 on. Here's this burn pile, and this is what I want you guys to
24 remember, the house is this way. Any version of what he says
25 does not make sense, and that's where your common sense comes

1 into play. If he's walking away and his back is to her, Joanie
2 fell on her back, so that means at the very least even if her
3 back was facing Brandon for her to fall on her back, her head
4 had to have been turned at some point, her head faced the gun.
5 Here, they searched, he said the gun and the holster would be
6 in the same spot, no, the firearm was loaded. Treat all
7 firearms as they are loaded, but they were, this one was
8 loaded, and he knew that, it's his gun, and you wonder why I
9 put in, let me go back here, I put in photos of that gun box to
10 show you the ammunition wasn't a full box. This is his house,
11 his gun that he claims and the testimony is that he shot that
12 gun every other day, there was barely anything left in that, he
13 knew it was loaded. Never point a firearm at anyone or
14 anything you are not willing to destroy. Keep your finger off
15 the trigger and know your target. Now, later on he interviewed
16 with that special agent. And what did he tell that agent? You
17 have a copy of his Miranda, he waived his rights to speak
18 again, he wanted to explain himself yet again. And he said, I
19 made up the story about the holster, it's not true. There was
20 no holster anyway, but let's say if, it doesn't work, but he
21 tells the agent he made it up, it wasn't true, he said he was
22 frustrated that Joanie had been seeing another man named Fred,
23 here we go with Fred again, Fred, Fred, Fred, and you got to
24 hear from Fred. Fred said, Brandon, they met, they had been
25 dating for a few months, she would go back and forth between

1 them and any time that Joanie went with Fred, he had a problem
2 with it. At one point in the interview with Creech, he said, I
3 believe it was Creech, one of the interviews, I don't want to
4 misquote this, but I think it was Creech, he said, I've been in
5 this situation before where I was torn between two people, I
6 wanted her to love me instead of Fred. It's in there, you
7 listen to it. So he tells this agent who doesn't know him,
8 doesn't work for the Lexington County Sheriff's Department that
9 he was frustrated that she was seeing another man named Fred.
10 Now, we'll never know the complete truth, right? Only two
11 people know. And this is our burden, the Defense does not have
12 to put up a case, and that's how it should be, that's the way
13 our system works." But Joanie's not here to tell you what
14 happened. He said he got this gun from underneath the seat of
15 his car and walked around the rear of his vehicle and trailer.
16 He removed the gun from the holster, pointed it at Joanie and
17 pulled the hammer back then he says the gun fired. Still not
18 taking responsibility because he still says I'm not a shooter.
19 Make it make sense, make it make sense. In Lexington County,
20 that you can come in, you can tell the police that I pointed
21 the gun at her and pulled back the hammer, make it make sense,
22 but I'm not a shooter, that's what he said, and you have it, he
23 said he was just trying to scare her, he wanted her to know
24 that he was mad and hoped to signal to her to stop playing with
25 me. He pointed that gun at Joanie, and the testimony from the

1 doctor is that a yard, three feet, at least, away, is that
2 getting closer to what he told Beeler, that he was on the
3 other, he was walking around the trailer? Then we know from
4 the crime scene it says that it appeared that Joanie was shot
5 in the apex of that door. So what does that look like. This
6 is the door, we'll have to switch sides here, Joanie in the
7 door, Brandon in the driver's side, gets the gun, Joanie's
8 here, he walks around, now switch, on the other side of the
9 car, he's getting closer and closer, closer and closer to how
10 this angle happened. Whether or not Joanie was looking forward
11 or angled this way, she knows she was shot in the apex of that
12 car door and then body collapsed. No holster found,
13 cigarettes, the gun working, you heard on some of the audios he
14 said it was an accident, it was an accident. It wasn't an
15 accident, not possible. You heard the SLED expert say the gun
16 was working just fine, there was no manufacturing malfunction
17 on that gun, so it's not legally an accident, it's not a
18 defense, and you'll know that because the Judge is not going to
19 charge you on that. You cannot point a gun at someone, pull
20 the hammer back and then say it wasn't on purpose, that you did
21 exactly what you threatened. Where does that happen? You
22 can't point a gun at someone after you've threatened repeatedly
23 that I would blow your head off, do exactly what he said he
24 would do and then say it wasn't on purpose. This is the
25 definition of murder, is the killing of any person with malice

1 aforethought, it's the intentional doing of a wrongful act, the
2 intentional doing of a wrongful act. Aforethought, the time
3 when evil is conceived. There doesn't have to be a length,
4 this isn't like any other states, this isn't like anywhere
5 else, it can be that moment. I submit to you that we've given
6 that Joanie was killed here in Lexington, and we'll talk about
7 express implied, but in this case, we have expressed malice.
8 Now, malice, malice is hatred, it's ill will, or hostility
9 towards another person. It is the intentional doing of a
10 wrongful act without just cause or excuse and with an intent to
11 inflict an injury under circumstances that the law will infer
12 an evil intent. That's evil in your heart, and there is no
13 greater evidence than a man's intent that when he expressed
14 what he would do and then he does it. Malice must simply exist
15 in the mind of that man just before and at the time he does
16 that intentional act. Expressed malice, and this is the law in
17 South Carolina, expressed malice is shown when a person speaks
18 words which express hatred or ill will for another, for when
19 the person prepared beforehand to do the act which was later
20 accomplished, speaks words. So why not involuntary
21 manslaughter? You've heard that thrown around, and the Judge
22 is going to charge you on the law of that. But this is why
23 it's not involuntary, this is a unique situation for the jury
24 where he admits to doing something and you all have to decipher
25 the law. Involuntary is a lesser included of murder, so in

1 South Carolina, there's murder, and then there's a statute for
2 manslaughter that includes two different levels, and this is
3 the lesser one. It is defined as the unintentional killing of
4 another without malice, that's what distinguishes in South
5 Carolina murder and manslaughter, malice. And that's while
6 engaged in either the commission of some unlawful act not
7 amounting to a felony and not naturally tending to cause death
8 or great bodily harm or the doing of a lawful act with a
9 reckless disregard for the safety of others. Now, we don't
10 even get to there because it has to be an unintentional
11 killing. And in this case, he did exactly what he intended to
12 do and exactly what he threatened. It has to be without
13 malice. So if you guys get here, that means you've determined
14 that he had no malice, but if you get here, the first prong, an
15 unlawful act. I submit to you, take all of the facts as you've
16 heard them here coupled with him not allowed to possess a
17 firearm, he is acting unlawfully. So you look at the second
18 one, doing a lawful act. Well, he's possessing a firearm when
19 he's not supposed to. So if you work through the analysis, you
20 don't even get there because there's malice in this case, and
21 you all get to determine that, malice. I will blow your head
22 off, that's expressed malice. I will murder you, malice, you
23 heard that audio, pointing a loaded revolver, malice. You
24 don't get to do all those things and say all those things and
25 say, well, it was involuntary, no. Malice, hatred, ill will,

1 or hostility towards another person, the intentional doing of a
2 wrongful act, period. Now, we have to prove this to you beyond
3 a reasonable doubt. As he sits there today, he is presumed
4 innocent. The presumption of innocence is like a robe of
5 righteousness cloaked on his shoulders. That is the law, that
6 is the way it should be until the State has met their burden of
7 proof beyond a reasonable doubt. Now, proof beyond a
8 reasonable doubt is not proof beyond all doubt. There's very
9 few things in life that we are actually certain of. It's
10 simply proof that leaves you firmly convinced of that man's
11 guilt, remember that, you have to be reasonable in what to
12 expect. There's nothing in life that we know with absolute
13 certainty, nothing. Now, proof can be proven with direct and
14 circumstantial evidence, that's the law, there's no greater
15 weight to what it is. Direct evidence is someone witnessed the
16 crime, right? Or the person's own words. Circumstantial, you
17 can look at the crime scene, look at the gun and what it would
18 take to fire this gun, take his words and his prior threats to
19 do exactly what happened and link it all together. Brandon
20 Corder, I'm sorry, I didn't mean to make y'all fall asleep, I'm
21 almost done, I promise. Brandon Corder did exactly what he
22 said he would do. And if y'all got bored in this case or if I
23 did anything wrong, please don't hold that against Joanie.
24 Like I said, once I sit down, I can't get back up, and so I'm
25 sorry that y'all have to sit through this and deal with

1 everything that happened and the delays in the trial. But this
2 is important, this is really important. You all get to speak a
3 verdict that speaks the truth in this case, and I'm asking you
4 to deliver justice for Joanie. There is no greater evidence of
5 a man's intent, what's in his heart --

6 (Playing video.)

7 Q -- I ask you find Brandon Corder guilty for doing exactly
8 what he said he would do. He told Joanie that he would murder
9 her, that he would blow her head off, right is right, wrong is
10 wrong. Joanie took her last breath by a burn pile, trash. You
11 can't outrun a bullet; you can't outrun a bullet. You can love
12 someone, you can cry, you can vomit, they're not mutually
13 exclusive. Thank you.

14 THE COURT: Thank you, Ms. Fuller.

15 MR. STITELY: Judge, I have matters of law to take up
16 before I start my closing.

17 THE COURT: Sure. Shall I excuse the jury?

18 MR. STITELY: Yes, ma'am.

19 THE COURT: Alright. Mr. Foreman, ladies and
20 gentlemen of the jury, please don't discuss this case yet
21 amongst yourselves, let me take up a matter of law with the
22 lawyers.

23 (Jurors exiting Courtroom.)

24 THE COURT: Alright. At first, let me ask y'all, was
25 that a juror snoring?

1 MS. FULLER: Yes, ma'am.

2 THE COURT: I heard it, but, is it the one in the
3 white t-shirt?

4 MS. FULLER: It was the one in the blue, I'm not sure
5 what she was wearing, but it was the black lady in front. I
6 didn't mean to bore them, sorry.

7 THE COURT: I mean, was she sleeping?

8 MS. FULLER: No. She was just fighting it the whole
9 time.

10 THE COURT: We'll take that matter up in just a
11 second. Alright. Let me hear your matter of law. I had to
12 rearrange the first, I didn't change anything of the jury
13 instructions, only the order, so it would read right.

14 MR. STITELY: Judge, it's a motion for a mistrial and
15 it's three very specific things. One, the solicitor, not once,
16 not twice, but three times told the jury, make it make sense.
17 That is a direct burden shift compelling the jury to make sense
18 of a situation. That is saying that they have to find
19 something. The jury doesn't have to find anything, the burden
20 relies on the State. She said, make it make sense, make all
21 the facts make sense, make it make sense is a direct burden
22 shift and she did it three times in a row. Second, Your Honor,
23 she said to the jury, you know it's not an accident because the
24 Judge won't charge it. You can't tell them that, you can't say
25 you know it's not because the Judge isn't going to say.

1 There's no affirmative defense of accident, but nothing bars
2 the jury from making any determination as to whether the act
3 was deliberate or unintentional. By saying you know it's not
4 because the Judge won't charge it is a mischaracterization of
5 the law and a flat and compelling statement to the jury that's
6 telling them they can't do something which is their purview.
7 And third, she said, jury, you have to decipher the law. The
8 jury does not decipher the law, the jury decides the facts and
9 applies them to the law. It is improper to tell the jury that
10 they have anything to do with the law aside from determine the
11 facts, that is not the jury's role. All three independent of
12 each other would be a mistrial, all three together, absolutely
13 a mistrial.

14 THE COURT: Alright. Ms. Fuller, let me hear from
15 you on that.

16 MS. FULLER: Yes, Your Honor, beg the Court's
17 indulgence, I want to make sure I cite the right thing.

18 MR. STITELY: And for the record, there's a reason I
19 waited until the end is I didn't want to interrupt, but I still
20 think I'm protected, at least, as far as making my objections.

21 MS. FULLER: Thank you, Your Honor. Your Honor,
22 looking at the law, obviously, I know Your Honor knows the
23 granting of a mistrial is an extreme measure in this case which
24 should be taken only if it's so, was egregious, prejudicial
25 effect cannot be removed any other way. Your Honor, first

1 taking his first comment about make it make sense, Your Honor,
2 I believe appropriately the facts are to be determined by the
3 jury and so I'm telling them to make it make sense, like,
4 they're supposed to determine the facts, and I don't find
5 anything improper about that. If there is, Your Honor, there
6 needs to be a curative instruction. I believe you typically
7 charge the jury that what we say in opening and closing are
8 not, not the evidence to be considered, they're just arguments
9 of counsel. But make it make sense is just a colloquialism to
10 apply to just determine the facts in this case, and that's what
11 the State intended when I made that comment. In terms of not
12 an accident, Your Honor, I thought it was appropriate that I
13 needed to address that since I put in his statement in audio he
14 kept saying it was an accident, an accident and the testimony
15 was in terms of what an accident is was a malfunctioning in the
16 gun, and I said you guys know that because, and they can play
17 it back, and I know where I was going with that was in terms of
18 the expert's testimony is an accidental discharge means the gun
19 malfunctioned or something's wrong with it. And then I said --
20 -

21 THE COURT: And there was testimony in the trial on
22 that.

23 MS. FULLER: Right, from Suzann Cromer. And then I
24 also indicated that it's not a defense in this case because you
25 won't hear the Judge charge that. I've never been told that's

1 inappropriate; I don't know any case law that says that this
2 isn't the law in this case. It's, it's, I've always said this
3 is what the law is in South Carolina, this is what it's not, I
4 don't find that any different in how I phrased that especially
5 since there's, I know, at least three or four times in the
6 Defendant's statement he said it was an accident, it was an
7 accident. This does not impact whether or not they consider
8 involuntary in the sense of a negligence, you know, the
9 testimony from the expert was an unintentional accidental,
10 there's a distinction, and I believe Ms. Williams handled that,
11 and I was, like, I didn't know there was two, and learned that
12 in that moment, and so I thought it was perfectly appropriate
13 for me to address the accident because I can anticipate that
14 maybe even the jury asking, well, can we consider accident,
15 accident is different than involuntary manslaughter, and I
16 didn't comment on that. In terms of the jury deciphering the
17 law, my understanding from opening arguments is the Defense
18 said that we, I wasn't here, but what I was told was he said we
19 agree with the State, the difference is the charge or something
20 along that line, that it's involuntary manslaughter versus a
21 murder, that's essentially telling the jury they have to
22 distinguish the law. It's not saying he's not guilty of doing
23 this or pulling the trigger or how this happened, it was
24 determining this between the law, and I told them this was a
25 unique case that they have to decipher the law. I don't know

1 how that is improper, I'll definitely take guidance from the
2 Court on that. I definitely don't believe that's grounds for a
3 mistrial because you are going to charge them on two different
4 laws and they're going to have to apply the facts to them and
5 determine that ---

6 THE COURT: You mean the meaning between ---

7 MS. FULLER: Murder and ---

8 THE COURT: --- what is murder or ---

9 MS. FULLER: --- involuntary ---

10 THE COURT: --- involuntary?

11 MS. FULLER: --- because this isn't a, and I tried to
12 be careful in how I phrased my sentences if you heard me pause
13 at certain points because I didn't want to do anything to
14 suggest that the Defense has to put up a case or what he says,
15 I kept my comments and my arguments to what is in the record
16 and what statements were put in. But they're asking for
17 involuntary manslaughter of this jury, the jury's going to have
18 to decipher the law, I don't know that, that's truth, and if
19 that was improper, I'll apologize to the Court, but I really
20 don't think it's grounds for a mistrial. That is an extreme
21 measure here, if there needs to be a curative instruction, but
22 I believe your charge says if you believe the State has failed,
23 maybe they're my words, but if you believe the State has failed
24 to meet their burden of murder, you may consider the lesser
25 included offense of involuntary manslaughter. If that's, if

1 deciphering is the offended, offensive word, then I won't use
2 that in the future. But I don't know how else to describe what
3 they're asked to do and what counsel asked them to do in
4 opening arguments, opening statements. So I respectfully
5 request that the Court deny the Defense's motion for mistrial
6 and I don't believe that anything was in violation of the law
7 or case law and if Your Honor feels that any statement, any one
8 of those independently does violate the law, that there's
9 nothing a curative instruction can't fix. But I stand by that
10 none of those three that he has identified violates the law of
11 South Carolina.

12 THE COURT: Okay.

13 MR. STITELY: Just briefly, Judge, I do think that
14 the third one, if you just emphasize that it's not the jury's
15 job to deal with the law, they deal with the facts, I deal with
16 the law. I think your charge will fix a lot of that one. The
17 problem with the second thing, this was not an accident because
18 the Judge won't charge it, the expert talks about what an
19 accident on discharge is and the term of a firearm unloading a
20 bullet. My client didn't, and nowhere in the facts does it say
21 that he was arguing was an accidental discharge, he said the
22 entire incident was an accident. She's talking about the
23 expert; she was talking about what an accidental discharge is
24 in terms of a gun. He kept saying this whole thing was an
25 accident. So by saying, it's almost like it can't be real

1 because the Judge isn't going to tell you, that's almost like
2 asking the jury to rely on what you say in the opening, you
3 can't defer from things I say that I have any interpretation
4 as to what the facts are, what I say are simply comments
5 on the law, you cannot interpret from my rulings anything, the
6 Court is not allowed to take a position on what the facts
7 are.

8 THE COURT: I'm not allowed to have an opinion.

9 MR. STITELY: Correct. So that's my problem with it
10 is she's kind of saying, well, you can't say it was an accident
11 because the Judge ain't going to say that. Well, that's saying
12 the Judge has some bearing on what facts the jury can consider.

13 MS. FULLER: And Your Honor, respectfully, I did not
14 say that nor suggest that to the jury. I mean, I'm going to
15 double check now ---

16 THE COURT: Yeah. Let me ---

17 MS. FULLER: --- but I'm pretty sure in the opening -
18 --

19 THE COURT: Lisa, let me get ---

20 MS. FULLER: --- remarks, the duties of the Trial
21 Judge clearly states that and it says, I am the sole judge of
22 the law of this case. So telling you that you're not charging
23 Defense of that, like, accident as the law, I don't know how
24 the, you're telling the jury that you're the judge of the law,
25 that has nothing to do with the facts, they heard the words

1 accident and I believe I had to explain that because that's not
2 a defense in this case. I truly respect ---

3 THE COURT: Let's go back on the record and Lisa, can
4 we look at the part about you know it is not an accident
5 because the Judge won't charge it, I think is what you said.

6 MS. FULLER: I said legally.

7 (Off the record.)

8 THE COURT: Anything else from the State?

9 MS. FULLER: Your Honor, I'm just looking at State v.
10 Lunsford indicates that I can point out what the jury's not to
11 consider, I think the first portion. The second portion in
12 terms of saying you're going to know it's not legal because the
13 Judge is not going to charge it. Your Honor, I don't believe
14 that amounts to the extreme measure of a mistrial. I think
15 your charge covers that you're the judge in the charge of the
16 law, if that needs to be specifically clarified that my comment
17 is not commenting on that you're commenting on the facts
18 because I think I told the jury that they're the finder of the
19 facts. But if that portion impugned that you're commenting on
20 the facts, then I think we can work through with some curative
21 instruction, but I don't believe it's an absolute mistrial.
22 But it definitely wasn't my intent to interject, and I don't
23 think I did interject you ---

24 THE COURT: I know you didn't intend it.

25 MR. STITELY: Can we approach real quick, Judge?

1 THE COURT: (Nonverbal response).

2 (Off the record.)

3 THE COURT: Alright. I'm going to hear another
4 matter real quick.

5 (Off the record.)

6 THE COURT: Alright. Let me get back to this case.
7 I hate it, but I'm going to grant your mistrial, and this is
8 why, the solicitor's comment of the accident because the Judge
9 won't charge it, I feel that it brings the Judge right into the
10 jury's deliberations, and it gives them the impression that I
11 made some ruling that I haven't made. And, you know, it's easy
12 for us lawyers to sit here and talk about accident, but we're
13 talking about the legal sense of accident as to whether he is
14 entitled to a defense or not. They don't know that, they think
15 accident of something totally different and in this case,
16 particularly, I've heard the word accident several times in the
17 Defendant's own statement, and I feel like he would be
18 absolutely prejudiced. I don't know how to fix it; I don't
19 know how to unring the bell on that particular thing. Also,
20 there's the other two instances, even if I could, I'd be fixing
21 this thing three different ways that I think is totally
22 confusing to the jury. You have to decipher the law, well, I
23 could probably fix that with jury instruction if that was the
24 only thing, that would be an easy fix. But, and then I've got,
25 make it make sense of all the facts, it needs to make sense. I

1 can probably fix that with another jury instruction, but at
2 some point I think it turns on being prejudicial to the
3 Defendant. Therefore, I don't know how to fix it, I'm sorry.
4 I know nothing was done intentionally, this Court does not
5 believe it was done intentionally, it just happened. And you
6 know, sometimes it does happen. So I'm declaring a mistrial,
7 thank you.

8 MR. STITELY: Just briefly, and we respect that, we
9 do, would reassert our motion for bond, I know you don't want
10 to hear that today, but not to say that we have no idea how we
11 get this back on the trial docket, but Your Honor knows very
12 well we are six solid months out on weeklong trials. He is
13 entitled to a bond, I would believe, so I would just request
14 that we get that somewhere on the radar to do sooner rather
15 than later. Because once again, I don't know when they can try
16 this again because I know that we're booked through July, so
17 that's putting it out ---

18 THE COURT: Well, now, don't ever say never
19 because I just had to do one that I had started and then
20 I had to come back and do it again. I'm going to tell
21 you, you know, you know it, Mr. Stitely, as well as I
22 do as does Ms. Fuller and Mr. McNair, you know, sometimes
23 those lead cases break down. This could be a backup case to
24 any of it, we've already been through it, it ought to be
25 easy to step right back in, so don't get rid of all

1 your notes, all your stuff because it will be sooner than
2 later.

3 MR. STITELY: Yes, ma'am.

4 THE COURT: Okay? Thank you.

5 MR. STITELY: Thank you.

6 THE COURT: I'm going to bring the jury, or can I
7 bring the jury in or can I just go back and tell them.

8 MR. STITELY: It's up to you, Judge.

9 MS. FULLER: You can bring them in.

10 THE COURT: Okay. Let's bring them in right quick.

11 (Jury entering Courtroom.)

12 THE COURT: Alright. Ladies and gentlemen, I hope
13 you enjoyed lunch.

14 JURORS: Thank you.

15 THE COURT: You're welcome. I heard y'all back there
16 laughing, so I figured y'all were enjoying lunch. Let me tell
17 the jury. I've declared a mistrial in this case, so you won't
18 be deliberating. But I just want to thank you for your
19 service, thank all of y'all for being attentive and listening
20 and all. What will end up happening is that we'll have to
21 retry this case another day with another jury. So, but I just
22 want to thank y'all so much, okay? I'm going to let y'all go
23 back to your jury room and I'm going to come back and talk to
24 you and dismiss you. Thank you.

25 (Jury exiting Courtroom.)

1 THE COURT: Thank y'all.

2 (Whereupon the hearing ended at 2:16 pm.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
)
)
COUNTY OF LEXINGTON)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Lexington, South Carolina, on the 2nd day of March 2023.

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

December 5, 2023

Lisa Amick

Lisa G. Amick

Court Reporter

My commission expires: June 30th, 2025

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Lexington	)	2020-GS-32-01854
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	PARTIAL
vs.	)	TRANSCRIPT OF RECORD
	)	
BRANDON CORDER,	)	
	)	
DEFENDANT,	)	

September 25, 2023
Lexington, South Carolina

BEFORE:

THE HONORABLE DEBRA MCCASLIN, JUDGE and a jury.

APPEARANCES:

SUTANIA FULLER, ASSISTANT SOLICITOR
ROBBIE MCNAIR, ASSISTANT SOLICITOR
Attorneys for the State

BENJAMIN STITELY, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

1 THE COURT: We are about to begin the trial of the
2 State of South Carolina versus Brandon Corder.

3 Madam Solicitor, do you want to call your case?

4 MS. FULLER: Thank you, Your Honor. May it please
5 the Court?

6 THE COURT: Yes, ma'am.

7 MS. FULLER: The State calls under indictment number
8 2020-GS-32-01854, the State vs. Brandon Lee Corder for an
9 indictment for murder, and this has been true billed by
10 the Lexington County Grand Jury.

11 THE COURT: Thank you.

12 MS. FULLER: May I approach?

13 THE COURT: You may. Thank you.

14 All right. Mr. Stitely, let me ask, how does your
15 client plead?

16 MR. STITLEY: Not guilty, and demands a jury trial,
17 Your Honor.

18 THE COURT: All right. Thank you.

19 Ladies and gentlemen of the jury, before we select
20 the jury, there are several questions which I will ask
21 you. If you need to answer any of these questions,
22 please, stand and I will call on you individually. I
23 don't want you immediately standing and responding. I
24 will ask you the questions, okay.

25 Before we start that, I'm going to ask the solicitors

1 All right. I'm going to ask that you go with the
2 bailiffs. They'll show you to your jury room. I'm going
3 to let you go to lunch, but I'm planning to start this
4 case today. I want you back in the jury room at 1:15.

5 Now, let me tell you, and you'll final this true
6 throughout the whole trial. If one is late, we're all
7 late. I can't start without you at all, so everybody
8 please be conscientious of your time. And I will be your
9 trial judge, okay. Follow the bailiffs. Thank you.

10 (There was a break while Judge Newman took the bench
11 in an unrelated term of court. Proceedings resumed
12 with the following being heard before Judge
13 McCaslin).

14 THE COURT: All right. I didn't see any motions from
15 you, Mr. Stitely.

16 MR. STITLEY: Judge, I have one motion I think we
17 need to take up before anything else. It's a motion to
18 dismiss on double jeopardy.

19 THE COURT: Right.

20 MR. STITLEY: Your Honor, I can't actually even file
21 this motion until a case has been called for trial because
22 the solicitor could always elect to try other things that
23 don't meet the Broughton standard, whatever it is for
24 substantially similar facts in evidence. So my case
25 intended to be called for trial it becomes relevant.

1 Double jeopardy, typically, is defined in any case
2 frees one from being tried twice for the same offense. As
3 Your Honor is well aware, in this case, we had a mistrial
4 situation, which is why you're back here. The two cases
5 on point, and I'll pass it up, are Parker, and that's a
6 South Carolina case cited in there, and it cites the
7 federal case, which is Oregon V. Kennedy.

8 It is clearly established under law that a mistrial
9 when you have a situation with a hung jury would not
10 attach jeopardy. That's not the kind of mistrial we're
11 talking about when we're speaking to the case law in a
12 case like this. Stating back to Oregon, which sets the
13 foundation, that's a United States Supreme Court, it talks
14 about the concept of goading a defense lawyer into making
15 a mistrial motion.

16 In Parker, which is the South Carolina case, that's
17 391 South Carolina 606, it talks about what that all
18 means. The first thing I think you have to consider when
19 doing is a mistrial, in general, is an absolute last
20 recourse the judge has in a trial. That's State v.
21 Beckman. That's South Carolina law. Judge, there's 50
22 cases that talk about that.

23 THE COURT: Absolutely.

24 MR. STITLEY: So you have to kind of then take a step
25 further and look at what happens in a specific case. In

1 this case, we're not talking about a lay witness saying
2 something. We're not talking about even a law enforcement
3 officer saying something that leads to a defense lawyer
4 jumping up and making a motion for a mistrial. Plenty of
5 times, a witness says something they probably shouldn't
6 have said. And as coached or not coached as they are,
7 it's hard to control a witness in what they might say to
8 lead to a mistrial.

9 If you look up the word mistrial in case law, the
10 first 100 are usually a statement that was made by
11 somebody, a witness, a line of questioning that went side
12 ways.

13 In this case, we get all the way to closing
14 arguments -- and I think it's relevant, Judge, because
15 there was a heated discussion in this case about what we
16 would charge. And over the State's objection, you charged
17 involuntary manslaughter or would have charged had we
18 gotten to that point.

19 During the close argument -- and I cannot find my
20 notes, but I had three separate mistrial motions that were
21 made. Your Honor should have them. Two of them were
22 comments that were made that Your Honor said those could
23 be clarified and qualified through a curative instructive,
24 a mistrial would not be needed. The third one,
25 ultimately, after hours of contemplation and discussion,

1 you granted a mistrial deeming that there was no curative
2 instruction that could fix the problem.

3 Judge, that is the definition of what goading a
4 defense lawyer into making a mistrial motion has. It's
5 not necessarily specifically saying it was daring me to do
6 it, but when you looked at the word, it forced me to make
7 a mistrial after a week-long trial when I had gotten the
8 charge I wanted. I even said to the bench, I don't want
9 to make this motion, but I have no other option. If I
10 don't make the motion, I am committing malpractice,
11 opening myself up for a PCR. I think when an action by
12 the State, specifically, a seasoned prosecutor leaves the
13 defense attorney no option but to make a mistrial motion.
14 That's what Oregon vs. Kennedy is talking about with
15 goading.

16 If you read the language in Parker, it talks about,
17 actually, they go on -- the judge doesn't grant the
18 mistrial. They go on, they have a hung jury and they
19 grant the mistrial. They say well, the jury didn't make
20 the decision, so that's good enough. Parker says, no, no,
21 no. Here you have a prosecutor who said something, the
22 defense lawyer was forced to make the motion and that's
23 jeopardy.

24 This isn't an early in the trial situation. This
25 isn't a lay witness. There were three specific arguments.

1 And, Your Honor, I apologize. I don't have the other two.
2 But you did say they could be fixed with curative
3 language. But in a case where you get to the end of the
4 trial and statements are made by the attorney for the
5 State that cause me to have no other possible alternative
6 but to be goaded into making a mistrial, jeopardy
7 attaches. State v. Parker is clear on that. And the
8 remedy is dismissal. They cannot call this case for trial
9 again because of the actions at trial.

10 I can go further into the language of Parker, Judge,
11 but if you read it, it's actually a pretty short, simple
12 case. And then if you want me to go further into the
13 concept in Oregon V. Kennedy, but it talks about, you
14 know, Constitutional protections and if a defense lawyer
15 is forced to do something to protect their client's
16 rights, jeopardy attaches. And it's through an action,
17 once again, not of a lay witness, but of an attorney who
18 was prosecuting the case. I think there is no basis aside
19 from a dismissal.

20 And I put the exact language with the problem for a
21 mistrial in there. I know Your Honor remembers what it
22 is, but in my motion, it talks about the statements that
23 were utilized. And it was especially relevant because
24 after a conference and discussion on what we could charge
25 and not charge and the defense and the affirmative defense

1 of accident, that was all discussed ahead of time. Your
2 Honor, as you saw, had no other outcome, but to do it.
3 And if you can remember and it wasn't part of the record,
4 I even said this is the last thing I want to do, but I'm
5 left with no choice. That's goading me into making me do
6 it because it's not what I wanted to do, but it's what I
7 had to do for my client. It was an action directly
8 through the State. That attached prejudice.

9 THE COURT: I'll hear from you.

10 MR. MCNAIR: Your Honor, I agree with Mr. Stitely on
11 one thing, that State v. Parker is the applicable case to
12 this scenario, but what that case says is that
13 prosecutorial conduct that might be viewed as harassment
14 or overreaching, even if sufficient to justify a mistrial
15 on defendant's motion does not bar retrial absent intent
16 on the part of the prosecutor to subvert protections
17 offered by the double jeopardy clause. So what this case
18 says is that he would have to show that Ms. Fuller's
19 subjective intent was to intentionally spite this case.
20 And he cannot show that. He has not shown that.

21 In the Parker case, this was a situation where the
22 court found the prosecutor engaged in conduct intended to
23 goad the defendant into seeking a mistrial when they
24 showed the original videotape of a crime scene, including
25 graphic images of the victim's body where they agreed not

1 to do so before trial. When the prosecutor made
2 statements about defense counsel himself, personal
3 comments and encouraged the jury to convict in order to
4 protect the community.

5 This case goes on to say that case law has
6 consistently emphasized the application of the double
7 jeopardy bar is dependent on a showing of the prosecutor's
8 subjective intent to cause a mistrial in order to retry
9 the case.

10 It says courts have to determine whether the
11 subjective intent of the solicitor was to cause a
12 mistrial. Further, the court says in our opinion, it will
13 be rare that the solicitor actually intends to cause the
14 defendant to move for a mistrial.

15 Your Honor, in this case, it was one comment in
16 particular. And I believe it was something to the effect
17 of it's not an accident and that's why the judge won't
18 instruct you on accident. It was one comment in closing
19 arguments. We were all back there in your chambers,
20 including Mr. Stitely, racking our brains on how to fix
21 that issue. There was no bad intent on Solicitor Fuller's
22 part to spite this case.

23 Your Honor, in addition, there was no reason for us
24 to want a mistrial. We felt confident in our case. We
25 spoke to several jurors after the fact and they would have

1 convicted Mr. Corder. So we felt confident in our case.
2 We had no reason to want a new trial. No reason to
3 intentionally spite the case to get a mistrial.
4 Mr. Stitley cannot show that.

5 We're talking about one statement in closing argument
6 and that is not goading. That's not a pattern of behavior
7 like what happened in this Parker case where she did
8 several things over the course of the trial that the court
9 determined as goading. This was one statement that we
10 decided or Your Honor decided was not curable and why you
11 granted the mistrial. It's not a pattern of behavior.

12 MR. STITLEY: In all due respect, he's reading from
13 the Court of Appeals case Parker. It gets overturned by
14 the Supreme Court. He's reading from the Court of Appeals
15 opinion.

16 MR. MCNAIR: I am not. I am not. I'm reading from
17 the Supreme Court case.

18 MR. STITLEY: I guess, if we're just going to read --

19 MR. MCNAIR: I read it directly.

20 THE COURT: All right. One at a time.

21 MR. STITLEY: They say that the Court of Appeals was
22 wrong in relying on that and they go back and they cite
23 the exact language. And they don't go into a multitude of
24 things in this case. I'd ask Your Honor to read it. They
25 say that -- they cite, again, Oregon vs. Kennedy and this

1 is a properly granted mistrial, poses none if there's not
2 a subject prosecution only where the government did
3 conduct that goads the defense into moving for a mistrial.

4 It doesn't talk about a long pattern. It doesn't
5 talk about a repeated effort. Any action by the
6 government that forces my hand and forces me to make a
7 mistrial motion on a direct action. And that's what
8 happened in this case, Judge. It is the law. And you can
9 argue that it wasn't her intent, but that's not it. It's
10 an action by the State that goads. And the fact we had
11 gotten to that point, there was an action by the State
12 that forced my hand into making -- you remember, we were
13 here 4:30 on a, I don't remember if it was a Thursday or
14 Friday, there is no other outcome. Your Honor, I ask you
15 to take a few minutes and read the entire Parker opinion.
16 It doesn't talk about --

17 THE COURT: I read it.

18 MR. STITLEY: -- an entirety of all these events. It
19 talks about one specific action was enough and that
20 creates a bar for double jeopardy.

21 THE COURT: Anything else?

22 MR. MCNAIR: Judge, where I read -- the quotes that I
23 just read on page four of the opinion that Mr. Stitley
24 cited, the last paragraph on that page, if you want to
25 read that, but it says exactly what I just said it says.

1 THE COURT: I'm going to tell you, I remember it
2 specifically, even though we tried this case at end of
3 February this year. And I will say that I spent a lot of
4 time with the lawyers trying to save this case because we
5 had gotten all the way to closing. In fact, I even read
6 my notes on it.

7 I felt like the judge was placed in the deliberations
8 because I didn't charge something and that's why I granted
9 a mistrial. Was it goading? No, it wasn't goading. Was
10 it intentional? No. I don't believe that it was. I
11 listened to it. I hate that it ended in a mistrial. I
12 know y'all worked hard. We were at it for a week, but it,
13 certainly, wasn't goading and it wasn't intentional. It
14 was just a statement. And if I remember correctly, you
15 can correct me if I'm wrong, but the word accident with
16 involuntary and the charge of accident, I think, is, also,
17 what we talked about that I wasn't -- I can't remember if
18 the court was going to charge accident or not, but I think
19 that I said no. But it was hard to distinguish between
20 the two and that's why I felt the court had been placed in
21 a position that it was a fact finder and the court is not,
22 and I didn't know how to put it all back into the box. I
23 couldn't figure a charge that would not be confusing to
24 the jury, so I declared a mistrial.

25 So I'm going to deny your motion, Mr. Stitely. Any

1 other motions?

2 MR. STITLEY: I guess, I still think -- and, Your
3 Honor, we spoke and this wasn't on record. I think any
4 rulings that were made in this case, whether you want to
5 call them pretrial or trial rulings upon the granting of a
6 mistrial invalidates all those rulings and they have to be
7 done again. I can give you a number of examples is why
8 you asked for case law saying otherwise. I cannot find a
9 single case anywhere where the Supreme Court or Court of
10 Appeals adopted a previous trial's pretrial rulings into
11 any opinion they ever discussed about a mistrial. The
12 fact that it doesn't exist and I've never found somewhere
13 saying they can do it makes me think it's never been done
14 before.

15 I think we need to have all motions. And I can say
16 this is why. Let's do it as three different examples,
17 potentially. One, it could be argued in a way that the
18 court may find it different or more compelling through the
19 testimony of the witnesses. Second, the witnesses may
20 testify in a slightly different manner that may allow
21 something to be heard. Third, I can call Mr. Corder to
22 have him speak specifically to his state of mind, which I
23 intend to do at this time during the Jackson V. Denno
24 motions. I, also, could call additional witnesses. If he
25 hired a different counsel, they could attack those motions

1 in a different way, different relevance, different
2 positioning, different cases. Third -- or fourth, I
3 guess, if we had a PCR down the road and a PCR was
4 granted, which, effectually, is granting a new trial, no
5 one would argue that that attorney is bound by what
6 they're terming pretrial rulings or some element of
7 ineffective assistance of counsel. If we had that theory,
8 any motion that's heard that's not specifically deemed to
9 have been incompetent on the part of an attorney would be
10 covered or re-protected in a PCR situation.

11 I guess that's kind of a funny way to think about it,
12 but a mistrial is a new trial. It's a new trial. We need
13 to have all new rulings. I think the record will become
14 convoluted if we try to adopt previous hearings. I think
15 the testimony all needs to be redone. And, ultimately,
16 you still will be talking to a jury and I can argue to a
17 jury that determinations about voluntariness of a
18 statement, they can believe or disbelieve. We have to
19 have the hearings again.

20 THE COURT: Let me ask you, Mr. Stitely, is there
21 something that you want to add? It's my understanding
22 that we've got -- there was a 9-1-1 call.

23 MR. STITLEY: No problems with the 9-1-1 call. I
24 think we talked about that before. It's --

25 THE COURT: Let me finish, okay. Anything you want

1 to add to the statement to the first responding officer,
2 which was Officer Gietz?

3 MR. STITLEY: Well, there's no recording of that one,
4 which I find is interesting. I think we need to have a
5 hearing about that. That's not even something we can
6 shore up with a recording.

7 THE COURT: And how about a statement to Investigator
8 Sherman? That was recorded.

9 MR. STITLEY: I have problems with the statement to
10 Investigator Sherman. The most important one, the
11 statement of Creech, the one that's record by the coroner
12 who's standing there with Creech. And if you remember
13 that one specifically, Judge --

14 THE COURT: I do remember.

15 MR. STITLEY: That was where they start the
16 conversation, go about 15 minutes in and then they decide
17 to offer Miranda where we had argued it was a continuing
18 chain and it was a tactic. We even used the legal term
19 for it.

20 They remove him from the location where he was, put
21 him in a patrol vehicle, initiate a conversation where
22 they point out inconsistencies in his statement, saying
23 well, why don't you correct these inconsistencies. As
24 soon as he starts to make alternate statements, he then
25 decides well, I better give him Miranda because now, I got

1 something good. I think we need to go back through that
2 and flesh it out. I guess we're going to have to come to
3 it and play all these videos for the jury again. I know
4 you've heard a lot of them, but --

5 THE COURT: I've heard all of them.

6 MR. STITLEY: Yes, ma'am.

7 THE COURT: Every single one of them, I can promise
8 you. Are you trying to tell me that prior testimony is
9 not admissible?

10 MR. STITLEY: I think if they said something
11 inconsistent, that would be impeachable, but no, I do not
12 think for a new trial, as we are now, their testimony is
13 part of this case. I think they need to be redone --

14 THE COURT: It was a pretrial ruling and the jury had
15 not been sworn in.

16 MR. STITLEY: I hear you. And I think when you
17 granted a mistrial, the entire case goes back to square
18 one. That is my position and I would argue it that way.

19 THE COURT: Somebody passed up State v. Woods to me
20 and I read State v. woods. To me, it kind of goes --
21 State V. Woods is about a venue question that a judge
22 decided in pretrial. And that judge decided to do
23 something different and called in, I believe, a jury from
24 the home county where the incident took place. And they
25 wanted to say no, he was bound by the pretrial ruling.

1 Certainly, he is not bound by any rulings that were made
2 during the trial after a jury has been sworn, but he could
3 make up his own mind on that. You disagree with that?

4 MR. STITLEY: When you're talking about venue, venue
5 is not something that you necessarily have the same
6 Constitutional protections on. And the difference here is
7 a mistrial.

8 THE COURT: Let's talk about Constitutional
9 protections because this is -- this case was called in
10 February. It was mistried. I kept jurisdiction of this
11 case. I am the judge who heard this. I have the same
12 defense team, except I'm missing Anna, who's out on
13 maternity leave. I have the same defendant. I have the
14 same officers that most of their statements are on audio.
15 You were able to cross examine, so I don't believe there's
16 any confrontation Constitutional right. He's had that
17 right in prior testimony. But I'll be glad to hear your
18 thoughts on it.

19 MR. STITLEY: Judge -- and once again, if I'm wrong,
20 so be it. If this case comes back on appeal because we
21 didn't -- I believe that when you grant a mistrial, we
22 start at square one. And because it's not just, you know,
23 a retrial for some other basis, there was a mistrial
24 granted in a criminal case. If you want to take the flip
25 side of my due process double jeopardy motion and we're

1 going to argue once again because you're saying we're
2 retrying, we're back to square one and we should be forced
3 to do everything from the beginning. That would be my
4 position on it.

5 I didn't argue the suppression motions. Ms. Williams
6 did, not -- Ms. Young did, I did not. And here's the
7 problem. Say we get into trial today or tomorrow and
8 Investigator Creech gets up there and is like no, I didn't
9 take him over to the car. I waited to take him. I had
10 detective so and so do it. So I then have to say to the
11 jury --

12 THE COURT: It's all on audio.

13 MR. STITLEY: Yes, ma'am. But they still have to
14 testify-- some of it is still going to be testimony
15 because they arrive at the car and the other officer turns
16 the recording on. But if there is a prior inconsistent
17 statement, then I'm forced to say well, at the last trial,
18 at the last time. How do we fix that?

19 So now we're going to have previous out-of-state --
20 once again, I can't tell you that's going to happen or
21 not. The testimony might be perfect, but if I intend to
22 impeach on anything that's not perfect, I am forced to say
23 at the last trial. I do not believe that those pretrial
24 rulings or trial rulings, we can call them pretrial or
25 trial. She called the case. I know the jury wasn't

1 sworn. The case was called, we had motions. That case
2 died. We're starting anew. That would be my argument.
3 And I think that it creates a world of problems if we
4 don't have a clean record.

5 MS. FULLER: Thank you, Your Honor. Respectfully,
6 Your Honor, I've had trials previously where we've done
7 pretrial prior to the trial. I had a major case that we
8 had four to five prior hearings. If the concern is the
9 record on appeal, assuming we get a conviction, it was no
10 problem. They had the hearing date, the appellate
11 counsel, they pulled them, you go online and all the
12 transcripts are here. It will be no different here. I
13 had that case in front of Judge Addy.

14 Had a case in front of McLeod, mistrial, we redid it.
15 The record on appeal has the first pretrial date and it
16 has the trial transcript because the prior rulings for the
17 Denno and all that stuff was done at a previous date. No
18 issues on appeal there. We've had other cases. This is
19 not an issue because -- it's not an issue on appeal
20 because it's not an issue.

21 In this case, Your Honor, you're the same, Judge.
22 Defense counsel, like you were going if we want to take
23 each independent thing if he had additional arguments,
24 Your Honor, the State would obviously have no objection if
25 there's something new. And, obviously, that's in Your

1 Honor's discretion.

2 In terms of his argument started talking about the
3 trial and impeachment, I would respectfully request that
4 Your Honor if there is any impeachment that is done in
5 every witness that defense counsel say in a prior hearing
6 and not suggest to the jury it was another trial. I think
7 that cuts both ways in terms of the prejudicial potential
8 effect of the jury questioning what could have happened.

9 I think it's appropriate to say we cross that bridge
10 when we get there should that witness even testify in this
11 case that they can impeach them, but it has nothing to do
12 with a matter of law. As of last Wednesday, the court has
13 clarified as a matter of law whether or not the statement
14 was made freely and voluntarily.

15 I heard defense counsel just suggest that he wants to
16 put his client up now to reopen discussion on Denno.
17 Obviously, that's in Your Honor's discretion, but we would
18 be prepared to cross-examine him now on that issue and
19 re-litigate the voluntariness of whichever statement he is
20 now challenging, Your Honor.

21 MR. STITLEY: And I think the fact that new case law
22 that's happened intervening even complicates this more.

23 MS. FULLER: No, it does not.

24 MR. STITLEY: I think it complicates it even more,
25 Judge. I'm not asking you -- I will be asking you to

1 change your rulings, but that's not specifically the
2 situation. And I understand the concept, but I just
3 can't -- and if there is a case out there -- and I know
4 you're talking about a venue, whether or not they're bound
5 by venue. If there is some case out there that says say I
6 do something wrong, I didn't argue it this way at this
7 trial or whatever and it comes back, how would a situation
8 even exist where you'd be bound to some of the rulings,
9 but maybe not the other one. And that's the problem.

10 THE COURT: Well, no, obviously, once a jury is
11 sworn, that is the trial. That's the beginning of the
12 trial. The pretrial motions, the pretrial motions.

13 MR. STITLEY: I haven't seen the new case, but I
14 would be interested to see then if they would require you
15 to do that with jeopardy attaching -- I guess, here is my
16 theory on that. Say they get the rulings they want. They
17 can mistry a case 15 times until they get the flavor, the
18 feeling they want, until they get the motions to line up.

19 Once again, I'm not suggesting that's what happened,
20 but every trial needs to be its own entity if a mistrial
21 is granted particularly. And I think that's the
22 distinction here. I'm not saying some other judge made a
23 ruling or you even made a ruling, a mistrial is granted.
24 We go back to square one if how I would define it. And if
25 the Court disagrees with me, they disagree with me.

1 THE COURT: I understand what you're saying. I just
2 disagree that when it's a pretrial motion. This was
3 before trial, before a jury was sworn in. And, I guess,
4 what I'm asking -- you know, I'm going to go down the list
5 that I have and let me know if there's new case law. If
6 you have new evidence. There's something you need to add,
7 I'll be more than happy to do so.

8 Like, let's start with the 9-1-1 call by the
9 defendant. Do you have anything new you want added,
10 additional evidence or case law?

11 MR. STITLEY: Not to the 9-1-1, Judge.

12 THE COURT: So are you agreeing that it's admitted.

13 MR. STITLEY: No, ma'am. I can't agree to that, not
14 on that same basis. In a new hearing, I would have no
15 problem with the 9-1-1 call. My client made it. I have
16 no problem with it. As far as I would have argued the
17 same thing last time as I would argue this time.

18 THE COURT: Okay. You what is it that you want? You
19 want us to play it?

20 MR. STITLEY: As far as the 9-1-1 call, I have no
21 problem. I just would like to have -- and here's kind of
22 half of it, too. I want the chance to impeach people if
23 their statements are different. That's the long and the
24 short of it. We got a mistrial, we got a new trial.
25 I've --

1 THE COURT: Do you have a copy of the transcript?

2 MR. STITLEY: I do not. It was not included
3 with what I have, Judge, the pretrial, I guess. I have my
4 notes. Some of them come up to a question. This did come
5 up at trial, the next witness. There was testimony about
6 the heat shocker and I asked where that came from. And
7 there were different opinions as to who said that and how
8 that ended up. Because on the CAD report, there's no
9 mention of it. And then there's a long discussion. Once
10 again, this is kind of getting into it.

11 I think it's really interesting that now, I get to
12 take a re-crack at people after hearing their testimony at
13 trial versus what they had to say during pretrial. But
14 there were some questions that came out.

15 The one guy, Mr. Bowerman testified. And I don't
16 know if he's coming or not. He doesn't report ever
17 hearing someone say she shot herself. He says it looks
18 like she's shot. That was his testimony at trial. So the
19 testimony by Detective Gietz at the pretrial is that he
20 got a 9-1-1 call that a girl committed suicide. That's
21 what he said in this hearing. I wrote it down exactly
22 like that. We got the 9-1-1 calls and there is no mention
23 of the word suicide. The CAD report does not mention
24 suicide. We had an in-depth discussion eventually with
25 what the call went out as and why you would have thought

1 that.

2 Then there was some testimony by Bowerman, she shot
3 herself, Bowerman said. He did not say that in the trial,
4 so there's lots of impeachment that could be going on
5 here, Judge. And, I guess, that's why we need to have the
6 hearings.

7 MS. FULLER: Your Honor, as it relates to this, this
8 is Jackson vs. Denno. We are dealing with the
9 voluntariness of a statement, not a deposition to maybe
10 cross somebody later. So as it relates to Gietz, I'm
11 trying to --

12 THE COURT: I mean, he can impeach him when the trial
13 starts --

14 MS. FULLER: When the trial starts, right. We're
15 talking pretrial ruling on the admissibility of the
16 defendant's statement, if it was freely and voluntarily
17 made. So I'm just respectfully waiting on a legal
18 argument for me to respond to just for -- we've got a jury
19 waiting. I'm trying to see what I need to do, if I need
20 to get witnesses up here. I don't know if there's
21 anything additional with Gietz. Is the defendant about to
22 testify. I'm just trying to --

23 MR. STITLEY: Yeah, I'll have him testify.

24 MS. FULLER: Great.

25 THE COURT: Okay. All right. So you want -- the

1 9-1-1 call.

2 MR. STITLEY: No problem with the 9-1-1 call, Judge.

3 THE COURT: All right. The 9-1-1 call is admitted.

4 I'm going to go down this list, okay, so we know what

5 we're doing. How about the statement to the first

6 responding officer? That was Gietz? I'll put in

7 parentheses not recorded. However, that was admitted with

8 no objection last time. I just want to know,

9 Mr. Stitely --

10 MR. STITLEY: I guess we have to know which statement

11 from Gietz that they intend to offer.

12 THE COURT: This is when he -- he arrived in an

13 unmarked car. He asked what had happened. And then your

14 defendant tells him that he had been chopping wood,

15 throwing wood on a pile, then heard a shot, didn't know

16 where the gun was.

17 MR. STITLEY: No, ma'am, that's not to Gietz, I don't

18 believe. Gietz's statement is --

19 MS. FULLER: That's correct, Your Honor. Your notes

20 are correct.

21 THE COURT: My notes are correct?

22 MS. FULLER: They are correct.

23 THE COURT: I hope so. I'd hate to think that I was

24 wrong, though, I've been wrong before.

25 MS. FULLER: You're not wrong, Your Honor.

1 THE COURT: It says he did not appear to be under any
2 influence or drugs. He says your client made a statement
3 that was unprompted that she shot herself. The defendant
4 was not in custody or under arrest.

5 He did not conduct a formal interview of the
6 defendant. He was the first man on the scene to say hey,
7 what happened, is my understanding. And if I remember
8 correctly, I think it was the shot came from the woods.
9 And it's kind of a short --

10 MS. FULLER: It was, Your Honor.

11 THE COURT: It was a short statement.

12 So does she need to be prepared to put that up for
13 you?

14 MR. STITLEY: Judge, in looking at his -- and this is
15 his incident report, the testimony was -- the first thing
16 he said is she shot herself, she's laying by the car back
17 there. And then he appeared to be on the verge of crying
18 saying she's dead. I mean, I don't know. It might be
19 testimony would be argued. Then it goes into he provided
20 his ID card and said what happened and then he gets a
21 second statement saying, we were chopping wood back there.
22 He was throwing wood in the pile. I heard a shot and then
23 I heard her fall. I tried to help her. I tried to help
24 her. And then I asked him where the gun was and he said I
25 don't know.

1 MS. FULLER: Your Honor, is the challenge that that
2 statement was freely and voluntarily made?

3 THE COURT: Is it?

4 MS. FULLER: What's the challenge?

5 MR. STITLEY: That the statement was made.

6 MS. FULLER: That's cross-examination. The judge
7 ruled that it was freely and voluntarily made.

8 THE COURT: Do you have some new additional evidence
9 on that? Is your client going to testify to that? Is
10 there case law on it?

11 MR. STITLEY: No, it will become a pitting question
12 at that point, Judge, rather than an admissibility
13 question. No, I would not offer testimony specifically.
14 That would be pitting in that situation.

15 MS. FULLER: Your Honor, we respectfully request that
16 your prior ruling on the admissibility of the statements
17 made to the first responding officer stand.

18 THE COURT: Any objection?

19 MR. STITLEY: Previous objections, but no, no
20 objection to that specifically, Judge.

21 THE COURT: Okay. Now, let's go to Investigator
22 Sherman. This is audio only. On this, I think there was
23 some information given -- and I listened to this last
24 night, information given to Investigator Sherman. I think
25 the information he got that he thought it was a suicide,

1 the crime tape was already up when he arrived. He states
2 that the defendant was not a suspect, nor was he in
3 custody.

4 MS. FULLER: Thank you, Your Honor. We would
5 respectfully request that your prior ruling on the
6 admissibility of statements made to Detective Sherman
7 stand.

8 THE COURT: How about -- well, do you have any new
9 evidence, case law or does your client want to testify?
10 Is there something you can add to this?

11 MR. STITLEY: Not to Sherman's, as well, Judge.

12 THE COURT: I'm going to go ahead and admit it.

13 All right. How about to Coroner Gain? Coroner Gain
14 was there performing duties and he spoke with the
15 defendant during his own investigation. I listened to
16 that audio tape last night. I think he told the defendant
17 the conversation was being record. It took place next to
18 the car.

19 He states he didn't appear to be under the influence
20 of any drugs or alcohol. He was not under arrest. He was
21 simply trying to determine what happened. And he had
22 been -- the coroner himself had been told to report
23 because there was a death involving a gunshot wound. He
24 said he arrived 35 minutes after the initial officer, but
25 he hadn't been told anything about their efforts or their

1 investigation.

2 I'll be glad to hear from you.

3 MS. FULLER: Thank you, Your Honor. The State would
4 respectfully request that Your Honor stand by your
5 previous ruling in terms of the admissibility of the
6 statements made to the corner back on scene.

7 THE COURT: Okay. Again, this is an audio that I --
8 and I listened to it again last night. Is there something
9 new, new case law? Does your client want to testify or do
10 you need to add something to this statement from Coroner
11 Gain?

12 MR. STITLEY: No, ma'am, not from the coroner.

13 THE COURT: Not from the coroner, okay. Then I'm
14 going to admit that.

15 Now, we come to Investigator Creech. That was a
16 long -- I listened to it, too. It was a long, two-part
17 audio recording. One pre-Miranda, one post Miranda. I
18 listened to both of them. Do you have something new,
19 something you want to add or some new case law that would
20 have changed my ruling?

21 MR. STITLEY: I do as it relates to Detective
22 Creech's interview.

23 THE COURT: Okay. All right. Let me move on to
24 Officer Booth. He responded to the scene and he was the
25 one that I think spoke with the defendant after the

1 defendant was Mirandized. He transferred -- he was
2 transferred into his custody. He never issued Miranda and
3 he didn't know if Miranda had been given yet and the
4 defendant made some sporadic statements. He said he
5 understood he was in custody, but continued to make
6 statements.

7 Let me hear from you, Ms. Fuller.

8 MS. FULLER: Your Honor, the State would respectfully
9 request that you stick to your prior ruling in terms of
10 the admissibility of Booth. And if you remember prior, it
11 was a three-hour long body cam. We didn't introduce it
12 last time, but should we introduce it this time. At the
13 appropriate time, we would let the court know what
14 redactions is necessary since he talked a lot on that
15 recording.

16 THE COURT: Let me hear from you.

17 MR. STITLEY: I agree on this one, he was already in
18 custody by the time he's dealing with Booth. So at this
19 point, he had been Mirandized by officer Creech. There
20 were some stuff I think we have that we have to take out
21 if it comes in, but, otherwise, I -- and this one, he
22 has --

23 THE COURT: Is this the one that we redacted already?

24 MS. FULLER: No, that would be Creech's. Booth's was
25 three hours long, so that one, we did not. We didn't

1 introduce it last time. But at the appropriate time in
2 this trial, if we decide to, we'll let Your Honor know.

3 MR. STITLEY: And I do anticipate part of this coming
4 in. But yes, ma'am, to this one, he had already been
5 arrested. He had been Mirandized. There is no, to my
6 knowledge, direct reengagement as far as a questioning by
7 Booth on this video.

8 THE COURT: Okay. So then I'm going to admit that,
9 but I'm making a note on this.

10 Mr. Stitely, you're telling me that there might be
11 some things that need to be redacted from this should they
12 try to introduce it?

13 MR. STITLEY: Yes, ma'am. There's lots of stuff that
14 wouldn't be appropriate for the trial.

15 THE COURT: Got it. I'm making a note on that.

16 All right. Then I've got statements to Special Agent
17 Beeler. He was a polygrapher in this case. I think, if
18 my memory serves me right, he takes a polygraph. And I
19 think we -- in our last pretrial, nobody mentioned
20 anything about polygraph. The deal is that after the
21 polygraph was over with, he was Mirandized and he gave a
22 statement. And it's that statement that we're talking
23 about.

24 MS. FULLER: That's correct, Your Honor. Just one
25 minor correction on that. So when they first enter the

1 room for the pretest, they broke it up in two parts, they
2 go in and they Mirandize him and that carries out the
3 pretest, takes the polygraph, he fails and then he gives a
4 post test. I think he gave a written statement to be
5 tested on and then he gave the post test. I think it was
6 like a three-part thing there. But Miranda was done at
7 the beginning and it carried out throughout.

8 So we would respectfully request that Your Honor
9 stand by your ruling as it relates to the entire
10 examination, to include anything from pretest, the written
11 portion to be tested, as well, as the post test. And we
12 both agree that polygraphs would not be mentioned.

13 THE COURT: Not mentioned. It's only the statement
14 after the photograph is what the State wants in.

15 MR. STITLEY: Right.

16 THE COURT: I wrote down my ruling.

17 MR. STITLEY: Right, and we had a couple of issues
18 about this, in general. We went into some depth about
19 attorneys not even being allowed to go -- you know, he
20 couldn't have me sitting next to him during any
21 questioning.

22 So I still would raise -- and I think it was raised
23 at the time. It's not an admissible statement protected
24 by Miranda because I would not have allowed to be there
25 regardless. So how can you say you have a right to an

1 attorney when I think Agent Beeler who said well, no, you
2 wouldn't be allowed to be there anyway.

3 We've already kind of hashed some of this out, but I
4 would still maintain, and this was his post test where he
5 goes on to offer a different line of questioning. And I
6 think he even said it wasn't on any request specifically
7 made by the State. He said this is his policy. This is
8 how they do it.

9 So it wasn't a matter of the solicitor's office was
10 telling him hey, go ask these questions. Or I don't even
11 think Creech told him to go ask these questions. He did
12 say this is just the way I do it.

13 I have a problem with it still in general because
14 even if you were to say you have a right to your attorney
15 present, it wasn't really that way. That would be my
16 objection to it. But I don't think there's anything new
17 or different than what's previously argued. I am in
18 agreement that if it is coming in, we need to avoid the
19 words polygraph. I think it was just you told the special
20 agent that he was just conducting an interview.

21 THE COURT: That was exactly right and that's what my
22 notes say. Is there anything else you need to add or your
23 client needs to testify or is there any new case law or
24 new evidence that we would need to hear this testimony
25 again?

1 MR. STITLEY: No, ma'am.

2 THE COURT: Thank you. Then I'm going to admit it.
3 Should the statement -- if y'all use this statement in
4 your case, I'm going to ask the State not to mention a
5 polygraph. Let me ask you, was there something -- I've
6 got something in my notes and I want to make sure there
7 were portions in the polygraph -- was there some of it
8 that was going to be redacted?

9 MS. FULLER: What you're talking about is the actual
10 Miranda form, the word polygraph was redacted off of that
11 form.

12 THE COURT: Make sure all that is done, same way. I
13 don't want polygraph written on any form, any of that.

14 MS. FULLER: Yes, and from my notes, it looks like
15 when he testified, it was just he works for the United
16 States Secret Service, special agent that assist agencies
17 with interviews. And he was contacted, I don't remember
18 if he said by the defendant or was contacted to interview
19 the defendant at defendant's request or something along
20 those lines. But it was no mention of the word polygraph
21 or -- like I think you allowed me to lead him and went
22 straight into it, if memory serves me right, so it
23 wouldn't trigger anything.

24 MR. STITLEY: I think that's right. And the
25 redactions is correct. He had to change his form a little

1 bit because it talks -- on it, it's in big bold letters,
2 it's like Secret Service Polygraph form. Polygraph
3 Miranda. So you did make them take that out, so that's
4 probably what you're thinking of.

5 THE COURT: All right. I just wanted to make sure
6 because I going through my notes. My prior ruling still
7 stands on that. So I'm going to tell you, my prior ruling
8 stands on -- and I'm going to tell you, what day did we
9 start that case, February the...

10 MS. FULLER: It was February 27th, Your Honor. We
11 started pretrial around 1:45 and stayed until after 5:00.
12 And then on February 28th around 9:16 a.m., you ruled on
13 the admissibility of the statements .and then the jury
14 came at 10:18.

15 THE COURT: Yes, I did.

16 MS. FULLER: Then just for the record, if this is
17 okay, you ruled on the admissibility of the statements at
18 10:16 a.m. on February 28th. The jury was sworn in at
19 10:18 a.m.

20 THE COURT: Okay. I just -- okay. I'm going to
21 state for the record for February 27th through the 28th
22 from 1:45 to five o'clock, then continuing the following
23 morning of February 28th, and that is 2023 from 9:00 to
24 10:16 were pretrial motions.

25 My ruling stands for the 9-1-1 call. My ruling

1 stands for the first responding officer, which is Gietz.
2 The statement made by the defendant to Investigator
3 Sherman, the statement made to Coroner Gain is -- also, my
4 ruling stands, as well as to Special Agent Beeler and on
5 Officer Booth. There's not any new additional evidence.
6 There's not any new additional case law. Therefore, I
7 find that prior testimony stands and all of those
8 statements were made freely and voluntarily for the
9 reasons that I put in the record on February 27th and
10 February 28th.

11 Now, he's called into question Investigator Creech.
12 I think I will hear that testimony.

13 Let me ask you, is there any other motions? I think
14 at one time --

15 MS. FULLER: Yes, Your Honor.

16 THE COURT: At one point -- any other motions from --
17 let me see the lawyers just for a quick second.

18 (Whereupon, there was a bench conference.)

19 MS. FULLER: Your Honor, one additional thing for the
20 record. Pretrial, we had argued so we could argue in
21 openings, as well, we requested a pretrial ruling on prior
22 threats made by the defendant to the deceased in this
23 case. The threats would come by way of a witness, as
24 well, as an audio recording. We went through, you
25 listened to that recording. And your prior ruling that

1 you published during that 9:16 a.m. prior to the jury
2 being sworn on February 28th, you ruled on the
3 admissibility of it, indicated that it was well settled to
4 show malice.

5 We relied on three cases. The State argued State v.
6 Beck. Your Honor found Lee, Alford and Pennington that
7 neither of the threats is too remote. You did a 403
8 balancing and, obviously, once we properly authenticated
9 the foundation laid during the trial.

10 So we respectfully request that your pretrial ruling
11 regarding the prior threats relied on that case stands.
12 And I'm not sure if counsel has new case law that would
13 change that prior ruling.

14 THE COURT: Any new case law? Any new evidence? Or
15 does your client want to add anything to that?

16 MR. STITLEY: No, ma'am, we would still hold, as I'm
17 sure I argued back then, that -- if you remember, this was
18 an audio tape, I want to say, that was alleged to have
19 happened in the summer the year before, maybe six months
20 in advance. It was a tape that -- and I remember the
21 foundation thing, we haven't gotten there yet, but this
22 was a recording off of a cell phone onto a second cell
23 phone.

24 But, regardless, as far as a pretrial matter, I still
25 don't think it would be appropriate for them to be able to

1 make reference to it until the full foundation is laid and
2 you can admit it properly in a trial. I don't think it's
3 appropriate to be heard at all pretrial. I think it would
4 have to be something that comes up during trial. And then
5 I would then argue, of course, that if you were to make
6 some determination that it's somehow admissible, the value
7 of an alleged recording from third parties who weren't
8 actually on the call would be more prejudicial than
9 probative.

10 I think I even went into a further thing and,
11 actually, the fantastic ethics commission, whatever
12 counselor speaking at our C.L.E. last week said that we
13 can't trust anything electronic these days without proof
14 of it. She, actually, showed a couple of cool videos.
15 And I'll be happy to show some during trial. One is a
16 really cute one of Arnold Schwarzenegger's face over Mr.
17 Rodgers using Arnold Schwarzenegger's voice to tell one of
18 Mr. Rodgers stories. And you cannot tell the real from
19 the fake. And without the proper authenticity, being the
20 actual device this was recorded on, some kind of expert to
21 say it hasn't been tampered with because -- and I don't
22 know if you remember, this was a recording off of a
23 recording that someone wasn't even a party to.

24 So I will have a litany of arguments about that at
25 the appropriate time. But, again, I don't know it's a

1 pretrial issue regardless.

2 THE COURT: Honestly, I think I'm going to wait and
3 rule on it and make sure there's a proper foundation laid.
4 Just let me know when that's coming up.

5 MS. FULLER: Your Honor, just to be clear, at the
6 last trial, your pretrial ruling relied on that and we
7 referenced it in opening statements. Should we choose to,
8 is that problematic now? Because it was the prior threats
9 that I'm going to blow your head off and the prior
10 recording saying I'm going to murder you. So we wanted to
11 talk about the content and so I just wanted to clarify
12 that since that was the ruling relied on previously.

13 THE COURT: I'm going to wait to rule on it. Let me
14 talk to the lawyers up here.

15 (Whereupon, there was a bench conference.)

16 THE COURT: Let's go ahead and put that on the
17 record. I'm going to let you mention it, but --

18 MR. STITLEY: Mention it. There's two parts, Judge.
19 One is a direct statement that someone heard, which I
20 still think would be disallowed by time and space.
21 There's some cases where you disagreed with me on that.

22 THE COURT: Right.

23 MR. STITLEY: I believe the solicitor is going to
24 mention it in opening, but is not going to get into the
25 context of the audio recording during opening until we

1 hash that out in trial.

2 THE COURT: Yes, and we lay a proper foundation for
3 it.

4 MR. STITLEY: Yes, ma'am.

5 THE COURT: Okay. All right. Anything else besides
6 taking up the matter with Creech? Those were all the
7 motions that I had, I think, from last time.

8 MS. FULLER: Yes, Your Honor. And just briefly, in
9 terms of Creech, I think he indicated he's going to put
10 his client up. Just for scheduling purposes today, is
11 that something that we did -- we're not going to mention
12 in openings and we're not going to get into today. Is
13 that something that we can just get the trial started and
14 deal with tomorrow morning prior to --

15 THE COURT: As far as the Jackson vs. Denno on
16 Sergeant Creech's testimony?

17 MS. FULLER: We don't plan to go into it today.

18 THE COURT: Is there any problem with that,
19 Mr. Stitely?

20 MR. STITLEY: Can we walk up again, Judge?

21 (Whereupon, there was a bench conference.)

22 THE COURT: Anything else from the lawyers?

23 MS. FULLER: No, Your Honor, we're ready to go.

24 THE COURT: You have, like, eight minutes and I'm
25 going to bring the jury in and I'm going to give them my

1 You can call your first witness.

2 MS. FULLER: Thank you, Your Honor. The State calls
3 John Gietz.

4 JOHN GIETZ, after being duly sworn,
5 testified as follows:

6 THE CLERK: If you'll state your name and spell your
7 last for the record.

8 THE WITNESS: John Gietz, G-I-E-T-Z.

9 DIRECT EXAMINATION:

10 BY MS. FULLER:

11 Q Let's go ahead and introduce you to the jury. Where
12 are you employed?

13 A Lexington County Sheriff's Department.

14 Q And how long have you been in law enforcement?

15 A Over ten years.

16 Q And did you spend your entire career at the Lexington
17 County Sheriff's Department?

18 A Yes, ma'am, I did.

19 Q And what is your current rank?

20 A I'm a senior investigator over narcotics.

21 Q And back when this incident occurred in December of
22 2019, what was your rank then?

23 A I was an investigator attached to our net team.

24 Q And as it relates to this case, did you respond to
25 the scene?

1 A Yes, ma'am, I did.

2 Q And what was the incident location?

3 A It was [REDACTED] Valley Lane in Lexington County, South
4 Carolina.

5 Q And you said in Lexington County, correct?

6 A Yes, ma'am.

7 Q And do you recall what time the call came in?

8 A I believe it was 3:09.

9 Q And do you recall what time is listed as the first
10 arrived on scene?

11 A It's 3:15.

12 Q Would that have been you?

13 A Yes, ma'am.

14 Q And what was the nature of the call? When I say
15 nature of the call, what did you believe you were
16 responding to?

17 MR. STITLEY: Judge, I'm going to object to any
18 hearsay at this point. We don't know what kind of call
19 we're responding to. So what was the nature of the call.
20 I'm object to any hearsay or anything that may be related
21 to that.

22 MS. FULLER: Your Honor, for the purpose of police
23 interaction, I believe it's a well-established hearsay
24 exception.

25 THE COURT: I'm going to allow it. He can testify to

1 the nature of the call that he received.

2 MS. FULLER: Thank you, Your Honor.

3 BY MS. FULLER:

4 Q And what was the nature of the call that you were
5 responding to?

6 A It was a gunshot wound. And after the initial report
7 -- or the initial Lexington County communication dispatch
8 put out that it was a gunshot wound and it was
9 self-inflicted by the female.

10 Q And let's talk about that. You said put out, not
11 everyone knows what that means, really what that means.
12 What does that mean? How did you receive the call?

13 A Over the radio. Typically, when you respond to a
14 call that's kind of on emergency call, they'll put a tone
15 out. It's just, basically, to notify officers hey, you
16 guys need to be on alert. This is a very important call,
17 pay attention. So the tones came out and then dispatch
18 put out that there was a gunshot wound. And then shortly
19 after that, it was reported that it was self-inflicted.

20 Q Okay. When we say tone out, you guys are trained in
21 knowing what the tones actually mean, correct?

22 A Yes, ma'am. For police services, we pretty much have
23 one tone.

24 Q And for this particular tone, you were listening and
25 then you tune in to determine what you are responding to,

1 correct?

2 A Yes, ma'am.

3 Q And so you're on radio, you hear the tone, then you
4 listen in and you determine what you're going to --

5 MR. STITLEY: Judge, I'm going to object to hearsay
6 again. We're more than why he was called to the scene.
7 We're now talking about what he heard over the call.
8 That's not been entered into evidence at this point. We
9 done have any context to it either.

10 MS. FULLER: Your Honor, I was just repeating to move
11 to my next question.

12 THE COURT: Okay. Well, get to it.

13 BY MS. FULLER:

14 Q Now, you, ultimately, end up responding. Once you
15 arrived on the scene, can you describe the scene to the
16 jury?

17 A Yes, ma'am. There was a residence. There were trees
18 around the residence, but there was a front door and then
19 a side door. It seemed like there were more people
20 congregated around the side door. In the back, I could
21 sigh a pile of woods, a burgundy vehicle and a female
22 laying on the ground.

23 Q Okay. When you responded to the scene, what were you
24 wearing?

25 A So in my job, I wear ordinary clothes that everybody

1 else would wear, but I wear an outer carrier that says
2 Lexington County Sheriff's Department with a badge affixed
3 to it that says Lexington County Sheriff's Department
4 investigator. And then on the back of my vest is, also --
5 it says Lexington County Sheriff's Department.

6 Q And was your vehicle marked or unmarked?

7 A It was unmarked, ma'am.

8 Q But your attire, although it was plain clothes, you
9 had on outer garments that identified you as law
10 enforcement, correct?

11 A Clearly, yes.

12 Q I'm going to show you what's been premarked as
13 State's Exhibits 3 through 7.

14 MR. STITLEY: No objection to those, Judge.

15 (WHEREUPON, State's Exhibits Nos. 3 - 7 were marked
16 for identification and received into evidence.)

17 MS. FULLER: Permission to approach the witness?

18 THE COURT: You may.

19 BY MS. FULLER:

20 Q Looking now at State's Exhibit 3. This is titled as
21 an overview aerial. Do you recognize this?

22 A Yes, ma'am, it looks like an aerial view of the
23 incident location I responded to.

24 Q And this would be an aerial of [REDACTED] Valley Lane in
25 Lexington; is that correct?

1 A Yes, ma'am.

2 Q Looking at State's 4, do you recognize this as a
3 second aerial, but zoomed in; is that correct?

4 A Yes, ma'am.

5 Q And looking at State's 5, you recognize this as a
6 third aerial, just a different angle, a little more zoomed
7 in; is that correct?

8 A Yes, ma'am.

9 Q And looking at State's 6, do you recognize this as
10 street view of the incident location; is that correct?

11 A That's correct.

12 Q And looking at State's 7, you recognize it as the
13 incident location correct?

14 A Yes, ma'am.

15 Q And are these the photographs, as well, as the
16 aerials and the street view fairly represent the area, as
17 well as State's 7, the scene, as it was that day?

18 A Yes, ma'am.

19 Q Do they appear to be altered in any way?

20 A No, ma'am.

21 MS. FULLER: At this time, Your Honor, the State
22 seeks to introduce into evidence State's 3 through 7?

23 THE COURT: They're admitted without objection.

24 MS. FULLER: Publishing?

25 THE COURT: Please. Go ahead.

1 BY MS. FULLER:

2 Q Looking at State's 3, go ahead and zoom out, and ask
3 you to explain to the jury -- I'm going to give you a
4 laser pointer. For the record and for the jury, can you
5 identify the main roads, orient the jury as to where in
6 Lexington this took place?

7 A This appears to be the Red Bank area. This is going
8 to be Platt Springs Road right here with a cross street
9 of, I believe, Sandy Springs. And then Valley Lane is
10 here and [REDACTED] Valley Lane is right where that red marker
11 is.

12 Q Now, going to State's 4, similarly, can you orient
13 the jury on the second aerial, as well?

14 A Yes, ma'am, that is the residence, [REDACTED] Sandy Lane --
15 or [REDACTED] Valley Lane, cross street is Sandy Springs Lane.

16 Q Thank you. Just another zoomed in angle, that's
17 State's 5, correct?

18 A Yes, ma'am.

19 Q Now, going to State's 6, can you orient the jury in
20 terms of where this is in relation to the aerials we just
21 looked at?

22 A Okay. So this is Valley Lane right here and this is
23 the driveway leading into [REDACTED] Valley Lane. And the actual
24 incident location, I guess, is in the backyard right
25 there.

1 Q And looking at this angle, when you arrived on scene,
2 where exactly did you park? And I'm looking here now, the
3 roads here look a little sandy. Is that how it appeared
4 on the day you arrived?

5 A Yes, ma'am.

6 Q As well as the yard?

7 A Yes, ma'am.

8 Q Where exactly did you park when you arrived on scene?

9 A More so over here so I could get a better vantage
10 point. They teach us when we respond to kind of park a
11 little bit away from where the incident location is so you
12 can evaluate everything as you approach.

13 Q Okay. And when you arrived on scene, you indicated
14 -- when you were describing the scene, go ahead and
15 describe it again showing who was on scene and where?

16 A So there were people at the residence. This would be
17 what I would consider, I'd say, the front door right here.
18 If you come over here, there's a side door. That's where
19 everybody seemed to be congregated.

20 Q I'm going to show you State's 7. This is an actual
21 crime scene photograph. You see yellow tape in it.
22 What's that yellow tape?

23 A That's crime scene tape, ma'am.

24 Q So this is actually a photograph from that day,
25 correct?

1 A Yes, ma'am.

2 Q And that side door, can you go ahead and show the
3 jury what you were referring to from the street view?

4 A That's the side door right there.

5 Q When you arrived on the scene, you came from that
6 angle; is that correct?

7 A That is correct, ma'am.

8 Q Did you see the defendant, Brandon Corder, when you
9 arrived on scene?

10 A No, ma'am, not initially, but people at the side door
11 began calling out that the police were here. Mr. Corder
12 exited the side door of the residence and was asking, you
13 know, where the police were, kind of looking around to
14 see. He appeared calm, not upset at all. And then after
15 a bit, he noticed me walking up and he began -- I don't
16 know a better way to say it, but putting on a show, acting
17 upset, like he was crying.

18 MR. STITLEY: Judge, I have to take a matter up
19 outside the presence of the jury.

20 THE COURT: Okay. Can we step out in the hall?

21 MR. STITLEY: Sure.

22 (The judge and the attorneys left the courtroom.)

23 THE COURT: Go ahead, Ms. Fuller.

24 MS. FULLER: Thank you, Your Honor.

25 Q So you indicated once he saw you, he acted

1 differently; is that correct?

2 A That's correct.

3 Q If you don't mind pulling the microphone to your
4 mouth, I apologize. And I asked you earlier, your car was
5 unmarked, correct?

6 A That is correct, ma'am.

7 Q So the only thing identifying you readily if someone
8 stepped out by law enforcement is your outer garments,
9 correct?

10 A That's correct.

11 Q Once he -- I just want to make sure it's clear.
12 Where did he come from when you first saw him?

13 A From inside the residence.

14 Q And what door did you see him come out of?

15 A He came out of that door right there, what I
16 indicated as the side door.

17 Q So Brandon Corder was not outside when law
18 enforcement pulled up; is that correct?

19 A That is correct, ma'am.

20 Q So when you encountered him, what, if anything, did
21 he say to you?

22 A Without asking him any questions, he said she shot
23 herself. She's laying by the car back there. And then he
24 said, she's dead.

25 Q And when you say she, who is he referring to?

1 A Joanie Youmans.

2 Q And from this angle here, were you able to see the
3 car when you walked up, as well as Joanie in this case?

4 A Yes, ma'am. As I progressed a little bit further in,
5 I was able to see there was a burgundy vehicle in the back
6 and then, also, the female laying in the back.

7 Q And zooming in just a little bit there, can you point
8 out for the jury what's considered the back and what
9 vehicle you're referring to?

10 A So this back here would be considered the back and
11 that would be the vehicle that I said I saw.

12 Q And you indicated -- I'm not sure if you indicated.
13 Where was Joanie located?

14 A You can kind of see her there. She's actually right
15 there.

16 Q And when you say there, what is there?

17 A Next to the burgundy car in the backyard.

18 Q And where? On what?

19 A Laying on the ground.

20 Q Thank you so much. Sorry. I know it seems clear --

21 A Yes, ma'am.

22 Q -- but just for record. So you saw her laying on the
23 ground next to the car; is that correct?

24 A Yes, ma'am.

25 Q Did you actually go over to Joanie at this time?

1 A Yes, ma'am, I did.

2 Q What, if anything, did you do?

3 A So I removed my glove to check for a pulse. She
4 wasn't moving and I didn't see any signs of breathing or a
5 pulse, so I wanted to check her pulse. She had no pulse.
6 And then, also, I moved a sweatshirt or jacket that she
7 had near her to look for a firearm.

8 Q And what was the purpose of looking for a firearm?

9 A To see where the firearm was that shot her. I'd
10 spoken to Mr. Corder and he said that he was throwing wood
11 on a pile and heard a shot and then he heard her fall. He
12 said, I tried to help her. I tried help her. I asked him
13 where the gun was, he said he didn't know.

14 Q So when you first arrived on scene, he indicated she
15 shot herself. And then when you asked him, followed up
16 with him, you indicated they were chopping wood and then
17 you said you ended up asking him for the gun or where the
18 gun was?

19 A Yes, ma'am.

20 Q And did he indicate in that second conversation
21 whether or not the shot was self-inflicted again?

22 A Yes, ma'am, he said -- in the second statement, he
23 said that he was throwing wood in a pile and he heard a
24 shot. Then I heard her fall. Then he said he tried to
25 help her. He tried to help her. And then when I asked

1 where the gun was, he said he didn't know.

2 Q Did he indicate where the shot came from?

3 A No, ma'am.

4 Q Okay.

5 A Well, initially, he did. He said she shot herself --
6 that she shot herself.

7 Q And then the second time, he didn't indicate where
8 the shot came from; is that correct?

9 A That's correct.

10 Q And did -- during your encounter with him, did he
11 ever indicate that he was involved in the shooting?

12 A No, ma'am.

13 Q Now, we talked about the crime scene tape. Can you
14 explain to the jury what's the purpose of putting crime
15 scene tape up?

16 A To make sure that the scene of the incident is not
17 disturbed.

18 Q And when you say not disturbed, does that mean
19 nothing going in or coming out?

20 A Correct, so no one can come into the crime scene or
21 exit the crime scene without being registered on a crime
22 scene log.

23 Q Did you stand by until the crime scene was processed?

24 A Yes, ma'am, I did.

25 Q And while you were on scene, were you present when a

1 gun was located?

2 A No, I cleared by then. The scene was turned over to
3 investigators afterwards.

4 Q Okay. But when you initially went to the body, a gun
5 was not there, correct?

6 A Correct.

7 Q I'm going to show you what's been premarked as
8 State's 29. I'm going to ask you if you recognize this?

9 A Yes, ma'am.

10 Q What do you recognize this to be?

11 A Statements made to me by Mr. Corder.

12 Q Does this fairly summarize, essentially, the
13 statements he made to you back on December 27th of 2019?

14 A Yes, ma'am.

15 MS. FULLER: At this time, Your Honor, the State
16 seeks to introduce State's 29 into the record?

17 THE COURT: Any objection?

18 MR. STITLEY: Yes, Judge. I object to items like
19 this. They're just repetitious. They're not actual
20 exhibits. I think the statement of an individual is in
21 and of itself the testimony, not a printed-out version
22 thereof.

23 MS. FULLER: Your Honor, this is a summary of the
24 statement made by the defendant.

25 THE COURT: Okay. I'm going to allow it go ahead.

1 (There was an equipment failure. The proceedings
2 were stopped until it was resolved and resumed with
3 the following testimony.)

4 BY MS. FULLER:

5 Q Publishing for the record, November 27, 2019, that's
6 when you interacted with the defendant in this case?

7 A Yes, ma'am.

8 Q You arrived on the scene at 3:16 p.m., correct?

9 A That is correct.

10 Q And here, can you publish the first statement that
11 the defendant made to you?

12 A She shot herself. She's laying by the car back
13 there. She's dead.

14 Q And then when you were talking to him again and asked
15 him what happened, what did he say to you?

16 A We were shopping wood and brought it back here. I
17 was throwing wood in the pile and I heard a shot, then I
18 heard her fall. Then when I asked where the gun was, he
19 said I don't know.

20 Q And then prior to that, he did indicate I tried to
21 help her, I tried to help her?

22 A I tried to help her, I tried to help her, yes.

23 MS. FULLER: Beg the Court's indulgence.

24 (Pause.)

25 Nothing further at this time.

1 THE COURT: Mr. Stitely.

2 CROSS-EXAMINATION:

3 BY MR. STITLEY:

4 Q Investigator Gietz, how were you dressed that day?

5 A In plain clothes underneath an outer vest affixed
6 with a gold badge that says sheriff's department and
7 investigator, as well as sheriff's department on the front
8 and sheriff's department on the back.

9 Q Were you driving around in your vest?

10 A That particular day, I was, yes.

11 Q Okay. And the way you described it, you got a tone
12 over the radio. I guess they could be different for all
13 kinds of things, correct?

14 A Not for police services, no.

15 Q But, I mean, you could have a tone that says gunshot,
16 or you could have a tone that's high speed chase. I'm
17 guessing there's tones that alert you to different things?

18 A Essentially, yes.

19 Q How do they come out?

20 A It comes out as a tone.

21 Q I'm sorry, bad question. Where do they come from?

22 A Dispatch usually sends them out.

23 Q Who is dispatch?

24 A The Lexington County Communication Center.

25 Q So for the jury's sake, if I was to call the

1 sheriff's department's main phone number, would I get
2 communications?

3 A I'm not sure.

4 Q Okay. If I call 9-1-1, who answers the phone number?

5 A I would assume it would be Lexington County
6 Communications, but, again, I'm not sure. I don't handle
7 that side of the house.

8 Q Let's talk about this case. Who called 9-1-1 that
9 day?

10 A I'm not sure. I didn't take the phone call, sir.

11 Q How many calls were made to 9-1-1 before you arrived
12 on scene?

13 A I don't know how many calls were made.

14 Q Did Mr. Corder call 9-1-1?

15 A I don't know. I didn't talk to Mr. Corder until I
16 got on the scene.

17 Q When you said you arrived there, everybody was
18 congregated by the back door. Who is everybody?

19 A I'm not sure who all was there.

20 Q All right. Let's describe the people who were there.
21 How many women were present?

22 A I'm not sure.

23 Q How many men?

24 A I'm not sure. I know Mr. Corder was not present,
25 though.

1 Q All right. But they were all standing right by that
2 door is what you said?

3 A Mostly, yes.

4 Q Was it 20 people, was it 100 people?

5 A It was less than 20.

6 Q Okay. And you arrived at 3:15 is what you said?

7 A Yes, sir.

8 Q Do you make reports when you respond to anything
9 pretty much?

10 A I mean, generally, you make a report if it's a
11 serious nature.

12 Q So if I had something that was called a reporting
13 officer narrative with your name on the bottom, that's an
14 example of a report you would have made, correct?

15 A That is correct.

16 Q Do you have yours? I don't want to speak to you
17 about it if you don't have it in front of you?

18 A I do have it, yes.

19 Q I'm going to go to the first paragraph towards the
20 bottom. You said and you told the jury he exited the side
21 door of the house, correct? That's the door we're talking
22 about?

23 A Correct.

24 Q Where all the other folks were?

25 A That's correct.

1 Q He said she shot herself, she's laying back there.
2 And he said, Brandon was yelling and appeared to be on the
3 verge of crying and saying she's dead; is that correct?

4 A That's correct.

5 Q When did you create this report?

6 A On December 27th of 2019.

7 Q So almost four years ago, correct?

8 A That's correct.

9 Q And you wouldn't put thing in your report unless
10 that's how you recalled them at the time you wrote it,
11 correct?

12 A Correct.

13 Q And it looks like you wrote this report about two
14 hours later. I guess, after you left the scene or
15 whatever. It says 1712 and the time of reporting was
16 1515?

17 A Yeah, I'm not sure why it says that. It could be
18 just the way it's generated, but I would hate to
19 speculate.

20 Q But close in time to when it happened?

21 A Correct.

22 Q You told the jury that someone was yelling the police
23 are here. Who was that?

24 A I don't know.

25 Q Was it a man?

1 A I don't know.

2 MR. STITLEY: No other questions. Thank you.

3 THE COURT: Any redirect?

4 MS. FULLER: No, Your Honor.

5 THE COURT: May I let the investigator down?

6 MS. FULLER: Please, Your Honor.

7 THE COURT: Thank you.

8 Madam Forelady, jury, okay? Anybody need a break?

9 THE FOREMAN: We're all right.

10 THE COURT: One goes, we all go.

11 Okay. Call your next witness.

12 MR. MCNAIR: Thank you, Your Honor. The State calls

13 Billy Dowd.

14 BILLY DOWD, after being duly sworn,

15 testified as follows:

16 THE CLERK: Have a seat over there, please. If

17 you'll state your name and spell your last, please, for

18 the record.

19 DIRECT EXAMINATION:

20 BY MR. MCNAIR:

21 Q Mr. Dowd, will you state your full name and spell

22 your last name for the record?

23 A Billy Edward Dowd, D-O-W-D.

24 Q How are you doing today?

25 A All right.

1 Q Tell the jury where you live.

2 A I live at [REDACTED] Shady Springs Lane.

3 Q Pardon?

4 A [REDACTED] Sandy Springs Lane.

5 Q How long have you lived there?

6 A Probably 20 years.

7 Q Does anybody else live with you?

8 A Not now. I'm living behind my daughter's house.

9 Q Your daughter lives beside you?

10 A She lives in the house in front of me. I live back
11 in her backyard.

12 Q Tell the jury how you know Brandon Corder.

13 A I've known Brandon since my daughter actually met her
14 husband, which is Eddie Stone that lived in the house.
15 And I met him, I guess, as a young teenager.

16 Q All right. Where does Brandon Corder live in
17 relation to you?

18 A Right next door to where my trailer is back behind my
19 trailer.

20 Q He's your neighbor?

21 A Yeah.

22 Q Who did Brandon Corder live there with?

23 A His mom.

24 Q Just his mom?

25 A When I first met him, his mom and dad. His daddy

1 died.

2 Q Did you ever meet Joanie Youmans?

3 A Yes.

4 Q How many times did you meet her?

5 A I probably talked to her just twice.

6 Q Where did you see her?

7 A She was next door at Brandon's house. She actually
8 come over there hunting for Brandon and he wasn't there.
9 I was cleaning my pool and she started talking to me. I
10 asked how Brandon and his mama was.

11 Q Now, let's talk about December 27th of 2019, the day
12 that Joanie was killed, were you home that day?

13 A Yes.

14 Q Did you see Mr. Corder and Joanie that day?

15 A Yes.

16 Q What were they doing?

17 A They pull up in the backyard and had a trailer on the
18 back and they was fixing to unload some limbs and stuff
19 off of it. They had been working somewhere.

20 Q And where were you when you saw them?

21 A I was standing in my living room looking out the
22 window.

23 Q Did you go outside?

24 A I went outside when I went to leave.

25 Q Did you ever speak to Joanie that day?

1 A Yes. She actually -- when I was walking down the
2 steps, she said my name and I looked and she started -- I
3 thought she was coming to the fence to talk to me about
4 something. I think Brandon said something to her, she
5 turned and went to the car where Brandon was.

6 Q So she was headed your way and then Brandon said
7 something and she turned around?

8 A Yeah.

9 Q And went back to where he was?

10 A Yes.

11 Q Where was he at that time?

12 A He was sitting in his car.

13 Q And where in his backyard was his car?

14 A It was back past his house, past the shed where he
15 usually burnt limbs and stuff back there.

16 Q There's a burn pile back there?

17 A Yes.

18 Q Now, after you saw Joanie turn and go back to
19 Mr. Corder, what did you do at that point?

20 A I had walked on over to my daughter's house and I was
21 sitting there in the kitchen drinking my coffee.

22 Q What, if anything, did you hear once you got to your
23 daughter's house?

24 A I was sitting there, me and my daughter was talking.
25 And all of a sudden, I heard a gun fire. My dog come

1 running to the door expecting to get in. And my daughter
2 went to the door and she said something about --

3 MR. STITLEY: Objection to hearsay.

4 THE COURT: You want to rephrase that?

5 MR. MCNAIR: Yes, ma'am.

6 BY MR. MCNAIR:

7 Q So you were in your daughter's house and you heard
8 gunfire?

9 A I heard the sound of a gun going off.

10 Q One gunshot? Two gunshots?

11 A Just once.

12 Q Now, what did you do at that point?

13 A My daughter went to the door and she hollered, said
14 something about --

15 Q Let's don't talk about what she said, just what you
16 did, okay? After you heard the gunshot, what did you do?

17 A I ran out the door and run over to the fence.

18 Q Okay. And when you heard the gunshot, where did you
19 think that gunshot came from?

20 A Over at Brandon's house.

21 Q Okay. Where, in his backyard?

22 A Yes, sir, outside.

23 Q So after you heard the gunshot, you went outside.
24 What did you see at that point?

25 A I didn't see nothing. When I run to the fence, I

1 seen Brandon come to the side of the building. And I
2 asked him, I said, Is everything all right, Brandon? And
3 he said, No, Billy, nothing's all right. And he went on
4 his house.

5 Q What did you do at that point?

6 A I run up to my gate, went around and went in
7 Brandon's yard. I seen Joanie laying back there on the
8 ground by the trailer.

9 Q Where was Brandon at that point?

10 A He was in his house.

11 Q He went back in his house?

12 A He only went in that first time when I run over there
13 and I asked him if everything was already. He said no and
14 he went straight in his house and then I ran over there.

15 Q Did you see Brandon again once you got over there?

16 A Yeah, he walked back out his door.

17 Q Did you ask him anything at that point?

18 A Yeah, I asked him if she had killed herself or if he
19 accidentally -- I went to or did you accidentally and
20 before I got to finish saying that, he said somebody shot
21 through the woods.

22 Q Somebody shot through the woods?

23 A Yeah.

24 Q Was law enforcement there at that time?

25 A No, sir.

1 Q Was anybody there other than you?

2 A Not at that time, no, sir.

3 Q Were you there when law enforcement showed up?

4 A Yes, sir.

5 Q There you witness Brandon talk to law enforcement,
6 too?

7 A Yes, sir.

8 Q Did you hear what he told them?

9 A Told them the same thing he told me. Because the law
10 got there, pulled up in a black truck. He went back
11 there. He actually was looking at me and I pointed back
12 there on the ground where Joanie was. He walked on past
13 us. And he come back, he still looked at me, he asked me
14 where the gun was. I pointed at Brandon, told him he
15 needed to talk to him. Brandon said, There's no gun,
16 somebody shot through the woods.

17 Q There's no gun, somebody shot through the woods?

18 A Yeah.

19 Q Now, let's talk about this gunshot. When you heard
20 it, was that a sound that you recognized?

21 A Yes, sir.

22 Q Why did you recognize that sound?

23 A Because I actually heard Brandon shooting just about
24 everyday for a couple of weeks.

25 Q Were you familiar with what gun he had?

1 A Yes.

2 Q Were you present when he bought that gun?

3 A I was standing in my yard looking at him and the guy
4 he bought it from.

5 Q What type of gun was it?

6 A 357 revolver.

7 Q Revolver?

8 A Yeah.

9 Q Do you remember how it looked?

10 A I'm pretty sure it had black handles and was silver.

11 Q Now, when he bought that gun, did a holster come with
12 it?

13 A I didn't never see a holster with it, no, sir?

14 Q And you mentioned that he would regularly shoot that
15 gun in his yard?

16 A Yes, sir.

17 Q Would you see him with that gun from time to time?

18 A I seen him shooting it several times.

19 Q Did you ever see him with a holster for that gun?

20 A No, sir.

21 Q All right. Now, in relation to when Joanie died or
22 was killed, how far before had he bought that gun?

23 A I'm thinking maybe two to three weeks.

24 Q I'm going to show you State's Exhibit 5. Can you see
' 25 that from where you're sitting?

1 A Yeah.

2 Q I'm going to give you a laser pointer. If you just
3 push that silver button, it will have a red dot. Will you
4 show the jury where Mr. Corder's house is?

5 A I'm trying to find my trailer.

6 Q Right do you see your house?

7 A I see my daughter's house there with 204 on it, that
8 thing in the white back, I guess, is my trailer right
9 there.

10 Q So that's your house and your daughter's house is
11 where the 204 is?

12 A Right there, and I stay right there.

13 Q Where is Mr. Corder's house?

14 A Right here.

15 Q All right. And prior to the shooting, where did you
16 see Joanie and Mr. Corder?

17 A Back here. She was back here. They had the car
18 parked back there.

19 Q That's where their burn pile is?

20 A Sir?

21 Q And that's where their burn pile is?

22 A Yeah, the burn pile is right there, right behind the
23 house. It's a driveway that goes through there, they was
24 parked there. My fence was right there.

25 Q And after you heard the shot and came outside and saw

1 Mr. Corder, where were you standing?

2 A I was standing up here by the fence looking over here
3 towards the house and he come out through here. And
4 that's when I asked him, Everything all right, Brandon.
5 He said, No, Ain't nothing right, Billy. He went in the
6 house. I went around to my gate and went out and went
7 over there.

8 Q You came back out to the street, walked around and
9 then went --

10 A Yeah, I came back out the gate, went around and
11 walked right down through there where she was at and I
12 then I walked back up to the door there on the side.

13 Q Okay. And he was in his house when you first got up
14 there?

15 A Yes, sir.

16 Q And then when he walked out, that's when you asked
17 him what happened?

18 A Yes, sir.

19 Q And he told you this story about the shooter in the
20 woods?

21 A Yes, sir.

22 Q Okay. Now, what type of area is this? Do people
23 hunt around here?

24 A No, sir.

25 Q Okay.

1 A There's houses up and down that road and up and down
2 my road.

3 Q And State's 7, is that the door you said you saw him
4 go into?

5 A Yes, sir.

6 Q And where he came out?

7 A Yes, sir.

8 Q Now, when he was walking to his house, did you see
9 anything in his hand?

10 A No, sir, all I seen was there was blood on his arm.

11 Q Okay.

12 A That's why I hollered and asked him if everything was
13 all right.

14 Q Now, after you saw Joanie and she came and tried to
15 speak to you, how long after that was it that you heard a
16 gunshot?

17 A Not long, probably three to five minutes at the most,
18 because it took me about a minute to walk to my daughter's
19 house and I was sitting there a couple minutes.

20 Q Do you see Mr. Corder in the courtroom today?

21 A Yes.

22 Q Is he the one sitting at defense table?

23 A Yes, sir.

24 MR. MCNAIR: That's all I have at this time, Your
25 Honor?

1 THE COURT: Thank you, Mr. McNair.

2 Mr. Stitely.

3 MR. STITLEY: Yes, ma'am, may it please the Court.

4 CROSS-EXAMINATION:

5 BY MR. STITLEY:

6 Q Hey, Mr. Billy, how you doing?

7 A All right.

8 Q Good. I want to go over a couple of things with you
9 real quick. You're here to tell the truth, correct?

10 A Yes.

11 Q You didn't see what happened, correct?

12 A No, sir.

13 Q But you were definitely next door that day?

14 A Yes, sir.

15 Q When you talked to Joanie, was she screaming for your
16 help, like, come help me, come help me, anything like
17 that?

18 A No, sir. They just -- I think she was going to tell
19 me something about the girl I see because it sounds like
20 that's what she said. She said, Hey, Billy. She was
21 coming around the back of the car and I went toward the
22 fence and that's when she said, Later. And she walked
23 over to Brandon's side of the car.

24 Q So she said later, but it wasn't like screaming help,
25 save me?

1 A No, no, no.

2 Q All right.

3 A Actually, she was smiling when she said it.

4 Q So I just want to ask, you go into your daughter's
5 house and you heard a shot, correct?

6 A Yes, sir.

7 Q Okay. And then you went out along the fence line --
8 so for the jury's sake, you couldn't walk straight -- look
9 at this picture first. You can kind of half see it.
10 There's a fence here, correct?

11 A Yes, sir.

12 Q So you wouldn't have been able to walk straight to
13 Brandon's mom's house or Brandon's house, you have to go
14 around, correct?

15 A Yes, sir.

16 Q You said you came out to the fence line --

17 A Yes.

18 Q -- and you said, you okay or everything okay. I
19 don't want to put words in your mouth, but you said
20 everything okay?

21 A Yeah, because I seen Brandon come walking from the
22 side of the building, between the building. He come
23 walking up through there, that's when I seen him. He was
24 holding his arm like that and I seen blood on his arm. I
25 said, Brandon, I said, everything all right? He said, No,

1 Billy, there ain't nothing all right.

2 Q Do you remember --

3 A He went on in his house.

4 Q Sorry. Do you remember him hollering for his mama
5 when he was doing that?

6 A Yep. Heard the gunshot, then he started hollering,
7 Oh, God, mama, mama.

8 Q So did you hear him calling that before you even got
9 to the fence line or was that --

10 A No, huh-uh.

11 Q Okay. That's fine. So he went in the house and that
12 was the only time he went in the house is what you said,
13 correct?

14 A Yes.

15 Q And then he came back out the house?

16 A Yes.

17 Q And at that point, you had gotten around the fence
18 and right up here, correct?

19 A Yes, sir.

20 Q I'm going to switch pictures to No. 7. And this is
21 the door we've been talking about, correct?

22 A Yes.

23 Q So you're for sure Brandon came back outside and then
24 you asked him what happened?

25 A Yes.

1 Q You told the solicitor you asked, Brandon, did she
2 kill herself? And he said, No, someone else shot?

3 A I said, Brandon, did she kill herself or did you
4 accidentally, and before I got finished, I was going to ask
5 him if he accidentally done it. And he said, No, Billy,
6 it come through the woods, the gunshot come through the
7 woods.

8 Q But he never said she did it?

9 A No.

10 Q And you two were standing outside on that porch
11 before law enforcement arrived, correct?

12 A Yes.

13 Q And the first cop who came, can you describe what he
14 looked like?

15 A I know he was in a black truck and he had on his vest
16 and all kind of, I guess, heavyset a little bit.

17 Q Bigger guy with a black beard?

18 A Yeah, maybe a goatee or something, but I know he was
19 looking straight at me, that's when I pointed to where she
20 was at. And he walked right by us, didn't say nothing.
21 Walked right by us and was looking at Joanie and then he
22 come back up, still looking at me, he asked me, Where is
23 the gun? And I pointed at Brandon, said, You need to talk
24 to him. That's when Brandon said, There's no gun, it come
25 through the woods.

1 Q Were there around 20 people hanging out here when
2 that law enforcement officer came up?

3 A No, there were only two people that just walked up.
4 Lee that lives down the street and then another -- I don't
5 know other guy. He's in his 20s, I believe.

6 Q So there was three of y'all standing on that porch,
7 correct, Brandon, you and Lee?

8 A No, just me and Brandon was standing on the side
9 there. Lee and the guy that with him was at their front
10 door, their front porch.

11 Q But there wasn't no giant group of people on that
12 side porch?

13 A There wasn't, no.

14 Q Okay. And without a doubt, you guys were already
15 outside when that law enforcement man showed up, correct?

16 A Yes, sir.

17 Q All right. You never heard Brandon tell that cop
18 that she shot herself. He, in fact, even told you that's
19 not what happened?

20 A That's right.

21 MR. STITLEY: Thank you. No other questions.

22 REDIRECT EXAMINATION:

23 BY MR. MCNAIR:

24 Q Mr. Dowd, after the police showed up, did you stay
25 there the whole time?

1 A No, I left, but it was a bunch of law enforcement
2 there, the ambulance and everything was already there.
3 They was back there checking her and everything. And then
4 Brandon went over, somebody gave him a chair or something
5 and he sat down in the chair. Ain't nobody else ever
6 asked me nothing. I was there most of the time until he
7 got -- the place got full of law.

8 Q Just to be clear, Joanie was coming to say something
9 to you. Why did she turn around and head back?

10 A Brandon said something. I don't know if he said hey,
11 come here or something, but when she come around the back
12 of the car, she said, Hey, Billy. I thought she was going
13 to talk to me and then I walked toward the fence and she
14 turned and went toward Brandon's side of the car.

15 Q Right after Mr. Corder said something?

16 A Yeah.

17 MR. MCNAIR: All right. Thank you.

18 MR. STITLEY: No other questions. Thank you.

19 THE COURT: May I let Mr. Dowd be excused?

20 MR. MCNAIR: Yes, ma'am.

21 THE COURT: You may be excused.

22 THE WITNESS: All right. Thank you.

23 MS. FULLER: The State called Brenda Snelgrove.

24 BREANDA SNELGROVE, after being duly
25 sworn, testified as follows:

1 THE CLERK: Have a seat, please. State your name and
2 spell your last name.

3 THE WITNESS: My name is Brenda Snelgrove,
4 S-N-E-L-G-R-O-V-E.

5 DIRECT EXAMINATION:

6 BY MS. FULLER:

7 Q We're going to go ahead and introduce yourself to the
8 jury. Where are you employed?

9 A I'm employed Lexington County Sheriff's Department.

10 Q In what capacity?

11 A The sergeant over the crime scene unit.

12 Q And how long have you worked in that capacity?

13 A With Lexington County, I've been with them for eight
14 years.

15 Q And crime scene?

16 A Eight years.

17 Q And do you have prior law enforcement experience
18 prior to Lexington County?

19 A Yes, ma'am. I worked for Newberry County for
20 approximately close to four years.

21 Q Now, as it relates to this case, we're talking about
22 ■ Valley Lane in Lexington County, did you respond that
23 day?

24 A Yes, ma'am.

25 Q And what were you responding to?

1 A I actually heard dispatch give the call over the
2 radio because I was out and about in my vehicle at the
3 time and I heard dispatch give out the call at that
4 address in reference to a male's girlfriend that shot
5 herself.

6 Q Okay. And what time did you arrive on the scene?

7 A I arrived on scene at approximately 1517, which would
8 have been 3:17 p.m. I'm sorry, 1546, that was when I
9 received the phone call. 1546 was when I arrived, which
10 would have been 3:17.

11 Q I apologize for pausing. I was trying to figure out
12 how to get to the next paragraph. So 3:46 is when you
13 arrived on scene per your report, correct?

14 A Yes.

15 Q And how long were you on scene? When did you depart
16 the scene?

17 A I left at 19:55 hours, which is 7:55.

18 Q So while you were on the scene, can you go ahead and
19 describe for the jury, they may not be familiar with it or
20 watch CSI, what goes into processing a crime scene?

21 A With processing a crime scene, it's a lot of
22 documentation. So we kind of get an idea of what we kind
23 of have as far as where a victim may be or the incident
24 location occurred, if there was any other prior locations
25 to lead to where the victim ended up at. So we're going

1 to take photos of that area. We're, also, going to take
2 notes and, if needed, measurements and a diagram is done,
3 a sketch.

4 Q And as it relates to this case, did you follow the
5 same methodology that you just described to the jury?

6 A Yes, ma'am.

7 Q And as the crime scene unit, do you work individually
8 or do you guys work in groups or teams? Can you explain
9 that to the jury?

10 A Typically, we work by ourselves. However, when we
11 believe that we're working with a suspicious death,
12 especially a possible homicide, is when we're going to
13 call out our secondary unit because doing measurements can
14 be tough doing that by yourself.

15 Q And at this time -- at the time of arriving on any
16 scene, you're dealing with possibilities, you don't know
17 exactly what you have, correct?

18 A That's correct.

19 Q So as it relates to this case can you go ahead and
20 describe to the jury the scene as it was when you arrived
21 at 3:46 p.m.?

22 A When I arrived, of course, there was a lot of
23 officers already there and investigators. The crime scene
24 tape was already up. I was advised that a crime scene log
25 had already been started. And I was advised that the

1 scene was in the back behind the house where the vehicle
2 was and that the victim was lying beside her, which I
3 could kind of see myself. And when I go in, eventually,
4 into the scene, I did see her, in fact, laying beside the
5 vehicle, which a trailer was hooked up to the back of the
6 car with, like, branches and whatnot on the back of the
7 trailer.

8 Q Okay. And did you see the defendant when you arrived
9 on scene?

10 A Eventually, he was pointed out to me.

11 Q And did you hear any statements he made about what
12 occurred?

13 A I did. After I spoke to the first responding deputy
14 and another deputy that had been on scene, I was with the
15 coroner, Coroner Gain, Coroner Deputy Gain and we went
16 over to where, I believe it was Investigator Sherman,
17 yeah, Investigator Sherman was talking to Mr. Corder. I
18 went over there and I heard him -- he was in the middle of
19 what he was saying, but I heard him say that him and the
20 victim had broke up a week ago. She called to work things
21 out. She was an on and off girlfriend.

22 They went to bed late, got up around 11:15 to 11:30
23 and left between 12:00 and 12:30 to do some work, and they
24 came back. She went to go get a pack of cigarettes out of
25 the car. She turned toward him and fell. He went to her,

1 but he could not do anything for her. He went to the
2 door, but could not get in. He banged on his mother's
3 window to call 9-1-1. He then advised that a gun was not
4 inside the car and the victim did not have one on her. Do
5 you want me to go further?

6 Q Yes. The next two?

7 A Deputy Coroner Gain had asked where the shot came
8 from. Mr. Corder said --

9 MR. STITLEY: I'm going to object to hearsay now.
10 She's testifying as to what Deputy Coroner or someone
11 asked questions.

12 MS. FULLER: That's not hearsay. It's a question.

13 MR. STITLEY: I disagree, Judge.

14 THE COURT: I'll allow it. Go ahead.

15 BY MR. MCNAIR:

16 Q What was his response?

17 A He said that -- sorry, I'm trying to get back to
18 where --

19 Q Where did Mr. Corder say the shot came from?

20 A He said it was not real close or far away, maybe down
21 the road.

22 Q And was that the extent of the portion of the
23 conversation that you heard Mr. Corder making at that
24 time?

25 A I did.

1 Q And at that point, what, if anything, did you notice
2 on Mr. Corder?

3 A When I was observing him, I observed what appeared to
4 be blood on him, on his clothes and on his person. At
5 that time, I went and found another investigator, which
6 was a sergeant investigator and advised him that I wanted
7 his clothes and I wanted a GSR kit, which would be a
8 gunshot residue kit, done on Mr. Corder.

9 Q And what was the purpose of that at that time?

10 A Because if he was saying that he didn't have anything
11 to do with it, we would typically not see GSR on him.

12 Q All right. And did you have other crime scene agents
13 with you at that time?

14 A Not at that time, but my backup was called around
15 that same time that I was requesting the clothes and the
16 GSR kit, and he arrived shortly after.

17 Q Okay. Did you have to obtain a search warrant to
18 process this scene?

19 A I did not, but investigators did.

20 Q So investigators had to obtain a search warrant,
21 correct?

22 A Yes, ma'am.

23 Q And what's the purpose of obtaining a search warrant
24 as it relates to this case?

25 A So we're able to go in and process the scene and look

1 for any potential evidence.

2 Q And what time did you start -- did you obtain -- was
3 the search warrant actually in hand?

4 A I'd have to look at my notes right quick.

5 Q Does 4:05 p.m. sound correct?

6 A Yes, 4:05 is when I was advised that it was signed
7 and in hand.

8 Q Okay. Then was a gun located by Joanie's body when
9 you entered the scene?

10 A No, ma'am.

11 Q When processing the scene, did you take a number of
12 photographs?

13 A I did. I took several.

14 Q We're going to go through quite a few things here.
15 I'm going to show you what I believe is already displayed
16 as State's 7. Do you recognize that as one of the crime
17 scene photographs?

18 A Yes, ma'am.

19 Q I'm going to show you some additional ones. This is
20 going to be State's 8 through 11, as well as State's 42
21 and 43 and ask if you recognize them?

22 MR. STITLEY: No objection to those, Judge.

23 THE COURT: Okay. Thank you.

24 BY MS. FULLER:

25 Q I'll lay the foundation. Showing you the exhibits

1 that are premarked as State's 8 through 11, as well as 42
2 and 43. If you'll go ahead and take the time to recognize
3 them?

4 (WHEREUPON, State's Exhibits Nos. 8 - 11, 42, 43 were
5 marked for identification only.)

6 A Yes, ma'am.

7 Q Do you recognize these photographs?

8 A Yes, ma'am.

9 Q And how do you recognize them?

10 A They appear to be photographs I took of the scene.

11 Q And do they fairly and accurately represent the scene
12 as depicted in these photographs on December 27th, 2019?

13 A Yes, ma'am.

14 Q Do they appear to be altered in any way?

15 A No, ma'am.

16 MS. FULLER: At this time, the State seeks to
17 introduce into evidence State's Exhibits 8 through 11, as
18 well as 42 and 43?

19 THE COURT: They're admitted without objection.

20 MS. FULLER: Thank you, Your Honor.

21 (WHEREUPON, State's Exhibits Nos. 8 - 11, 42, 43 were
22 admitted into evidence.)

23 MS. FULLER: Publish them for the record?

24 THE COURT: You may.
25

1 BY MS. FULLER:

2 Q Now, the jury has already oriented with State's 7,
3 but these are one the photographs, as well, correct?

4 A I'm sorry? .

5 Q State's 7 -- I apologize, you can't see the number.
6 The jury is already oriented, but this depicts the scene
7 that day, correct?

8 A Yes, ma'am.

9 Q And now going in from there, State's 8, can you
10 describe for the jury what they're looking at here in this
11 angle?

12 A That is, basically, just a close-up of the previous
13 photo.

14 Q And you testified about the vehicle, as well as her
15 body. Do you have a laser pointer up there?

16 A Yes, ma'am.

17 Q Can you go ahead in this photograph, State's 8,
18 identify that for the record for the jury?

19 A Here is the vehicle and trailer that was attached to
20 it and this is our victim right here.

21 Q Now, looking at State's 9, this appears to be a
22 different angle; is that correct?

23 A Slightly closer to it. I'm kind of between that
24 garage that was on the left side and the back corner of
25 the house.

1 Q And we're getting a little bit closer now, looking at
2 State's 10, and can you go ahead and describe for the jury
3 what is in the center of the photograph to the right?

4 A Right here, I call it a burn pile. Here's that
5 trailer with the tree branches in it, the vehicle and then
6 our victim.

7 Q Okay. Now, we're going to look at State's 11. And
8 stay here for a moment. Can you go ahead and describe for
9 the jury what we're looking at here in State's 11?

10 A We're looking on the passenger side of the vehicle.
11 As you can see, this is the passenger seat, this is the
12 driver's seat over here. We have some gloves, some
13 substance that appeared to me to be blood and possible
14 brain matter."

15 Q And looking at the blood there, what, if anything,
16 did that indicate to you when processing the scene?

17 A With the blood there, I would say she was in close
18 proximity when she was shot. Further analysis of the car,
19 I realized there was no -- nothing on the dash or
20 windshield, but there was some on the interior side of
21 that passenger door, which tells me that she was
22 approximately standing in the apex of that vehicle.

23 Q And for record, what type of vehicle is that?

24 A It's a Honda Civic. It's going to be a 90s model, I
25 believe.

1 Q Do you have the approximate height of that vehicle?

2 A It was a little shorter than me. It was about four
3 feet, five inches approximately because I'm 5-foot.

4 Q Five zero?

5 A Five zero.

6 Q And I apologize, and how tall approximately was the
7 height of the vehicle?

8 A Of me or the car?

9 Q Of the car?

10 A The car is about four feet-and-a-half inches.

11 Q Four?

12 A Four feet-and-a-half inch. Almost five, but not
13 quite five.

14 Q Okay. So 11-and-a-half -- you said four
15 feet-and-a-half?

16 A Yes.

17 Q I'm confused. I'm sorry?

18 A So four feet and a half of a foot.

19 Q Oh, a half of a foot. I'm sorry. I was thinking
20 half of an inch. And I was, like, I'm not there yet with
21 the math. I apologize.

22 A Sorry.

23 Q Moving on. In terms of the trailer, do you -- based
24 on the measurements, do you have the approximate length of
25 that trailer?

1 A I don't believe we actually measured the trailer,
2 but, to me, it looked like about a six-foot trailer.

3 Q Okay. So combined, that's approximately about -- do
4 you have the vehicle length?

5 A I think it was about a little over 13 feet, if I
6 remember correctly.

7 Q So combine the vehicle length and the trailer is
8 approximately, I can do that math, 19 feet?

9 A Yes, ma'am.

10 Q Okay. Now, in terms of inside the vehicle, was there
11 any damage inside the vehicle as it relates to a gunshot
12 wound -- or a gunshot?

13 A We did not observe any projectile defect, which would
14 suggest that the bullet went into the car.

15 Q Okay. So was there anything suggesting that the
16 shooting took place actually inside of the vehicle?

17 A No, ma'am.

18 Q Based on crime scene, it appeared that she would have
19 been standing outside of the vehicle in that apex,
20 correct?

21 A Yes, ma'am.

22 Q And you indicate there are gloves on that passenger
23 seat; is that correct?

24 A Yes, ma'am. It looks like work gloves right there.

25 Q And I'm going to go to State's 42. Looking at a

1 different angle, but we're dealing with the same location;
2 is that correct?

3 A Yes, ma'am.

4 Q And you see the vehicle and that trailer; is that
5 correct?

6 A Yes, ma'am.

7 Q For the record, is the trailer actually attached to
8 the vehicle?

9 A Yes, ma'am.

10 Q Now, when you searched -- did you, ultimately, go
11 inside of that vehicle and actually search it looking for
12 evidence in that case?

13 A Yes, ma'am.

14 Q And was a gun located inside that vehicle?

15 A No, ma'am, it wasn't.

16 Q I'm going to show you what's been premarked as
17 State's 14. I'm going to ask if you recognize this?

18 (WHEREUPON, State's Exhibit No. 14 was marked for
19 identification only.)

20 A Yes, ma'am, it's my diagram.

21 Q And when you say my diagram, which diagram?

22 A A diagram of the incident location. It's actually an
23 aerial zoomed in and where I added, like, the car and all
24 to it.

25 Q And it relates to this case, correct?

1 A Yes, ma'am.

2 Q Does it appear to be altered in any way?

3 A No, ma'am.

4 Q And this is your work product, correct?

5 A Yes, ma'am.

6 MS. FULLER: Your Honor, the State seeks to introduce
7 into evidence State's 14 at this time.

8 MR. STITLEY: No objection.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit No. 14 was admitted into
11 evidence.)

12 BY MS. FULLER:

13 Q Just to make sure the jury is fully oriented, use
14 your laser pointer and point out to the jury what you were
15 looking at to identify this crime scene diagram?

16 A Okay. When we walked, we walked in this way. As you
17 see, this is what I label as the burn pile. We have the
18 car right here and the trailer attached to it and then
19 Ms. Youmans on the ground.

20 Q And, eventually, did you actually turn over her body?

21 A Yes, ma'am. The coroner and I worked together,
22 deputy coroner, and when she was rolled over, we looked
23 under her.

24 Q And was a gun located under her?

25 A No, ma'am, there wasn't.

1 Q I'm going to show you what's been premarked as
2 State's Exhibits 12 and 21?

3 MR. STITLEY: No objection.

4 THE COURT: Twelve and?

5 MS. FULLER: It's a black and white photograph for
6 the record.

7 Q I'm asking if you recognize this?

8 A Yes, ma'am.

9 Q How do you recognize this?

10 A This appears to be a photograph I took, except it is
11 in black and white.

12 Q Outside of the color change, does it fairly and
13 accurately represent what's depicted in the photograph?

14 A Yes, ma'am.

15 Q Does it appear to be altered in any other way?

16 A No, ma'am.

17 MS. FULLER: At this time, Your Honor, the State
18 seeks to introduce into evidence State's 12?

19 THE COURT: It's admitted without objection.

20 (WHEREUPON, State's Exhibit No. 12 was marked for
21 identification and received into evidence.)

22 BY MS. FULLER:

23 Q On the back of the exhibit, do you notice the time
24 and date of when you took this photograph?

25 A Yes, ma'am.

1 Q When was that?

2 A It was on December 27th, 2019 at 5:00 p.m.

3 Q And that would have been the time when the photograph
4 was taken, correct?

5 A Yes, ma'am.

6 Q Now, publishing for the record State's 12. And when
7 you're doing something on the scene and processing the
8 crime scene, are you documenting with photographs
9 simultaneously?

10 A Yes, I'm taking photos while I'm going, yes, ma'am.

11 Q So the photograph was exposed at five o'clock. Would
12 that be the approximate time her body was actually rolled
13 over; is that correct?

14 A Yes, ma'am.

15 Q And this indicates that there was no weapon
16 underneath her body, correct?

17 A Yes, ma'am.

18 Q And then for the record, what position was her body
19 in prior to moving it?

20 A She was on her back, kind of twisted a little bit
21 slightly to the right. Her legs were bent at the knee,
22 kind of picked up. In my diagram, you can see.

23 Q Going back to State's 14, that's why you have her
24 body positioned that way in that diagram?

25 A Yes, ma'am, I was trying to accurately show how she

1 was laying.

2 Q Looking back at State's 12, on the back is what I'm
3 pointing at is the date this particular photograph was
4 taken; is that correct?

5 A Yes, ma'am?

6 Q Now, going to State's 43, looking at this photograph,
7 is this another angle of that backyard?

8 A Yes, ma'am, it is.

9 Q And can you point out here for the jury standing at
10 this position where the -- we've been talking about the
11 side door and that pavement would be from this angle?

12 A Yes, ma'am. That's going to be right over here. The
13 side door is going to be on this side.

14 Q And now, looking on this side, was there a firearm
15 located on the outside of the vehicle on this side of the
16 photograph?

17 A No, ma'am.

18 Q When processing the car, did you locate the box of
19 cigarettes?

20 A No, ma'am.

21 Q Did you locate a pack of cigarettes -- I believe you
22 testified he indicated that Joanie went to the car to get
23 a pack of cigarettes. Did you find that anywhere around
24 the car?

25 A No, ma'am.

1 Q And these photographs were taken at the time and if a
2 pack of cigarettes were there, it would be in these
3 photographs, correct?

4 A That's correct.

5 Q And inside the vehicle we were just looking at, was
6 there a pack of cigarettes in the apex of that vehicle?

7 A No.

8 Q Going back to, I believe it's State's 11, were there
9 cigarettes found in the car?

10 A No, ma'am.

11 Q Did you, ultimately, find a firearm in this case --
12 or was a firearm, ultimately, recovered in this case?

13 A Yes, ma'am.

14 Q And where was that firearm recovered?

15 A It was in a bedroom closet in the house.

16 Q I'm going to show you what's been premarked as
17 State's 27?

18 MR. STITLEY: No objection to that diagram, Your
19 Honor.

20 (WHEREUPON, State's Exhibit No. 27 was marked for
21 identification only.)

22 BY MS. FULLER:

23 Q I'm going to ask if you recognize this diagram?

24 A Yes, ma'am.

25 Q And how do you recognize it?

1 A It appears to be a layout of the residence at [REDACTED]
2 Valley Lane.

3 Q And this fairly and accurately represents the layout
4 of that residence; is that correct?

5 A That's correct.

6 MS. FULLER: At this time, Your Honor, the State
7 seeks to introduce into evidence State's Exhibit 27.

8 THE COURT: Admitted without objection.

9 MS. FULLER: Thank you, Your Honor. Publishing for
10 the record 27.

11 (WHEREUPON, State's Exhibit No. 27 was admitted into
12 evidence.)

13 BY MS. FULLER:

14 Q Can you go ahead and orient the jury, as well in
15 relation to what been referring to as that side door.

16 Beg the Court's indulgence.

17 (Pause.)

18 What we've been referring to in State's 43 and other
19 exhibits, as well, okay?

20 A Okay.

21 Q So going back to State's 27.

22 A So this is going to be the side door that we've been
23 talking about all afternoon. Back here was actually where
24 the scene was. When you go into this residence, this
25 first bedroom that you come to, that is where the revolver

1 was located in that closet.

2 Q And so for the record in relation to the side door,
3 how would you get to that bedroom? If you can show the
4 path of travel that you would have taken.

5 A So I came in through the kitchen, which leads into
6 the living room. You go down this short hallway, turn
7 down another hallway and then this door right here to this
8 bedroom and the closet was over here.

9 Q And on this diagram, the rooms were empty. Was the
10 residence empty at the time of walking through it?

11 A No, ma'am, it was properly furnished.

12 Q Including that first bedroom where the firearm was
13 located?

14 A Yes, ma'am. I'm not exactly sure what all was in
15 that one, if it was actually being used as a bedroom, but
16 it was nothing abnormal, I would say.

17 Q Okay. I'm going to show you now what's been
18 premarked for identification as State's 15 through 26 and
19 ask you to take your time to look through them and make
20 sure you recognize them. And let me know if you recognize
21 them.

22 A Yes, ma'am, these are photos I took.

23 Q As it relates to State's 15 through 26, are these
24 photographs that you took on December 27th, 2019?

25 A Yes, ma'am.

1 Q And you recognize these as photos you took that day,
2 correct?

3 A Yes, ma'am.

4 Q Do they fairly and accurately represent what's
5 depicted in these photographs?

6 A Yes, ma'am.

7 Q Do they appear to be altered in any way?

8 A No, ma'am.

9 MS. FULLER: At this time, Your Honor, the State
10 seeks to introduce into evidence State's 15 through 26.

11 THE COURT: Any objection?

12 MR. STITLEY: No objection.

13 THE COURT: They're admitted without objection.

14 (WHEREUPON, State's Exhibits Nos. 15 - 26 were marked
15 for identification and received into evidence.)

16 BY MS. FULLER:

17 Q Looking at State's 15, is this that closet that you
18 identified on this diagram?

19 A Yes, ma'am.

20 Q And looking at State's 15, I'm going to zoom in, as
21 well, can you point out for the jury where that firearm
22 was ultimately located?

23 A Under this brown comforter, that is where the
24 revolver was located.

25 Q And when you walk into that room and first look into

1 that closet, can you see the revolver underneath that
2 blanket?

3 A I don't recall being able to see it. If you look
4 down at the bottom, there's actually a chair where my
5 lieutenant, she's short in stature, as well, stood at and
6 was able to locate it.

7 Q So a chair was utilized to actually find that
8 firearm; is that correct?

9 A Yes, ma'am.

10 Q And flipping on the back of this photograph, do you
11 see what time -- can you publish for the record what time
12 this particular photo was taken?

13 A 6:21.

14 Q And you arrived on scene at 3:45, correct?

15 A Yes, ma'am.

16 Q Okay. Now looking at State's 16, it appears that
17 blanket seems to be manipulated. I don't know if that's
18 the appropriate word, but go ahead and describe for the
19 jury what they're looking at here.

20 A Yes, ma'am. As you can see, the comforter has been
21 moved some so I can actually photograph and see the
22 revolver and this box right here.

23 Q And looking at State's 17, go ahead and describe this
24 for the jury.

25 A That's just another angle trying to show that's a gun

1 there.

2 Q And you took these photographs?

3 A Yes, ma'am.

4 Q Did you have to stand on the chair, as well to take
5 this?

6 A Yes, ma'am.

7 Q I wasn't sure if you used a ladder. So looking at
8 State's 18, same angle in place, correct?

9 A Yes, ma'am.

10 Q Now, looking at 19, where are we here?

11 A So there was, like, a table -- along that wall
12 between the closet and the door to that bedroom, there was
13 a table. And that is where I laid the firearm so I could
14 take more photos of it and document the state of it.

15 Q And now, looking at 20, what kind of firearm was
16 this?

17 A It's a Smith and Wesson.

18 Q And now, looking at 21, more specifically, what type
19 of firearm?

20 A A 357 Magnum. And you can see the serial number
21 there.

22 Q And go ahead -- I take this for granted, a revolver.
23 Go ahead and describe a revolver generally to the jury in
24 terms of the actual bullets. Where are they?

25 A They're going to be in the cylinder right here.

1 That's going to be where the cartridges are and the
2 cartridge cases. The cartridge case is going to be what's
3 left behind when the bullet has been fired.

4 Q Okay. And looking at State's 22, that's another
5 angle. What are we looking at here?

6 A We're looking at the cylinder in the revolver.

7 Q And looking at 23, what are we looking at here?

8 A The cylinder has been opened up so we can see the --
9 what is inside of it. We see that there's six cartridges
10 and then we have a fired cartridge case right here.

11 Q I'm going to zoom in. How is the jury able to
12 determine or how are you able to determine that one was
13 fired?

14 A So you see this firing pin strike right here, in the
15 center, it's more pronounced and that's how we know that
16 that one is fired.

17 Q Looking at State's 24, it's kind of lost on there,
18 but what were you photographing on this photograph?

19 A That's going to be the handle of the gun, where you
20 hold it. And what appeared to me was blood on the handle
21 here, right here.

22 Q And we'll come back to that. Looking at State's 25,
23 what are we looking at here?

24 A That's going to be the revolver and the cartridges
25 and the cartridge case after I removed them from the

1 cylinder with my evidence placard number one.

2 Q And one is different from the other? Can you point
3 that out for the jury?

4 A This is going to be that cartridge case I spoke about
5 and all these are going to be those cartridges. So this
6 is the fired one, these are the unfired ones.

7 Q So your photograph, essentially, documents them in
8 place and then you documented by photograph, via
9 photograph, you're removing the fired and unfired from the
10 actual cylinder in the revolver; is that correct?

11 A Yes, ma'am.

12 Q And these photographs step-by-step take you through
13 what you did as you were processing, correct?

14 A Yes, ma'am.

15 Q Now, looking at State's 26, what is depicted in this
16 photograph?

17 A That green box that I spoke about earlier, to me, it
18 looks like an ammo box. And you can see unfired cartridge
19 cases in it that had the same head stamp as the ones that
20 were in the revolver.

21 Q And that was hidden under the blanket next to the
22 revolver, correct?

23 A Yes, ma'am.

24 Q Now, going back to the first photograph of the
25 closet, which is State's 15, I believe, and then, also,

1 looking at 16 and 17, was there a holster located under
2 that blanket?

3 A No, ma'am.

4 Q Looking back at State's 24, were you able to test or
5 swab the firearm?

6 A Yes, ma'am. At another date and time in our crime
7 lab, I swabbed that handle, that reddish-brown substance
8 that I observed.

9 Q Okay. And how many swabs did you collect from the
10 firearm?

11 A I did three. One was used to do a presumptive blood
12 test.

13 Q And what is a presumptive blood test?

14 A It is presumptively saying that this is blood. Of
15 course, there are some that could -- some things that
16 could cause a false positive, but we are pretty certain
17 that it is, in fact, blood.

18 Q And you're speaking from your knowledge. You're not
19 the DNA expert?

20 A Just my knowledge. I'm definitely not a DNA analyst,
21 that's why it goes to them.

22 Q Did you attempt anything else on the firearm?

23 A At another date and time, I, also, collected
24 additional swabs for potentially touch DNA and then
25 processed it for fingerprints.

1 Q And what were the results of the fingerprints?

2 A I don't believe I was able to locate any of value.

3 Q Okay. So negative in that sense?

4 A Yes, ma'am.

5 Q Now, were you able to actually examine the gun itself
6 physically to tell if it was functional?

7 A Yes, ma'am.

8 Q Can you tell the jury whether or not it was
9 functional?

10 A From the testing that I was able to do, yes, it was
11 functional.

12 Q Did you observe any residue in the chamber or the
13 barrel of the gun?

14 A Yes, ma'am, I did.

15 Q What does that suggest?

16 A That it was dirty and, most likely, that occurs from
17 firing it.

18 Q And were you able to actually pull the trigger on
19 that firearm?

20 A Yes, ma'am. Since it was a double and a single
21 action, I tried to pull it without pulling the hammer
22 back. It was very difficult to pull the trigger. And
23 then when I pulled it back to pull the trigger -- this is
24 all safely done, it was not loaded. When it was pulled
25 back, it was a lot easier to pull it, but I did not do any

1 poundage testing on it.

2 Q Okay. And in terms of the firearms, that would be
3 the firearms expert to go into detail about that, right?

4 A Yes.

5 Q You just testified as to what you did with the
6 firearm?

7 A That's correct.

8 Q I'm going to show you a few items of evidence now.
9 I'm going to show you State's Exhibit 35, here's some
10 gloves and scissors, and ask if you recognize it?

11 (WHEREUPON, State's Exhibit No. 35 was marked for
12 identification only.)

13 A So in the box is going to be the revolver that I
14 collected from that closet.

15 MS. FULLER: And, Your Honor, for record, the firearm
16 has been safetied and checked in with law enforcement at
17 the courthouse.

18 THE COURT: Any objection?

19 MR. STITLEY: No, ma'am.

20 THE COURT: It's admitted.

21 MS. FULLER: At this time, Your Honor, the State
22 seeks to introduce into evidence as State's Exhibit 35.

23 THE COURT: It's admitted without objection.

24 (WHEREUPON, State's Exhibit No. 35 was admitted into
25 evidence.)

1 MS. FULLER: Thank you, Your Honor.

2 BY MS. FULLER:

3 Q Now, I'm going to show you what's been premarked
4 State's Exhibit 36, which contains State's Exhibit 37 and
5 38, and ask if you recognize it? Go ahead and open it.

6 A Yes, ma'am, this is going to be the cartridge case
7 and the cartridges that I removed from the revolver.

8 (WHEREUPON, State's Exhibits Nos. 36 - 38 were marked
9 for identification only.)

10 MS. FULLER: At this time, Your Honor, the State
11 seeks to introduce into evidence collectively the bags,
12 State's 36 and 37 and 38?

13 THE COURT: Any objection?

14 MR. STITLEY: No objection.

15 THE COURT: It's admitted without objection.

16 (WHEREUPON, State's Exhibit Nos. 36, 37 and 38 were
17 admitted into evidence.)

18 BY MS. FULLER:

19 Q Now, I'm going to show you State's 30 and 31. Do you
20 recognize the exterior of the bag?

21 (WHEREUPON, State's Exhibits Nos. 30, 31 were marked
22 for identification only.)

23 A No, ma'am, I do not. I do recognize this.

24 Q What do you recognize that to be?

25 A This is the bag that I packaged the swabs in that I

1 took from the handle for DNA. So it's the ones that I did
2 of the blood.

3 Q And when did you take those swabs?

4 A It was on January 10th of 2020.

5 MS. FULLER: And at this time, Your Honor, the State
6 seeks to introduce into evidence State's 30.

7 THE COURT: Any objection?

8 MR. STITLEY: No, ma'am.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit No. 30 was admitted into
11 evidence.)

12 BY MS. FULLER:

13 Q Now, we're looking at State's 31. And do you
14 recognize State's 31?

15 A These are swabs.

16 Q So for the record, yes?

17 A Yes, I do recognize it.

18 Q What do you recognize it to be?

19 A These are the swabs I took for touch DNA. I took it
20 from the handle where it did not appear to be bloody, the
21 hammer, the cylinder release and the trigger.

22 Q And what date did you do this?

23 A This one was January 27th, 2020.

24 MS. FULLER: At this time, Your Honor, the State
25 seeks to introduce into evidence State's 31.

1 THE COURT: Any objection?

2 MR. STITLEY: No, ma'am.

3 THE COURT: It's admitted.

4 (WHEREUPON, State's Exhibit No. 31 was admitted into
5 evidence.)

6 BY MS. FULLER:

7 Q Looking at State's 33, is that packaged separately
8 with that casing we were talking about?

9 A Thirty-seven, yes.

10 Q And looking at 38, is that packaged collectively
11 together as the unfired?

12 A Yes, ma'am.

13 Q When you looked at Joanie's body, were you able to
14 identify a gunshot wound?

15 A Yes, ma'am.

16 Q And can you describe to the jury where that gunshot
17 wound, we don't have a photograph, but if you can describe
18 for the jury where that gunshot wound was located?

19 A Yes, ma'am. It was above the left eye and below the
20 left eyebrow, so it's going to be about right in here.

21 Q And for the record, I said we don't have a
22 photograph. You did take a photograph for it, correct?

23 A Yes, ma'am.

24 Q We're just not introducing it for the record; is that
25 correct?

1 A Yes, ma'am.

2 Q And what, if anything, did you notice about that
3 injury to the -- you described above the left eye, but
4 below the eyebrow?

5 A Yes, ma'am.

6 Q What did you notice about that gunshot wound?

7 A It did not have any stippling. We expect to see
8 stippling when the gun is in close proximity when it is
9 fired.

10 Q And then, did you locate another wound on her?

11 A Yes, ma'am. We located one on the back of her head
12 and it appeared to be an exit wound because of the outward
13 beveling of the skull.

14 Q I'm going to show you what's been premarked as
15 State's 13. I'm going to show you what's been premarked
16 as State's 13 and ask if you recognize this photograph?

17 A Yes, ma'am, I do.

18 Q And did you take this photograph?

19 A No, ma'am, I did not.

20 Q Do you recognize the individual in the photograph?

21 A Yes, ma'am.

22 Q And who is this individual?

23 A That's Mr. Corder.

24 Q And earlier, you testified about seeing him on scene.
25 Do you recall that testimony?

1 A Yes, ma'am.

2 Q And you described his appearance to the jury. Do you
3 recall that?

4 A Yes, ma'am.

5 Q And does this photograph fairly and accurately
6 represent or depict Brandon Corder as you saw him on
7 scene?

8 A Yes, ma'am.

9 Q Does it appear to be altered in any way?

10 A No, ma'am.

11 Q This is how he looked on December 27th of 2019; is
12 that correct?

13 A Yes, ma'am.

14 MS. FULLER: At this time, Your Honor, the State
15 seeks to introduce into evidence State's 13?

16 THE COURT: Any objection?

17 MS. FULLER: No objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit No. 13 was marked for
20 identification and received into evidence.)

21 BY MS. FULLER:

22 Q Looking at State's 13, for the record, can you go
23 ahead and identify who you see in this photograph?

24 A Mr. Corder.

25 Q When you indicated seeing blood on him, can you point

1 that out for the jury?

2 A Yes, ma'am. I saw some here on his arm, the lower
3 parts of his pants. And it's hard to tell on this photo
4 with this lighting, but I, also, observed some on his
5 boots.

6 Q And that is how you saw him when you arrived on
7 scene, correct?

8 A Yes, ma'am.

9 MS. FULLER: Beg the Court's indulgence.

10 (Pause.)

11 Nothing further at this time.

12 THE COURT: Mr. Stitley, can I give the jury just
13 like a ten-minute break?

14 MR. STITLEY: Of course, Judge. It's your courtroom.

15 THE COURT: I'm going to give y'all the opportunity
16 just to stretch your legs, just a ten-minute break and
17 then we'll come back and finish this witness. Okay.
18 Thank you. Remember no talking about this case, even
19 amongst yourselves.

20 (WHEREUPON, the jury left the courtroom at 4:29 p.m.)

21 THE COURT: Ten minutes.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Let's bring the jury in.

24 (WHEREUPON, the jury entered the courtroom at 4:39
25 p.m.)

1 THE COURT: All right. Madam Forelady, the jury
2 ready?

3 THE FOREMAN: Ready.

4 THE COURT: Mr. Stitely.

5 MR. STITLEY: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION:

8 BY MR. STITLEY:

9 Q Ms. Snelgrove, how are you this afternoon?

10 A I'm all right.

11 Q So you're not an investigator as far as to what
12 happened. You're pretty much the crime scene collector;
13 is that fair?

14 A I wouldn't say crime scene collector. I document and
15 process the scene.

16 Q Okay. But you're not the one who routinely is trying
17 to figure out who did what with where and why. You're
18 more collect the evidence and document the evidence?

19 A Yes. And what it tells us.

20 Q So in this case, you arrived about 30 minutes after
21 you said you received a call, correct?

22 A Yes.

23 Q You were very specific that you received a call at
24 3:17. Who called 9-1-1 in this case?

25 A I don't know.

1 Q How many calls were made to 9-1-1?

2 A I do not know.

3 Q How does the sheriff's department document things
4 like 9-1-1 calls?

5 A My understanding it's going to be through CAD, but I
6 do not work that area.

7 Q Okay. So CAD is a fancy program that they have that
8 tracks calls and actually tracks when officers are
9 dispatched, when officers arrive and all of that, correct?

10 A My understanding.

11 Q So, like, what's your officer number?

12 A At the time, I believe I was 342.

13 Q So if there was a report that says 342 arrive at
14 scene at 1546, that's a fancy way of saying you showed up
15 at that time, correct?

16 A Yes.

17 Q And that's what the CAD report does show, correct?

18 A Yes, sir.

19 Q And that's why you can be fairly specific when you
20 say what time you arrived?

21 A Yes, sir.

22 Q So do you have -- when you got there, how many police
23 officers were out there?

24 A I do not recall.

25 Q Can we spit ball it?

1 A I do not like to spit ball.

2 Q Because you're an evidence collector. Sorry. Were
3 there three cops?

4 A Well, counting me and two investigators, yes.

5 Q Were there several deputies in uniforms?

6 A There were other ones in uniforms.

7 Q All right. So, at least, a crime scene investigator,
8 two detectives, some deputies in uniforms. Any other lay
9 people there?

10 A Yes.

11 Q All right. How many lay people were there?

12 A I do not know.

13 Q Is it important when you're documenting a crime scene
14 to have some form of security over the crime scene?

15 A That's correct, and we did.

16 Q When you got there, how many people were allowed in
17 that crime scene?

18 A None.

19 Q Okay. How many people had already been in that crime
20 scene?

21 A I would have to consult with the crime scene log.

22 Q Do you have that with you?

23 A Yes.

24 Q Could you tell me how many people had been in the
25 crime scene?

1 A Approximately seven.

2 Q Okay.

3 A That signed into the crime scene log.

4 Q Now, that would be seven police officers, correct?

5 A No, we, also, had EMS.

6 Q Sorry, but seven people affiliated with y'all's side
7 of the table, that wouldn't be lay people. Like, if I was
8 walking around, my client was walking around, he's not
9 going to be on your log, correct?

10 A Correct.

11 Q The neighbors wouldn't be on that log either,
12 correct?

13 A Huh-uh.

14 Q So, at least, seven, including law enforcement and
15 EMS when you got there?

16 A Before I got there.

17 Q Before you got there. Who secured the crime scene?

18 A That is going to be, I believe, Deputy Holt and
19 Sergeant Seboe.

20 Q Okay. When Deputy Holt got there, does it tell you
21 how many people were at the crime scene when he arrived?

22 A No, sir.

23 Q And how about Sergeant Seboe?

24 A No, sir.

25 Q Do you carry a recording device on you?

1 A No, sir.

2 Q You don't?

3 A Beside my cell phone.

4 Q Do you use your cell phone sometimes to record
5 things, audio or video?

6 A Not for law enforcement purposes.

7 Q Okay. You have your digital camera, though?

8 A Yes.

9 Q What about the other officers? What do Lexington
10 County police officers wear on their bodies if they're in
11 a uniform?

12 A If they're on patrol, typically, they do have a body
13 cam.

14 Q Does it record both video and audio?

15 A Yes, ma'am -- I mean, yes, sir, sorry.

16 Q How does that work?

17 A I've never used one.

18 Q Okay. If you don't know the answer, it's fine.

19 A I don't.

20 Q Do you know if they're always running? You have to
21 turn them on and off?

22 A I believe they do have to turn them on and off.

23 Q I don't see a deputy in here. But they're usually
24 stuck on their chest right here, correct?

25 A Typically, but I believe previously, at this time,

1 they may have been in another location.

2 Q How about investigators, do they carry recording
3 devices?

4 A Sometimes.

5 Q If they don't, are they allowed to utilize their law
6 enforcement cell phone to record or interview a
7 conversation?

8 A Yes, sir.

9 Q In your time -- four years in Newberry and how many
10 years in Lexington?

11 A Eight.

12 Q Eight. Have you seen or been a party to recordings
13 that were taken on cell phones?

14 A Yes.

15 Q No procedure that says you can't do it that way?

16 A Correct.

17 Q Are sergeants and detectives issued county phones?

18 A Yes.

19 Q Smart phone calls, like, ones that have recording
20 abilities?

21 A Yes, sir.

22 Q And that's part of the allowance you get from the
23 county, correct?

24 A Yes, sir.

25 Q All right. So you obviously get there 30 minutes

1 after the fact, so you weren't a party to any of the
2 conversations with any of the parties?

3 A No, sir.

4 Q Law enforcement or lay witnesses?

5 A No, sir.

6 Q You wouldn't actually collect statements to review
7 from any of those people either, correct?

8 A No, sir.

9 Q So you wouldn't gather the witness statements or
10 anything like that as part of your job?

11 A No, sir.

12 Q All right. You did say that one of the first things
13 you went and looked at was the car area, correct? You
14 said you walked into the back and took pictures as you
15 were heading?

16 A When the search warrant was signed, that's when I
17 entered in to photograph it.

18 Q And that was 4:06, so 20 minutes or so after you got
19 there?

20 A Yes, sir. So shortly after I got the go ahead, that
21 was approximately the time I would go in and take the
22 photos.

23 Q Okay. So was that before or after you went and
24 listen to the conversation between the deputy coroner,
25 Detective Sherman and Mr. Corder?

1 A So that conversation was before.

2 Q Okay. If you don't mind, let's jump backwards a
3 little bit then?

4 A Okay.

5 Q So you heard a conversation and part of the testimony
6 was he ran and he tried to open a door and banged on a
7 window calling for his mom to dial 9-1-1, correct?

8 A Yes, sir.

9 Q I'm going to show you a picture that you took a
10 little bit later. It's marked as No. 43. All right. We,
11 also, have a picture that was previously marked I believe
12 as No. 7, okay. So 43, this is the back of the house,
13 correct?

14 A Yes, sir.

15 Q All right. And No. 7 is the driveway leading up to
16 the side towards the back of the house, correct?

17 A Yes, sir.

18 Q And Ms. Youmans was over here, correct?

19 A Yes, sir.

20 Q All right. So Mr. Corder said he ran and tried to
21 get in the door and then banged on a window and yelled for
22 his mom for 9-1-1. Is there a door on the back of the
23 house?

24 A Yes, sir.

25 Q All right. You had a little diagram earlier. Was

1 that back door accessible? Did it open easily?

2 A I'm not sure.

3 Q Did you check it?

4 A I know we messed with it, but I cannot remember what
5 all we did with it.

6 Q Okay. Would you have photographed it if you were
7 opening and closing it?

8 A Yes, sir.

9 Q Do you recall having that picture?

10 A I know we have a photo of it.

11 Q But you can't tell me whether or not it was easily
12 openable or not?

13 A No, sir.

14 Q Your diaphragm was No. 27, so, I guess, kind of
15 flipped, but this would have been that back door that we
16 were talking about?

17 A Yes, sir, but that's not my diaphragm.

18 Q Oh, sorry. I apologize.

19 A It's okay.

20 MR. STITLEY: May I approach?

21 THE COURT: You may.

22 BY MR. STITLEY:

23 Q All right. Sorry. In the diagram, I know it says
24 not to scale, but you said that you collected a firearm
25 from here, correct?

1 A Yes, sir.

2 Q You marked -- someone marked master bedroom here,
3 correct?

4 A Yes, sir.

5 Q So when we're looking at the picture, back door,
6 master bedroom, correct?

7 A Yes, sir.

8 Q All right. Well, there's a living room in between
9 and a master bedroom?

10 A Right.

11 Q With a window on it?

12 A Uh-huh.

13 Q And then he said he came around to the side door
14 because he couldn't get in the back door, correct?

15 A Let me check right quick. In what I heard, he did
16 not say anything about the side door.

17 Q Okay. But he did say he couldn't get in the door and
18 he banged on the window?

19 A Yes, sir.

20 Q Okay. You don't know who actually called 9-1-1 or
21 the times of those phone calls?

22 A No, sir, I only know what I heard from dispatch.

23 Q Not a problem. All right. So let's talk about the
24 firearm really quickly. And it's safe to touch or
25 whatever to hold up? It's been locked so the jury doesn't

1 have to worry about it?

2 A Yes, sir.

3 Q It's got a trigger -- well, a zip-tie through
4 anything that would allow it to possibly fire, correct?

5 A Yes, sir.

6 Q Now, this is a single or double action revolver?

7 A It's both.

8 Q The difference being a single action means you have
9 to have it hammered back, pull the trigger and it goes or
10 a double action, your trigger can drop, pull the hammer
11 back and let it go forward, correct?

12 A I'm not fully versed in that, so I don't want to say.

13 Q Okay. The way you described it when you were talking
14 to the solicitor is, one way, it was easy to pull the
15 trigger, the other, it was hard?

16 A Yes.

17 Q So in layman's terms -- or in looking at this
18 revolver and it's kind of tricky, but it's a revolver with
19 a visible hammer, correct?

20 A Correct.

21 Q And the hammer is on the back that on the front of it
22 has a little pin called a firing pin and it hits the back
23 and it hits the back of the casing, igniting it,
24 discharging the projectile, the bullet?

25 A Yes.

1 Q So this gun could be fired either starting like this
2 and pulling the trigger or with the hammer already locked
3 in a back position?

4 A Yes, sir.

5 Q When it's locked in the back position, that's the
6 easier to pull the trigger part, correct?

7 A Yes, sir.

8 Q And if it's like this, it's harder to pull the
9 trigger part?

10 A Correct.

11 Q And when we say harder, you exert more physical force
12 on the trigger to make it work?

13 A Yes, sir.

14 Q It doesn't change the way the gun fires, though, it
15 still does the same thing. The hammer comes forward,
16 projectile ejected, correct?

17 A Yes.

18 Q And in picture, No. 23, you indicated that this one
19 was the projectile or the discharged shell?

20 A Correct. It's the cartridge case.

21 Q So the difference --

22 A It's been fired.

23 Q Yes, ma'am. So pistol, semiautomatic versus
24 revolver, the difference being, the casings remain in the
25 cylinder and a semiautomatic pistol, as we think of them,

1 they will be discharged as the next round comes up,
2 correct?

3 A Yes, sir.

4 Q What about this second one over here that appears to
5 have a strike?

6 A As you see, it is a lot smaller than the one next to
7 it, so I can only assume that is the location where after
8 it fired, it then rotates the cylinder, that's where it
9 was resting.

10 Q Okay. Well, that's a little scary. I mean, how much
11 force needs to be exerted by a firing pin to initiate the
12 discharge?

13 A It's just pressure from my understanding.

14 Q So you're sure, though, that none of the other
15 cartridges were fired, correct?

16 A Yes, sir. That would be why I took them out of the
17 cylinder.

18 Q What kind of rounds can that gun fire?

19 A I'm assuming 357. If it can shoot something else,
20 I'm not aware of.

21 Q It can shoot 38s, as well?

22 A I do not know.

23 Q Not your speciality?

24 A Not my specialty area.

25 Q Did you notice any of those marks on any of the

1 bullets, completed casing shell combos in that little
2 green case?

3 A I don't think so.

4 Q What kind of safety does that gun have on it?

5 A I was not sure if there was a safety on it. That's
6 in my notes.

7 Q Because you're not a gun expert?

8 A No, sir.

9 Q All right. So now, we go to what we find inside the
10 car. This is No. 11. Okay. What are these?

11 A Gloves.

12 Q And what is this?

13 A I believe that was a beanie.

14 Q Was there another pair of gloves located somewhere?

15 A There was a pair of gloves that matched the beanie
16 located, but I believe they were in two different areas,
17 if I remember correctly.

18 Q Okay. Did you do an inventory of things like the
19 glove box and consoles and trunks and everything in this
20 car?

21 A We searched through all of it. I don't actually
22 remember the trunk. It was a hatchback, so yes, we did,
23 because I climbed in the vehicle.

24 Q Did you do an -- you didn't specifically inventory
25 items that would have been found in the glove box?

1 A No, sir.

2 Q So are we absolutely positive --

3 A We searched the vehicle, but as far as what I found
4 in there, I don't remember.

5 Q Was there a title?

6 A I don't remember.

7 Q How about an insurance card?

8 A I do not remember.

9 Q It's possible there could have been a pack of smokes
10 in the glove box?

11 A No, because I remember specifically looking for a
12 pack of cigarettes.

13 Q What was interesting about the gloves?

14 A The work gloves had what appeared to be blood on
15 them.

16 Q Do you have the gloves with you?

17 A No, sir.

18 Q Okay. Do you know where they are?

19 A No, sir, I do not.

20 Q Okay. You say they're work gloves. Give me a better
21 explanation as to what they were like?

22 A So my experience growing up and having to carry
23 firewood and having to work in the yard, they were tougher
24 material to protect your fingers from, like, getting
25 splinters or whatnot. I just call them work gloves.

1 Q Okay. Would they have made your hand bigger, like,
2 your fingers look a little bit larger if you had a glove
3 on?

4 A Yes, sir.

5 Q Where was the blood on these gloves?

6 A I'll have to consult my report right quick because I
7 know I have it on here. They had blood stains on them,
8 what appeared to be blood. There was, also, stains, what
9 appeared to be blood inside of the left glove.

10 Q Would it be fair to say that with the gloves on, it
11 might be more difficult to handle something precise?

12 A That's correct.

13 Q But you don't know where they are at this point?

14 A They could be here with evidence or they could be in
15 evidence at Lexington County Sheriff's Department. I do
16 not maintain evidence like that?

17 Q Okay. I show you No. 13. Which arm has the blood on
18 it on Brandon right there?

19 A From what we can see in the photo, on the left arm.

20 Q Would that be consistent with -- once again, if you
21 think this is outside what you can answer, but you said
22 you found some blood on the inside of the left glove.

23 Looks like there's blood running down his arm, correct?

24 A Yes, ma'am.

25 Q Left arm?

1 A Left arm, yes, sir.

2 Q Is it reasonable to think possibly that's how blood
3 go on the inside of the left glove?

4 A It's possible;

5 Q Did he have blood on the rest of his hands?

6 A I do not -- I want to say I took photos of his hands.

7 Q At least, did he have large quantities of blood on
8 his hands?

9 A No, sir.

10 Q You would have absolutely taken a very specific
11 picture of that, correct?

12 A I do have pictures of his hands and I don't see any
13 that jumps out to me.

14 Q Okay. How many law enforcement officers were around
15 Brandon when that picture was taken, do you know?

16 A No, sir.

17 Q Because you didn't take that picture?

18 A No, sir.

19 Q When he was talking to Investigator Sherman, where
20 was he?

21 A I honestly do not remember.

22 Q Okay. And you don't remember any other parties who
23 may have specifically been around him besides the deputy
24 corner, the detective and you came up?

25 A There might have been another investigator that was

1 around them at the time.

2 Q Okay.

3 A I'm sure other deputies had talked to him. I don't
4 know if they were still there when I walked up. I don't
5 remember.

6 Q Okay. Why did you -- and this is just out of pure
7 curiosity. You did the blood checking, I think you said
8 on January 10th, and the DNA swabbing on January 27th.
9 Why the month long delay on that? I'm just wondering?

10 A I believe what it was -- so when we have bigger
11 cases, we have meetings on what has been done and what
12 needs to be done. And I believe what happened was there
13 was another meeting after I had already swabbed it for the
14 blood that they wanted additional testing.

15 Q Okay. So a call comes up from someone else that says
16 hey, would you mind pulling these tests and you just do
17 it, correct?

18 A Yes, sir.

19 Q And you don't have anything to say once it gets
20 locked in the evidence bag and out for testing, it's not
21 you anymore, correct?

22 A Correct.

23 Q So you don't do the DNA testing, the gunshot residue
24 results, all of that goes to someone else?

25 A Yes, sir.

1 Q You said you did a GSR testing. I didn't see an
2 envelope up here that you guys went through. Did you put
3 that in one of these envelopes and send it on, as well?

4 A It was an envelope, but I did not take that. That
5 would have been at the time Weyandt.

6 Q So Weyandt did the GSR testing, not you?

7 A Correct -- well, the collection of it.

8 Q The collection, I'm sorry?

9 A Yeah.

10 Q But you were the one who called for it because all
11 facts you want that testing?

12 A Yes, sir.

13 Q Okay. You said nothing on the fingerprints. You
14 couldn't pull any?

15 A Not that I recall, no, sir.

16 Q Okay. And your pictures from inside the house were
17 at 6:41, I believe is what you said, about two hours after
18 you got there, three hours after you got there?

19 A The actual --

20 Q Closet?

21 A Closet, yes, sir.

22 Q Were you the one who would have done all of the
23 searching of the entire house?

24 A No, sir.

25 Q Okay. Who actually did that?

1 A That would have been investigators and possible other
2 deputies.

3 Q So who would have went through, say, the cabinet
4 drawers?

5 A That would have been investigators and deputies.

6 Q And so say there's not a picture of the kitchen
7 cabinets in the collection of photographs that you took.
8 Why would that be the case?

9 A I'm not sure. I did not photograph the entire house.
10 That was not me. That was CSI Weyandt.

11 Q Okay. So I'd have to ask him. You don't know what
12 pictures necessarily he has?

13 A I mean I have ones in front of me, but that's it.

14 Q Okay. Do you know if he took pictures of every
15 single cabinet, every single storage space in that house?

16 A Pretty sure probably not.

17 Q So something like a small holster, if it was in a
18 kitchen cabinet drawer that you didn't go into, you
19 wouldn't be able to say whether it was in there or not?

20 A I do know that we exerted all options and chances of
21 locating that firearm -- that holster.

22 Q But why not document if you're so specific about
23 documenting everything else?

24 A Because we would probably still be out there.

25 MR. STITLEY: Understood. Thank you. No other

1 questions.

2 THE COURT: Any redirect?

3 MS. FULLER: Just briefly.

4 REDIRECT EXAMINATION:

5 BY MS. FULLER:

6 Q Going back to the beginning, when a scene is actually
7 secured, I just want to make sure it's clear, what does
8 that mean in terms of what is within the crime scene tape
9 in terms of accessibility?

10 A Oh, we don't allow just anybody to go into that crime
11 scene.

12 Q And so when a crime scene log is started, what does
13 that indicate?

14 A That this is a crime scene and we're going to be
15 doing an investigation.

16 Q So the log is not started before the tape goes up; is
17 that correct?

18 A Correct. It might actually be simultaneously.

19 Q So tape up, crime scene logs start, correct.

20 A Yes, ma'am.

21 Q So prior to that, prior to your arrival, people could
22 have been going in and out, but in terms of law
23 enforcement and once law enforcement secured that scene,
24 by testimony, no one but authorized personnel would have
25 entered that scene, correct?

1 A Yes, ma'am.

2 Q And when it comes to -- we talked about Mr. Corder's
3 hands, and I don't know if you have all the photographs,
4 but on this one, defense counsel asked you about blood on
5 his hands. Did you note any blood on his right hand? And
6 I can show you the photograph up close?

7 A Yeah, because I have thumbnails.

8 Q Correct.

9 A So there appears to be some redness on his right
10 hand, on a knuckle and a finger, but I do not know what it
11 is.

12 Q Okay. So when we're talking about the large
13 collection you referred to was on that left hand, correct?

14 A Yes, ma'am, that's my understanding.

15 Q And in terms of personnel out there when this
16 photograph was taken, your testimony was you didn't know,
17 that's correct, right?

18 A Yes.

19 Q So it's clear, this was the condition that you saw
20 him in when you did see him, correct?

21 A Yes, yes, ma'am.

22 Q And you testified that there were other law
23 enforcement officers on the log. I think you said, at
24 least, seven entered the actual crime scene tape?

25 A According to the log.

1 Q According to the log. And in this log something you
2 would maintain in your file, too?

3 A I maintain it after we're done. I'll take it and it
4 goes into my case file.

5 Q And when it comes to -- just -- it was talked about,
6 so I want to make sure it's clear. When it comes to the
7 actual handling of evidence, once you collect it, what is
8 the next step?

9 A When I collect it, I secure it in the crime lab until
10 I'm able to turn it into evidence at the Lexington County
11 Sheriff's Department. And at that point, they take
12 custody of it and are in charge of it.

13 Q Okay. We talked about -- and I won't look for the
14 photograph. It was up there for awhile. We talked about
15 the apex of the door. Do you remember that conversation
16 in that photograph?

17 A Yes.

18 Q Defense counsel is asking you specifically about
19 searching the car. You talked about getting in the
20 vehicle. Where would you have gotten into that vehicle?

21 A I entered the vehicle on the driver's side because I
22 didn't want to have to climb through the possible blood.

23 Q Okay. When you talked about searching for a pack of
24 cigarettes, you indicated you were looking for it. Why
25 were you looking for it?

1 A Because I heard Mr. Corder say she turned around to
2 look -- that she went to look for a pack of cigarettes.
3 And we do that to corroborate. !

4 Q So you -- similar to looking for a firearm
5 extensively, you were looking for cigarettes extensively,
6 correct?

7 A Yes, ma'am.

8 Q And if they were in that vehicle, would you have
9 found them?

10 A Yes, ma'am, because it was quite a small vehicle.

11 Q In terms of the defense counsel asked you about a
12 holster for the firearm, you were looking for a holster,
13 correct?

14 A Yes, we were.

15 Q Did you search extensively for that holster?

16 A Yes, we did.

17 Q If a holster was around the car, outside in that yard
18 or in that house, would you have found it?

19 A Yes.

20 Q And you were on scene from approximately 3:45 to what
21 time, 7:00?

22 A It's almost eight o'clock.

23 Q Almost 8:00, so it turned dark a little bit?

24 A Oh, yeah.

25 Q And you talked about deputies and investigators

1 assist in the search, correct?

2 A Yes.

3 Q And that would have included the yard and the
4 entirety of the yard, correct?

5 A I would assume so.

6 Q And included around the vehicle, correct?

7 A I know I looked around the vehicle myself.

8 Q And it included inside the home, correct?

9 A Yes.

10 Q And if any of those items were found, it would have
11 been documented, correct?

12 A Yes.

13 MS. FULLER: No further questions.

14 MR. STITLEY: Just briefly in response to that.

15 RECROSS-EXAMINATION:

16 BY MR. STITLEY:

17 Q Did you guys check the persons, either Mr. Dowd or
18 Brandon's mother, who were both on the scene to see if
19 they had touched or grabbed anything before your crime
20 scene was secured?

21 A I'm not sure, that wouldn't have been my part.

22 Q And you can't speak to what other lay people would
23 have walked in before you guys had your evidence tape up,
24 correct?

25 A That's correct.

1 Q And where was Ms. Corder, Brandon's mother during
2 this entire time?

3 A I don't know entire time. At some point, she was on
4 the front porch.

5 Q That side area or in front of the house?

6 A The front of house.

7 MR. STITLEY: Okay. Thank you.

8 THE COURT: Can I excuse Investigator Snelgrove?

9 MS. FULLER: Yes, Your Honor.

10 THE COURT: Thank you.

11 MS. FULLER: Your Honor, may we approach?

12 THE COURT: Yes.

13 (There was a bench conference in the presence of the
14 jury but out of the hearing of the jury.)

15 THE COURT: All right. Madam Forelady, ladies and
16 gentlemen of the jury, I'm going to let you go for the
17 day. Now, you can't talk about this case. I know it's
18 tempting. Don't get on the phone and call everybody you
19 know and say hey, you're not going to believe it, but I
20 got picked for the jury. Don't do it. Somehow I always
21 find out about it. I don't know how it happens, but I do.
22 It's amazing to me.

23 You're not allowed to talk to anybody about this, do
24 any research, get on the computer, look up anything that
25 you think might be helpful. You are not allowed to do

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit

3
4 State of South Carolina,) Transcript of Record
5 vs.) 2020-GS-32-01854
6 Brandon Lee Corder,)
7 Defendant.)

8
9 September 26th-27th, 2023
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable Debra R. McCaslin, Judge, and a Jury

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

15 Sutania A. Fuller, Senior Assistant Solicitor
16 Robert L. McNair, III, Senior Assistant Solicitor
17 On behalf of the State of South Carolina

18 Benjamin A. Stitely, Esquire
19 On behalf of the Defendant

20 Stacy S. Johnson, RPR
21 Circuit Court Reporter

22

23

24

25

1 (The following proceedings were held September 26,
2 2023, beginning at 9:10 AM.)

3 THE COURT: All right. If you want to get started,
4 we're gonna do the Jackson v. Denno.

5 MS. FULLER: Yes, Your Honor. I have one quick thing
6 to put on the record that we didn't yesterday, if that's
7 okay?

8 THE COURT: Sure.

9 MS. FULLER: Your Honor, yesterday during the first
10 responding officer's testimony, John Gietz, there was an
11 objection and we handled it in the hallway.

12 THE COURT: Right. We did.

13 MS. FULLER: So the testimony was when Mr. Corder
14 came out he paused and then said his description of his
15 demeanor change was putting on a show. Defense counsel
16 had a matter of law outside the presence of the jury.
17 Your Honor insisted that we go out in the hallway instead
18 of sending the jury to the jury room and we took it up
19 outside in the hallway.

20 Your Honor then pulled her notes from prior testimony
21 because defense counsel suggested potential impeachment
22 or mischaracterization and ultimately Your Honor said that
23 he can describe what he saw, and that's what the testimony
24 was. And I believe your law clerk pulled up prior trial
25 notes from the prior law clerk that indicated that he said

1 something similar and I stated in the hallway that I feel
2 like that's what I had in my notes as well.

3 Defense counsel -- just to protect the record and
4 your ruling, I just figured we'd go ahead and put that on
5 the record because I don't remember if we really did.

6 THE COURT: I don't think we did and thank you for
7 bringing that to my attention.

8 MR. STITELY: And that's fair, Judge.

9 THE COURT: And it's on the record now.

10 MS. FULLER: Thank you, Your Honor. I apologize.

11 MR. STITELY: That's a good call.

12 THE COURT: Now can we go with Sergeant Creech?
13 Because this is one that the defense had either new case
14 law, something to add to my prior ruling when we did this
15 on February the --

16 MS. FULLER: 27th.

17 THE COURT: -- 27th that continued until the 28th
18 -- until 10:15 on the 28th. I note Sergeant Creech's
19 testimony was quite lengthy. The other statements he
20 didn't have anything new or new case law or anything --
21 newly discovered evidence or anything to add, but this
22 one he does.

23 MS. FULLER: Yes, Your Honor.

24 THE COURT: So I want to go forward with Sergeant
25 Creech on a Jackson v. Denno.

1 MR. STITELY: And I think some of it we can probably
2 shortcut because you've actually now seen and watched the
3 video.

4 THE COURT: Oh, I've watched all -- and for the
5 record, I've watched every single one of these videos that
6 are audios. Not once, but several times. I watched it on
7 Sunday night before this trial just to refresh my memory
8 and some of this stuff is like three hours long.

9 But go ahead. I didn't mean to interrupt you,
10 Mr. Stitely.

11 MR. STITELY: And that's -- and that's what -- I
12 was trying to circumvent having to replay the entire
13 audio and we can address the specific issues and getting
14 a ruling clarification.

15 If Your Honor recalls, this is the situation, and
16 I guess we can put him up first or I can just kind of
17 brief it.

18 MS. FULLER: Well, Your Honor, my understanding or
19 my position is that we're supplementing and so I have
20 nothing new in terms of his testimony, but I would
21 reserve the right to reply to, I think, the defendant's
22 testimony if necessary.

23 THE COURT: Absolutely.

24 MR. STITELY: And I think that makes it easiest to
25 go forward with.

1 THE COURT: Okay.

2 MR. STITELY: Judge, the question in this case and
3 the specifics of why this Jackson v. Denno, and our
4 position, is that Miranda should have been issued, and
5 it's pretty much straightforward. It's our position it's
6 a custodial interrogation where an objective standard
7 would say he's not reasonably free to go. There's also
8 the allegation of a Seibert violation, which is addressed
9 in State v. Navy, and I'll pass that up if Your Honor
10 doesn't have that in front of you.

11 THE COURT: I've got State v. Navy and, in fact, if
12 I remember correctly, and I have my prior ruling on this,
13 that I addressed State v. Navy, and if I need to do that
14 again, I will.

15 MR. STITELY: And I think that's kind of where we
16 may have a disconnect as far as what the standard would
17 need to be. And I'm happy to call Mr. Corder. So --
18 and, I guess, just needing clarification. It would be
19 our position first he was not free to go and I cannot
20 recall specifically if the Court was concerned about
21 that part or not. Now -- and I guess we're kind of
22 halfway through it, but there's been testimony through
23 other officers about how many police officers were on the
24 scene. There will be some testimony, and I can put him
25 forward, to say that he was told -- and actually it does

1 say in Creech's narrative I said let's go to my truck.
2 His position is it was so we could have a quiet
3 conversation. My client will say he definitely was told
4 by a law enforcement officer go get into a patrol vehicle,
5 and I can put him up to say could you have walked away or
6 was it pretty clear that they positioned an officer on
7 guard to hold you at a location.

8 So if we don't need testimony stating that there is
9 not a question that he was definitely in custody, and I
10 don't know if that's the position the Court -- or the
11 Solicitor wants to stipulate to or if we want to take his
12 testimony, but if he's in custody, then we have to come
13 to the question of what form of interrogation it is, and
14 if he's in custody I think it's -- it is exactly the
15 conversation that happens in Navy. You start talking,
16 you point out an inconsistency and then you get them to
17 slightly change their story. They call it a confession.
18 I don't care if it's a confession or just an alternate
19 reality story, the second we get a difference by pointing
20 out our evidence, our investigation has shown you might
21 not being truthful, he then says well, hang on, let me
22 give you a Miranda, and then pushes forward.

23 THE COURT: Well, it's my understanding if I
24 remember correctly that there's -- it's like a two-part.
25 First, it's noncustodial, there's no Miranda and then it

1 turns into during the middle of the conversation Sergeant
2 Creech goes back and gives him Miranda.

3 MR. STITELY: And I would dis -- I would say the
4 entire thing is custodial and if we need to elicit some
5 testimony as to how he was -- and, once again, the
6 standard is not subjective, it is not on the person, it
7 is objective in the totality of the circumstances, but I
8 believe the testimony I could elicit is not dissimilar
9 from what Creech said, but at least I'm sitting there and
10 there's a ton of law enforcement around me, I'm told to
11 go to a patrol car, put in the seat and then questioned
12 by an officer for the third time.

13 THE COURT: Okay. And I think the questioning, and
14 I'm going from my notes and my memory, was that Sergeant
15 Creech was concerned about the gun that had not been
16 found at that point and as part of his investigation he
17 was trying to get his hands on that gun.

18 Correct me if I'm wrong, Ms. Fuller.

19 MS. FULLER: No, Your Honor. That was definitely
20 part of it.

21 Your Honor, I'm not hearing anything quite new that
22 Your Honor didn't consider before and so I think it might
23 be appropriate now just for the defendant to testify and
24 then I can develop the counter of where we're potentially
25 going because those arguments were made last time in

1 terms of where Mr. Corder was. Law enforcement on cross,
2 he asked how many officers were there. Like all of that
3 was kind of developed for Your Honor to take into account
4 and you thought about it overnight and watched the video
5 again back then --

6 THE COURT: I did. I took it under advisement.

7 MS. FULLER: -- and came to court with a written
8 ruling.

9 So I'm not hearing anything new. I stand by my
10 previous arguments back on February 27th in terms of
11 where we are distinguishing it from Seibert. I don't
12 think that's a violation at all in what we were looking
13 for. Public policy dictates. Creech was concerned
14 about that weapon and the defendant kind of set the scene
15 where he was more of witness or just merely present than
16 actually involved and he took steps. If you remember the
17 timeline in terms of when they even were able to find the
18 weapon, he took steps to hide it to make sure he wasn't
19 considered a suspect, and so I think the State wouldn't
20 -- if he wants to take the stand and defense counsel
21 elicits that and I get to explore it to kind of --
22 because that's the only thing new. Everything else has
23 been litigated.

24 THE COURT: Okay. Go ahead, Mr. Stitely.

25 MR. STITELY: Mr. Corder, please take the stand.

1 THE COURT: Come forward and be sworn.

2 (Whereupon, Brandon Lee Corder was duly sworn by
3 the Clerk of Court.)

4 THE CLERK: If you'll have a seat up there. If
5 you'll state your name and spell your last name for the
6 record.

7 THE WITNESS: Brandon Corder. C-O-R-D-E-R.

8 BRANDON LEE CORDER,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION (In-Camera)

11 BY MR. STITELY:

12 Q. Brandon, how old are you?

13 A. I'm thirty-two.

14 Q. How far did you go in school?

15 A. I graduated high school, got my diploma, and then went
16 onto about a year and a half of technical college.

17 Q. Okay. And just very quickly, what we're talking about
18 now is we're simply gonna talk about the circumstances
19 around the period when the officers first showed up and
20 when you went to Detective Creech's car or truck, whatever
21 it was, okay?

22 To your recollection, who was the first officer who
23 conducted an interview with you?

24 A. I believe that was Sherban.

25 Q. Okay. And that's the gentleman sitting right here?

1 A. Yes.

2 Q. Okay. And he came and talked to you and the deputy
3 coroner was with him?

4 A. Yes.

5 Q. And you remember seeing the deputy coroner. I don't
6 remember if you remember talking to him or not, but you
7 saw him at the last trial, that gentleman, too?

8 A. Yes, I seen him.

9 Q. Okay. Where were you at the time?

10 A. When exactly are you talking about?

11 Q. When you talked to Detective Sherban, where were you
12 located?

13 A. He approached me when I was in front of the house in
14 front of the front porch. I was -- I had thrown up. I was
15 on hands and knees.

16 Q. Okay. Do you recall to the best of your recollection
17 how many law enforcement official looking personnel were
18 there at the time?

19 A. To the best of my recollection, I'd say about a dozen.

20 Q. Okay. At some point subsequent to then, do you
21 remember being approached by Detective Creech? He's the
22 gentleman in the front row.

23 A. Yes.

24 Q. Okay. And where did he tell you he wanted to speak
25 to you?

1 A. He said he wanted to speak to me inside of his patrol
2 vehicle.

3 Q. Okay. At any point did they say if you want to leave
4 and go somewhere else you can?

5 A. No.

6 Q. Did you have any impression that if you wanted to get
7 in your car and drive away that would have been okay?

8 A. I certainly did not.

9 Q. Was there any point when there wasn't at least one
10 police officer within an extreme close proximity to you?

11 A. I do not recall a time where there was not one.

12 Q. Okay. When you went to speak to Detective Creech,
13 did you feel it would have been okay to hop out of his car
14 and run away?

15 A. No.

16 Q. Were there other deputies around his vehicle as well?

17 A. Yes.

18 Q. When you initiated the conversation with him, had he
19 read you your Miranda rights?

20 A. No.

21 Q. Were you made aware by any other officer prior to that
22 time of what your Miranda rights are?

23 A. I was not.

24 Q. And your Miranda rights are that you have the right
25 to remain silent, anything you say can and will be used

1 against you and so on, correct?

2 A. Correct.

3 Q. Were you offered the opportunity to speak to an
4 attorney prior to questioning by Detective Creech?

5 A. No.

6 Q. At some point he did give you your Miranda warnings,
7 correct?

8 A. That's correct.

9 Q. And you recall him giving them to you?

10 A. I do.

11 Q. But he had already asked you a good amount of
12 questions before then, correct?

13 A. Yes.

14 Q. And, again, did you feel you could have gotten out of
15 a police car and left?

16 A. No.

17 Q. And there were other -- both uniformed and
18 un-uniformed officers around that area, too?

19 A. Yes, there were.

20 Q. Did he tell you you could leave?

21 A. No, he did not.

22 Q. Did he tell you you didn't have to answer his
23 questions?

24 A. Not immediately.

25 Q. Okay. Not until he gives you the full Miranda?

1 A. Not until he read me Miranda, correct.

2 MR. STITELY: No other questions at this time.

3 Please answer any the Solicitor has.

4 MS. FULLER: Thank you.

5 CROSS-EXAMINATION (In-Camera)

6 BY MS. FULLER:

7 Q. So what high school did you go to?

8 A. I went to White Knoll.

9 Q. Okay. And you graduated, so a four-year diploma,
10 correct?

11 A. Yes.

12 Q. And then you went to technical college, correct?

13 A. Yes.

14 Q. So you can understand, read and write the English
15 language, correct?

16 A. Yes.

17 Q. And you know how to communicate with people?

18 A. I do.

19 Q. Okay. So prior to this case, you've had interactions
20 with law enforcement before, correct?

21 A. Yes.

22 Q. And you've been provided Miranda before, correct?

23 A. I can't recall a specific time I have, but I'd imagine
24 so.

25 Q. You're familiar with Miranda, correct?

- 1 A. No. I mean, I've -- I've heard it, but I don't
2 really --
- 3 Q. It's a yes or no.
- 4 A. -- understand.
- 5 Q. So no, you're not familiar with Miranda?
- 6 A. I do not fully understand it. I did not at the time.
- 7 Q. You did not understand Miranda at the time?
- 8 A. No.
- 9 Q. Okay. But you've had prior encounters with law
10 enforcement, correct?
- 11 A. Yes.
- 12 Q. Have you talked to law enforcement previously before
13 this case?
- 14 A. Yes.
- 15 Q. Okay. And back then you didn't understand Miranda
16 either?
- 17 A. No. I mean --
- 18 Q. And that's some years ago before this, correct?
- 19 A. Uh-huh. Yes.
- 20 Q. So you'd gone for years without understanding Miranda
21 even though you've encountered police more than once?
- 22 A. That is correct.
- 23 Q. Okay. Now you would agree that the initial 9-1-1 call
24 not made by you was at 3:09?
- 25 A. Okay.

1 Q. Would you disagree with that?

2 A. I don't have any paperwork in front of me to refer to.

3 I don't --

4 Q. Well, you've been in this trial and you've heard the
5 testimony, correct, that the 9-1-1 call was at 3:09,
6 correct?

7 A. Yes.

8 Q. And would you disagree with the records that shows
9 when you called 9-1-1 it was three minutes after that?

10 A. I would not disagree.

11 Q. Okay. So it was three minutes after the shooting that
12 you called 9-1-1; is that correct?

13 A. Correct.

14 Q. And so you -- you have your own business, right?

15 A. Yes.

16 Q. And what kind of business is that?

17 A. I cut trees.

18 Q. And how long have you had that business?

19 A. Before the incident I was doing it for roughly two and
20 a half years.

21 Q. And you managed that business on your own?

22 A. Yes.

23 Q. You had the mental ability to do that, correct?

24 A. I would say so.

25 Q. To interact with people?

1 A. Yes, I interact with people.

2 Q. Drive yourself to job sites?

3 A. Yes.

4 Q. When you finish work you drive home?

5 A. Yes.

6 Q. Or go about your business, whatever you want to do?

7 A. Yes.

8 Q. Okay. So that day on December 27, 2019, you went to
9 work like normal; is that correct?

10 A. Yes.

11 Q. And Joanie would help you from time to time, correct?

12 A. Yes.

13 Q. And she went with you that day?

14 A. Uh-huh.

15 THE COURT: You've got to answer yes or no for the
16 record.

17 THE WITNESS: Yes, she did.

18 THE COURT: We've got a court reporter who takes
19 down everything we say and she can't take down uh-huh,
20 okay?

21 THE WITNESS: I understand. Thank you.

22 THE COURT: Yes or no, please.

23 BY MS. FULLER:

24 Q. And you guys go to work and you come back to your
25 house; is that correct?

1 A. That's correct.

2 Q. And you're back at your house and you're offloading
3 your trailer; is that correct?

4 A. At a certain point --

5 MR. STITELY: Judge, I would object to the line
6 of questioning. We're specifically here to deal with
7 questions about the custody situation for a Jackson v.
8 Denno hearing. This isn't about trying the factual
9 elements of the actual trial. This is whether he was
10 in custody and gave a statement with or without Miranda.

11 MS. FULLER: Your Honor, respectfully, one, this
12 is cross-examination; two, the issue -- Your Honor has
13 ruled on this issue and defendant is asking you to reverse
14 your issue -- your ruling based on his credibility in
15 terms of his viewpoint and what his testimony is, and
16 what he's testified to already, which I'm getting to, is
17 not consistent with what happened at the scene and so I
18 believe it's appropriate for Your Honor not to be ruling
19 in a vacuum, but to actually have a full lay of the land
20 from his perspective.

21 THE COURT: Okay. Well, I don't need to go over the
22 whole case.

23 MS. FULLER: And I don't intend to. I'm just
24 trying to get to the point of police interaction in the
25 timeline --

1 THE COURT: Okay. Go ahead then.

2 MS. FULLER: -- which I think is relevant to what
3 defense counsel is doing.

4 THE COURT: Go ahead and tie it up.

5 MS. FULLER: Thank you, Your Honor.

6 BY MS. FULLER:

7 Q. And the shooting happened, correct?

8 A. Yes, it did.

9 Q. Okay. And in that moment you were able to go back
10 inside the house, correct?

11 A. I did go at a certain time. I had to go to the back
12 window and bang on the door because I could not get into
13 the back door.

14 Q. And you went inside the house?

15 A. I did.

16 Q. And you put the gun up, correct?

17 A. That's not the correct order of events, no.

18 Q. The gun got put up?

19 A. At a certain time, yes.

20 Q. And you were able to come back outside?

21 A. Yeah.

22 Q. And you saw the police there?

23 A. Uh-huh.

24 Q. And you --

25 A. Yes, ma'am.

1 Q. -- would agree that the officer's records show that
2 he was on-scene at 3:15; is that correct?

3 A. You're talking about Officer Gietz?

4 Q. Yes.

5 A. Yes.

6 Q. You won't disagree with that?

7 A. No.

8 Q. Now we talked about -- you said your first interaction
9 was with Sherban. Do you recall testifying to that just
10 now?

11 A. Yes.

12 Q. And if I told you that the recording with Sherban
13 began at 4:21, would you disagree with that?

14 A. Like I said, I can't remember the exact times
15 everything happened.

16 Q. But if the records show and the judge has already
17 looked at them and listened to and we had testimony that
18 it was at 4:21, would you disagree with that?

19 A. I wouldn't agree with everything the record says.
20 No, I would not.

21 Q. So you disagree that it was 4:21 PM when the recording
22 started with Sherban?

23 A. I don't agree or disagree. I don't know.

24 Q. Okay. If the recording started at 4:21, you would
25 agree that that was over an hour after the 9-1-1 call?

1 A. Okay. Yes.

2 Q. And in that hour you were free to walk around your
3 yard?

4 A. No, I was constantly being talked to by people on the
5 scene.

6 Q. So if there's body cam footage of you moving around
7 and you lying on the ground, you going over here to throw
8 up, you sitting on a bucket, you're saying that didn't
9 happen?

10 A. That did happened, but I wasn't free to move away.
11 No, I didn't believe at the time I could leave my property
12 or anything of that nature. No.

13 Q. I'm talking about the yard. You were able -- you were
14 not in handcuffs?

15 A. No.

16 Q. You were there for over an hour before speaking to
17 Sherban, you were there alone -- not alone, but free to do
18 whatever you wanted before speaking to Sherban for over an
19 hour?

20 A. I guess.

21 Q. Okay.

22 A. I don't know what you're getting at.

23 Q. Just answer the question.

24 A. Okay.

25 Q. Okay. You were free up until 4:21, even half after

1 that, but police were around investigating. Testimony was
2 crime scene was on-scene by 3:45, 3:46. You didn't start
3 speaking to Sherban until 4:21. You were not in custody,
4 correct?

5 A. I wouldn't say at that time, no.

6 Q. Because, in fact, you had told the police that you
7 didn't know where the shot came from. That's correct,
8 right?

9 A. That is correct.

10 Q. So they weren't considering you a suspect, correct?

11 A. I don't know what they were considering.

12 Q. You were not in custody at that time; is that correct?

13 A. That's correct.

14 Q. Okay. And this is over an hour after the initial
15 9-1-1 call. So now you're there, you had already told the
16 police you didn't know where the shot came from, that it
17 came from the woods, correct?

18 A. Yes, I said that.

19 Q. Okay. They didn't put handcuffs on you?

20 A. (Shakes head.)

21 Q. Yes?

22 A. No.

23 Q. Thank you. And so at that point your interaction with
24 Investigator Creech, what you testified when he walked up
25 to you and said go in the patrol car, that was not your

1 first interaction with him?

2 A. With Creech?

3 Q. Yes.

4 A. That was my first interaction with Creech. I was
5 talking about Sherban before this.

6 Q. Unh-unh. No, with Creech. Isn't it true that when
7 you were on the ground on another officer's body cam,
8 Seboe, Creech walks up and is talking to you and says
9 what happened. You were laying on the ground and it's
10 approximately twenty-two minutes into that body cam and
11 you can hear that conversation and you're telling him what
12 happened. Do you recall that?

13 A. No, I don't.

14 Q. Okay. And so you don't recall him walking off and you
15 saying where did he go?

16 A. No.

17 Q. And so if I have video of you actually doing that,
18 would you agree or disagree with it?

19 A. If you have video, then I couldn't disagree with it.
20 If you're asking me now, I cannot agree because I don't
21 remember. I don't remember that. I was throwing up, so I
22 don't think I was paying any attention to what he was or
23 was not doing.

24 Q. Okay. So you don't recall indicating during that
25 first encounter with Creech that you were working at

1 cutting down trees? Do you recall that happening?

2 A. I do not.

3 Q. Okay. Do you recall we just loaded the trailer up,
4 it was full and we came straight here, we didn't make any
5 stops, not at a gas station? Do you recall that?

6 A. This is before we got in his vehicle?

7 Q. Way before.

8 A. I guess I was under the impression he was Sherban
9 doing the investigation.

10 Q. Okay. So even -- even when you opened your eyes and
11 looked like where did he go because he walked off while you
12 were essentially -- I think my words to him was pouring
13 your heart out?

14 A. I can tell you one thing, that I was in shock and I
15 was traumatized. So if I confused somebody for somebody
16 else because I don't know them, that's -- that's possible.

17 Q. Thank you so much. Can you answer my question?

18 A. I can. Restate your question, please.

19 Q. Do you recall stating this?

20 A. What exactly are you asking?

21 Q. You came back, you didn't make any stops, not at the
22 gas station, started to unload the wood off the trailer
23 to the burn pile. You don't recall laying on the ground,
24 Officer Creech is there and -- and another officer, Seboe,
25 standing over you, you're free to lay down, stating this

1 to Sergeant Creech?

2 A. I do not recall.

3 Q. Okay. Do you recall stating that we might have been
4 working and then she went to the car to get cigarettes, she
5 went down and then you heard a bang?

6 A. I don't recall.

7 Q. Okay. Do you recall stating that I tried and I pulled
8 her and I held her up underneath? And you went through all
9 of this. You indicated that you checked her pulse. Do you
10 recall that?

11 A. I remember saying that to somebody. I remember saying
12 that.

13 Q. Okay. Do you recall being asked about firearms and
14 you indicated that no, there weren't any, maybe a BB gun or
15 something? Do you recall any of that?

16 A. I recall denying to somebody that there were firearms
17 around.

18 Q. Okay. So you're starting to remember that
19 conversation?

20 A. No, not the conversation. I remember saying specific
21 things, but I don't know who I said them to.

22 Q. Okay. And if there's video that you were saying this
23 to Creech before the interaction after 5:00 in his car,
24 there's video, would you disagree with the video?

25 A. If I saw the video, I couldn't disagree.

1 Q. Okay. Would you agree that your interaction with
2 Creech didn't start until I think my notes say 5:19 PM?
3 Would you disagree with that? The one that you just
4 testified to on direct, would you disagree that that
5 started at 5:19 PM, over two hours and ten minutes after
6 law enforcement had been on the scene where you were
7 comfortably talking to anyone that was walking by?

8 A. You're talking about the time we were in his vehicle?

9 Q. When his recording started, correct.

10 A. I recall that time.

11 Q. And you recall that being over two hours after the
12 initial 9-1-1 call?

13 A. I wasn't keeping up with the time in my head at the
14 time. I do not know. If that's what the paper says. I
15 don't know. If that's what the paper says. I don't know.
16 I wasn't keeping up with the time.

17 Q. Now you testified that you -- when I started asking
18 you questions, that you did not understand Miranda, so
19 let's go through with that. Now when he was asking you
20 about Miranda and -- I mean, he was giving you your
21 Miranda, you asked questions. Do you recall that?

22 A. Yes.

23 Q. Okay. And you said you don't understand the first one
24 where you said that everything I say can and will be used
25 against me. How is that gonna be used against me if I'm

1 telling you it's a complete accident? Do you recall
2 stating that?

3 A. Yes.

4 Q. And do you recall Creech explaining to you that right?

5 A. I recall him saying something, but it -- it did not
6 strike me as an explanation. It struck me as just him
7 trying to move forward quickly.

8 Q. Okay. I understand that, but you recall him
9 explaining it to you?

10 A. If that's what you call an explanation, yes.

11 Q. Thank you. And then he says well, I'm saying that
12 the things you say can be repeated, that's what that means,
13 and then you said but -- you said it can and it will and it
14 will, and then he said if it goes into a court of law. Do
15 you recall that part of the conversation?

16 A. Yes.

17 Q. And then you recall saying I loved her, I loved her
18 with all my heart, man. You were just talking?

19 A. Yes.

20 Q. You remember that?

21 A. Yes.

22 Q. Okay. And this is all while he was explaining your
23 rights to you, correct?

24 A. A right, not my rights. I was not through telling
25 him the other ones I didn't understand or anything. He

1 just cut me off and kept moving forward.

2 Q. Okay. So when he says having these rights in mind,
3 are you good to explain to me what happened now, you say
4 yeah. You're saying you didn't say yeah?

5 A. To that one right. He didn't -- he said do you
6 understand these rights, I said no and I tried to say what
7 I didn't understand and he cut me off in the middle of
8 saying what I didn't understand and tried to explain to me
9 what -- about the part -- about things being used against
10 me later.

11 Q. Thank you. So let me get to the bottom line. After
12 over two hours of you telling the police one thing on-scene
13 that you didn't know anything, that you were basically just
14 there present, that did happen. You told the police that?

15 A. I did.

16 Q. So at that point they did not have you in handcuffs?

17 A. No.

18 Q. They did not even say you did this?

19 A. At the point before I went into the vehicle?

20 Q. Yes. They did not say it.

21 A. No, I was not in handcuffs.

22 MS. FULLER: Okay. I think that's enough for the
23 purposes of this hearing.

24 THE COURT: Mr. Stitely?

25 MR. STITELY: No more questions for Mr. Corder.

1 THE COURT: I'll be glad to hear your argument.

2 Let me let you step down and return to the table,
3 please.

4 THE WITNESS: Yes, ma'am.

5 (Witness excused.)

6 MR. STITELY: I would like to call Detective Creech
7 for a brief moment to clarify one item off of his --

8 THE COURT: Okay.

9 (Whereupon, Anthony Adam Creech was duly sworn by
10 the Clerk of Court.)

11 THE CLERK: Have a seat up there. If you'll state
12 your name and spell your last name for the record.

13 THE WITNESS: Sergeant Anthony Adam Creech. Creech
14 is C-R-E-E-C-H.

15 ANTHONY ADAM CREECH,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION (In-Camera)

18 BY MR. STITELY:

19 Q. Sorry, Sergeant. I was calling you investigator. I
20 didn't mean to demote you.

21 A. No offense taken.

22 Q. Do you have your report?

23 A. I do.

24 Q. Okay. So in your report -- and we're gonna go ahead
25 and we'll look at -- starting at the third one from the

1 bottom of the first page.

2 A. It might be easier if you show me what page you're
3 referencing in case they're not numbered the same.

4 Q. Okay. Sorry. Starting your supplemental or your --

5 A. Yeah.

6 Q. Cool.

7 MR. STITELY: Sorry, Judge.

8 THE COURT: No, no. You're fine.

9 BY MR. STITELY:

10 Q. Starting -- it looks like the third paragraph from the
11 bottom, you obviously weren't the first officer on-scene?

12 A. I was not.

13 Q. You were called out subsequent to assist or sergeant
14 or whatever it is, right?

15 A. Correct.

16 Q. Okay. Your initial -- it says here you kind of walked
17 up and overheard a conversation with Sherban, correct?

18 A. Correct.

19 Q. And you went and did some other investigation of your
20 own, correct?

21 A. Correct. Mostly supervisor and coordination, but,
22 yes.

23 Q. Okay. And then let's go to the last paragraph. Now
24 Brandon just testified that he didn't really remember who
25 was talking to him and even vomiting.

1 A. Correct.

2 Q. Why don't you go ahead and just read me that last
3 paragraph of your initial report? The first page.

4 A. I attempted briefly to speak with Brandon who was
5 outside next to my vehicle. I attempted to get Brandon to
6 explain what happened. Brandon was laying on his back with
7 his eyes closed the entire time. He would not make direct
8 eye contact with me. Brandon claimed not to know what had
9 happened. Because Brandon had blood on his clothes, we
10 discussed that CSI would need to collect his clothes and I
11 told him I would get a change of clothes from inside the
12 residence.

13 Q. Okay. And just flipping to the next page, there's
14 three more paragraphs before we get into the actual
15 discussion in the truck, correct?

16 A. Correct.

17 Q. Nowhere in there does it indicate the twenty-one
18 minute in where you were talking to him as well. You
19 didn't indicate that in your report either, did you?

20 A. I'm sorry. Can you repeat the question?

21 Q. Ms. Fuller asked Mr. Corder if at twenty-one minutes
22 into a video you start asking some additional questions to
23 Mr. Corder. You heard that, correct? About the wood line
24 and the -- she said you asked him those questions on the
25 video. You don't indicate that anywhere in this report

1 either, do you?

2 A. If there's anything on video, I'm assuming it would be
3 the recorded interaction of him lying on the ground.

4 Q. Okay. So that's --

5 A. There could be more than this. This is just a
6 summary. It's not word for word that interaction for sure.

7 Q. Okay. But you, as far as, I guess -- I'm not gonna
8 say questions, but your questioning in earnest you would
9 say fairly started once you put him in the car and had an
10 opportunity to speak with him with him looking at you,
11 correct?

12 A. Correct.

13 Q. Okay. And you did not offer Miranda immediately,
14 correct?

15 A. I did not.

16 Q. You did ask him several questions or point out
17 inconsistencies prior to reading Miranda; is that fair?

18 A. That's fair.

19 Q. Okay. And then you did read him Miranda, correct?

20 A. Correct.

21 Q. And there was some whether or not he understood you
22 or not, you did your job as far as the Miranda as written
23 on your card and tried to explain it again?

24 A. Yes, and he had the one particular question, which I
25 believe I did address within the interview.

1 Q. Okay. I know he was not in cuffs when he was in your
2 vehicle, correct?

3 A. Correct.

4 Q. How many other deputies were outside of your vehicle
5 at that time, either uniformed or un-uniformed?

6 A. Well, he and I were speaking. I don't believe there
7 was anybody outside of my vehicle.

8 Q. Okay. How about when he was kind of, as they
9 described it, going around his yard? Was there always at
10 least one officer within immediate proximity of him?

11 A. There probably were, but there was probably somebody
12 in immediate proximity of everybody that was on-scene.

13 Q. He described it and I believe the -- and I have the
14 evidence log. There were at least thirteen people checked
15 in and out of the scene, so there were several deputies out
16 there, correct?

17 A. Correct.

18 Q. What would you have done if he tried to run away from
19 the property?

20 A. At that stage, we wouldn't have had any reason to --
21 if we had a reason to detain him, he would have been
22 detained already.

23 Q. Okay. If he would have hopped out of your car and got
24 in his and tried to drive away, what would have happened?

25 A. I don't know. It would have been -- it would have

1 been pretty wild that's for sure. I'm not sure what would
2 have happened without being there and that happening at the
3 time.

4 Q. Okay. In your experience, if you're in the middle of
5 a conversation with someone and they get up and run away or
6 hop back in their car and drive away, would you treat that
7 as them fleeing?

8 A. In fourteen years I've never had that happen.

9 Q. Because pretty much people understand when a police
10 officer has you in their vehicle that's where they're
11 supposed to be for the moment, correct?

12 A. It would have certainly been a head scratcher, but if
13 -- again, he wasn't detained.

14 Q. And this happened -- and, once again, I don't have the
15 exact time. Is it fair enough to say it's possible it was
16 two full hours after the initial response is when you get
17 him in the car, correct?

18 A. That sounds about right, yes.

19 MR. STITELY: Thank you. I appreciate it.

20 CROSS-EXAMINATION (In-Camera)

21 BY MS. FULLER:

22 Q. So if you had a reason to detain him, he would have
23 been detained already, correct?

24 A. Correct.

25 Q. Now based on officer -- what he's talking about is

1 Officer Seboe's body cam when Brandon Corder was laying on
2 the ground. Do you recall walking up to him and talking to
3 him?

4 A. Yes, ma'am, I do.

5 Q. And do you recall asking him what happened?

6 A. I do.

7 Q. And you let him talk for a while, correct?

8 A. Correct.

9 Q. And did you have an opportunity, I guess, several
10 months ago or even now to watch that interaction?

11 A. I believe I watched it back in February, but I haven't
12 watched it since then.

13 Q. And do you recall when you were talking to him that
14 you ended up walking off and he got up to look to see where
15 you -- or he turned his head to see where you were walking
16 off to?

17 A. Yes. I do recall that, yes.

18 Q. Okay. And so he did look for you when you were
19 walking away as he was trying to just tell you everything?

20 A. Correct.

21 Q. Now did you have an opportunity to review -- I don't
22 know if it's in your report, but do you recall the last
23 time looking at the recording and that it started roughly
24 after 5:00? Do you recall that?

25 A. That sounds about right. Yes, ma'am.

1 Q. And when defense counsel was asking you if he were to
2 run off what you would do in that situation, that's not
3 necessarily where we are, correct? We're dealing with what
4 you knew at the time, correct?

5 A. Correct.

6 Q. And at the time did you have any indication, any
7 evidence to suggest the weapon or anything, that he was
8 involved in killing Joanie?

9 A. I'm sorry, can you clarify the question?

10 Q. When you first arrived on-scene or before 5:00, did
11 you have any evidence, probable cause, that he actually
12 killed Joanie?

13 A. No, I did not.

14 Q. Okay. And, in fact, was the information that it was
15 either a suicide or the shot came from the woods? Is that
16 what you-all had?

17 A. That was certainly the impression we were operating
18 under once we arrived on-scene, yes.

19 Q. And the call came in at 3:09 and the interaction on
20 the recording was over two hours later; is that correct?

21 A. That's correct.

22 Q. And this whole time he had been there interacting
23 freely with law enforcement, correct?

24 A. Correct.

25 Q. And he was not detained because there was no cause at

1 that point, correct?

2 A. We certainly wouldn't have been letting somebody who
3 was detained lay on the ground.

4 Q. Okay.

5 MS. FULLER: No further questions.

6 THE COURT: Anything else?

7 MR. STITELY: Just it's -- is Booth here? Is Booth
8 in the building?

9 MS. FULLER: I don't know.

10 MR. STITELY: I do have a couple of other questions
11 and I guess I'm gonna ask them and if he can answer these,
12 he can; if not, we may have to hold this for a moment
13 while I find the subpoena for Booth and Lint if he can't
14 answer these couple of questions.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION (In-Camera)

17 BY MR. STITELY:

18 Q. Sergeant Creech, you said that you don't recall anyone
19 being at the side of the vehicle when you were speaking
20 to Mr. Corder. And you were in the driver's seat
21 obviously, correct?

22 A. Correct.

23 Q. Now when an officer comes out to a scene, do you guys
24 make a case supplemental report typically?

25 A. We should, but not everybody always does, no.

1 Q. Okay. There is a standard report that could be made
2 by one of your officers though. It's a pretty standard
3 form where they type up what they said happened?

4 A. Anybody can do that, yes.

5 Q. Okay. Do you remember if Officer Booth was at the
6 scene that day?

7 A. He was.

8 Q. Okay. Was he a uniformed officer at the time?

9 A. He was.

10 Q. So he would have had a camera on him?

11 A. He did I believe, yes.

12 Q. And I'm gonna --

13 MR. STITLEY: May I approach?

14 THE COURT: You may.

15 BY MR. STITLEY:

16 Q. I'm gonna show you Officer Booth's supplemental
17 report.

18 A. Certainly. Yes, I'm aware of what he's referring to.

19 Q. Okay. So if Officer Booth wrote I was told by
20 Lieutenant Lint to go to the passenger side door of
21 Creech's patrol vehicle where he was speaking with Corder,
22 that would mean that someone told a deputy with a uniform
23 and a visible gun and a recorder to go monitor the
24 passenger side of your door, correct?

25 A. Certainly. The context of that is once Mr. Corder

1 makes an admission and I provided him with his rights and
2 he continued to make significant admissions in the case,
3 at that point I knew that his -- he would have to be
4 detained at that stage of the investigation and I advised
5 Lieutenant Lint to have one of the uniformed deputies to
6 then respond to the passenger side of my vehicle because
7 at that point as far as we were concerned Mr. Corder's
8 status had changed.

9 Q. Okay. But you say that. There's nothing in here
10 indicating a timeline. Do you have a specific timeline
11 when you made that call to Lieutenant Lint?

12 A. I could probably find out. It's probably still in my
13 cell phone.

14 Q. Okay. And actually it's interesting, and then I guess
15 I'm kind of going forward, but it's on the body cam, which
16 I think we've used as a court exhibit before, he starts
17 talking about the initial conversation with Corder as being
18 on the body cam before he changed the story and you read
19 him Miranda and defined custody in the next sentence,
20 doesn't he? And I know this is not your report, so I'm
21 not asking you to speak to the veracity of it, just
22 what's indicated in it because I don't have access to that
23 officer.

24 A. So I believe what he's referring to is if you
25 listened to the recording at the very end of the audio

1 recording I had with Mr. Corder you can hear Lieutenant
2 Lint and I believe also Deputy Booth and that overlaps
3 with, I believe, the beginning of his body camera footage.

4 Q. Okay.

5 MR. STITELY: Thank you. No other questions. I
6 appreciate it.

7 THE COURT: All right. Can I let Sergeant Creech
8 down?

9 MS. FULLER: That's fine, Your Honor.

10 (Witness excused.)

11 THE COURT: All right. Let me hear your arguments.

12 MR. STITELY: Judge, again, I did not have a
13 specific objection with the conversation with Sherban.
14 I agree when Detective Sherban is speaking to him he is
15 not in custody at that time. He is being, I would
16 describe, almost informally spoken to. I would say,
17 however, that there's an absolute change when we get
18 to the investigation, interrogation, as I would call
19 it, custodial interrogation of Sergeant Creech, at this
20 point you've already been questioned by a couple of law
21 enforcement officer, there's thirteen if not more, I'm
22 just using that as what the evidence log appears -- or
23 the crime scene log appears to be on-site. He's taken
24 to a separate location. I'm not saying far away, but
25 a police car is a separate location from sitting on the

1 front porch. A door is shut. And we can argue about
2 what time another officer was posted at his window, but
3 uniformed gun bearing camera wearing police officers
4 are stationed at a window and he is questioned. The
5 questioning becomes exactly the Seibert scenario where
6 you use inconsistencies in your investigation to elicit
7 confession, alternate story, some form of testimony, and
8 then you issue Miranda.

9 I do not believe I have an argument that after
10 Miranda those statements should be suppressed. I think
11 once he issues him Miranda, the second half of that
12 conversation is fair game. I'm not arguing that he
13 failed to inform him of his rights. There's some bad
14 case law for me that says just because someone says they
15 don't really understand it you still did your job, but
16 I do think that the first part of the discussion is a
17 custodial interrogation. It fails the Seibert test as
18 them using a tactic to elicit it before providing
19 protections under the Fifth Amendment.

20 So the first part -- I believe from the moment
21 Creech puts him in the car, there's another officer at
22 least stationed nearby, and I asked Creech if he decided
23 to hop out of your car and jump in a car and drive away,
24 that would be a head scratcher. I think that's a fair
25 way of saying objectively no person thinks they can hop

1 out of a police car, run and grab their car and haul
2 away. It's not a subjective standard, it's an objective
3 standard, and I would say that any reasonable person
4 would assume when he's put in a patrol car, be it marked
5 or unmarked, with the third detective that they've spoken
6 to and someone's stationed nearby, you're not free to go.
7 It is custodial and becomes an interrogation.

8 Again, second part, after Miranda, no objection.

9 MS. FULLER: Thank you, Your Honor.

10 Your Honor, the testimony that I was going through
11 was to kind of set the scene from Mr. Corder's viewpoint
12 to supplement what we argued last time, which was exactly
13 the same in this situation. Law enforcement arrived
14 on-scene thinking they were responding to one thing.
15 They did not have Mr. Corder eyeball cause that he was
16 the perpetrator at that time. He testified and admitted
17 that whichever way you want to look at the gun being put
18 up, the gun was put up. There was no -- that he admitted
19 that he told the officer it come from the woods, so at
20 that time of that interaction there was no cause to even
21 detain him, transport him, do anything at that point,
22 and so Mr. Stitely is trying to isolate this time window
23 he was not free to go. Creech's testimony is that he
24 called -- this is Creech again. He said if he had cause
25 to detain him, he would have been detained at the time.

1 That just goes towards the Court's ruling last time in
2 terms of analyzing and differentiating where we are.

3 In terms of -- we got towards Booth, and I don't
4 know how that adds to the analysis, but if the Court is
5 questioning about that, we went through Booth's body cam.
6 His testimony last time, it was three hours long. Your
7 Honor had a copy as part of the record as well, it's a
8 Court's exhibit, and at the beginning of Booth's you see
9 -- you watch on the body cam and there's an overlap where
10 he's there, but this was already after the admissions
11 were made, and then on the body cam you can see him being
12 detained and put in, and I think the testimony last time
13 was somewhere around 5:40-ish or something that he was
14 actually detained on-scene.

15 So, Your Honor, I don't know if we heard anything
16 per se new. We flushed out a little bit more details
17 from Mr. Corder's vantage point, but I don't think it
18 changes the analysis one bit in the sense of his custody
19 status and if the statements were freely and voluntarily
20 made.

21 Where I was going with the fact that he was talking
22 to someone with his eyes closed, he knew it was a police
23 officer, he didn't care who he was talking to, but he
24 was just talking. He was just laying on the ground
25 free to speak to whoever he wanted to speak to and tell

1 whatever story he wants to. And he says he's educated.
2 He says he has a job. If we're talking about mental
3 imparity or what Denno requires in terms of voluntariness,
4 too, because that's being challenged as well even if it
5 wasn't argued, I think it's appropriate for the Court to
6 make a full ruling on the issue. They want to use the
7 argument counter, but I'm using it for the fact that he
8 was free to just talk. He was free to just be on the
9 ground. He was clearly not detained. He didn't even
10 care to make contact with an officer and we've seen
11 some officer interactions and if you're laying there
12 kind of nonchalant, it's like hey, show some respect.
13 He didn't -- he was just free, and so I think that
14 just goes towards the Court's ruling last time and we
15 respectfully request that your ruling stands, Your Honor.
16 I don't think there's anything new or any new case law
17 where the facts haven't changed to alter your prior
18 ruling.

19 MR. STITELY: And that's the distinctive difference.
20 He was free to just lay there and then at some point he's
21 put in a police car and that's when it became a custodial
22 interrogation.

23 That's it.

24 THE COURT: Let me ask, and I'm going from memory
25 of testimony, but I didn't believe Sergeant Creech was

1 in a police car. Wasn't he in his SUV?

2 SERGEANT CREECH: Yes, ma'am. It's an unmarked
3 Tahoe.

4 THE COURT: An unmarked Tahoe.

5 MR. STITELY: But a police vehicle.

6 THE COURT: I just wanted to make sure.

7 Okay. I'm just gonna tell you I don't believe that
8 the defendant was in custody when Sergeant Creech began
9 his questioning. You know, this started, again, at 3:09.
10 He was free to go around, walk. He has already talked
11 to I think three other police officers, including the
12 coroner, telling them what had happened. He's certainly
13 not in handcuffs. I didn't see or hear any testimony
14 about any type of coercion or threats, promises of
15 leniency or any misrepresentations.

16 There is no testimony about him being impaired.
17 Certainly he was upset, I think there's been testimony to
18 that, but I'm gonna tell you he's thirty-two years old.
19 Not only has he graduated from high school, but he's got
20 some college under his belt.

21 He's admitted he's had prior run-ins with law
22 enforcement before. And, you know, the testimony differs
23 as to how many officers were there at the vehicle. I
24 remember testimony that the main concern of Sergeant
25 Creech was there was a lose gun around and they wanted to

1 find it because it was a danger to the public and that's
2 what started the questioning.

3 It's my understanding now, and I want to make sure
4 I'm right before I finish ruling, that you are not
5 contesting the post-Miranda statements; is that right?

6 MR. STITELY: That is correct, Judge.

7 THE COURT: Because in my last hearing on pre-trial
8 on this case, and this is a supplement to that, I ruled
9 that once Miranda was given all of that was admissible,
10 so there's no need for me to go back over that.

11 MR. STITELY: Judge, the standard pretty much is
12 if you find that some of it's problematic, you can't
13 create a good Miranda, but as far as the actual reading
14 of Miranda, I don't object. I think he did that
15 properly. I think he was notified and made aware of it
16 at that point.

17 THE COURT: And I think he understood it. Are
18 you --

19 MR. STITELY: I'm not sure he understood it, Judge,
20 but I think as far as the law is concerned he understood
21 it as far as the law requires.

22 THE COURT: Okay. Well, I'm going to --

23 MS. FULLER: May we approach briefly?

24 THE COURT: Sure.

25 (Proceedings held at the bench; not reported.)

1 (Whereupon, Susan Erin Presnell was duly sworn by
2 the Clerk of Court.)

3 THE CLERK: If you'll have a seat on the witness
4 stand. If you'll state your full name and spell your
5 last on the record.

6 THE WITNESS: Good morning. My name is Susan Erin
7 Presnell. It's P-R-E-S-N-E-L-L.

8 SUSAN ERIN PRESNELL,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. FULLER:

12 Q. Good morning. Go ahead and introduce yourself to the
13 jury. Where are you employed?

14 A. I'm a forensic pathologist. I work at MUSC in
15 Charleston.

16 Q. And how long have you worked in this capacity?

17 A. Twenty-five years.

18 Q. And can you go ahead and explain to the jury your
19 training, education and experience in the field of
20 forensic pathology?

21 A. Well, I went to Clemson for undergraduate and then I
22 moved to Charleston for medical school at MUSC, and then
23 that's where I stayed. So I did my medical school there,
24 then I chose pathology as my field of specialty. That was
25 a five-year training program, and then I chose forensics as

1 a subspecialty of pathology, that was an additional year,
2 and then they hired me as faculty so I stayed on.

3 Q. And what exactly is forensic pathology?

4 A. Well, so forensic pathologist is a subspecialty of
5 pathology. Most pathologists are diagnosing disease
6 usually from like a biopsy or, you know, if a surgeon does
7 an operation and takes out some tissue, the pathologist
8 looks at it and diagnoses disease on living persons.
9 Forensic pathology, again, is a subspecialty, so we're not
10 just looking at a piece of tissue or an appendix, we're
11 looking at an entire person that's passed away. We are
12 looking for disease, but we also evaluate trauma and the
13 process of our evaluation is the autopsy and through that
14 we determine a cause and manner of death.

15 Q. And roughly how many autopsies have you performed in
16 your career?

17 A. It's an approximation, so I should be over 5,000.

18 Q. And have you testified in court before as an expert in
19 this field?

20 A. Yes, in forensic pathology.

21 Q. And approximately how many times?

22 A. Again, approximate, 200.

23 MS. FULLER: Your Honor, at this time the State
24 seeks to introduce Dr. Presnell as an expert in the
25 field of forensic pathology.

1 THE COURT: Any objection?

2 MR. STITELY: No, ma'am.

3 THE COURT: All right. Let me tell the jury.

4 Usually witnesses can only testify to things that
5 they saw, heard or did. However, we have an exception
6 to that rule called the expert witness. Because of
7 education and experience they're allowed to give their
8 opinion. You give her testimony the weight that you
9 think it deserves.

10 MS. FULLER: Thank you, Your Honor.

11 BY MS. FULLER:

12 Q. As it relates to this case, did you conduct an autopsy
13 on the deceased, Joanie Youmans, in this case?

14 A. Yes, I did an autopsy at MUSC in Charleston on
15 January 1, 2020.

16 Q. And can you go ahead and describe at the time of
17 autopsy what was Joanie's height?

18 A. She was 5-5.

19 Q. And what was her weight?

20 A. About 119 pounds.

21 Q. And were you able to determine a cause of death
22 following your autopsy?

23 A. Yes, Ms. Youmans had a single gunshot wound to her
24 head that entered into the left side of her head and exited
25 the back of her right side of her head.

1 Q. And were you able to determine a manner of death?

2 A. Yes. This was classified as homicide, meaning death
3 at the hands of another.

4 Q. I'm gonna show you what's been premarked for
5 identification as State's 39 and I'm gonna ask you if you
6 recognize this document?

7 A. Yes, this is a diagram. We do diagrams during autopsy
8 and then sometimes we have lot of notations on it, so this
9 is a diagram I did for the Solicitor at her request drawing
10 where the gunshot wound was.

11 Q. Does it appear to so reflect the work you did fairly
12 and accurately represented and not altered in any way?

13 A. Yes.

14 MS. FULLER: At this time, Your Honor, the State
15 seeks to introduce into evidence State's Exhibit 39.

16 MR. STITELY: No objection.

17 THE COURT: It's admitted.

18 (State's Exhibit Number 39, an autopsy diagram, was
19 admitted into evidence.)

20 BY MS. FULLER:

21 Q. Now when we talk about her gunshot wound, I'm gonna
22 utilize the diagram so you can explain it to the jury as
23 well. Publishing State's 39 for the record, and I'm not
24 sure if the laser pointer is still up there. Do you see
25 it? Can you go ahead and identify for the jury where you

1 were pointing on yourself on this diagram where the gunshot
2 wound was?

3 A. All right. So this is the left side of her face right
4 above the left eye. That's the entrance gunshot wound. It
5 goes towards her right and from her front backwards and
6 slightly up and exits -- this is the right side of the
7 head, and that's the exit wound on the back of her head.

8 Q. And let's talk about entrance wounds for a moment.
9 How were you able to determine the entrance wound as it
10 relates to Joanie?

11 A. Well, I mean, entrance wounds have particular
12 characteristics. One of the things comparing entrance and
13 exits that you can see is this thing called bevelling and
14 that's something that you see on the bone on flat bones,
15 and the skull is flat bones. So if you think of a beveled
16 mirror, how the mirror has a slanted edge, you can see
17 that bevelling reproduced on the bone and so her exit wound
18 had what we call external beveling, which means that the
19 pathway is going that way. There's other characteristics
20 like exit wounds don't actually -- aren't actually like
21 holes, they could be, but classically they can be stellate
22 and you can put them all back together without seeing a
23 hole versus entrance wounds, which she has above her left
24 eye, and there's an actual hole in the skin, an actual
25 defect.

1 Q. And when you say actual defect, something that you
2 can't put back together, correct?

3 A. Right. It's a hole.

4 Q. And in terms of you with your hands were describing
5 kind of like an angled bullet path. For the record, what
6 was the actual path that the bullet travelled through
7 Joanie?

8 A. All right. Well, again, it entered above the left
9 eye. It actually struck the eye and entered through the
10 skull, through the left side of the brain, the brainstem,
11 the right side of the brain, and then out the skull on the
12 back of the head to the right of midline.

13 Q. And you were pointing kind of like up. Was it an
14 upward or downward --

15 A. It's slightly upward.

16 Q. Now in examining Joanie at the time of autopsy, were
17 you able to identify any soot or stippling on the entrance
18 wound?

19 A. No, I was not.

20 Q. And what is soot and stippling?

21 A. So one of the things when we're evaluating gunshot
22 wounds is from our perspective as a forensic pathologist is
23 trying to see if we can find evidence that the gunshot was
24 a contact, a close range or what we would consider distant.
25 So along with the bullet coming out the end of the barrel,

1 you also have some soot and you also have little pieces of
2 gunpowder particles. That's the -- the gunpowder is in
3 the actual casing of the bullet. When it's fired, some of
4 those particles, I think of them kind of like sand, will
5 also come out the end of the barrel. If a gunshot wound is
6 contact, meaning that the gun is up against the skin, what
7 we would see is a rim of soot, all right? As the gun is
8 pulled away, it's still close, but it's not contact, that
9 soot may or may not -- you know, it's kind of like a gas
10 and it may or may not make it to the skin, but those little
11 sandy particles will make it to the skin and scratch them,
12 so you actually get little scratches around the entrance
13 wound with a close range gunshot. That's called stippling.
14 You can't wipe that off. Then as you get further away,
15 that soot isn't gonna make it to the skin, nor will the
16 gunpowder particles, and you just have the entrance without
17 any soot or any of that stippling around.

18 Q. And so not finding that on Joanie, how would you
19 characterize this shot in terms of distance?

20 A. So it has features that are consistent with what we
21 would call a distant. There could always be some kind of
22 intermediate target that would have prevented that from
23 getting to her, but just looking at the entrance wound by
24 itself it's considered in the forensic pathology world as
25 a distant gunshot wound.

1 Q. And when we talk about distance, are you able to give
2 an approximation in terms of how far in inches or feet
3 would the barrel of the gun have to be from Joanie when
4 this occurred?

5 A. Well, so the best way to determine how far away a
6 gun has to be before that soot and the gunpowder will no
7 longer reach her would be to test fire the weapon with
8 that suspected ammunition. In general, for most handguns
9 by the time you're 36 inches away, 36 to 42, so around a
10 yard, then that gunpowder and that soot will not reach the
11 skin. So a distant for a forensic pathologist is a yard
12 away and beyond, I mean, as far back as you can go, and the
13 appearance of the wound would look the same.

14 Q. Have you -- I don't know the answer to this next
15 question. Have you ever performed an autopsy on someone
16 where there was evidence that they were shot from a half a
17 mile down the street?

18 A. I recall off the top of my head.

19 Q. And if that were to happen, what would you see at
20 autopsy?

21 A. Well, again, the appearance of a distant gunshot wound
22 in the forensic pathology terminology is 36 to 42 inches
23 away or however the gun tests out and beyond a half mile --
24 you know, however far back it can go for the bullet to
25 still strike someone, the gunshot wound will still look the

1 same.

2 Q. It will still look the same no matter the distance?

3 A. No matter how -- once you get --

4 Q. Once you get past 36 inches?

5 A. Yeah, it will look the same.

6 Q. Okay. At the time of autopsy were you able to collect
7 any fragments from Joanie?

8 A. Well, so her x-ray -- we took an x-ray of her head to
9 see if there was still a retained bullet and there were a
10 bunch of little tiny fragments of the bullet in there. We
11 did get one of the larger pieces from the scalp that we
12 turned over to law enforcement.

13 Q. And at the time of autopsy were you able to also
14 collect a blood spot?

15 A. Yes, that's the standard. We get a blood spot from
16 the decedent just to have a standard, yes.

17 Q. I'm gonna show you what's been premarked for
18 identification as 33 and 34 and ask if you can open it
19 and see if you recognize it as it relates to this case?

20 I don't know if you need gloves or not. I don't know
21 what's in there.

22 A. Let's see.

23 Q. Okay. I'm gonna ask you do you recognize those items?

24 A. Yes.

25 Q. And how do you recognize them?

1 A. Well, I recognize them through the little autopsy
2 envelopes and the autopsy labels with the decedent's name,
3 their autopsy number and the labeling of what it actually
4 is.

5 Q. And when you say autopsy number, is that unique to
6 this case, to Joanie?

7 A. Yes.

8 Q. Okay.

9 MS. FULLER: At this time, Your Honor, the State
10 seeks to introduce into evidence State's 33 and 34.

11 MR. STITELY: No objection.

12 THE COURT: They're admitted.

13 (State's Exhibit Number 33, a blood spot, and
14 State's Exhibit Number 34, a bullet fragment, were
15 admitted into evidence.)

16 BY MS. FULLER:

17 Q. And then publishing for the record officially
18 State's 33. Can you publish for the record what exactly
19 this is?

20 A. That's the blood spot that we had collected from
21 Joanie.

22 Q. And officially for the record, State's 34, can you
23 publish what this is?

24 A. That's the fragment of the bullet that we recovered
25 from her scalp.

1 Q. And publishing State's 34 on the overhead so you can
2 see, can you point out to the jury your writing on this?

3 A. It's our autopsy assistant's writing because mine's a
4 little messier, but, yeah. So gray metal fragment, head,
5 scalp. That's probably -- what it probably says. The
6 autopsy number's up there, as well as her name and the
7 county coroner that referred the case.

8 Q. And then looking at State's 33, similarly labeled, and
9 that's how you recognize it as what was collected at the
10 time of autopsy, correct?

11 A. Correct.

12 Q. Going back to the gunshot, I have a few more questions
13 about what would be consistent. At the time of autopsy,
14 were you able to determine if Joanie sustained her gunshot
15 wound -- when she sustained her gunshot would if it was
16 consistent with a suicide?

17 A. Well, it's -- I classified it has homicide because
18 there was no evidence of it being a contact gunshot wound
19 or even close, which would -- is something you would expect
20 in a suicidal injury.

21 Q. And for the purposes of court, were you able to look
22 at an actual physical anatomical dia -- I don't know if
23 it's a diagram. What's it called?

24 MS. FULLER: I beg the Court's indulgence.

25 THE WITNESS: Like mannequin?

1 MS. FULLER: I couldn't think of the word. I
2 apologize. I didn't want to say dummy, but a mannequin.
3 I apologize.

4 THE COURT: You're fine.

5 BY MS. FULLER:

6 Q. A mannequin, and place Joanie's gunshot wound there?

7 A. Yes. You provided a mannequin and we have attempted
8 to place the probe through the gunshot wound.

9 Q. Okay. And were you able to also see Joanie's -- we
10 adjusted it to Joanie's height at the time of autopsy,
11 correct?

12 A. I believe so. We will see in a moment.

13 MS. FULLER: Okay. Thank you.

14 Just for demonstrative purposes, Your Honor.

15 THE COURT: Okay. Somebody might want to hold the
16 door for him.

17 MS. FULLER: Your Honor, permission for the witness
18 to step down?

19 THE COURT: Yes, please.

20 BY MS. FULLER:

21 Q. Dr. Presnell, can you go ahead and take a moment and
22 verify the approximate height of the mannequin?

23 A. It looks to be about 65.

24 Q. Okay. And then can you also verify the gunshot wound,
25 if that's the appropriate -- the accurate angle?

1 A. Yes. So it looks like, again, it's going in above
2 the left eye and headed slightly upward to the back of the
3 right side of the head.

4 Q. Now in looking at this mannequin, when we're dealing
5 with the head, the head is different than being shot
6 anywhere else in the body. Is that a fair statement in
7 terms of mobility of the head?

8 A. Well, the extremities are pretty mobile as well, so,
9 but the head is uniquely mobile in being able to turn side
10 to side, up, down, et cetera.

11 Q. Okay. So at autopsy you're not -- and your testimony
12 is not gonna be -- you can't say what direction Joanie's
13 head was actually in at the time she was shot, correct?

14 A. Correct. The autopsy's not gonna tell me the
15 positioning of her head, just the direction of the bullet
16 through the head.

17 Q. Okay. But something that we can say is that
18 regardless of which position her head was in at the time
19 that she sustained the injury the actual gun was facing her
20 head, correct?

21 A. Because is the bullet is coming from this direction --
22 and I don't know if it would be easier for them to see if
23 it was facing them maybe.

24 MS. FULLER: I beg the Court's indulgence.

25 You shouldn't have to do that. Sorry.

1 All right. Thank you, Doctor.

2 THE WITNESS: Sure.

3 All right. So what was the question again?

4 BY MS. FULLER:

5 Q. I forgot. I got distracted.

6 A. So, again, the bullet -- what's an important part of
7 this from the autopsy perspective is I can show you where
8 the bullet is going. It's entering above the left eye,
9 exiting the back of the right head. It depends, again,
10 where the position of her head is; if it's looking down, if
11 it's looking up, looking this way. So the bullet is coming
12 this direction, so the gun would be out at the end of -- at
13 the beginning of where that bullet's coming from. So you
14 can see how it would be oriented towards her head.

15 Q. I'm gonna place on here, on the overhead, State's
16 Exhibit 11. We've had testimony from crime scene that
17 based on the crime scene that there was blood in the apex
18 of the door and on top of the car suggesting that Joanie
19 was standing -- there's evidence suggesting that she was
20 standing in the apex of that door when she was shot.

21 So taking that into account, is there a scenario or
22 the better question is where would Joanie's body have to be
23 in terms of to get this shot? And I'm really trying to ask
24 a question that makes sense. Is it possible that she could
25 have been bending down inside of that vehicle when she

1 sustained this gunshot wound.

2 A. Well, I think that depends mostly on the crime scene
3 investigation and the reconstruction of that scene and so
4 your expert has -- that person has his or her conclusions
5 and that stance. I mean, the autopsy is not gonna say
6 whether she was standing up.

7 Q. Well, let me ask you this. Is it consistent with her
8 bending -- how she sustained this injury consistent with
9 her bending down inside the vehicle -- like bending down if
10 she was in the door?

11 A. So if she's bending, then the bullet would be coming
12 from down below. So unless there's a scenario that
13 accounts for the bullet coming from down below, then that
14 does not make sense.

15 Q. Okay. Would it be consistent with if Joanie's body
16 was turned facing into the car, I guess, and I guess this
17 is the perfect angle, and her turning her neck completely
18 around when she was shot?

19 A. If we have her face the car, all right, and here,
20 again, is the thing -- the head, so maybe she could turn
21 it all the way to the side and then it's coming from this
22 direction, maybe all the way to that side. It just --
23 again, it depends on where the gun was.

24 Q. Okay. And for the record this is not a real gun, but
25 let's go with the scenario where her back -- she's in the

1 door, in the car, okay, and you said if -- she could turn
2 her head all the way this way. Your testimony is that most
3 guns have to be 36 to 42 inches away, which would be the
4 barrel of the gun, correct?

5 A. Right. I mean, it could be closer. It just depends
6 on the gun, okay? By the time it's a yard away, most
7 handguns will not have the soot or the stippling appear.

8 Q. Okay. And so in this scenario where Joanie is in the
9 car and the gun is like this, I guess I'm trying to line up
10 with the car, so it is possible that you're at the end of
11 the car and angled, I guess, down like this, I guess, to
12 create that angle?

13 A. Yes. If she's looking up a little, then more straight
14 on. If she's looking further down, then, again, it would
15 be coming from a lower angle.

16 Q. Okay. If we're standing here and we take the gun out
17 and the gun is like this, is it possible to create that
18 angle?

19 A. If it fires from right there?

20 Q. Yes.

21 A. Well, no.

22 Q. Okay.

23 A. The bullet would have to come from this way here.

24 Q. Okay. If you're putting the gun away like this, is it
25 possible to create that angle?

1 A. The gun would have to be pointed at her. Unless it
2 was some ricochet-type of scenario, but this was not an
3 irregular entrance gunshot wound to suggest that.

4 Q. Okay. So I know these are basic questions, so just
5 asking you for the record, if you were walking away holding
6 the gun to put it away, I guess trying to create a scenario
7 to create that angle, how exactly would -- assuming Joanie
8 is like that, you're walking away holding the gun to put it
9 away, could you create that?

10 A. If you can point the gun in that direction, then you
11 can create it.

12 Q. So if you're walking away, putting it away, you would
13 have to walk sideways, I guess, because you're --

14 A. If you can put the gun pointing towards her and then
15 however you move your body, that's the way that it would be
16 -- it could be angled.

17 Q. Okay. Now -- what's another scenario I wanted to ask
18 you? I think...

19 MS. FULLER: I beg the Court's indulgence.

20 THE COURT: Take your time.

21 BY MS. FULLER:

22 Q. Turning Joanie back around for one last question about
23 her position, is there any scenario to accomplish that, I
24 guess, consistent with Joanie sustaining -- it's a dumb
25 question, but I just need it answered for the record,

1 sustaining that injury without seeing the gun, looking at
2 the gun, her head facing the gun?

3 A. It's going in right here, so she could have her eyes
4 closed and not see it, but it would -- it would obviously
5 be in her periphery or if the gun was covered and not see
6 it, but, I mean, it would be in her vision if the gun -- if
7 the entrance is right here.

8 Q. And when we say like right here, I know we have the
9 autopsy diagram, and you did take photographs at autopsy,
10 correct?

11 A. I did.

12 Q. But we're working off of the diagram here. And I know
13 you can see it on here, but I don't know if you have -- I
14 don't know the answer, so I don't know if you have this
15 measurement. Looking at that, approximately how far is
16 this from like the end of her face, this injury?

17 A. I don't have a specific measurement, but a couple of
18 inches from the side of your eyebrow to the side of your
19 head or an inch and a half. I don't have the specific
20 measurement.

21 Q. Okay. I believe that was my final question.

22 MS. FULLER: I beg the Court's indulgence.

23 Yes, that was it.

24 Thank you.

25 THE COURT: Okay. Mr. Stitely.

1 Can we turn the lights back on, please?

2 MR. STITELY: You can leave them for a second if
3 you don't mind just in case.

4 CROSS-EXAMINATION

5 BY MR. STITELY:

6 Q. Good morning, Dr. Presnell.

7 A. Good morning.

8 Q. So -- and I found everything you were saying was
9 really interesting and the one thing that you can't say
10 is with absolute certainty what happened that day aside a
11 fatal gunshot wound entered from the left eye and exited
12 the right rear hemisphere?

13 A. Right, that is all my autopsy can say, and the range
14 of fire.

15 Q. And we can fairly certainly say it wasn't -- and I
16 hate to call it this -- an execution-style where someone
17 put the gun physically to the head and pulled the trigger?

18 A. There is no evidence of a contact or a close range
19 gunshot wound to her head.

20 Q. So you could say with fair certainty, and you don't
21 know what the ballistic grade of these bullets was and the
22 distance, but you can assume three to three and a half feet
23 at a safe minimum away?

24 A. Yes, at the closest.

25 Q. Okay. So at least this far, double the length of this

1 rod or a little longer?

2 A. Yeah, that -- if we think of holding a yardstick up,
3 so that far away would be where the barrel --

4 Q. I'm sorry. Let me turn sideways. At least say this
5 far away?

6 A. That looks around a yard, yes.

7 Q. Do you have an exact angle of entry? Did you do that?

8 A. I'm not sure what you mean.

9 Q. Like an actual grade. Like if you put like a
10 90-degree curve, like what the actual angle of entry was?

11 A. So when we -- what I did was put rods in the head at
12 the time of autopsy. There's so much wiggle room. So
13 when we do the autopsy, of course, we take all the organs
14 out. If we have an entrance right here, it goes through
15 the brain, and exit right here, the skull is massively
16 fractured, so I'm trying to put it back together. You get
17 the general direction of it. And, again, we can illustrate
18 that with the rods of which I have photographs, but we
19 don't typically -- I used to do the angle, like try to come
20 up with a number. Like, oh, 25 degrees up or 20 degrees to
21 the rights, although I do believe I estimated this one at
22 20 degrees to the right, but we try to steer away from that
23 because it applies some degree of complete accuracy and
24 it's not that accurate. So, no, I don't have a specific
25 measurement on that.

1 Q. But you can be specific that it wasn't a point -- put
2 the gun up to their face and pull the trigger. That we are
3 sure of?

4 A. Yes.

5 Q. And there were lots of hypothetical situations that
6 were posed, but as described --

7 MR. STITELY: May I borrow your plastic gun?

8 MS. FULLER: (Handing.)

9 BY MR. STITELY:

10 Q. Did you do a -- so assuming she's 5-5, did you do the
11 trigonometry to determine how far away the gun would have
12 been?

13 A. The trigonometry? No, I haven't done trigonometry in
14 a long time.

15 Q. I'm just wondering. Anyway, so, once again, going
16 into hypotheticals, you cannot say for sure where she was
17 positioned, how she was positioned, how she was looking,
18 where the gun was, aside from more than three to three and
19 a half feet away, correct?

20 A. Correct. I see Ms. Youmans on our autopsy table in
21 that position and I can't tell from the autopsy how she
22 would have been configured at the time she was shot.

23 Q. Okay. And in Ms. Fuller's questioning, she gave lots
24 of could it be like this. Any position of the gun from
25 laying on the ground to up here if she was looking down is

1 possible, correct?

2 A. Right. However you can move her head, that is the
3 direction the bullet is coming from.

4 Q. And it doesn't matter if the gun was sideways or
5 straight up or upside down, once again, it's all about just
6 this line?

7 A. Correct.

8 Q. So if someone was trying to put it like this, it
9 could have fired upwards or like this it could have fired
10 downwards, correct?

11 A. Yes. However --

12 Q. So this we could have had or this we could have had
13 potentially?

14 A. Yes. Yes.

15 MR. STITELY: No other questions. Thank you, ma'am.

16 THE COURT: Any redirect?

17 MS. FULLER: No, Your Honor.

18 THE COURT: May I let Dr. Presnell be excused?

19 MS. FULLER: Yes, Your Honor.

20 THE COURT: Doctor, thank you.

21 THE WITNESS: You're welcome.

22 (Witness excused.)

23 MS. FULLER: May I call the next witness?

24 THE COURT: You may.

25 MS. FULLER: Thank you, Your Honor.

1 The State calls Catherine Leisy.

2 (Whereupon, Catherine Leisy was duly sworn by the
3 Clerk of Court.)

4 THE CLERK: Thank you. If you'll have a seat up
5 there. If you'll state your name and spell your last
6 name for the record.

7 THE WITNESS: Catherine Leisy. L-E-I-S-Y.

8 CATHERINE LEISY,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. FULLER:

12 Q. And let's introduce yourself to the jury. Where are
13 you employed?

14 A. I am a forensic scientist assigned to the DNA casework
15 department at the South Carolina Law Enforcement Division,
16 more commonly referred to as SLED.

17 Q. And in what department do you work in?

18 A. DNA casework.

19 Q. And can you go ahead and explain to the jury what is
20 your training, education and background in the field of DNA
21 analysis?

22 A. I have a bachelor of science degree in genetic
23 engineering from Cedar Crest College in Allentown,
24 Pennsylvania. I've been with SLED now for a little over
25 seventeen years and I've received in-house training by

1 other court-qualified analysts in all the different types
2 of testing and analyses I'm required to perform. I'm
3 required to complete competency testing to show that I am
4 capable of performing these tests correctly before I do
5 casework. I also participate in proficiency testing twice
6 a year. It's essentially a test that the answer is known.
7 I have to perform this test to show that our protocols are
8 working correctly and I'm operating correctly under those
9 protocols. I also participate in continuing education,
10 which consists of attending seminars or conferences to help
11 keep us up to date with the most current types of tests and
12 analyses available. I also spent approximately four years
13 as a forensic DNA analyst at a private testing facility
14 before coming to SLED where I performed the same types of
15 tests and analyses I perform now.

16 Q. And have you testified in court before in the field of
17 DNA analysis?

18 A. I have.

19 Q. Approximately how many times?

20 A. Over a hundred occasions.

21 Q. And you've been qualified as an expert, correct?

22 A. I've been qualified every time I've been offered.

23 Yes, ma'am.

24 Q. Thank you.

25 MS. FULLER: Your Honor, at this time the State

1 seeks to introduce Catherine Leisy as an expert in the
2 field of DNA analysis.

3 THE COURT: Any objection?

4 MR. STITELY: No objection.

5 THE COURT: Again, I'll tell the jury this witness
6 may give her opinion. You give it the weight that you
7 deem appropriate.

8 MS. FULLER: Thank you, Your Honor.

9 BY MS. FULLER:

10 Q. As it relates to this case, did you perform an
11 analysis on your SLED Lab Number L20-02534?

12 A. Yes, ma'am, I did.

13 Q. And for your analysis, did you have two swabs from a
14 Smith & Wesson .357?

15 A. I did.

16 Q. As well as a blood spot from Joanie Youmans from
17 autopsy?

18 A. That's correct.

19 Q. I'm gonna show you what's already been introduced into
20 evidence as State's Exhibit 33 and State's 30 and 31 and
21 ask if you -- take your time and ask if you recognize these
22 items as items that you had at the time of processing of
23 DNA analysis?

24 A. I do recognize these items and that is based on the
25 SLED case number being present, as well as the specific