

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-000148

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SC Court of Appeals

THE STATE

APPELLANT,

v.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

RECORD ON APPEAL

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**PURSUANT TO THE ORDER OF THIS COURT FILED JANUARY 21, 2014, THE
FOLLOWING EXHIBITS ARE ON FILE:**

DEFENSE EXHIBITS ##1-39, 46-58, 60-63 (PHOTOGRAPHS)
DEFENSE EXHIBIT #58 (911 Recording)
STATE’S EXHIBITS ## 1-12, 14-25 (PHOTOGRAPHS)

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)	
COUNTY OF CHESTERFIELD)	FOURTH JUDICIAL CIRCUIT
)	
THE STATE OF SOUTH CAROLINA)	CASTLE DOCTRINE HEARING
)	
PLAINTIFF)	
)	OCTOBER 2, 2012
VERSUS)	OCTOBER 3, 2012
)	
GRAHAM FRANKLIN DOUGLAS)	
)	
DEFENDANT)	
_____)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

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TYLER BRYANT BROWN, ESQUIRE
ATTORNEYS FOR THE STATE

MELVIN WAYNE "TREY" COCKRELL, ESQUIRE
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JAHUE MOORE, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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THE STATE VERSUS GRAHAM FRANKLIN DOUGLAS

10

1 (Whereupon, this case was called to order at
2 9:48 a.m. on Tuesday, October 2, 2012.)

3 **THE COURT:** Good morning, ladies and gentlemen. All
4 right. We want to welcome everyone to the courtroom.
5 Before we begin this proceeding, let me introduce myself. I
6 am Judge Baxley. I am actually from Darlington County, but
7 I work here in Chesterfield County a good bit, because
8 Chesterfield and Darlington are in the same judicial
9 circuit.

10 I realize that we are here today in a difficult matter
11 for both sides, all sides of this case. I thank you for
12 following and keeping the decorum of this Court, with
13 respect for witnesses and other counsel who appear today.

14 And let me just say to each of you who are here, that I
15 know this is difficult, because you are here over a matter
16 that happened sometime ago, still though in your minds
17 today. But, when you come back to the courtroom, you relive
18 it, and refreshing it in your mind. It is a difficult
19 process for you. But, I thank you for having the courage to
20 be here to see that justice is done, whatever that justice
21 may be today.

22 And we are ready to proceed at this time. Counsel,
23 let's begin if we may. I know we have a special prosecutor
24 here, Mr. Finney. If you would introduce yourself, and
25 those who are on the prosecution team; we will do the same

THE STATE VERSUS GRAHAM FRANKLIN DOUGLAS

11

1 for the defense. Then we will proceed into an opening
2 statement, if counsel wishes to make an opening statement.
3 I don't require it, but give you that opportunity, and then
4 we will take testimony.

5 **MR. FINNEY:** Thank you, good morning, Your Honor.

6 **THE COURT:** Good morning.

7 **MR. FINNEY:** My name is Ernest Finney, I am the
8 Solicitor from the Third Judicial Circuit, handling this
9 case by a matter of a conflict that arose in the fourth
10 circuit. Assisting me today is Tyler Brown, Assistant
11 Solicitor from Sumter. We have Agent James Johnson, who is
12 our lead investigator from SLED. We have a multitude of
13 family members here on behalf of the deceased, Eden Smith.

14 Your Honor, I would pass up a witness list that has
15 been prepared. It has been handed to the defense. Those
16 are the witnesses for the State. And, thank you, Your
17 Honor.

18 **THE COURT:** Yes, sir. Thank you. Now, for the
19 defense.

20 **MR. MOORE:** Yes, sir, Your Honor. Good morning. I
21 am Jac Moore, with me is my associate Brooke Biediger. We
22 are pleased to be associated with Attorney Trey Cockrell.
23 We are representing the defendant Graham Douglas. And, I
24 believe we have his Mom, his Dad, and members of the
25 community are here in support of the friendship of the

THE STATE VERSUS GRAHAM FRANKLIN DOUGLAS

12

1 Graham's.

2 **THE COURT:** All right. Thank you. This is actually
3 a Motion by Defense. The defense bears the burden of proof
4 in this Motion. And tell me, do you wish to make an opening
5 statement?

6 **MR. MOORE:** Your Honor, we have spoken briefly with
7 the Solicitor's Office, and we have submitted to the Court a
8 Memorandum. This is basically a Castle Doctrine Hearing.
9 If it would please the Court, I believe that we could
10 probably just waive the opening, and go right into the case.
11 It is a classic Castle Doctrine case.

12 **THE COURT:** Very good. And, Mr. Prosecutor, is that
13 satisfactory to you?

14 **MR. FINNEY:** Yes, Your Honor. We intend to hand up a
15 memoranda at the close of the defense case. We agree that
16 this is a Motion by them, and they should call their
17 witnesses, and let's get into the facts of the matter.

18 **THE COURT:** All right. Very good. And, I should
19 introduce those who are here at the front table. Of course,
20 with me, Ms. Faye Sellers, our elected Clerk of Court here
21 in Chesterfield County. As well as our court reporter
22 today, in case someone needs this transcript, is Pamela
23 Cartee, and Jamie Scruggs, who is my law clerk is also
24 present with us on the bench.

25 And, Mr. Moore, please call your first witness.

THE STATE VERSUS GRAHAM FRANKLIN DOUGLAS

13

1 **MR. MOORE:** May it please, Your Honor. If I might,
2 we have pre-marked and agreed to fifty-nine exhibits, which
3 we have already given to the Court reporter. If I might
4 move those into evidence.

5 **THE COURT:** All right. Is there objection?

6 **MR. FINNEY:** No objection.

7 **THE COURT:** Without objection, then 1 through 59 in
8 evidence for the defense.

9 **WHEREUPON, DEFENDANT'S EXHIBIT**

10 **NUMBER 1 THROUGH 59 WERE**

11 **ADMITTED INTO EVIDENCE WITHOUT**

12 **OBJECTION.**

13 **MR. MOORE:** And, Your Honor, we have also handed up a
14 Stipulation of Fact, if we might --- Mr. Finney and I have
15 gotten together, and I believe that might shorten the trial
16 a tad. If I might have that marked as either a defense
17 exhibit or move it into evidence as a court's exhibit with a
18 stipulation that we agreed to.

19 **THE COURT:** Very good. And is there an objection to
20 the stipulation?

21 **MR. FINNEY:** No objection, Your Honor.

22 **THE COURT:** Then without objection, we will make that
23 Court's Exhibit Number 1. Let's take a moment while that is
24 marked, please. Do we have it on the bench? I have handed
25 it to Your Honor.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

15

1 Q. Is that where you were basically raised as a child?

2 A. Yes, sir.

3 Q. Are you married?

4 A. No, sir.

5 Q. Ever been married?

6 A. No, sir.

7 Q. The address that you have given me, is that your home?

8 A. Yes, sir.

9 Q. How long has that been your home, Graham?

10 A. For the better part --- Since I graduated from law
11 school in 2004.

12 Q. Now the incident that we are talking about today, did
13 that actually happen inside of your home?

14 A. Yes, sir.

15 Q. Now, there is a Deed that we have placed into evidence
16 to the property. Who actually holds title to the
17 property which is your home?

18 A. Either my Mother, my Father, or both.

19 Q. And that Deed is in evidence; is that correct?

20 A. That is my understanding.

21 Q. And they have allowed you to live there as your house?

22 A. Yes, sir.

23 Q. The house that you live in, is it a large house?

24 A. No, it is a small house.

25 Q. It was actually an old share-cropper's house; is that

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

16

1 correct?

2 A. That's correct..

3 Q. Can you give me an approximation in regard to the
4 square footage of that house?

5 Q. A thousand feet or so?

6 A. It is small.

7 Q. How many bedrooms?

8 A. Two small bedrooms.

9 Q. And, you were living there with your parent's
10 permission?

11 A. Yes, sir.

12 Q. Where was their house?

13 A. Less than a hundred yards away.

14 Q. Was the house that your parents lived in, was that on
15 the same track of land where your home was?

16 A. Yes, sir, that is my belief.

17 Q. So, you were living right next door to your parents?

18 A. Yes, sir.

19 Q. This house was your house, and that house was theirs?

20 A. Right.

21 Q. How long had you lived there in this little house as
22 your home before the incident in question took place?

23 A. Continuously?

24 Q. Yes.

25 A. Since, I believe, 2009.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

17

1 Q. Does it have high ceilings or low ceilings?

2 A. It has very low ceilings in the old share-croppers
3 part. My great grandfather built two rooms with
4 slightly higher ceilings, but all the ceilings are low.

5 Q. The kitchen, is it located next to any particular room?

6 A. The kitchen is located in between my bedroom and the
7 dining room.

8 Q. Is the dining room and the kitchen pretty much one
9 room?

10 A. It is.

11 Q. So, your bedroom runs off of the kitchen?

12 A. Yes, sir.

13 Q. How big would that kitchen be?

14 A. Small.

15 Q. What is your educational background, Graham?

16 A. I have a doctorate degree in jurisprudence from USC.

17 Q. So, you graduated from law school?

18 A. Yes, sir.

19 Q. Where did you go to college?

20 A. Woford College.

21 Q. And you were born and raised right here in
22 Chesterfield?

23 A. I was born in Columbia. My parents adopted me. They
24 raised me here.

25 Q. Do you have a learning disability?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

18

1 A. Yes, sir.

2 Q. What do you have?

3 A. I have ADD and dyslexia.

4 Q. Now, ADD is Attention Deficit Disorder?

5 A. That is my understanding, yes.

6 Q. Dyslexia, do you have understanding as to what that is?

7 A. Somewhat, yes, sir.

8 Q. Has your dyslexia been diagnosed as slight, medium, or
9 severe?

10 A. It is my understanding that it is more severe than
11 slight.

12 Q. Can you explain to Judge Baxley how the dyslexia that
13 you suffer from impacts you?

14 A. I was thirteen before I could tie my shoes. I attended
15 speech therapy up until eight or nine. I have trouble
16 with syntax with homonyms, with spelling, I mix up
17 phrases and nouns, homonyms, and opposites, left and
18 right.

19 Q. When you get under stress, more upset, is there any
20 special impact that the dyslexia has on you?

21 A. Oh, yeah. Yes, sir.

22 Q. Describe that please to Judge Baxley?

23 A. It increases, it makes me --- it makes it increasingly
24 hard for me to express myself accurately, verbally or
25 written.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

19

- 1 Q. Do you confuse words?
- 2 A. Yes.
- 3 Q. Who diagnosed the dyslexia?
- 4 A. Dr. B. G. Quesenbery.
- 5 Q. And where does Dr. Quesenbery practice?
- 6 A. Charleston, South Carolina.
- 7 Q. And I believe that is a Ph.D., not a medical doctor; is
- 8 that correct?
- 9 A. That is my understanding. Yes, sir.
- 10 Q. Is there any treatment for dyslexia?
- 11 A. There would have been perhaps if I had been diagnosed
- 12 earlier, but not at this point.
- 13 Q. Are you under medication today?
- 14 A. Yes, sir.
- 15 Q. What are you taking today?
- 16 A. I am taking an anti-anxiety drug.
- 17 Q. How long have you been on anti-anxiety medication?
- 18 A. Every since I suffered my first panic attack somewhere
- 19 in the late 90s.
- 20 Q. Do you suffer from panic attacks from time to time?
- 21 A. Yes, sir.
- 22 Q. Who diagnosed or prescribed the anti-anxiety medicine
- 23 for you?
- 24 A. Dr. John McLeod.
- 25 Q. And he is your medical doctor?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

20

1 A. That's right. Yes, sir.

2 Q. Were you prescribed --- Did you have a prescription for
3 anti-anxiety medicine at the time of the incident,
4 which lead to the death of Eden Smith?

5 A. Yes, sir. I was also --- also suffering from insomnia,
6 chronic insomnia, which Dr. McLeod has also treated me
7 for from time to time.

8 Q. And what medications did you have to treat you for
9 that?

10 A. Several throughout the years.

11 Q. Now, how long have you known Eden Smith?

12 A. For approximately eighteen years.

13 Q. How did you meet him?

14 A. I met him because I dated his sister.

15 Q. When did you begin to date his sister?

16 A. She was my first girlfriend. I began to date her when
17 I was fifteen, I guess we went on our first date.

18 Q. And you dated her how long?

19 A. On and off.

20 Q. On and off for how many years?

21 A. The next fifteen years.

22 Q. Was it a stead thing?

23 A. No, sir.

24 Q. Now, were you and Eden --- were y'all close friends?

25 A. No, sir.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

21

1 Q. Were you acquaintances?

2 A. Yes, sir.

3 Q. Did you dislike him?

4 A. No, sir.

5 Q. Were you ever close friends with Eden?

6 A. No, sir.

7 Q. Did you have on the day this happened, and I believe
8 this was May 31, 2011. Did you have any knowledge in
9 regard to Eden's propensity for violence?

10 A. Oh, yes, sir.

11 Q. Would you tell the Judge the knowledge that you had in
12 regard to his propensity for violence?

13 A. I knew that he had a history of violence in the past,
14 and that he could be unpredictable, and violent, and
15 aggressive.

16 Q. Did you know that he had a criminal history of violent
17 acts?

18 A. Oh, yes, sir.

19 Q. Can you describe the criminal history that you knew he
20 had in regard to violent activity?

21 A. Burglary, armed robbery, assaulting a woman, assaulting
22 two police officers, and I know that he had a upcoming
23 charge against him for some sort of criminal sexual
24 misconduct.

25 Q. That was pending in the Court at the time he passed

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

22

1 away?

2 A. Yes, sir.

3 Q. And did you understand that he had a court appearance
4 that week, imminent in that criminal sexual conduct
5 case that was pending against --

6 **MR. FINNEY:** I'm going to object to the leading, Your
7 Honor.

8 **THE COURT:** Sustained. Counsel, you cannot lead your
9 witness with a question that suggest the answer.

10 **MR. MOORE:** Thank you, Your Honor.

11 Q. What, if anything, did you understand in regard to when
12 the criminal sexual conduct trial was coming up?

13 A. I knew it was very soon.

14 Q. All right. At any time in the past, had Eden ever
15 assaulted you?

16 A. Yes, sir.

17 Q. How many years ago was it that Eden actually assaulted
18 you?

19 A. It would have been somewhere around the summer of 2006.

20 Q. Where did that assault take place?

21 A. In the home of his parents.

22 Q. Would you tell the Judge what he had done when he
23 assaulted you approximately five-years before this
24 happened?

25 A. He had thrown me up against, as I remember, the pantry

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

23

1 door, and strangled me, started choking me. He stopped
2 because his sister and mother crying pulled him off.

3 Q. What had provoked that attack?

4 A. I am said, god damn.

5 Q. And when you said that, what did he do?

6 A. He snapped.

7 Q. Where did this prior assault take place?

8 A. In the home of his parents. I think he was living
9 there at the time, but I am not sure.

10 Q. Now, was he stronger than you?

11 A. Absolutely.

12 Q. And did he work out regularly?

13 A. He worked out at the Y. Yes, sir, he did. He was
14 stronger than me.

15 Q. Can you give me an idea in regard to --- How tall are
16 you?

17 A. I'm about six feet, give or take.

18 Q. What do you weigh?

19 A. Right now I am in the 190s.

20 Q. How about at the time of the incident?

21 A. Give or take ten pounds, probably about the same.

22 Q. Are you stronger?

23 A. No, sir.

24 Q. Are you pronged to fighting?

25 A. No, sir.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

24

1 Q. Do you work out?

2 A. No, sir.

3 Q. In regard to your height and weight, would he have been
4 taller, about the same, shorter?

5 A. I would say about the same.

6 Q. How about his weight?

7 A. I have no idea what his weight was?

8 Q. Was he strong?

9 A. He was very strong. I didn't realize people could be
10 that strong.

11 Q. Now, in May of 2011, were you and he hanging out
12 together on a regular basis?

13 A. No, sir.

14 Q. How did you get together on May 31, 2011?

15 A. He had shown up at my house on my birthday, around
16 three a.m.

17 Q. Your birthday was what day?

18 A. May 21st.

19 Q. So, May 21st, about ten days before this happened, he
20 came to your house?

21 A. At three-thirty in the morning.

22 Q. All right. Tell me what happened when he came to your
23 house at three-thirty in the morning, on your birthday.

24 A. He knocked on the door and he woke me up. He was
25 intoxicated and upset.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

25

- 1 Q. Now, why was he upset with you?
- 2 A. He was upset about a child custody matter?
- 3 Q. Who was the child?
- 4 A. Baby Brannon. (Phonetic.)
- 5 Q. And have you provided some unofficial advice in regard
6 to the placement of Baby Brannon?
- 7 A. I had.
- 8 Q. Was he upset with you about the advice that you had
9 given?
- 10 A. Yes, sir.
- 11 Q. And when he showed up at your house, what was he upset
12 with you about?
- 13 A. About my advice.
- 14 Q. Did you talk with him?
- 15 A. Yes, I tried to.
- 16 Q. Was there any reasoning with him?
- 17 A. Not much, no. I brought out the law books, and I
18 showed him the family law and the best interest of the
19 child test that the Court uses.
- 20 Q. And would he leave that night?
- 21 A. No, he would not leave. He would not go to sleep.
- 22 Q. What did you do with him?
- 23 A. I stood up and tried to talk to him.
- 24 Q. How did you separate from him on that particular
25 evening?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

26

- 1 A. I tried to go into my bedroom. I gave him a pillow for
2 the couch. I told him he could either sleep in my
3 spare bedroom or on the couch.
- 4 Q. Did anything violent happen that day?
- 5 A. No. He just refused to go to sleep.
- 6 Q. Did you go to sleep?
- 7 A. No.
- 8 Q. Why not?
- 9 A. He kept me awake. I went into my bedroom, tried to go
10 to sleep, and he followed me in there.
- 11 Q. All right. How did you get away from him that day?
- 12 A. I got up that morning, it was my birthday. My family
13 was coming to go along with my Godmother, my sister
14 Sheila, and our normal practice on Saturdays was, I
15 would cook meals for the family. I like to cook. So,
16 I was going to have a birthday dinner there, and then
17 sister Sheila and I were going to go to mass in
18 Charlotte, at St. Patrick's Cathedral.
- 19 Q. Did you go to mass?
- 20 A. Yes, sir.
- 21 Q. Was he there when you left?
- 22 A. Yes, sir.
- 23 Q. Was he there when you got back?
- 24 A. No, sir.
- 25 Q. Now, the next time you would have seen him would have

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

27

1 been May 31, 2011?

2 A. Yes, sir.

3 Q. Who made contact? Did you call him or did he call you?

4 A. He called me.

5 Q. What did he want to do?

6 A. He wanted to hang out.

7 Q. What did you say?

8 A. I said, okay, I thought that it would maybe show some
9 goodwill that the child custody thing that had caused
10 the family to be upset with me, it may give me a chance
11 to resolve it. I also realized that he was under
12 stress. And, I cared for him. And, I cared for his
13 family, and I still care for them still.

14 Q. Let me ask you this. There are all kinds of rumors,
15 was there any kind of physical relationship between the
16 two of you?

17 A. No.

18 Q. From a sexual standpoint?

19 A. No, sir.

20 Q. Had there ever been any such?

21 A. No, sir.

22 Q. Had there ever been any such?

23 A. No, sir.

24 Q. Now, so he called, and what did y'all decide to do?

25 A. I told him we would go play golf, and I suggested

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

28

1 Memorial Day.

2 Q. Was that acceptable?

3 A. Well, he called me on Memorial Day, and I didn't want
4 to go. I was kind of nervous about being around him,
5 and didn't know exactly what to do. So, I said, the
6 golf course is going to be very crowded. It is hot.
7 Let's delay it.

8 Q. So, you went May 31st?

9 A. That's right.

10 Q. Did he come to your house and get you, or did you pick
11 him up, or how did you meet him?

12 A. He came to my house. He called me in the morning, and
13 said, are we still --- I don't know if he called or
14 texted, but one or the other. He said, are we playing
15 golf, and I said, you know, why not. So --

16 Q. And, where did you play golf?

17 A. Green River Country Club.

18 Q. Where is that in relation to your home?

19 A. Two miles, give or take.

20 Q. So, he came to the house. Where did you go from the
21 house?

22 A. We went to the convenient store.

23 Q. And what did you do there?

24 A. I bought two cups of ice and a pack of cigarettes.

25 Q. Why did you need the ice?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

29

- 1 A. Well, it was cold --- hot that day.
- 2 Q. Did someone have liquor?
- 3 A. Oh, yes, sir.
- 4 Q. Who had the liquor?
- 5 A. Eden.
- 6 Q. What kind of liquor did he have?
- 7 A. Vodka.
- 8 Q. Did he have much?
- 9 A. He didn't have the smallest bottle, he didn't have the
- 10 largest bottle.
- 11 Q. Did y'all drink the bottle of liquor?
- 12 A. Yes, sir.
- 13 Q. Over what period of time did you drink the bottle of
- 14 liquor?
- 15 A. We reached the golf course --
- 16 **MR. MOORE:** Take your hand away from your mouth.
- 17 A. We reached the golf course somewhere between nine and
- 18 ten. And we left the golf course somewhere between
- 19 three, four-thirty.
- 20 Q. Did y'all eat anything?
- 21 A. I believe we did have some snacks before we left the
- 22 house.
- 23 Q. Did you get drunk?
- 24 A. I was not falling --- We did not get falling down
- 25 drunk, but neither one of us knew how to operate a

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

30

1 vehicle.

2 Q. Did you drink the whole bottle of liquor on the golf
3 course?

4 A. Yes, sir.

5 Q. Did you have any type of fight or altercation on the
6 golf course?

7 A. None whatsoever.

8 Q. How did you get along as you were playing golf?

9 A. Fine, I thought. There was a little aggression, but
10 not much.

11 Q. Where did you go when you left the golf course?

12 A. We went to Shroud's Liquor Store.

13 Q. Who was driving?

14 A. Eden.

15 Q. Who went in and bought the liquor?

16 A. I did.

17 Q. What did you buy?

18 A. I bought the same thing, Burnett's Vodka.

19 Q. How much did you buy?

20 A. About the same size as before.

21 Q. A good size bottle of Vodka?

22 A. Yes, sir.

23 Q. When you left Shroud's Liqueored Store, where did you
24 go?

25 A. Home, I believe. My house.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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- 1 Q. Why did you go to your house?
- 2 A. That is where I live.
- 3 Q. When you got to your house, what did you do?
- 4 A. Poured the liquor in a Britta -- one of those water
5 filter things.
- 6 Q. Why would you pour the liquor in a water filter?
- 7 A. Well, unless you are very drunk, Burnett's Vodka
8 doesn't taste very good. And pouring it through the
9 filter, filters it again. I learned the trick on Myth
10 Busters.
- 11 Q. You learned the trick on Myth Busters?
- 12 A. It is a TV show.
- 13 Q. Now, after you basically got the liquor where you could
14 drink it, did y'all start drinking the liquor?
- 15 A. We did. I was hot and exhausted.
- 16 Q. Where were you drinking the liquor?
- 17 A. We poured some drinks, went outside, and sat back
18 behind my house. We were in two chairs and a view of
19 my garden.
- 20 Q. Now, Graham, in your back yard is this -- How far are
21 you outside of town?
- 22 A. I'd say approximately five miles, give or take.
- 23 Q. Would this be a rural area or a city area?
- 24 A. It is rural.
- 25 Q. Would there have been shotgun shells in your backyard?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

32

1 A. Oh, yes, sir.

2 Q. Why?

3 A. Well, I have a garden. And I have buzzards and crows.
4 I can't shoot the buzzards, it's illegal. But I have
5 crows that try to nest right in the pine trees in my
6 backyard. So, I shoot the shotgun to scare the
7 buzzards.

8 Q. Did you ever discharge the shotgun on May the 11th?

9 A. No, sir. On May the?

10 Q. On May 31st, I'm sorry.

11 A. No, sir.

12 Q. How long did you guys sit in your backyard drinking
13 Vodka?

14 A. Not long.

15 Q. Did you drink the whole bottle?

16 A. No, sir.

17 Q. Now, what did you wear when you were playing golf?

18 A. I wore a knit green and blue striped polo shirt.

19 Q. When you got home, did you keep those clothes on?

20 A. No, sir. That was one of the reasons we quit playing
21 golf early. I had worn a thick pair of light blue
22 pants and a thick knit shirt, and I was soaked, sweaty,
23 and tired.

24 Q. So, did you change?

25 A. Yes, sir.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

33

1 Q. What did you change into?

2 A. I changed into a thinner blue shirt and a pair of
3 lighter weight khaki pants.

4 Q. Was there also another pair of pants in your home that
5 had blood on them?

6 A. Yes.

7 Q. Where had that blood come from?

8 A. It had come from an accident that I had.

9 Q. What type of accident?

10 A. A car accident.

11 Q. How long before, was it before May 31st that you had
12 the car accident?

13 A. Several months. I don't recall exactly.

14 Q. Did alcohol have anything to do with it?

15 A. No, sir.

16 Q. Did the police investigate the accident?

17 A. Yes.

18 Q. Where did that accident take place?

19 A. Here in town.

20 Q. Why hadn't you cleaned it up?

21 A. I just laid them back there in the backroom. I never
22 go there. I hadn't gotten around to it. I didn't know
23 if they could be cleaned.

24 Q. What was Eden wearing?

25 A. I can't remember.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

34

1 Q. Did he change clothes that you know of?

2 A. No, sir.

3 Q. I want to talk a moment about depression. Did you
4 suffer from depression?

5 A. Yes, sir. I have suffered from depression on and off
6 every since my first day of the bar exam.

7 Q. How many times have you taken and failed the bar?

8 A. Four or five.

9 Q. Why did that depress you?

10 A. Well, I had invested four years of college, planned on
11 going to law school. I had invested three years at law
12 school. And I invested since 2004 to 2011 trying to
13 pass the bar. So, the better --- what is that,
14 fourteen years?

15 Q. How serious was the depression that you suffered as a
16 result of not being able to pass the South Carolina
17 Bar?

18 A. It varied. In 2011, when I received notification from
19 the South Carolina Supreme Court that they denied my
20 application for accommodation, the depression was very
21 extreme.

22 Q. There was a point in time when you made application to
23 the Supreme Court for accommodation for what?

24 A. For dyslexia and ADD.

25 Q. Would the Supreme Court allow you the accommodation for

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1. the exam?
2. A. No.
3. Q. What did you do in trying to get the accommodation?
4. A. I went and was tested by Dr. Quesenbery. He ran an IQ
5. and several other test. I included that with the
6. proper form, and submitted it.
7. Q. When your application to try to take the bar with
8. accommodation for your dyslexia was refused, did you
9. contemplate anything?
10. A. Yes, sir, I did.
11. Q. What did you think about doing?
12. A. I thought about killing myself.
13. Q. Now, Graham, why in the world would you think about
14. killing yourself?
15. A. I had been a drain on my parents for fourteen years. I
16. felt as if I was a failure, an utter failure. I had
17. applied for jobs, other jobs, and I couldn't one.
18. Q. Had you also developed a dependency problem?
19. A. A dependency --
20. Q. Have you abused alcohol?
21. A. I have abused alcohol in the past, yes. At that time I
22. don't believe I was an alcoholic, no.
23. Q. Had you lost your job?
24. A. I had resigned my job.
25. Q. And you were living at home with no means of support?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 A. Right, except charity.

2 Q. Now, tell me, there are gunshots in the ceiling of your
3 house; right?

4 A. Yes, sir.

5 Q. Tell Judge Baxley how those gun shots came to be in the
6 ceiling of your house?

7 A. When I got the letter, either in late January or
8 February, that night I set up with the letter and read
9 it. And, I got my pistol and I sat there on my
10 counter, and thought that maybe the best way out to end
11 the troubles that I had caused my parents, and was
12 continuing to cause them would be to end my life.

13 Q. Where was the gun?

14 A. It was on the counter.

15 Q. How long did you sit there contemplating the
16 possibility of killing yourself?

17 A. Minutes.

18 Q. Obviously you didn't kill yourself, what did you do
19 with your gun?

20 A. I picked it up and I thought about shooting myself, and
21 I decided, even though I had caused my parents
22 disappointment and pains through my failures, that
23 suicide would cause them even more. And that failing
24 the bar is not the end of the world, even though it
25 definitely seemed to me at the time. So, instead of

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 putting the bullet in my head, I fired the bullets in
2 my ceiling.

3 Q. How many bullets did you shoot in the ceiling?

4 A. I don't know. Several.

5 Q. So, on May 31, 2011, the bullets had been in the
6 ceiling for approximately how long?

7 A. A few months. That night I also --- After that I went
8 to my bedroom and had the letter there, and so angry at
9 myself about trying --- about thinking about suicide,
10 and about my failures, I shot holes in that ceiling as
11 well.

12 Q. Okay. Now, following that evening, did you keep the
13 pistol?

14 A. Yes, sir.

15 Q. Where did you keep the pistol?

16 A. I kept the pistol in my bedside dresser; in the right
17 drawer --- top drawer beside the bed.

18 Q. Why did you keep a pistol beside your bed?

19 A. I live out in the country. I have had strangers show
20 up at night with very dubious stories, who were
21 intoxicated on something that I haven't seen people
22 intoxicated on, and have asked me to take them places,
23 and wanted to come in and use the phone. Accused me of
24 stealing their dog. It's there in case someone breaks
25 in my house, or tries to assault me. It is for my

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 protection.

2 Q. How many bullets did you have in the gun?

3 A. At what time?

4 Q. May 31st.

5 A. Two.

6 Q. Why did you only have two bullets in the gun?

7 A. Well, a few weeks before this happened, or maybe a few
8 days, I had gotten to be good friends with a man named
9 Gil Brown, who is in the courtroom today. And, I was
10 at home, and I am not very familiar with pistols. This
11 was originally my Grandfather's pistol. And we took
12 some target practice in the backyard, I think it was a
13 pewter mug or a tin can.

14 Q. So, how many bullets did you have after the target
15 practice?

16 A. I would say two.

17 Q. What did you do --- Were there any spent casings, or
18 anything of that nature?

19 A. I'm sure there were spent casings; yes.

20 Q. Did you keep those in the gun or take them out?

21 A. I took them out.

22 Q. So, on May 31st, there would have been how many shells
23 in that thirty-eight revolver?

24 A. Two.

25 Q. And the gun was a thirty-eight revolver; is that

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 correct?

2 A. That is my understanding. Yes, sir.

3 Q. Now, did you have a shotgun?

4 A. Yes, sir. I have two shotguns.

5 Q. Now, there is a photograph of one of the shotguns
6 laying in the floor. Do you have any idea how that
7 shotgun got into the floor?

8 A. I do not.

9 Q. Where was it supposed to have been?

10 A. It should have been in my bedroom, in between my
11 dresser and my bed.

12 Q. On May 31st, was that shotgun used at all?

13 A. No, sir.

14 Q. Let's pick back up with you leaving on May 31st, and
15 going in your backyard drinking Vodka.

16 A. Yes, sir.

17 Q. Do you recall how many drinks of Vodka you would have
18 had each in the backyard?

19 A. No, I think I would have had less than one. I was hot
20 and exhausted.

21 Q. How about Eden?

22 A. I don't know how many he had.

23 Q. About what time did you and he go into the house?

24 A. My Dad was working as a Bailiff at that time. I think
25 court closes around five. Dad would not have been

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 pleased to see me hanging out with Eden, or drinking
2 alcohol. So, from where we were sitting, when we saw
3 him pull up, we went inside the house.

4 Q. So, you went back in the house when Dad got home?

5 A. Yes.

6 Q. When you got back in the house, how long was it from
7 the time you went into the house until these gunshots
8 took place?

9 A. I would say thirty, forty minutes. I really wasn't
10 keeping track of time.

11 Q. Let's take you then; that afternoon, five thirty, six
12 o'clock, you go back in the house with Eden. What did
13 y'all do when you went back into the house?

14 A. We sat down in the diningroom, at my diningroom table.
15 It is the largest room in the house. I often visit
16 there with guest.

17 Q. Were you still, both of you have liquor to drink?

18 A. I think so, yes.

19 Q. How much did you drink inside of the house; do you
20 remember?

21 A. Very little.

22 Q. And y'all were sitting at the table. Did you separate
23 at some fashion?

24 A. I believe he was sitting at the bar. I have a kitchen
25 bar that separates the two rooms. I have two chairs

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 there. I think I was sitting at the arm-chair at the
2 head of the diningroom table.

3 Q. Did he excuse himself?

4 A. Yeah, he said he had to use the bathroom.

5 Q. And how many bathrooms do you have in your house?

6 A. I have two.

7 Q. Did you tell him which bathroom to use?

8 A. I did.

9 Q. Which one?

10 A. I told him to use mine. The guest room bathroom was
11 filthy. Trey and I had been fishing the Sunday before,
12 and we had taken my dog, Faughtner, and I had washed
13 Faughtner in the bathtub, and there was muddy pond muck
14 in the tub, and I didn't find the strainer to ---
15 Anyway, it smelled like stale pond water.

16 Q. So, you told him then to use your bathroom?

17 A. That's right.

18 Q. Now, your bathroom, does it run off of your bedroom?

19 A. Yes, sir.

20 Q. Where would your bedroom have been in relation to the
21 kitchen?

22 A. Right beside it.

23 Q. Is there a door on your bathroom?

24 A. No, sir.

25 Q. Is there a door on your bedroom?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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- 1 A. Yes, sir.
- 2 Q. When he excused himself to go into the bathroom, what
3 did he do in regard to the door?
- 4 A. He closed it and locked it.
- 5 Q. So, that would be the door --- Which door are you
6 talking about that he closed and locked?
- 7 A. The door to the bedroom. At that time I had carpet,
8 and the only way the door to the bedroom would stay
9 shut would be if you locked it.
- 10 Q. All right. So, he went toward your bathroom.
- 11 A. Through my bedroom to my bathroom.
- 12 Q. Closed your bedroom door?
- 13 A. That's right.
- 14 Q. And locked it.
- 15 A. Yes, sir.
- 16 Q. Did he come out or did he stay?
- 17 A. He stayed in there for an inordinate amount of time.
- 18 Q. When you say he stayed in there for an inordinate
19 amount of time, what do you mean by that?
- 20 A. I mean, more than ten minutes. To the point where, you
21 know, I yelled, have you fallen in?
- 22 Q. And what did he say?
- 23 A. He said, no.
- 24 Q. Could you tell all he was doing in there?
- 25 A. I had no idea what he was doing in there.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 Q. Did he eventually come out?

2 A. He did.

3 Q. Now, Graham, very slowly, I want you to talk about what
4 happened when he came out of your bedroom. When he
5 came out of your bedroom, what was he doing?

6 A. He was holding a vile of my medication.

7 Q. Do you know what type of medication it was that he was
8 holding?

9 A. I believe it was Molozepam (phonetic.)

10 Q. Molozepam?

11 A. Or Clonazepam.

12 Q. Is that a sleep medication?

13 A. It is used for sleep and anxiety.

14 Q. Now, where had that bottle of medicine been?

15 A. It had been in the same drawer with my gun, there on my
16 dresser right beside my bed.

17 Q. Did you tell him before he went in that you had
18 sleeping pills and anxiety pills in your drawer?

19 A. No.

20 Q. So, he came out and he was holding your medication?

21 A. He was holding it like that and shaking it.

22 Q. Was the medication prescribed?

23 A. Yes.

24 Q. When he was holding your medication, what did he say?

25 A. He said, look what I found.

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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- 1 Q. What did you say to him?
- 2 A. I said, no, no, no, no, I need those. Give them to me.
- 3 Q. Would he give them to you?
- 4 A. No, sir.
- 5 Q. What did he begin to do?
- 6 A. I reached for them, and he would move them this way.
- 7 And I would reach, and he would move them this way.
- 8 And he started laughing. And then on the kitchen
- 9 counter that separates the two, he laid them there.
- 10 Q. Hold up. How many times did you try to reach and get
- 11 your medicine back?
- 12 A. Several.
- 13 Q. Now, you say he was laughing at you. Describe the
- 14 laughter that he was engaging in?
- 15 A. It was a bullying, taunting laugh.
- 16 Q. And you tried to get our medicine back?
- 17 A. I did.
- 18 Q. And he would change hands?
- 19 A. Then he placed it on the bar in the kitchen.
- 20 Q. So, then he placed the medication on the bar. When he
- 21 placed the medicine on the bar, what did you do?
- 22 A. I reached for it.
- 23 Q. When you reached for it on the bar, what happened?
- 24 A. He would slide it.
- 25 Q. Slid it. What happened then?

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1 A. He slid it again after I reached. I don't know how
2 many times this went back and forth. I finally --

3 Q. -- Go ahead.

4 A. Finally, I said god damn it, give me my medicine.

5 Q. When you said, god damn it, give me my medicine, what
6 happened?

7 A. He snapped. He went crazy.

8 Q. You say he snapped and he went crazy. Describe to the
9 Judge what happened after you said god damn it, give me
10 my medicine?

11 A. He turned around and grabbed me by my shoulders, and
12 threw me up against the refrigerator.

13 **MR. MOORE:** Come here a minute, Graham.

14 Q. On me, I know I am bigger than you. But show me how he
15 grabbed you.

16 A. Like that.

17 Q. Could you see his eyes?

18 A. Oh, yeah.

19 Q. How did his eyes look, son?

20 A. They didn't look like him. They looked like he was
21 someone else. They looked evil.

22 Q. Were you afraid?

23 A. I was scared to death.

24 Q. When he grabbed you by your arms, how hard was he
25 grabbing you?

GRAHAM F. DOUGLAS - DIRECT EXAMINATION

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1 A. He grabbed me so --- I didn't know people were that
2 strong. He grabbed me so hard that eventually my knees
3 buckled. And the only way I was standing was because
4 he was holding me up.

5 Q. You say he threw you back against the refrigerator.
6 Did any parts of your body hit anything on the
7 refrigerator?

8 A. I am sure my back and my head.

9 Q. Hit the refrigerator?

10 A. Yes.

11 **MR. MOORE:** Have a seat. It's okay.

12 Q. Now, he is holding you up.

13 A. Yes, sir.

14 Q. By your?

15 A. Biceps.

16 Q. By your biceps. You say your knees buckled. What do
17 you mean by that?

18 A. I meant that for me, the pain, the shock, or the fear,
19 my legs gave way.

20 Q. Was he hurting you when he grabbed you like that?

21 A. Oh, it was pain. Yes. It was very painful.

22 Q. Was there any way you could have fought back?

23 A. No.

24 Q. Why not?

25 A. I couldn't move. He was stronger than me, and I was in

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1 shock. I couldn't believe he was doing it.

2 Q. All right.

3 A. I knew that he could be violent toward others. I
4 didn't think he would do this to me.

5 Q. Okay. Now, when he threw you up against the
6 refrigerator, do you have any idea how long he held you
7 up there?

8 A. It seemed like forever.

9 Q. After he finally let go, what did you do?

10 A. I fell.

11 Q. Fell where?

12 A. I fell on the floor in front of the refrigerator.

13 Q. When you fell on the floor in front of the
14 refrigerator, did he leave you alone or did you --

15 A. -- No, I hit my head.

16 Q. How hard.

17 A. It was hard enough that I was dazed.

18 Q. What did you hit your head on, son?

19 A. The floor. Either that or the back of the refrig ---
20 the corner, you know, where it meets.

21 Q. Now, at this point, does your memory still stay good,
22 or does it get fuzzy?

23 **MR. FINNEY:** Objection, Your Honor. He is leading
24 the witness.

25 **THE COURT:** Yes, it is. That is leading counsel.

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1 Ladies and gentlemen, let me so we will all be aware. When
2 you have a witness on direct, and you are asking that
3 witness questions, you cannot suggest an answer in your
4 question. That is a leading question. And, it is --- You
5 did lead him, counsel. Rephrase please.

6 **MR. MOORE:** Thank you, Your Honor.

7 Q. How is your memory from this point, Graham?

8 A. Pretty good.

9 Q. Now, as you are on the floor --

10 A. -- Right.

11 Q. What did he do?

12 A. He stayed there on top of me.

13 Q. At any point in time, where you struck --- actually
14 hit?

15 A. I believe I was, yes.

16 **THE COURT:** Don't lead him, counsel.

17 Q. Which eye, if at all, were you hit in?

18 A. One of the two.

19 Q. All right. What, if anything else physically did he do
20 to you?

21 A. He bit me.

22 Q. Can you tell me where you were bitten?

23 A. I think at this time I was in the fetal position on the
24 floor, and he bit me in one of my legs at least once.

25 Q. Now, at any point in time were you able to get away?

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- 1 A. No. The whole time I was telling him to leave. Leave
2 me alone.
- 3 Q. How many times did you tell him to leave?
- 4 A. Dozens. As many as I could.
- 5 Q. And when you were telling him to leave, what would he
6 do?
- 7 A. He wouldn't.
- 8 Q. All right. How, if at all, did you get into your
9 bedroom?
- 10 A. I crawled.
- 11 Q. When you were crawling to your bedroom, what was he
12 doing?
- 13 A. After he bit me, he finally backed off and went into
14 the diningroom area, and started laughing.
- 15 Q. The laughter that you heard, was it a normal laugh, or
16 was it --
- 17 A. -- It was frightening.
- 18 Q. Why did you crawl into your bedroom?
- 19 A. Because I couldn't walk.
- 20 Q. When you crawled into your bedroom, what did you do?
- 21 A. I crawled up on my bed. I couldn't fit under it.
- 22 Q. While you were in the bed --- While you were in your
23 bed in the bedroom, and he was in the diningroom
24 laughing, did you say anything?
- 25 A. I did, as soon as I could. Again, I told him to get

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1 the hell out of my house.

2 Q. Did he do that?

3 A. No, he did not.

4 Q. At any point in time while you were on the bed, did you
5 acquire any objects?

6 A. I did. While I was sitting there, he was not leaving
7 the house after I asked him, yelling at him. When I
8 got up the strength to yell. He wouldn't leave.

9 Q. What were you yelling at him?

10 A. Get the fuck out of my house.

11 Q. What object did you get?

12 A. I went in my dresser drawer, and pulled out my pistol
13 that my Grandfather had left me and sat it on the bed
14 beside me.

15 Q. All right. So, there you are, sitting in your bed.
16 Were you bleeding?

17 A. Yes, sir. I believe I was at the time.

18 Q. There you are, sitting in your bed with a gun beside
19 you. What happens next?

20 A. He continued to laugh, and would not leave.

21 Q. All right. What happened next?

22 A. I continued to ask him to leave, and he would not
23 leave.

24 Q. What happened next?

25 A. I finally stood up in my bedroom, behind the doorway

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1 and held the gun beside me, and told him to leave in
2 very stern words.

3 Q. All right. So, there you are in your bedroom. How far
4 from the door to the kitchen would you have been?

5 A. Two feet-ish.

6 Q. You told him to leave and you are holding your pistol?

7 A. By my side, yes, sir.

8 Q. What happened next?

9 A. He didn't leave. He started to advance toward me. At
10 some point I cocked the gun, and when he started coming
11 toward me --

12 Q. -- What did you do?

13 A. I lifted and the gun fired.

14 **MR. MOORE:** Graham, stand up a minute and come back
15 out here. You stand right where you are.

16 Q. I want you to tell me about how far away he would have
17 been as he was coming toward you when the gun fired?

18 A. I remember jerking in my hand.

19 Q. How close would he have been?

20 A. He would have been somewhere between there, and backup
21 a little bit, and there.

22 Q. All right. Somewhere --

23 A. A yard, give or take a foot.

24 Q. Would he have actually still been in the kitchen, or
25 would he have been through the threshold of the door?

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- 1 A. He would not have been through the threshold of the
2 door, I don't believe.
- 3 Q. All right. Now, when the gun fired, what did he do?
- 4 A. He fell.
- 5 Q. How many times did the gun fire?
- 6 A. Once.
- 7 Q. And there were how many bullets in the gun?
- 8 A. Two.
- 9 Q. Why did the gun only discharge one time?
- 10 A. I didn't want to hurt Eden. I only drew the gun on him
11 to scare him away. I wanted him to leave. I love his
12 family. I cared about him. That is why I took him to
13 play golf.
- 14 Q. Do you recall pulling the trigger?
- 15 A. No.
- 16 Q. All right. When the gun went off --- When the gun went
17 off, what was he actually doing?
- 18 A. He was 'vexing toward me.
- 19 Q. Were you afraid at that time?
- 20 A. I was terrified.
- 21 Q. Why?
- 22 A. Because he had already beaten the hell out of me once.
- 23 Q. When he was approaching you, right before he got shot,
24 how did his eyes look?
- 25 A. Like a man possessed.

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1 Q. You rose the gun, it fired, he hit the floor. Do you
2 recall what happened next?

3 A. I do. I couldn't believe --- When the gun jumped in my
4 hand, I froze. I couldn't believe that it had fired.
5 And then I saw that he had been hit, and I couldn't
6 believe that. I don't know how long I froze. I was
7 shocked and stunned, and mortified at the situation.

8 Q. So, what did you do?

9 A. When I finally got able to move, I went and knelt down
10 beside him, and I saw he was struggling, and bleeding,
11 and trying to breath. And, then I ran over to my
12 parent's house and said, Eden has been shot. I went
13 barging through the backdoor, and dialed 911. Mom and
14 Dad I think, came into the kitchen area, which is right
15 there at the backdoor where I called.

16 Q. Who called 911?

17 A. I did.

18 Q. Who spoke with 911?

19 A. I did, briefly.

20 Q. Did anyone else speak to 911?

21 A. My father.

22 Q. Why did you give the phone to your Dad?

23 A. Because, I was in the mist of panic attack. I was
24 hysterical. I couldn't believe any of this had
25 happened. I could not believe that Eden had attacked

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1 me. I couldn't believe he had gotten shot. I couldn't
2 believe the way I saw him suffering on the ground.

3 Q. Had you ever seen anything like this before?

4 A. No.

5 Q. Graham, at any point in time before the police got
6 there, what if any medications did you take?

7 A. I took some of the Clonazepam.

8 Q. Did you do that before or after you called 911?

9 A. After.

10 Q. Did you do that before or after the police arrived?

11 A. Before.

12 Q. Graham, from your bedroom, the way that house is
13 situated; what if any escape would there have been?

14 A. None.

15 Q. Is there a door to the outside from your bedroom?

16 A. No. There is a window in my bedroom that is painted
17 shut. There is a window in the bathroom, but it is
18 several feet off the ground. I mean --

19 Q. To have gotten out that day, how would you have had to
20 do it?

21 A. Through Eden.

22 Q. Now, let's take a look if we might, at some
23 photographs. I am going to show you a photograph marked
24 Exhibit Number 1, this would have been dated June 2,
25 2011. Do you see that?

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- 1 A. Yes, sir.
- 2 Q. Where would that photograph have been taken?
- 3 A. At the county jail.
- 4 Q. Who took it?
- 5 A. Jim Foxworth.
- 6 Q. Now what, if any mark is there on your eye?
- 7 A. There is a black eye.
- 8 Q. Do you know how you got that?
- 9 A. From Eden.
- 10 Q. Now, the marks that are there on your arms, you have
- 11 two bruises on either arm. Where did those bruises
- 12 come from?
- 13 A. That came from when he was grabbing me and holding me,
- 14 and then when I was on the ground.
- 15 Q. All right. And, I believe Exhibit Number 2 shows
- 16 pretty much the same thing?
- 17 A. Yes.
- 18 Q. And Exhibit Number 3 shows pretty much the same thing?
- 19 A. Yes.
- 20 Q. And Exhibit Number 4 --
- 21 **MR. MOORE:** Your Honor, does the Court have?
- 22 **THE COURT:** I do.
- 23 Q. Exhibit Number 4 is a closer up photograph of your
- 24 arms?
- 25 A. Right.

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1 Q. And Exhibit Number 5, what does this show?

2 A. Black eye.

3 Q. Number 6, what does this show?

4 A. Some bruising to my chest, and my arms.

5 Q. Exhibit Number 7, it appears to be two different places
6 where there are bruises. Can you explain that to me?

7 A. Well, he was grabbing and choking me.

8 Q. Now, Exhibit Number 8, somebody is holding a dime. Do
9 you know who is holding the dime?

10 A. I believe that would be Attorney Trey Cockrell.

11 Q. Who took the photographs?

12 A. Jim Foxworth.

13 Q. And this would be another picture comparing the bruise
14 to the size of a dime?

15 A. Right.

16 Q. Graham, how long did it take for these bruises to
17 actually go away?

18 A. Weeks.

19 Q. How badly did he hurt you when he grabbed your arms
20 like that?

21 A. He grabbed me so hard that my knees gave way.

22 Q. Exhibit Number 10, and 11, 12, and I believe these also
23 show the bruising on your arms. Now, 13, what does it
24 show?

25 A. That shows where I must have fallen and hit my ---

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- 1 bruised my elbow.
- 2 Q. Exhibit Number 14, what does this show?
- 3 A. It shows some scrapes on my legs.
- 4 Q. Exhibit 15, what does this show?
- 5 A. My elbow, bruising.
- 6 Q. Did you have bruising on one elbow or both, or do you
- 7 remember?
- 8 A. I don't remember. I am trying to decide. That looks
- 9 like it must have been the same elbow.
- 10 Q. All right. Exhibits 16 and 17 appear to show some
- 11 scrapes. Did you also have some scraping?
- 12 A. Yes, sir.
- 13 Q. All right. Now, Exhibit Number 18 is a photograph of a
- 14 thumb. Can you tell me what this shows?
- 15 A. It shows a swollen thumb.
- 16 Q. Which thumb did you injure in the altercation?
- 17 A. My left.
- 18 Q. How badly did it swell up?
- 19 A. Well, I guess about half it's size or less.
- 20 Q. Graham, on the day in question, what if anything did
- 21 you do to fight back?
- 22 A. I couldn't fight back.
- 23 Q. Why?
- 24 A. Because he was stronger than heck.
- 25 Q. Okay.

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- 1 A. The only thing I did to fight back was to get a gun.
- 2 Q. Exhibit 19, what does that show?
- 3 A. Bruising on my knee.
- 4 Q. Number 20 also shows just you in general?
- 5 A. Yes, sir.
- 6 Q. 21 shows a scrapped place?
- 7 A. Yes, sir.
- 8 Q. Now 22 and 23, these are not very good photographs, but
- 9 can you tell me what these show?
- 10 A. That shows a bite mark.
- 11 Q. Where did he bite you?
- 12 A. On the leg.
- 13 Q. Where were you when he bit you on the leg?
- 14 A. In a fetal position on the floor in my kitchen.
- 15 Q. Now, I believe when the police officers came that day,
- 16 they actually took pictures of you before you went to
- 17 jail?
- 18 A. They did. I don't remember that. I was hysterical.
- 19 Q. Would Exhibit 24 have been an exhibit of you when?
- 20 A. I guess that day.
- 21 Q. All right. And Exhibit 25?
- 22 A. Same day.
- 23 Q. Exhibit 26?
- 24 A. Same day.
- 25 Q. Exhibit 27?

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1 A. Same day.

2 Q. Exhibit 28?

3 A. Same day.

4 Q. How badly was your leg bleeding?

5 A. It was bleeding enough to show a lot of blood.

6 Q. Did a doctor ever have to sew it up or anything?

7 A. No, sir.

8 Q. Did the leg heal?

9 A. Yes, sir.

10 Q. Where were you mainly injured?

11 A. On my arms, and on my face, and on my head when I hit
12 it. I think there was some bruising on my back.

13 Q. I believe that Exhibits 38 through 39 were taken at the
14 jail; is that correct?

15 A. Yes, sir, that is my understanding.

16 Q. Now, Exhibit 38 and 39, the bruising doesn't appear as
17 bad as the ones that were taken on June 2nd; do you
18 know why that is?

19 A. Well, I didn't, but I have looked it up on the
20 internet.

21 **MR. FINNEY:** I would object to that, Your Honor.

22 **THE COURT:** Sustained. Speculative.

23 Q. Did the bruising get worse or better as time went on?

24 A. It got worse.

25 Q. Now, I want to go over some photographs with you of the

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1 actual house, and you don't have copies of these. I
2 apologize. Graham, could you come up here, and --

3 MR. BROWN: You can show them on the TV screen. We
4 will be happy to put those up for you.

5 MR. MOORE: I appreciate it more than you know. I
6 love young lawyers, Your Honor.

7 (PAUSE.)

8 MR. MOORE: Can you see it, Your Honor?

9 THE COURT: Let's turn it so the individuals in the
10 audience can see it as well. You can leave it at an angle
11 that others can see, and that way we can see it too.

12 Q. Graham, tell me what I am looking at here?

13 A. You are looking at my kitchen and diningroom area from
14 my bedroom I presume, or somewhere close thereto.

15 Q. What is that here?

16 A. That is the bar, the kitchen counter that separates the
17 two rooms.

18 Q. And, the dishwasher door is open, why would that have
19 been?

20 A. I cook, and in order to fit pots and pans in there that
21 won't fit, I purposely engineered the dishwasher so I
22 could fit the pots and pans in there, and it resulted
23 in not always closing, and staying shut, and latching
24 like it should.

25 MR. FINNEY: Can we ask what exhibit number that is?

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- 1 **MR. MOORE:** I apologize. That is Exhibit Number 54.
- 2 **Q.** I am going to call your attention to Exhibit 53. I
3 hope I have that right. This would be Eden; is that
4 correct?
- 5 **A.** Yes, sir.
- 6 **Q.** Was his body moved at all from the time he was shot?
- 7 **A.** Not to my knowledge, no, sir.
- 8 **Q.** Would you come here and just show the Judge, using your
9 fingers, where your bedroom was, and where you would
10 have been at about the time you fired?
- 11 **A.** This is my bedroom. I would have been standing
12 somewhere along in there.
- 13 **Q.** And he would have been standing approximately where?
- 14 **A.** Somewhere near where he fell.
- 15 **Q.** And, which way would he be coming as you raised the
16 gun?
- 17 **A.** He would have been coming --- I raised the gun when he
18 passed this bar area. My front door -- I have two
19 front doors, one is here. And when I realized he was
20 not going out that front door, I lifted the gun.
- 21 **Q.** How fast was he moving toward you?
- 22 **A.** I didn't realize how fast he was moving, but he was
23 moving real quick.
- 24 **Q.** Just to give an idea in regard to your size. Can you
25 tell me what Exhibit 47 shows?

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1 A. That is my bedroom. That is my bed.

2 Q. How big is your bedroom?

3 A. It is small.

4 Q. And, Exhibit Number 48, what does this show? You can
5 come and look at it closer if you like.

6 A. I need glasses and I don't wear them. That is the
7 counter that runs from my bedroom door into my little
8 computer room area.

9 Q. What is sitting on top of --

10 A. -- my kitchen. The pill bottles.

11 Q. And why is on the counter?

12 A. Because after I had gotten Dad to call 911, I was in
13 the mist of a nervous breakdown. I felt --- I was just
14 hysterical. This medicine is prescribed for panic
15 attacks, and I was having the panic attack of my life.

16 Q. Thank you.

17 **MR. MOORE:** Would the Court give me a moment, Your
18 Honor?

19 **THE COURT:** Certainly.

20 (PAUSE.)

21 Q. Did you mean to attack Eden?

22 A. No, sir. This is the last thing that I wanted to
23 happen?

24 **MR. MOORE:** I have no further questions. Thank you,
25 Judge.

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1 **THE COURT:** Thank you. Let's take about a fifteen
2 minute break before we go into cross examination.

3 And, Mr. Douglas, I am going to ask you to not speak to
4 the lawyers on either side of this case, because you are a
5 witness under testimony.

6 Ladies and gentlemen, if you want to step outside and
7 enjoy your break, or step to the restroom, please do.

8 We will be in recess now until approximately 11:15.

9 (Whereupon, a recess was taken from 11:00
10 a.m. until 11:17 a.m.)

11 **THE COURT:** All right. Just by way of explanation
12 while we wait for Mr. Finney to come back, ladies and
13 gentlemen, we had some objections during the first direct
14 examination about leading questions, which is a question
15 that contains an answer. When you are on cross examination,
16 you may lead a witness. You can ask a question that suggest
17 or contains an answer to see if a witness holds to what they
18 testified to during direct. So, if you hear a leading
19 question, it is permissible on cross examination.

20 (PAUSE.)

21 **THE COURT:** All right. Mr. Finney, cross
22 examination.

23 **MR. FINNEY:** May it please the Court?

24 **CROSS EXAMINATION BY MR. FINNEY**

25 Q. Mr. Douglas, my name is Chip Finney. I want to be able

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1 to ask you some questions today about this case.

2 A. Yes, sir.

3 Q. Mr. Douglas, you graduated from Wolford College in what
4 year?

5 A. 2000.

6 Q. And did you go straight into the law school program
7 down in Columbia? Did you take a year off and travel
8 the world, or just go right into law school?

9 A. I was going to. I moved out to Bozeman to do a little
10 fly fishing. They had put me on a waiting list. And,
11 I got in by the skin of my teeth, at the last moment,
12 about a week before they called.

13 Q. So, you did go straight into law school after college?

14 A. Yes, sir.

15 Q. And your law school career, was it interrupted by
16 military service or anything, or did you go straight
17 through law school?

18 A. I went straight through.

19 Q. You graduated in what year?

20 A. Two thousand four, I believe.

21 Q. Did you work while you were in law school?

22 A. Briefly.

23 Q. Where?

24 A. Give me a minute, I forget his name.

25 (PAUSE.)

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- 1 A. Pantry Law Firm, I can't remember his first name.
- 2 Q. And were you working there when you graduated?
- 3 A. No, sir.
- 4 Q. Did you immediately take the bar after graduation?
- 5 A. Yes, sir.
- 6 Q. And would that have been the July bar?
- 7 A. Yes, sir.
- 8 Q. And you did not pass the July bar?
- 9 A. No, sir.
- 10 Q. Were you working during the period of time in October
- 11 when you found out you did not pass?
- 12 A. Yes, sir.
- 13 Q. Where were you working?
- 14 A. For Judge Burch.
- 15 Q. As a law clerk?
- 16 A. Yes, sir.
- 17 Q. After you did not pass the bar examination, and you
- 18 were working as a law clerk, did you continue that job
- 19 for several months, or did you loose that job right
- 20 away?
- 21 A. No, it was my understanding that I could continue
- 22 working.
- 23 Q. And during this time that you were a law clerk, and you
- 24 had graduated law school, you said you had an off
- 25 again, on again relationship with Samantha, who is

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1 Eden's sister?

2 A. Could you repeat that question, please, sir?

3 A. I am asking you to go back to the time when you
4 graduated law school and you were working for Judge
5 Burch. You had not passed the bar exam. It would
6 have been the fall of whatever year you graduated?

7 A. Two thousand and four.

8 Q. All right. The fall of that year you found out you did
9 not pass the bar?

10 A. Yes, sir.

11 Q. Two thousand four?

12 A. Right.

13 Q. And that is about eight years ago.

14 A. Yes, sir.

15 Q. At that time, were you on again, off again, with
16 Samantha?

17 A. I don't think we were together at the time. I was
18 dating a girl named Kimberly Vinson.

19 Q. All right. And at that time, you kept in touch with
20 the Smith family?

21 A. Well --

22 Q. Were you in touch with the Smith family? Were they
23 living in the Chesterfield area?

24 A. No, sir. At that time they were living at the beach --

25 Q. And you went down to the beach several times to visit?

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- 1 A. I went down to the beach once or twice.
- 2 Q. All right. And on those occasions, would you see Eden?
- 3 A. Oh, yes.
- 4 Q. Was he living at the beach?
- 5 A. Yes, sir.
- 6 Q. You all hung out at the beach?
- 7 A. He, and Samantha, and I both would hang out.
- 8 Q. And, from 2008 --- Excuse me, 2004 when you first did
9 not pass the bar.
- 10 A. Right.
- 11 Q. Until May 31, 2011, you saw Eden on a regular basis and
12 knew what he was doing?
- 13 A. Yes.
- 14 Q. And he knew what you were doing?
- 15 A. I did not see Eden on a regular basis, no, sir.
- 16 Q. You did not see him every week?
- 17 A. No, sir.
- 18 Q. If you did not see him on a regular basis, did you
19 communicate by texting or email?
- 20 A. Not to Eden, no.
- 21 Q. So, how would you know about what he had done with
22 these other cases that you conveniently mentioned this
23 morning?
- 24 A. Through his sister.
- 25 Q. So, his sister was telling you about information about

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1 what he was going through with this charge or that
2 charge?

3 A. The day after he was arrested for biting the girl in
4 Cheraw, and the police officer there --- I ran into him
5 briefly at BiLo, he showed me his hands where he had
6 been fingerprinted, and I said, what in the world had
7 happened? And he said, well I bit somebody. They were
8 still stained.

9 Q. All right. So, you would see and hear about it. That
10 didn't change the way you felt about him did it?

11 A. (No response.)

12 Q. Every time he called, you talked to him?

13 A. He didn't call that much.

14 Q. Okay.

15 A. But, if he would have called, I would have talked to
16 him, because I cared about him and his sister.

17 Q. You testified this morning to questions that your
18 lawyer asked you. You have never testified one time
19 this morning that you ever took any steps to stop being
20 able to communicate with Eden; when he would call you,
21 or he would see you at the store, or where ever?

22 A. That's right. I was always nice.

23 Q. And you had no fear of him, because every time he would
24 call and said we are going to go do something, you
25 would do it?

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1 A. I had some fear of him. Yes, I did.

2 Q. All right.

3 A. But, if he had called and asked me to do something --

4 Q. -- You would have done it?

5 A. Probably, yes, sir.

6 Q. Because you all had known each other for eighteen
7 years?

8 A. Yes.

9 Q. And you know what he is capable of?

10 A. Yes. Right.

11 Q. Let's go a little bit back into what you testified to
12 about your situation in 2011. You were arrested at the
13 house, in the backyard, standing next to your Dad, I
14 believe. You were placed in handcuffs and you were put
15 in a patrol car?

16 A. After I got Dad --- After I had frozen, saw Eden, ran
17 over called 911, brought dad back to the house, saw the
18 body, everything is just --- I broke down. I was
19 hysterical.

20 Q. Let's go back. You have answered questions this
21 morning from your lawyer?

22 A. Yes, sir.

23 Q. You were arrested and taken into custody on May 31,
24 2011.

25 A. That is my understanding, yes.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 Q. Did you give a statement after you had been read your
2 Miranda Warning to any law enforcement officer that
3 evening?

4 A. I have no memory of giving any statement.

5 Q. Do you remember giving a statement?

6 A. No, sir.

7 Q. Do you remember being taken to jail?

8 A. Oh, yes, sir.

9 Q. All right. Let me ask you this. Do you remember
10 officers taking you to the Law Enforcement Center
11 before they took you to jail?

12 A. Oh, yes, sir.

13 Q. All right. And, all during this time, the day, one
14 day, two days, three days, your lawyers were showing
15 pictures taken on June 2nd, two or three days after the
16 shooting incident? You were in jail two or three days
17 after the shooting incident.

18 A. If that is what you say, yes, sir.

19 Q. I don't know, sir. Do you know what day the pictures
20 were taken of you by your investigator?

21 A. I can't see the date from here.

22 Q. I am showing you Exhibit Number 7. Is this a picture
23 of your right arm?

24 A. Yes, sir. I will say that if it happened on the
25 afternoon of May 31st --

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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- 1 Q. Yes, sir.
- 2 A. And this is June 2nd.
- 3 Q. That would be two days later.
- 4 A. Two days later, yes, sir.
- 5 Q. Now, during those two days that you were in jail, did
6 you give any statements to anybody regarding what had
7 happened between you and Eden?
- 8 A. I don't believe so, no, sir.
- 9 Q. So, today, a year and three months later is the first
10 time anybody has heard you testify as to what Eden did
11 to you to cause you to shoot him that day; is that
12 correct?
- 13 A. Yes, sir.
- 14 Q. I want to show you what has been marked as Defendant's
15 Exhibit 24. Can you see that?
- 16 A. Yes, sir.
- 17 Q. Is that how you looked and appeared after you called
18 the 911 tape on May 31, 2011?
- 19 A. I presume so, yes, sir.
- 20 Q. All right, sir. And isn't it a fact that when you left
21 the house that day to go play golf, you were not
22 wearing that shirt?
- 23 A. That's right.
- 24 Q. All right. As a matter of fact, the shirt that you
25 were wearing when you played golf that day, where was

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 that shirt when you came home and took it off?

2 A. I don't remember.

3 Q. What do you mean you don't remember?

4 A. I don't know where I put the shirt.

5 Q. You don't have a recollection of any of the details of
6 what you did with your clothing when you came in from
7 golf?

8 A. And changed my clothes?

9 Q. Yes, sir.

10 A. I put them in the house somewhere.

11 Q. Did you take your golf shirt off at some point when you
12 came in from playing golf?

13 A. Yes, sir.

14 Q. All right. Do you know where you put it?

15 A. I think I have seen a picture of it, but I am not sure.

16 Q. All right. But you are not sure?

17 A. (No response.)

18 Q. Is that right?

19 A. Yeah.

20 Q. What did you have on when you shot Eden?

21 A. I had on a pair of kakhi pants.

22 Q. I am going to show you Defendant's Exhibit Number 26.
23 Those are the kakhi pants that you had on when you shot
24 Eden?

25 A. To my memory, yes.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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- 1 Q. Sir?
- 2 A. To my memory.
- 3 Q. So, these were the pants that you had on when you were
4 standing next to the emergency vehicle in the backyard?
- 5 A. Yes, sir.
- 6 Q. All right. Whose blood is that on the front of the
7 pants?
- 8 A. I don't know. Presumably mine or his.
- 9 Q. All right. You don't know how your blood would have
10 gotten on your pants, or how his blood would have
11 gotten on his pants?
- 12 A. Well, I knelt down beside him while he was bleeding.
- 13 Q. All right. Did you put pants on Eden after you shot
14 him?
- 15 A. No.
- 16 Q. Isn't it a fact that Eden was standing in the kitchen
17 with no clothes on except for some black socks when you
18 shot him?
- 19 A. No.
- 20 Q. When Eden got shot that afternoon, one time?
- 21 A. Right.
- 22 Q. Did he fall directly to the floor?
- 23 A. He staggered around a little.
- 24 Q. How far?
- 25 A. I couldn't say.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 Q. What did you do when he was staggering?

2 A. I was frozen.

3 Q. What did you do with the gun?

4 A. I don't remember.

5 Q. Do you know where the gun was when you left the house?

6 A. No, sir.

7 Q. Let me ask you this. Didn't you testify a minute ago
8 that after you shot him, and he was on the floor, you
9 went next door and called 911?

10 A. I did.

11 Q. Then you came back to the house and took some
12 tranquilizer pills?

13 A. That's right.

14 Q. In the same room where he was on the floor?

15 A. Yes, sir.

16 Q. And then you left again to go outside to wait --

17 A. -- My father took me outside.

18 Q. Your father came in the house also?

19 A. Yes, sir.

20 Q. So, he saw Eden as well on the floor?

21 A. Yes, sir.

22 Q. He saw Eden on the floor before you called 911 or
23 after?

24 A. After.

25 Q. After you called 911?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. Yes, sir.

2 MR. FINNEY: Can we listen to the 911 tape? It is in
3 evidence.

4 MR. MOORE: I have no objection.

5 (PAUSE.)

6 (WHEREUPON, Defendant's Exhibit Number 59 was
7 published to the Court.)

8 Q. Could you hear that sir?

9 A. Yes, sir.

10 Q. That is Defendant's Exhibit Number 59, the 911 tape
11 that was made by you? The other voice that is on this
12 tape is your father?

13 A. Yes, sir.

14 Q. Your father tells the 911 operator that he doesn't know
15 what happened? Your testimony is that you and your
16 father just left the kitchen floor watching Eden down
17 on the floor; is that correct?

18 A. I'm sorry. Could you repeat the question, please?

19 Q. Is it your testimony that you and your father had left
20 the kitchen area to come back to make the 911 call?

21 A. No, no, no. I left the kitchen area, went in the
22 backdoor, called 911. Then my father and I went back
23 together.

24 Q. What did you have on beside the kakhi pants when you
25 shot Eden? Did you have on a shirt?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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- 1 A. I think so. I'm not certain.
- 2 Q. Why is it you are not certain as to what you had on?
- 3 A. This is a catastrophic event.
- 4 Q. All right, sir. And you had a year to look at the
5 pictures, and the evidence, and to get ready for court?
- 6 A. I haven't had a year to look at the pictures. I think
7 it took you over a year to give them to us.
- 8 Q. All right, sir. You had an investigator that took
9 pictures of you?
- 10 A. Yes, sir.
- 11 Q. I didn't have those pictures. Did I?
- 12 A. I don't know.
- 13 Q. You don't remember if you had on a shirt when you shot
14 Eden?
- 15 A. I think I did.
- 16 Q. You think you had on kacki pants?
- 17 A. Yes, sir.
- 18 Q. What kind of shirt did you have on?
- 19 A. That blue shirt.
- 20 Q. Which blue shirt. I will show you State's Exhibit 24.
21 (PAUSE.)
- 22 Q. The question is, did you have on this blue shirt when
23 you shot Eden?
- 24 A. I think so.
- 25 Q. When did you put the blue shirt on?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. When we came home from playing golf.

2 Q. All right. So, I am going to show you Defendant's
3 Exhibit Number 46, and ask you. On the table in
4 Defendant's Exhibit Number 46 is the golf shirt that
5 you had on when you played golf?

6 A. Can I approach?

7 Q. Yes, sir. Please do.

8 A. Yes, sir. That looks like it.

9 Q. All right, sir. You came home. You bought another
10 bottle of Burnett's Vodka, you started drinking with
11 your buddy Eden. You took your golf shirt off, and put
12 it on the table. Is that the diningroom?

13 A. That is the diningroom. Yes, sir.

14 Q. All right. And it is your testimony that you
15 immediately put on this blue shirt that you have on in
16 24?

17 A. Immediately, I put it on.

18 Q. Is that right?

19 A. I put it on when I came home.

20 Q. Now, what pants did you have on when you were at the
21 golf course?

22 A. Light blue.

23 Q. All right, sir. Where are the light blue pants that
24 you had on when you came home from the golf course? Do
25 you have them still?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. No, sir.

2 MR. FINNEY: Beg the Court's indulgence.

3 (PAUSE.)

4 Q. The light blue pants that you had on at the golf
5 course; you played golf in them?

6 A. Yes, sir, or I tried.

7 Q. Those would be the same pants that you had on at the
8 convenient store when you bought the ice and
9 cigarettes?

10 A. Yes, sir.

11 Q. Do you remember what you had on when you played golf,
12 and you went to get the ice, you had the same outfit
13 on; is that correct?

14 A. Yes, sir.

15 Q. You had the stripped golf shirt?

16 A. Right.

17 Q. That is shown on the table.

18 A. Right.

19 Q. And you had the blue pants on. Did you have a belt on?

20 A. I think so.

21 Q. You don't know for sure?

22 A. I think I wore a belt. I normally would wear a belt.

23 Q. Let me show you State's Exhibit 11. Are those the blue
24 pants and the belt that you had on when you came home
25 from golf?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. Yes, sir.

2 Q. All right. So, now your testimony is that the outfit
3 that you had on at the golf course; when you got home
4 you took off the shirt, put it on the table. Took off
5 the pants and the belt, and put it on a chair in
6 whatever room that is.

7 A. That is my den.

8 Q. Is that correct?

9 A. Yes.

10 Q. And the officers took a photograph of that in State's
11 Exhibit 11, after the shooting?

12 A. Okay.

13 Q. So, at the time of the shooting, you did not have on
14 the stripped golf shirt, and you didn't have on these
15 blue pants with the belt?

16 A. That's right.

17 Q. So, you changed?

18 A. Yes, sir.

19 Q. All right. And you changed into Kakhi?

20 A. And that blue shirt.

21 Q. And the blue shirt.

22 A. Yeah.

23 Q. And you had those on at the time Eden was shot; is that
24 correct?

25 A. To the best of my knowledge, yes, sir.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 Q. To the best of your knowledge, was the blue shirt that
2 you had on, which is in State's Exhibit Number 26. Was
3 it taken by the officers and put into evidence when you
4 were taken into custody? Do you have that shirt now?

5 A. No, sir, I do not have that shirt now.

6 Q. Do you have those pants now?

7 A. No, sir. No.

8 Q. And you don't know if that is your blood or Eden's
9 blood on the pants?

10 A. No.

11 Q. You don't know if there is any blood on the shirt?

12 A. No.

13 Q. All right.

14 A. No, sir. Excuse me.

15 Q. I am showing you State's Exhibit Number 12. Whose
16 bedroom is that?

17 A. That is the guest room.

18 Q. In your house?

19 A. Yes, sir.

20 Q. And what is that on the guest bedroom?

21 A. That is a pair of pants.

22 Q. Whose pants?

23 A. Mine.

24 Q. Those are your pants?

25 A. I think so. Yes, sir.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 Q. Let me show it to you close up. State's Exhibit Number
2 12 and 10.

3 (PAUSE.)

4 A. I have a lot of kakhi pants. I think that --

5 Q. -- Mr. Douglas --

6 **MR. MOORE:** Let him answer the question, Your Honor.

7 I apologize.

8 **MR. FINNEY:** I apologize. I will be glad to wait.

9 A. I know that I had a injury in a pair of kakhi pants.
10 These may very well be them. I am not the best
11 housekeeper in the world. I wish I was.

12 Q. What if that is Mr. Eden Smith's blood on those pants.
13 How would you explain his blood on your pants in your
14 guest bedroom?

15 A. I don't know.

16 Q. Would you also for the record show the Judge in Exhibit
17 12, what is laying next to the pants in your guest
18 bedroom?

19 A. It looks like a wallet and a pair of glasses.

20 Q. Is it your wallet?

21 A. I don't know.

22 Q. Is it your glasses?

23 A. I don't think so, no.

24 Q. Come on, Mr. Douglas. Can't you tell the Judge whose
25 glasses and wallet they are?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. No, sir. I can't, not from here. I'm sorry.

2 Q. Very good. Now, Mr. Douglas, you have testified at
3 length today about the injuries that was on your arm,
4 left and right, between your elbow and your shoulder;
5 have you not?

6 A. I have, yes, sir.

7 Q. And your lawyer introduced Exhibits 8, 9, and 7 to show
8 some of those injuries?

9 A. Yes, sir.

10 Q. All right. And those injuries were photographed by
11 your lawyer on June the 2nd?

12 A. No, sir.

13 Q. Excuse me. By your lawyer's investigator?

14 A. Yes, sir.

15 Q. On June the 2nd, two days after the shooting.

16 A. Yes, sir.

17 Q. Do you see on those photographs any injury to the back
18 or bottom part of the arm, which would be your right
19 arm that is shown in Exhibit Number 8. Is there any
20 injury, bruising, or whatsoever, two days later to the
21 bottom part of your arm?

22 A. (No response.)

23 Q. In that picture.

24 A. Do you mean down here or up here?

25 Q. This part under the area that's --

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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- 1 A. -- I can't tell, but there doesn't appear to be, no,
2 sir.
- 3 Q. All right, sir. And would you also say in Defendant's
4 Exhibit Number 7, the rear part, which I think is
5 called the anterior or posterior part of the right arm
6 shows no purple marks, no bruising?
- 7 A. Well, I don't know what that is, but it shows bruising
8 here. I can't really see the back part of the arm from
9 there.
- 10 Q. Shows you 9, Exhibit 9, would you --- would you agree
11 with me that the bruising is on top of the arm and not
12 on the bottom of the arm?
- 13 A. I would say that the bruising was there.
- 14 Q. On the top of the arm.
- 15 A. Whatever you call that.
- 16 Q. Well, does the photograph show any bruising on the
17 bottom of the arm?
- 18 A. Not from here.
- 19 Q. All right, sir. Very good.
- 20 A. No, sir.
- 21 Q. And your testimony is that you were held and shaken
22 vigorously by Mr. Eden Smith for what you described is
23 like it seemed like forever?
- 24 A. Yes, sir.
- 25 Q. But it wasn't forever was it?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. No, sir.

2 Q. It was a matter of a few seconds by your testimony,
3 that you were held down until you crawled into the
4 bedroom?

5 A. Not a matter of a few seconds, no, sir.

6 Q. And your testimony is, that he held you so violently
7 that he actually picked you up and threw you against
8 the refrigerator?

9 A. No, sir, that is not my testimony.

10 Q. Please --

11 A. My testimony is that he picked me up and held me up
12 against --- Well, yes originally, yes he did. He threw
13 me up against the refrigerator.

14 Q. All right, sir. Now, this is State's Exhibit Number 1.

15 A. Right.

16 Q. What is that a picture of?

17 A. Of my refrigerator.

18 Q. What is on top of the refrigerator?

19 A. Some stuff. A bowl, a picture, a vase.

20 Q. What is a bowl, a picture, and a vase made out of?

21 A. Clay.

22 Q. So, if they fell on the floor they would break wouldn't
23 they?

24 A. I would think so, yes, sir.

25 Q. But they are still on top of the refrigerator, the

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 refrigerator is still in the same position it was
2 before you shot Eden?

3 A. (No response.)

4 Q. Is that correct?

5 A. I can't tell, but it looks that way.

6 Q. That is the refrigerator that you testified that Eden
7 forced you into?

8 A. Yes, sir.

9 Q. And nothing has been disturbed as far as the items on
10 top, or the position of the refrigerator itself?

11 A. Not that I can tell.

12 Q. All right, sir. You testified early this morning that
13 you and Eden were sitting out back having drinks in the
14 backyard?

15 A. Yes, sir.

16 Q. Where were you exactly sitting in the backyard?

17 A. There are two chairs, Anarondack chairs up against the
18 house.

19 Q. All right. And, did you move those chairs?

20 A. (No response.)

21 Q. When you and Eden got up when you saw your Dad come in,
22 did you move the chairs, or did you go right inside and
23 leave the chairs?

24 A. I believe we went right inside.

25 Q. All right. How long had you been out there sitting in

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 the chairs?

2 A. From when we got home from the golf course, and going
3 to the liquor store until Dad came home.

4 Q. All right. And when Dad came home, did you testify
5 about what time that was?

6 A. He was working as a bailiff at the time. Court ended
7 around five, so I don't know --- you know --

8 Q. -- Shortly after five?

9 A. Somewhere between five and six, I presume.

10 Q. And you all had been out there for some time, in the
11 back yard drinking, sitting?

12 A. Talking.

13 Q. Talking. Sometime?

14 A. Yes, sir.

15 Q. Having a good afternoon?

16 A. Yes, sir.

17 Q. All right. And, at the time that you were sitting in
18 the backyard, was your Mom in the house right next
19 door?

20 A. I don't know.

21 Q. Let me show you State's Exhibit Number 3, 4, 5 and 6,
22 and ask you if you can identify those items in those
23 picture?

24 A. That is my house.

25 Q. That is your house?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 A. Yes, sir.

2 Q. And are those different views of the house with the
3 crime scene tape up?

4 A. Yes, sir.

5 Q. Do you see the Anarondac chairs there?

6 A. No, I don't.

7 Q. You didn't move them?

8 A. Not to my memory.

9 Q. Can you look on any one of these four photographs, and
10 tell me where the chairs were the last time you saw
11 them?

12 A. (No response.)

13 Q. Would they have been in this picture if the picture was
14 taken, and the chairs was there? Is this the right
15 house, the right area of the backyard you were sitting
16 in?

17 A. It is the right house. It is the right house. I know
18 the chairs are there now.

19 Q. Let's look at State's Exhibit Number 6.

20 A. Yes, sir.

21 Q. Where would you have been sitting in the chairs? Where
22 were they placed in State's Exhibit Number 6, as far as
23 the backdoor is concerned.

24 A. Originally they would have been placed here. We may
25 have --

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 Q. -- Excuse me, sir. You have to tell for the record.
2 Was it on the right side or the left side of the
3 backdoor?

4 A. Facing the door?

5 Q. Yes, sir. Like you are in that picture. Which side
6 would the chairs had been on?

7 A. The chairs would have originally been on the right
8 side.

9 Q. And they are not in that picture?

10 A. No, sir.

11 Q. All right. Now, you also testified this morning that
12 you were in great fear of your friend Eden.

13 A. Yes, sir.

14 Q. And that he went off after you used the word god damn?

15 A. Yes, sir.

16 Q. Before you used the word god damn, he had not
17 threatened you or harmed you in any way, had he?

18 A. No.

19 Q. There was no struggle between you all was there?

20 A. Well, there was a struggle for the pill bottle.

21 Q. All right.

22 A. He was moving it back and forth, and taunting me.

23 Q. All right. And you were in --- He had come out of your
24 bedroom with the pill bottle?

25 A. That's right.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 Q. And what room were you in?

2 A. I was in the diningroom.

3 Q. And when you were trying to get the pill bottle back,
4 did you leave the diningroom and go towards him?

5 A. Yes, I did.

6 Q. And what room were you in when you were trying to get
7 the pills out of his hand?

8 A. The kitchen.

9 Q. So, you would have been in the kitchen. I am going to
10 show you Exhibit Number 2. That is the kitchen; is
11 that correct?

12 A. Yes, sir.

13 Q. There is a picture of the doorway into your bedroom?

14 A. Yes, sir.

15 Q. He would have been in the area of this doorway, in the
16 kitchen area holding the pill bottle?

17 A. No, sir. He would have been in between the doorway and
18 the counter.

19 Q. This counter?

20 A. Yes, sir.

21 Q. All right. There is an island counter in the kitchen
22 that separates to the diningroom?

23 A. Yes, sir.

24 Q. All right. So, he would have been in the area near the
25 front of these cabinets that are shown in this picture;

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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1 State's Exhibit Number 2?

2 A. (No response.)

3 Q. He would have been in this area of the kitchen in front
4 of these cabinets?

5 A. It would have been more to the center.

6 Q. All right, sir. And he was waving the pill bottle,
7 taunting you?

8 A. He wasn't waiving it, he was just shaking it say --

9 Q. -- You said earlier that he was taunting you. Taunting
10 and laughing at you.

11 A. He was later on.

12 Q. All right. You -- Go ahead.

13 A. To begin with he just came out and said, look what I
14 found.

15 Q. All right. Now, you had been drinking all day with
16 him?

17 A. I had been drinking on and off.

18 Q. You testified that neither one of you should have been
19 operating a vehicle when you left the golf course?

20 A. That's true.

21 Q. You came home and both drank more Vodka?

22 A. Yes, sir.

23 Q. It is now five or six o'clock in the evening; is that
24 correct?

25 A. Yes, sir.

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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- 1 Q. He is laughing and joking, and he has been drinking.
2 You are upset because he has your pill bottle, and you
3 have been drinking; is that correct?
- 4 A. I'm upset because I need those pills.
- 5 Q. All right. But he wasn't upset was he, Mr. Douglas?
- 6 A. He wasn't upset to begin with.
- 7 Q. He was laughing and in your word taunting you?
- 8 A. No, not at this point. At this point he was just
9 saying, look what I found.
- 10 Q. All right.
- 11 A. And then when I tried to take them, take them back,
12 that is when he began taunting.
- 13 Q. All right. And you tried to take them back, and both
14 of you were standing in the kitchen?
- 15 A. Right.
- 16 Q. And that is when he grabbed you and shoved you into the
17 refrigerator?
- 18 A. After there was a back and forth, and a back and forth,
19 and he became increasingly aggressive.
- 20 Q. All right. How would he grab you by both arms if he
21 was holding the pill bottle?
- 22 A. He wasn't holding the pill bottle. He turned around
23 and left the pill bottle on the bar and grabbed me.
- 24 Q. I see. And at that point you were in his full custody
25 and control?

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1 A. I was told by his mother that he could dead lift five
2 hundred pounds.

3 Q. Okay. In spite of that, you were in his full custody
4 and control, and could not do anything to get free?

5 A. I could not move, no.

6 Q. And your testimony is that he grabbed you face-to-face
7 with his hands around your arms between the elbow and
8 the shoulder, and he puts such force on you that he put
9 bruises on you that are shown on these pictures?

10 A. Yes, sir.

11 Q. And yet there are no injuries to the back of your arms
12 which is where his fingers would have had to been for
13 him to be face to face with you, holding you?

14 A. I don't believe so.

15 Q. Aren't your fingers going to be around the back of my
16 arms if you grab me and hold me tight?

17 A. No, sir.

18 **MR. FINNEY:** Thank you, sir.

19 Q. And once you get away from him, you testify you crawl
20 into your bedroom?

21 A. Yes, sir.

22 Q. You do not close your bedroom door?

23 A. No, sir.

24 Q. You do not try to go through the backdoor, which is
25 right here by the trash can?

GRAHAM F. DOUGLAS - CROSS EXAMINATION

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- 1 A. It took all I could do to crawl to my bedroom.
- 2 Q. Why didn't you try to crawl out the door?
- 3 A. It took --- that was as far as I could go at that
- 4 point.
- 5 Q. You did have a backdoor that you could have crawled out
- 6 of the kitchen?
- 7 A. Well, I had a backdoor, yes, sir.
- 8 Q. And if you had gotten out of the backdoor you could
- 9 have gone across the backyard to your Dad's house?
- 10 A. Not at that point. Not on my knees.
- 11 Q. Your Dad was home though?
- 12 A. Yeah, my Dad was home. But Eden was in my house, and
- 13 he wasn't crawling.
- 14 Q. All right. What was he doing when you were crawling?
- 15 A. He was laughing.
- 16 Q. He was laughing, you were crawling. And you decided to
- 17 go in your bedroom instead of go out the backdoor. You
- 18 got in your bedroom, you sat on the bed, and you told
- 19 him to stop and leave. But, you never closed the
- 20 bedroom door?
- 21 A. No.
- 22 Q. You reached in your drawer and pulled out your pistol?
- 23 A. That's right.
- 24 Q. Now, about this pistol. You had testified that there
- 25 were two bullets in the gun.

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1 A. That's right.

2 Q. Did you know that at the time?

3 A. Yes, sir.

4 Q. All right. And you testified that you had been target
5 practicing with your new friend, and that you had taken
6 bullets out of the gun after the target practice?

7 A. That's right.

8 Q. And you knew for a fact there were two bullets left in
9 the gun?

10 A. Yes, sir.

11 Q. And you took the empties out?

12 A. Yes, sir.

13 Q. And you are sure about that?

14 A. Yes, sir.

15 Q. So, when you pulled the gun out that afternoon, 6:30 in
16 the evening, you knew you had two bullets in it, and
17 you told Eden to leave and he wouldn't leave.

18 A. I told him to leave numerous times, and he --

19 Q. -- Did you call out for help from anybody?

20 A. Call out to who?

21 Q. To anybody. Did you call out --- Did you scream, God
22 help me? Dad come help me? Did you scream anything to
23 anybody?

24 A. No, I screamed for him to leave. It was my house.

25 Q. All right. And, when you picked up the gun, you didn't

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1 warn him you were going to shoot?

2 A. I stood in the ha --- I stood in that doorway in the
3 room and held it. He could see that I had a gun.

4 Q. And how far were you away from him when you say you
5 pulled the gun --- you pulled the gun up to point it at
6 him? How far were you --- With me and you, how far
7 were you when you --

8 A. -- When I began to pull the gun up?

9 Q. When you got the gun to pull it up, yes. How far was
10 he away from you?

11 A. I started pulling the gun up when he passed the counter
12 and I realized he was not going out the front door, he
13 was coming towards me.

14 Q. And you made the decision to shoot?

15 A. No, sir. I made the decision to raise the gun.

16 Q. All right. Did you try to shoot him in the leg, the
17 arm --

18 A. -- I didn't try to shoot him at all, sir.

19 Q. Who pulled the trigger?

20 A. Obviously, I did. But I have no memory of pulling the
21 trigger.

22 Q. When you got to the jail, there were several pictures
23 taken of you by the SLED people, and the other crime
24 scene investigators; is that correct?

25 A. It may be. I have memory of pictures being taken of

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1 me. At that point I was hysterical and crying.

2 Q. I am going to show you Defendant's Exhibit Number 29.

3 You weren't crying in that picture were you?

4 A. I may have been, I can't tell.

5 Q. All right. And there is no apparent bruising in that
6 picture, no purple marks are there?

7 A. It looks like I have a black eye.

8 Q. All right.

9 A. Do you see that?

10 Q. I see what appears to be your right eye.

11 A. Yeah.

12 Q. All right. Defendant's Exhibit Number 34. Is that the
13 right knee that was bleeding when the police got there
14 and you said there was blood all down your right leg.
15 Is that the right knee after it has been cleaned up?

16 A. Did I say that there was blood all down my right leg?

17 Q. I thought you saw --

18 A. I don't --

19 Q. -- Exhibit 28. Isn't that your leg?

20 A. That's my leg.

21 Q. Is that your right leg?

22 A. Yes, sir.

23 Q. Is that your blood?

24 A. It is either mine or Eden's.

25 Q. Whose --- Do you know where you were standing when

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1 Defendant's Exhibit Number 28 was taken?

2 A. This looks like my parent's driveway.

3 Q. All right. That would have been at the time the 911
4 call was made, and the police responded?

5 A. Yes, sir.

6 Q. That is how your leg looked when the police got there?

7 A. Yes, sir.

8 Q. This is how your leg looked later on when it got
9 cleaned up in State's Exhibit Number 31?

10 A. Yes, sir.

11 Q. Did it need stitches?

12 A. No, sir.

13 Q. Did it need a band-aid? Did you put a band-aid on it?

14 A. I didn't have a band-aid to put on it.

15 Q. Did you ask for one?

16 A. No, sir.

17 Q. All right. Did you put any medicine on it?

18 A. No, sir.

19 Q. All right. Any of the bruises that you had in
20 Defendant's Exhibit Number 36, or 35, or 34, or 33 to
21 your upper arm; did you ask for any medication or get
22 any treatment from any doctor while you were at the
23 jail for those injuries?

24 A. No, sir. I wasn't worried about my injuries at that
25 time. I was worried about Eden and his family.

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1 Q. Did you have any bruises, cuts, or contusions that
2 required medical treatment?

3 A. (No response.)

4 Q. Did you have any cuts, bruises, or contusions that
5 required medical treatment?

6 A. No, sir. I was not in imminent danger of death caused
7 by those bruises. But, I think an ice-pack and some
8 things could have probably helped the bruising.

9 Q. You didn't get the ice pack though, did you?

10 A. No, sir.

11 Q. Did you suffer any substantial risk of death or
12 permanent disfigurement from the fight you say you had
13 with Eden?

14 A. Could you rephrase that?

15 Q. Did you suffer any substantial risk of death or serious
16 permanent disfigurement as a result of the fight you
17 had with Eden?

18 A. Can I answer those in two parts?

19 Q. All right. Let me ask it in one part. Did you sustain
20 any substantial risk of death?

21 A. I think so, yes, sir.

22 Q. And how did that happen? How did you sustain
23 substantial risk of death in the kitchen in the fight
24 with Eden?

25 A. He scared the heck out of me. He showed me how strong

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1 he was, and how powerless I was against him.

2 Q. All right. Did you have any serious permanent
3 disfigurement as a result of the incident with Eden?

4 A. No, sir.

5 Q. Did you have any protractile loss or impairment of a
6 function of a bodily member or organ?

7 A. No, sir.

8 Q. When you found out that the bar exam, you hadn't passed
9 it, you filed paperwork to have some special
10 consideration from the Supreme Court?

11 A. No, sir.

12 Q. All right. My understanding was that after you had
13 failed the bar exam two or three times --

14 A. -- Several.

15 Q. Several times, you filed for special consideration at
16 the Supreme Court in Columbia?

17 A. Yes, sir.

18 Q. They turned you down?

19 A. Yes, sir.

20 Q. When they turned you down, they sent you a letter?

21 A. Yes, sir.

22 Q. You became depressed?

23 A. Yes, sir.

24 Q. It was at that time that your family, and you, and your
25 lawyer hired Dr. Quesenbery?

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1 A. No, sir.

2 Q. When did you hire Dr. Quesenbery?

3 A. Before I applied to get diagnosed?

4 Q. I don't understand.

5 A. To provide the documentation necessary to make the
6 proper application to the Supreme Court, they will not
7 give you direct answers to what kind of information
8 they require, whether it is a brain scan, or whether it
9 is the IQ, and whatever other psychological testing
10 they use. I was working for a lawyer at the time, his
11 name is Joel Shroud. He had received special
12 accommodation, and he had given me advice regarding the
13 type of testing that I need. And that is when I went
14 to Dr. Quesenbery. It would have been sometime in
15 August or July. It would have been several months
16 before --- I can't remember the exact date.

17 Q. All right. Your testimony is that your family selected
18 Dr. Quesenbery for you to go and receive treatment from
19 before you required for special accommodation from the
20 Supreme Court?

21 A. Yes, sir. To be diagnosed.

22 Q. All right. Now, after you were treated by the doctor;
23 is that correct? You were treated in July, August, and
24 September?

25 A. He diagnosed me.

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- 1 Q. All right. He prepared a report?
- 2 A. Yes, sir.
- 3 Q. And did that report, was it sent to the Supreme Court
4 along with your request for special circumstances?
- 5 A. Yes, sir.
- 6 Q. And based on your application --
- 7 A. -- Yes, sir.
- 8 Q. -- And, the doctor's report --
- 9 A. -- Yes, sir.
- 10 Q. The Supreme Court denied your request?
- 11 A. They did.
- 12 Q. And after that, did you see Dr. Quesenbery anymore?
- 13 A. No, sir.
- 14 Q. Did you make any other special application to the
15 Supreme Court or any other body?
- 16 A. I did. I filed an appeal.
- 17 Q. All right. A reconsideration?
- 18 A. Yes, sir.
- 19 Q. And was it turned down?
- 20 A. Yes, sir.
- 21 Q. And you never saw Dr. Quesenbery again?
- 22 A. No, I talked to him on the telephone.
- 23 Q. All right. And you have not seen him since you were
24 arrested for this charge?
- 25 A. No, sir. I have talked to him on the telephone.

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1 Q. All right. Do you know what Miranda Warnings are?

2 A. Yes, sir.

3 Q. And do you understand that Miranda Warnings were given
4 to you several times that night, May 31st, after the
5 shooting, after the 911 call was made by various law
6 enforcement officers that are in this room?

7 A. I have been told that, yes, sir.

8 Q. All right. And do you understand what Miranda means
9 when you are given the warnings?

10 A. I understand Miranda. I do not remember being
11 Mirandized:

12 Q. All right. And you do not remember being Mirandized,
13 and you do not remember giving any statement?

14 A. I do remember weeping and crying, and saying, oh my
15 god.

16 Q. I don't believe that is my question. Statements, did
17 you give any statements to the officers regarding the
18 incidents that happened, threats that had been made,
19 any violence that you had saw?

20 A. No, I did not give any written statement. No, sir.

21 Q. Let me ask you just a few more questions. Do you know
22 what day May 31, 2011 was? What day of the week?

23 A. It was a Tuesday, I think.

24 Q. What did you do on Monday, the day before?

25 A. I can't remember.

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1 Q. All right. Did you have a job?

2 A. No, sir. I had had a job, I had worked for Attorney
3 Joel Shroud up until that December.

4 Q. All right. This was in May, so you had not worked in
5 six months?

6 A. That's right.

7 Q. Were you drinking on Monday, May 30th?

8 A. I don't remember.

9 Q. All right. Do you know that there was a large bottle
10 of Burnett's Vodka found in the kitchen area of your
11 house and photographed by SLED after the 911 call?

12 A. Yes, I think I have seen that picture, yes, sir.

13 Q. Did you know that bottle was empty?

14 A. Yes, sir.

15 Q. So, you and your friend drank the whole bottle --- the
16 second bottle of Vodka that day?

17 A. No, sir. We poured it into a water filter.

18 Q. All right. You poured all of it in the water filter?
19 It was empty. The bottle of Burnett's on the floor was
20 empty.

21 A. We poured --- what would fit?

22 Q. Sir?

23 A. We poured in all that would fit.

24 Q. Very good. When did you talk with Eden about coming to
25 visit and play golf prior to the morning that he showed

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1 up at your house?

2 A. The day before. We were suppose to play Memorial Day.

3 Q. Which is a Monday. Was Monday Memorial Day?

4 A. I believe so.

5 Q. All right. You were suppose to play Monday, you didn't
6 feel like it, so you put it off until Tuesday?

7 A. That's right.

8 Q. All right. Let me ask you this. You and Eden went to
9 play golf, and he drove?

10 A. Yes, sir.

11 Q. Got to the golf course, played golf?

12 A. Yes, sir.

13 Q. At one point I heard you testified that you played from
14 about 9:30 and you left about three or four. Is that
15 correct?

16 A. Yes, sir. I wasn't watching my watch.

17 Q. All right. Well, let's just say if you got to playing
18 around ten, eleven, twelve, one, two, three, four, that
19 is six hours at the golf course?

20 A. It is.

21 Q. You didn't play eighteen holes did you?

22 A. No. Eden didn't have a set of clubs. I am not sure
23 Eden had played golf before.

24 Q. All right. But you stayed six hours at the golf course
25 and didn't play eighteen holes?

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- 1 A. That's right.
- 2 Q. And you testified a little later that it was hot at the
3 golf course and you left early?
- 4 A. That's right. Yes, sir.
- 5 Q. But your testimony is, you were there from about ten
6 until about four?
- 7 A. Yes, sir.
- 8 Q. All right. Now, what did Eden have on at the golf
9 course?
- 10 A. I can't remember.
- 11 Q. Well, did he have on a golf shirt?
- 12 A. I can't remember.
- 13 Q. Did he have on golf pants, short or long?
- 14 A. I can't remember.
- 15 Q. Did he have on golf shoes?
- 16 A. I can't remember.
- 17 Q. In the back of Eden's Land Rover is a set of golf
18 clubs; whose are they?
- 19 A. I would have to see them. I think they are mine.
- 20 Q. You just testified, I believe, that Eden didn't have
21 golf clubs at the golf course.
- 22 A. Well, I know he didn't bring any with him.
- 23 Q. All right.
- 24 A. I don't know whose clubs --
- 25 Q. -- Did he play golf with your clubs?

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1 A. He played golf with my father's clubs.

2 Q. So, there were two sets of golf clubs taken to the golf
3 course?

4 A. No, sir. My Dad has a locker at the golf course.

5 Q. All right. So, the set of clubs, if there is a set of
6 clubs in the back of Eden's car when 911 gets there and
7 takes pictures, whose clubs are those?

8 A. It should have been mine.

9 Q. Why were they not taken out when you all got back to
10 the house?

11 A. (No response.)

12 Q. Did Eden have on golf shoes?

13 A. I don't know. He may have borrowed a pair of mine, or
14 a pair of fathers. I can't remember that.

15 Q. All right. And there are golf shoes in the black Land
16 Rover, and you don't know whose shoes they were?

17 A. If I see a picture of them I might be able to tell you.

18 **MR. MOORE:** Your Honor, I have an objection I would
19 like to make. We have done a Rule 5 request. We have never
20 been shown the golf clubs. We have never been shown the
21 physical pants. We have never been shown any of these items
22 which we are now being examined about.

23 We filed Rule 5, we filed a Brady Motion, and we
24 actually have a Motion to Dismiss the Action, for them not
25 providing the documents.

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1 We have not been given any of these physical items that
2 we are now being examined on. Since the Solicitor's Office
3 has failed to produce any of these documents, these items
4 for us to actually look at, and we have requested to see
5 every single piece of evidence, I have to object to the
6 Solicitor going into items which we have not been allowed to
7 physically examine.

8 **THE COURT:** Do you want to respond?

9 **MR. FINNEY:** I would just say that all of the
10 photographs turned over to us were on a disc. We made a
11 copy of the disc. We did not delete anything from the disc.
12 And all the photographs of the Land Rover, which was in the
13 front yard at the time 911 arrived, and the photographs and
14 the house, and the scene have all been turned over to
15 counsel.

16 **THE COURT:** Very good. I am going to overrule your
17 objection at this time, and permit the questioning on this
18 issues. You may proceed.

19 Q. Tell the Judge, Mr. Douglas, where are the clothes ---
20 Have you seen the picture of Eden Smith as he was
21 photographs on the floor of your kitchen, Defendant's
22 Exhibit Number 55? Tell the Judge what he has on?

23 A. He has on a pair of shorts.

24 Q. Does he have on any underwear?

25 A. I can't tell.

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1 Q. Does he have on any shoes?

2 A. No, sir.

3 Q. What does he have on?

4 A. It looks like he has on a pair of shorts and a pair of
5 socks.

6 Q. The shorts would be described as cargo shorts?

7 A. Yes, sir.

8 Q. All right. No shirt?

9 A. No, sir.

10 Q. No T-shirt?

11 A. No.

12 Q. That is how he appeared to you when he was taunting you
13 and threatening you with the pill bottle?

14 A. I don't remember if he had on a shirt or not.

15 Q. Well, did you disturb the body of Eden Smith after you
16 shot him?

17 A. No, sir.

18 Q. You didn't put these pants on the body?

19 A. No, sir.

20 Q. And you don't remember when you shot your best friend,
21 or a friend, whether he had on a shirt or not?

22 A. No, sir. I wasn't worried about what he was wearing.
23 I was worried about his family.

24 Q. All right. And, you can't tell us today what happened
25 to the pants and shirt that he had on at the golf

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1 course after he came back from the golf course with
2 you?

3 A. I can't tell you what he wore to play golf in.

4 Q. Did you find any of his clothes at your house after the
5 police left and after you finished your --- getting
6 your bond so you could go back home. You are now
7 living at the same house where you were living this
8 night?

9 A. Right.

10 Q. You are staying in the same bedroom that he tried ---
11 that he came out of with the pill bottle?

12 A. Right.

13 Q. Did you find his golf shirt, or his golf pants, or any
14 items belonging to Eden at your house when you returned
15 there?

16 A. No, sir.

17 Q. So, you can't explain to us how he is laying on your
18 floor with no shirt on, and yet the shirt he had on at
19 the golf course has disappeared?

20 A. No, I don't know.

21 Q. Before Eden came out of the bedroom with the pill
22 bottle --

23 A. Yes, sir.

24 Q. Was there any confrontation between the two of you?

25 A. No, sir.

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1 Q. Was there any kind of struggle --

2 A. -- Well, let me take that back. When we left the golf
3 course, we went by the liquor store, and I tend to talk
4 to people, as you may have noticed. And, I apologize
5 if I take too much of your time. I was chatting with
6 the clerk. As he came in and said, what are you doing?
7 Let's go. Get out of here.

8 Q. And the clerk that worked in that store would be a
9 witness to that?

10 A. Yeah.

11 Q. This happened in front of this clerk?

12 A. Oh, yes, sir.

13 Q. All right. Did you have a confrontation with Eden
14 about his blood being on your pants in the guest
15 bedroom, State's Exhibit Number 12.

16 A. Is that his blood on my pants?

17 Q. Are those your pants?

18 A. I don't know.

19 Q. Did you have a confrontation with him about --- Did you
20 put those pants on the bed?

21 A. I don't know.

22 Q. Did you have a confrontation with Eden about anything
23 before the pill bottle that would have caused the two
24 of you to be hooked up, wrestling, tussling, or
25 fighting?

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- 1 A. No, sir.
- 2 Q. Can you tell the Judge why in State's Exhibit Number 1,
3 there is a desk chair turned over in the room adjoining
4 the kitchen?
- 5 A. No, sir.
- 6 Q. You don't know why?
- 7 A. I don't know why.
- 8 Q. Do you know that chair?
- 9 A. Yes, sir. That is my desk chair.
- 10 Q. And it is turned over laying on its side in the room
11 next to the kitchen?
- 12 A. Yes, sir.
- 13 Q. You don't know how it got in that condition?
- 14 A. No, sir.
- 15 Q. When you got back to your house, after you were
16 released on bond, did you see Eden's shoes there
17 anywhere?
- 18 A. No, sir. My house had been cleaned.
- 19 Q. All right. Well, do you remember Eden coming to your
20 house with shoes on, or did he come to your house
21 barefooted?
- 22 A. I would have believed he had on shoes, but I mean.
- 23 Q. And when you went to play golf, you would believe he
24 wore shoes to the golf course?
- 25 A. Yes, sir.

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1 Q. And when he came back in your house and had drinks with
2 you in the backyard, you would believe he had his
3 street shoes with him?

4 A. I assume so, but I --

5 Q. -- You don't --

6 A. -- I don't know --

7 Q. -- his street shoes are?

8 A. Right.

9 Q. Okay. What about the keys to his Land Rover? Don't
10 know anything about that either?

11 A. I didn't drive his Land Rover.

12 Q. Okay. There was only one vehicle at the house when the
13 police arrived; is that correct? The black Land Rover?

14 A. That's right.

15 Q. Where was your car?

16 A. My car had been wrecked, and it was at the garage.

17 Q. It was not at your house?

18 A. No, sir.

19 Q. You did not have a vehicle for your use that day?

20 A. No, sir.

21 **MR. FINNEY:** Your Honor, if it please, could we have
22 a five minute recess before I let the witness go. I just
23 want to make sure I talk to my staff about the final
24 questions.

25 **THE COURT:** We can do that. Are you comfortable

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1 doing that while we are here, or do you want us to stand
2 down for a moment?

3 **MR. FINNEY:** Yes, sir. If we could stand down.

4 **THE COURT:** We will do that. Ladies and gentlemen,
5 we will take about five minutes at the request of the
6 Solicitor.

7 The Court will be in recess.

8 (Whereupon, a recess was taken from 11:21
9 a.m. until 11:30 a.m..)

10 **THE COURT:** All right. Counsel tells me, Mr. Finney
11 tells me that he has some additional questions. He remains
12 on cross examination, and you may proceed.

13 **MR. FINNEY:** May it please the Court?

14 **THE COURT:** Yes, sir.

15 Q. Mr. Douglas.

16 A. Yes, sir.

17 Q. You testified early on to your lawyer this morning that
18 you have a problem with stress.

19 A. Yes, sir.

20 Q. You react differently than maybe other people in this
21 courtroom would to stress because of this learning
22 disability, the dyslexia, or whatever.

23 A. Anxiety, panic disorder, yes.

24 Q. And you have for years had alcohol as part of your
25 social routine, you drink regularly?

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1 A. On and off.

2 Q. Have you ever been told that alcohol may produce
3 results from the stress, may be impact the stress that
4 you suffer? Have you ever been told not to drink as
5 much as you do?

6 A. Oh, yes, sir.

7 Q. All right. And, you would agree that on the day that
8 you and Eden spent playing golf, being in the backyard,
9 you all had consumed a large quantity of alcohol, and
10 you voluntarily did that?

11 A. I drank too much to drive, yes, sir.

12 Q. You testified earlier that you had the gun when you
13 fired at Eden, and then after you knelt down beside
14 him, you left the house to go call 911?

15 A. That's right.

16 Q. What did you do with the gun?

17 A. I don't remember.

18 Q. And have you seen photographs of where the gun was when
19 911 arrived?

20 A. I'm not --

21 **MR. MOORE:** Your Honor, I would object to that
22 question. I think there are photographs --- The indication
23 that we have is the EMT personnel moved the gun.

24 **THE COURT:** All right. Counsel, I am going to stop
25 you there. First of all, let's hear the answer and then let

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1 me take your objection. I simply don't want to interfere
2 with what the testimony may be. The witness would have a
3 recollection. He was in the room.

4 So, the objection is deferred.

5 Q. The question was, did you see a picture of where the
6 gun was located when 911 arrived and the investigators
7 did their photographs?

8 A. I --- I --- I've seen some pictures of a gun with Eden,
9 yes.

10 Q. And it was near his right hand?

11 A. Yes, sir.

12 Q. You did not place the gun near his right hand?

13 A. I don't know how the gun got there.

14 **THE COURT:** All right. Now, just a moment. Do you
15 wish to further your objection?

16 **MR. MOORE:** No, sir.

17 **THE COURT:** All right, very good.

18 Q. You testified earlier that there was some pants in the
19 house that afternoon, and they were your pants that had
20 blood on them from when you had a car accident weeks
21 earlier?

22 A. Or months.

23 Q. Sometimes. Months earlier.

24 A. Sometime, yes, sir.

25 Q. And you testified that those pants had been in the

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1 house since the accident, and that they had not been
2 cleaned?

3 A. To the best of my knowledge, yes, sir.

4 Q. And those pants were which exact pants, and where were
5 they located? What color was the pants?

6 A. I believe they were Kacki.

7 Q. Were those the Kakhi ones that you have on in the
8 photograph standing next to the police car when the 911
9 call had been made?

10 A. No.

11 Q. Which kacki pants are you referring to?

12 A. I think they may have been the ones from the bed.

13 Q. All right.

14 A. But we haven't --

15 Q. -- Let me just show you the ones on the bed.

16 A. I have fifty pairs of kakhi pants.

17 Q. This is Defendant's Exhibit Number 26, you standing in
18 the backyard.

19 A. Right.

20 Q. There is another photograph, State's Exhibit Number 10,
21 kakhi pants on the back bedroom.

22 A. Right.

23 Q. Different pants?

24 A. Looks like it, maybe.

25 Q. Blood on both?

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1 A. Yes, sir.

2 Q. Which pair was in the house for several months before
3 the shooting?

4 A. I believe it was this pair.

5 Q. And you had those pair, the pair that is in State's
6 Exhibit Number 10, lying on the bed --

7 A. -- If these are the ones that I believe them to be,
8 yes, sir.

9 Q. They were lying on the bed covered with blood for
10 months?

11 A. Or weeks.

12 Q. All right.

13 A. It is a guest bedroom that no one ever uses.

14 Q. And those pants would have had nothing to do --

15 **MR. MOORE:** Let's let the witness finish.

16 **THE COURT:** I heard your response, which was that it
17 was a guest bedroom that no one ever uses.

18 Go ahead Mr. Finney.

19 Q. Do you have any knowledge as to why Eden's blood would
20 be on those pants?

21 A. No.

22 **MR. FINNEY:** Thank you, sir.

23 **THE COURT:** All right. Mr. Finney, just to make sure
24 our record is clear, you had some photographs marked, you
25 referred to some, but we have not formally placed them into

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1 evidence. What is your position on that, sir?

2 **MR. FINNEY:** I believe counsel had no objection, and
3 they were placed in evidence.

4 **MR. MOORE:** I have no objection to them coming in,
5 and I think we actually did place them in.

6 **THE COURT:** State's one through, what do you have?
7 One through twelve? No objection to one through twelve for
8 the State in evidence.

9 **MR. FINNEY:** Thank you, Your Honor.

10 **THE COURT:** Thank you.

11 **WHEREUPON, STATE'S EXHIBIT**
12 **NUMBER 12 WAS ADMITTED INTO**
13 **EVIDENCE WITHOUT OBJECTION.**

14 **THE COURT:** And that concludes your cross
15 examination?

16 **MR. FINNEY:** One final question.

17 **THE COURT:** Go ahead.

18 Q. You testified earlier that there was a time in your
19 life when you contemplated suicide.

20 A. Yes, sir.

21 Q. And that you were affected by the alcohol that you were
22 consuming at that time?

23 A. I don't believe I testified to that, no, sir.

24 Q. After you got the note from Columbia, The South
25 Carolina Supreme Court, you testified that your mental

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1 attitude was down, you contemplated suicide, and you
2 were drinking a lot?

3 A. I don't recall ever saying I was drinking a lot.

4 Q. Were you depressed?

5 A. Yes, sir.

6 Q. Did you become suicidal?

7 A. For a short period of time, that night, yes, I did.

8 Q. During any of that period of time did you get any
9 treatment, counseling, or tell anybody that?

10 A. No, sir.

11 Q. Today is the first time we have heard that?

12 A. I think I spoke to my parents.

13 Q. You think you did?

14 A. Well, I am sure I did. Yes.

15 **MR. FINNEY:** Nothing further.

16 **MR. MOORE:** May it please, Your Honor, I would like
17 to ask the Court to strike a portion of the question, and I
18 will have to explain the motion in this regard.

19 **THE COURT:** Go ahead.

20 **MR. MOORE:** The Solicitor has basically asked a
21 question from which I believe there are no facts in the
22 record which would support that. The question basically is.
23 Can you explain how Eden's blood would have been on the
24 pants which were in that bedroom? And, of course, we have
25 never seen those pants. We have never been shown those

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1 pants. Now, we have been given, and we have studied very
2 hard and tried to make sense of the evidence that we have
3 been given by the Solicitor's Office, and it is very
4 sketchy. But the only evidence we have been given by way of
5 analysis says apparently that the pair of pants in the front
6 bedroom is 26.1. Where that numbering system comes from, I
7 don't know. But 26.1 is the exhibit according to SLED that
8 they have analyzed. The only results we have found is in
9 the --- what was given to us in regard to the DNA analysis.
10 And that basically says that 26.1 matches the DNA profile of
11 Graham Douglas. We have been shown nothing, zero, to
12 indicate that there was any of Eden Smith's blood on the
13 pants in the front bedroom. Now, apparently the Solicitor
14 believes there is something to indicate that there is. But,
15 if there is, we have not been given that evidence.

16 **THE COURT:** Of course, counsel has the right to ask a
17 question in the alternative. It can be a leading question.
18 The State has not put up their case yet. I would decline to
19 make any change in the record at this point. But, I would
20 ask you to renew it if there is evidence brought out later
21 that you believe has not been produced to you in violation
22 of Rule 5, and we will take it up at that time.

23 **MR. MOORE:** Might I ask the Court to inquire of the
24 Solicitor, maybe over lunch, if they do have any documented
25 evidence to indicate that those pants has Eden Smith's blood

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1 on them, we have not seen it. If they have got, even at
2 this late date, I would sure like to see it.

3 **THE COURT:** Well, I will leave you all to have that
4 discussion over the lunch hour rather than interfere with
5 the strategy, tactics, and questions and answers, and what
6 witnesses are called by the parties. The Court will simply
7 at the end of this process, will determine what is in
8 appropriately, what evidence is not in, and what decision
9 should be made from that evidence. But, your position is
10 noted.

11 **MR. MOORE:** I have one final question for the
12 witness.

13 **THE COURT:** Redirect. Ladies and gentlemen, when you
14 call a witness you have direct and then there is cross. If
15 some new issue is brought up in cross that counsel wishes to
16 take up, they may do it on redirect. So, please proceed.

17 **MR. MOORE:** Thank you.

18 **REDIRECT EXAMINATION BY MR. MOORE**

19 Q. Graham, the --

20 **MR. MOORE:** May I have this marked please ma'am, if
21 you will. Let's make sure the record is clear.

22 **THE COURT:** Have you seen this photograph, Mr.
23 Finney, and will there be an objection?

24 **MR. FINNEY:** I would just like to see it. But, I
25 think I have seen all of them.

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1 **THE COURT:** Go ahead.

2 (PAUSE.)

3 **MR. FINNEY:** No objection.

4 **THE COURT:** In evidence for the defendant.

5 **MR. MOORE:** Thank you, Your Honor.

6 **WHEREUPON, DEFENDANT'S EXHIBIT**

7 **NUMBER 60 WAS ADMITTED INTO**

8 **EVIDENCE WITHOUT OBJECTION.**

9 Q. I am going to hand you Graham, Exhibit Number 60. You
10 were asked a question in regard to some chairs. What
11 does this photograph show?

12 A. That shows the chairs we were sitting in.

13 Q. And, is your house in proximity to those chairs?

14 A. Very close. You can see --- You can see the plants.

15 Q. Would you just point it out to the Judge so he can see
16 where your house is in proximity to the chair?

17 **THE COURT:** Thank you.

18 **MR. MOORE:** Thank you very much, Graham. I have no
19 further questions, Your Honor. Thank you.

20 **THE COURT:** Very good. Then Mr. Douglas, you may
21 step down and return to your seat.

22 **MR. DOUGLAS:** Thank you, Your Honor.

23 **THE COURT:** Yes, sir. All right. Ladies and
24 gentlemen, we are going to take our lunch break at this
25 time. What we will do is, we will take a break until two

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1 o'clock. That is about an hour and twenty minutes. When we
2 return to this courthouse, we will go back into the
3 courtroom. There was court in there earlier this morning,
4 but it has broken down. So, after lunch we will resume
5 these proceedings in the courtroom.

6 Counsel, before you leave, I wish you would step up
7 after you have organized your thoughts and comments there
8 among yourself, and we will talk a little bit more about
9 scheduling. But we will reconvene ladies and gentlemen, at
10 two o'clock in the main courtroom right behind us.

11 You are free to go at this time. Court is in recess
12 now until two.

13 (Whereupon, a lunch recess was taken from
14 12:30 p.m. until 2:00 p.m.)

15 **THE COURT:** Ladies and gentlemen, please be seated.
16 All right. Defense, please call your next witness.

17 **MR. MOORE:** Your Honor, we have several matters. The
18 State wanted to put a couple of photographs into evidence.
19 A still photograph that was taken of Mr. Douglas which was
20 stipulated from earlier that morning. And there were
21 several photographs --- pants that the State had wanted to
22 place into evidence, and I have no objection to that.

23 I also want to place two other photographs, if I might.

24 **MR. FINNEY:** No objection.

25 **THE COURT:** All right. Let's take a moment and let

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1 our court reporter mark the new exhibits.

2 **MR. FINNEY:** May we approach, Your Honor?

3 **THE COURT:** You may.

4 (Whereupon, a bench conference was
5 held.)

6 **THE COURT:** Are you ready, Madame Court Reporter?

7 **MADAME COURT REPORTER:** May I have just a little
8 longer, please?

9 **THE COURT:** Certainly. Take your time.

10 (PAUSE.)

11 **MADAME COURT REPORTER:** I'm ready, Your Honor.

12 **THE COURT:** All right. Very good. Let me first of
13 all, a voice check. Ladies and gentlemen, in the back of
14 the courtroom, can you hear me? Can you hear me on both
15 sides? All right, very good.

16 And, Madame Court Reporter, let's confirm what we have
17 added to the record, so there will not be any question about
18 it.

19 **MADAME COURT REPORTER:** I have marked 61 and 62 for
20 the defense.

21 **THE COURT:** All right, very good. Without objection,
22 61 and 62 in evidence for defense.

23 **MADAME COURT REPORTER:** And 13 through 20 for the
24 State.

25 **THE COURT:** Thirteen through 20 for the State. Now,

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1 is there an objection from either side to these additional
2 exhibits?

3 **MR. MOORE:** No, Your Honor.

4 **MR. FINNEY:** No, Your Honor.

5 **THE COURT:** All right. Hearing none, they are in
6 evidence.

7 **WHEREUPON, DEFENDANT'S EXHIBIT**
8 **NUMBER 61 AND 62 WERE MARKED**
9 **AND ADMITTED INTO EVIDENCE**
10 **WITHOUT OBJECTION.**

11
12 **WHEREUPON, STATE'S EXHIBIT**
13 **NUMBER 13 THROUGH 20 WERE**
14 **MARKED AND ADMITTED INTO**
15 **EVIDENCE WITHOUT OBJECTION.**

16 **THE COURT:** Ladies and gentlemen, we take great care
17 to make sure what is in evidence and what is not, in the
18 event there should be an appeal of the proceeding, as well
19 as the trier of fact is only permitted to see what is in
20 evidence and what is not in evidence is excluded.

21 And, are you ready, Mr. Moore?

22 **MR. MOORE:** Yes, sir, Your Honor. Brandy Teal.

23 **THE COURT:** Please come forward and take the oath of
24 a witness. If you would come around this way.

25 **WHEREUPON, BRANDY TEAL, LPN**

BRANDY TEAL, LPN - DIRECT EXAMINATION

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AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

1
2 MS. TEAL: I do.

3 DIRECT EXAMINATION BY MR. MOORE

4 Q. What is your name?

5 A. Brandy Teal.

6 Q. Ms. Teal, where are you employed?

7 A. At Chesterfield Detention Center.

8 Q. How long have you worked there?

9 A. Not quite six years.

10 Q. Would you have been working there January 2, 2011?

11 A. January 2nd?

12 Q. I'm sorry, June. Excuse me.

13 A. Yes.

14 Q. June 2, 2011?

15 A. Yes, sir.

16 Q. And, your job would have been as a LPN, is that
17 correct?

18 A. Yes, sir.

19 Q. Were you a LPN at the time?

20 A. Yes, sir.

21 Q. Did Graham Douglas come into your care on or about June
22 2, 2011?

23 A. Yes, sir.

24 Q. Can you tell me, was he in any special level of
25 custody?

BRANDY TEAL, LPN - DIRECT EXAMINATION

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- 1 A. He was in what we consider our medical cell on suicide
2 watch.
- 3 Q. And what is a suicide watch?
- 4 A. Where they may appear for suicide.
- 5 Q. And did he come into your care that day and time?
- 6 A. Yes, sir.
- 7 Q. Would you just describe from what you saw, would you
8 describe any injuries or condition that you found on
9 Mr. Douglas?
- 10 A. He did have bruising on his upper arms, and a black eye
11 on his right eye.
- 12 Q. How significant were the bruises?
- 13 A. We had documented baseball sizes.
- 14 Q. Okay. I am going to hand you an exhibit, which is
15 Defendant's Exhibit Number 1. Would those bruises been
16 what you saw?
- 17 A. Yes, sir.
- 18 Q. Were there any other injuries of any type that you
19 noted on his body?
- 20 A. None that I had noted.
- 21 Q. Did you make a record of June 2nd?
- 22 A. I did.
- 23 Q. Would you just tell me what notations you actually made
24 in the chart when you were following this man on
25 suicide watch at the jail?

BRANDY TEAL, LPN - CROSS EXAMINATION

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1 A. My notation was strictly for the suicide watch. I had
2 wrote, spoke with inmate. Inmate denies any suicide
3 thoughts at this time. Inmate denies any withdrawals
4 at this time. Inmates states that he does not use
5 alcohol on a daily basis. Inmate remains in med cell
6 at this time. Advised to alert with any medical needs
7 on bruising or scratches.

8 Q. And, he did not alert any need for any care for the
9 bruises or the scratches?

10 A. None that I am aware of.

11 **MR. MOORE:** Thank you very much. Would you answer
12 any questions counsel -- Well, I may have one or two.

13 (PAUSE.)

14 **MR. MOORE:** Nothing further, Your Honor.

15 **THE COURT:** Thank you.

16 **MR. FINNEY:** May it please the Court, Your Honor?

17 **CROSS EXAMINATION BY MR. FINNEY**

18 Q. Ms. Teal, my name is Chip Finney. I would like to ask
19 you a few questions. You have some notes from the jail
20 that you referred to?

21 A. I did.

22 Q. May I see them please?

23 A. Uh' huh.

24 (PAUSE.)

25 Q. And are they in your handwriting?

BRANDY TEAL, LPN - CROSS EXAMINATION

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- 1 A. Not all of them. I was not the only nurse.
- 2 Q. There is a note on here, June 1st at 9:00 a.m.
- 3 A. Yes, sir.
- 4 Q. Did you write that?
- 5 A. No, sir.
- 6 Q. Okay. June 2nd at 11:00 a.m., did you write that?
- 7 A. I did.
- 8 Q. This is your note down here?
- 9 A. And theses.
- 10 Q. And those forms, you have some forms too?
- 11 A. I do.
- 12 Q. Let me ask you something. You asked him, I thought you
- 13 say he denied using alcohol?
- 14 A. Yes, sir. Inmate denies any withdrawals at this time.
- 15 Inmate states he does not use alcohol on a daily basis.
- 16 Q. He does not use alcohol on a daily basis. Now, you saw
- 17 him and made that note on what day? June 2nd?
- 18 A. Yes, sir.
- 19 Q. At 11:00 a.m.
- 20 A. At 1:45.
- 21 Q. At 1:45. Let me ask you this. In the protocol at the
- 22 jail --- at the Detention Center, there is a medical
- 23 questionnaire. Are you familiar with that? Look at
- 24 State's Exhibit Number 13.
- 25 A. Uh'huh.

BRANDY TEAL, LPN - CROSS EXAMINATION

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1 Q. Are you familiar with that form?

2 A. I am.

3 Q. Is that a jail form or a Sheriff form?

4 A. This is what the jail uses when they are booked in the

5 --

6 Q. -- At the jail?

7 A. Yes, sir.

8 Q. And, that is a medical form?

9 A. Yes, sir.

10 Q. And that is part of the booking process?

11 A. Yes, sir.

12 Q. All right. And also back here as a part of this
13 exhibit it says there is a mental health screaming
14 form?

15 A. Right.

16 Q. It is also part of the jail procedure?

17 A. Yes.

18 Q. Screening in. Which one would have happened first?

19 A. This one.

20 Q. State's Exhibit Number 13?

21 A. Yes, sir.

22 Q. So, they would have asked questions for example about
23 taking any medication?

24 A. Yes, sir.

25 Q. About whether they were pregnant, had high blood

BRANDY TEAL, LPN - CROSS EXAMINATION

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1 pressure, all of those questions were asked before you
2 saw him?

3 A. Yes, sir.

4 Q. And, also whether he on the mental health screen, they
5 talk about suicide and other things. Under the
6 influence of alcohol or drugs. Are you aware whether
7 or not he gave the same answers at booking as he did
8 when he talked to you two days later?

9 A. I'm unaware.

10 Q. Tell the Judge what the date is on that booking report?

11 A. 6/1/2011.

12 Q. At what time, if it says?

13 A. It was printed at 2:21 a.m.

14 Q. All right. And that is a day before your notes?

15 A. Yes, sir.

16 Q. Did you give him any medication or treatment for the
17 bruising that you testified that you saw?

18 A. No, sir.

19 Q. Did he need any stitches?

20 A. No, sir.

21 Q. Band-aids, anything?

22 A. No, sir.

23 Q. Any kind of serious bodily injury that you noted from
24 blood loss, dizziness, contusion, concussion, anything?

25 A. No, sir.

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 **MR. FINNEY:** Thank you. Nothing further.

2 **THE COURT:** Redirect?

3 **MR. MOORE:** Nothing further.

4 **THE COURT:** Any objection to the release of this
5 witness?

6 **MR. MOORE:** None at all.

7 **MR. FINNEY:** No objection.

8 **THE COURT:** Hearing none, ma'am, you are not required
9 to leave, but you are free to leave if you wish.

10 **MS. TEAL:** Thank you.

11 **THE COURT:** Thank you.

12 **THE COURT:** Please call your next witness.

13 **MR. MOORE:** Your Honor, we would call William Joseph
14 Stair.

15 **THE COURT:** Please come forward and take the oath of
16 a witness.

17 **WHEREUPON, WILLIAM JOSEPH STAIR**

18 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

19 **MR. STAIR:** I do.

20 **DIRECT EXAMINATION BY MR. MOORE**

21 Q. What is your name?

22 A. William Stair.

23 Q. And, Mr. Stair, where are you employed?

24 A. The City of Myrtle Beach.

25 Q. As what?

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 A. A police officer.

2 Q. How long have you been a certified law enforcement
3 officer?

4 A. A little over six years.

5 Q. And what is your rank?

6 A. PFC.

7 **THE COURT:** Counsel, excuse me. Would you spell your
8 last name for us, please.

9 **MR. STAIR:** S-T-A-I-R.

10 **THE COURT:** Thank you. All right, go ahead, sir.

11 Q. Mr. Stair, back in 2007, were you involved in an
12 incident involving a Charles Eden Smith?

13 **MR. FINNEY:** I would object to this line of
14 questions, Your Honor.

15 **THE COURT:** All right. And on what basis?

16 **MR. FINNEY:** I believe counsel is attempting to
17 illicit information about character/conduct of the deceased
18 from the period of 2007. And I do not think it is relevant
19 to this hearing. We do not think it is probative of the
20 issue of the Duncan case. And we would strongly object,
21 especially because this Court is sitting today as judge and
22 jury, and therefore any indication of some prior act is
23 going to have some impact on your ability to make a decision
24 that needs to be made at the conclusion of Duncan Hearing.

25 **THE COURT:** All right.

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 **MR. FINNEY:** Thank you, Your Honor.

2 **THE COURT:** Thank you. And reply?

3 **MR. MOORE:** Your Honor, this is the testimony of the
4 incident that Mr. Douglas testified that he was one of the
5 ones that he was aware of, of a prior assault. My
6 understanding is that where the issue of self-defense is at
7 bar, and where the issue of the rationale and the
8 reasonableness of the defendant's conduct is an issue, that
9 if the defendant knows and is aware of prior violent acts,
10 it would certainly would bear on the reasonableness of his
11 conduct in attempting to repeal a person that he knows has
12 engaged in a prior bad act.

13 In this case, we are attempting to place in the record
14 simply testimony that supports the testimony of Mr. Douglas.
15 That he knew of prior bad acts. Was aware of prior acts of
16 aggression. And was aware of various attacks that the
17 victim had made on other people in the past, which would
18 include biting.

19 **THE COURT:** Very good. Do you want to reply?

20 **MR. FINNEY:** Yes, sir; please.

21 **MR. FINNEY:** I have no objection to Mr. Graham
22 Douglas testifying to what his understanding of the history
23 of Mr. Smith was. I do object to this officer now telling
24 the Court something that he did not tell Mr. Douglas.

25 **THE COURT:** All right, very good. The Court is going

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 to overrule your objection for the following reasons.

2 Number one. Whether or not this would be appropriate
3 Lyle Evidence really is not something that I can determine
4 just off the top of my head before we hear the testimony.
5 But there is a potential that it may be evidence that would
6 come in under 404(b) which in a way reverses things, because
7 typically that is the actions of the defendant as opposed to
8 the actions of the deceased.

9 But here we are under a Castle Doctrine Hearing that
10 would cause us to examine to some extent the actions of the
11 deceased.

12 Secondly. This evidence is somewhat cumulative in that
13 it was referred to by Mr. Douglas on his direct examination.

14 And then thirdly. I believe it goes to the credibility
15 of Mr. Douglas, and whether or not the information that he
16 tells us in his testimony will be born out by this witness.

17 And then finally, I believe it would go to whether or
18 not the defendant's alleged state of mind when this incident
19 occurred was in fact a reasonable one based on what
20 testimony we will hear from this witness as well Mr.
21 Douglas' impression of what had happened.

22 I believe there is a sufficient connection that we
23 would permit the evidence.

24 However, if at the end of this, although it is hard to
25 close the barn door once the horse is out, we will hear from

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1 you at the end as to whether or not there is reason, based
2 on the global evidence as we find it to be, that this
3 evidence should be excluded once given.

4 For all those reasons, I am going to overrule your
5 objection.

6 **MR. FINNEY:** Please note for the record, Your Honor,
7 our continuing objection throughout his testimony. As we
8 have noted, you are sitting as the Judge and the jury, and
9 we are bound to your acknowledging all of the evidence you
10 are about to hear.

11 **THE COURT:** All right. So, noted. And the Court
12 appreciates not only the specifics of your objections, but
13 the nuisance of why it concerns you, and the Court will
14 receive the information and use it accordingly, and not for
15 an inappropriate purpose.

16 But, nevertheless, that preserves your right to address
17 this again before a final decision is made.

18 **MR. FINNEY:** Thank you, Your Honor.

19 **THE COURT:** Thank you. Now, with that interruption,
20 let's start off again with your question and then the
21 answer.

22 Q. Officer, did you have an occasion in your professional
23 duties to come into the presence of Mr. Charles Eden
24 Smith in 2007?

25 A. Yes, I did.

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 Q. What month and what date was that?

2 A. December 14th.

3 Q. And how did you manage to meet Mr. Smith? What was
4 going on?

5 A. Myself and another officer were dispatched to Broadway
6 At The Beach, location in the City.

7 Q. And, was Mr. Smith placed under arrest?

8 A. Yes, he was.

9 Q. What was he placed under arrest for?

10 A. Public intoxication, disorderly conduct, and resisting
11 arrest.

12 Q. All right. And, was he taken to a cell?

13 A. Yes, he was.

14 Q. Would you tell me what, if anything happened out of the
15 ordinary in the jail cell that evening?

16 A. He was apparently trying to damage lights in the cell,
17 and the detention officer brought that to our attention
18 and needed assistance in moving him to a different cell
19 front. During that time he would not comply walking to
20 the front of the jail cell, so we had to basically drag
21 him to the front cell. When we placed him on the
22 ground in the cell to remove his cuffs, he started
23 struggling and attempted to bite my leg.

24 Q. All right. Do you recall --- Was he able to get the
25 bite off, or was he just trying to bite you?

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 A. He just tried. He did not bite me.

2 Q. How were you able to prevent him from biting you?

3 A. He couldn't reach. He was face down, I had my knee on
4 his shoulder.

5 Q. How many officers did it take to subdue him that
6 evening?

7 A. While in the jail?

8 Q. Yes.

9 A. There were four of us doing the escort.

10 Q. Why would it have taken four people to have subdued
11 him?

12 A. I would not --- it is just our jail policy, is that no
13 one person can transfer a prisoner from one cell to
14 another.

15 Q. All right. In the altercation that ensued with the
16 attempted bite, how many officers were involved in the
17 altercation?

18 A. Four. Two of us holding the shoulders, and two of us
19 holding his leg to put him on the ground.

20 Q. So, there were four of you that did that?

21 A. Yeah, he locked his body up straight, and wouldn't lay
22 down in the cell on the floor to get his handcuffs
23 taken off.

24 Q. All right. And, I believe you have an actual official
25 report from the police department there?

WILLIAM J. STAIR - DIRECT EXAMINATION

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1 A. Yes, I do.

2 MR. MOORE: Might we offer this into evidence,
3 please, Your Honor, subject to the objection of the State?

4 MR. FINNEY: Same objection, Your Honor. Could we
5 find out who prepared the report?

6 MR. STAIR: I am the one who prepared the report.
7 Myself.

8 MR. FINNEY: Same objection.

9 THE COURT: The objection is that it is for what you
10 stated previously?

11 MR. FINNEY: Yes, sir.

12 THE COURT: Well, I haven't let it in. I am going to
13 let the exhibit in as well, since he tells us he prepared
14 the incident report.

15 Objection overruled. So, what number is that, please?

16 MADAME COURT REPORTER: Sixty-three.

17 THE COURT: Over objection in evidence.

18 WHEREUPON, DEFENDANT'S EXHIBIT

19 NUMBER 63 WAS ADMITTED INTO

20 EVIDENCE OVER OBJECTION.

21 MR. MOORE: Officer, would you answer any questions
22 the Solicitor might have for you.

23 MR. FINNEY: Subject to my earlier objections, Your
24 Honor?

25 THE COURT: Yes, sir.

WILLIAM J. STAIR - CROSS EXAMINATION

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CROSS EXAMINATION BY MR. FINNEY

1
2 Q. Officer, are you a Myrtle Beach police officer, or a
3 jail detention center employee?

4 A. Police officer.

5 Q. So, you met Mr. Smith at Broadway On The Beach,
6 transported him to the Detention Center.

7 A. Yes.

8 Q. And was booking him, and he actually got put in a jail
9 cell?

10 A. He was already booked in. I was still present in the
11 jail when they requested it.

12 Q. And they requested you and some other officers to
13 assist in moving him?

14 A. Right. Yes.

15 **MR. FINNEY:** If I may, Your Honor?

16 **THE COURT:** Yes, sir. Take your time.

17 (PAUSE.)

18 Q. So, apparently, Mr. Smith was in the jail cell, he was
19 asked to kneel down, and he refused. He locked his
20 legs, kept them straight, and four officers went in and
21 got him on the ground, and removed the handcuffs, and
22 you -- he was charged with assault on a police officer,
23 because he lunged toward the officer?

24 A. Reporting officer.

25 Q. Reporting officer. He lunged towards the reporting

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1 officer's right leg and attempted to bite him?

2 A. Yes.

3 Q. That was the additional charge of assaulting a police
4 officer?

5 A. Yes.

6 Q. Did you have any further contact with him?

7 A. Just at the trial.

8 Q. And did he come to trial?

9 A. Yes.

10 Q. What happened to the case?

11 A. He plead guilty to all charges.

12 Q. Did he have to pay a fine or something?

13 A. You would have to check with our clerk of court's
14 office. I don't know.

15 Q. Was he intoxicated when he came to court?

16 A. No.

17 Q. What was his attitude on that particular day?

18 A. I actually do not remember the incident very well. I
19 know he showed up at court, with I believe a family
20 member.

21 Q. And there were no problems with him that day?

22 A. No, none at all. Right.

23 **MR. FINNEY:** Thank you, officer. Nothing further.

24 **THE COURT:** Redirect?

25 **MR. MOORE:** None, Your Honor. Might this witness be

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1 excused?

2 **THE COURT:** Is there an objection? All right, sir
3 you are not required to go, but you are free to go.

4 **MR. STAIR:** Thank you.

5 **THE COURT:** Have a good day, sir.

6 **MR. MOORE:** Your Honor, we are trying to work around
7 the schedule, and I have some people in route.

8 The Solicitor, with my consent, if it is alright with
9 the Court, we will call a few witnesses out of order, so we
10 can move along.

11 **THE COURT:** Certainly. Are you ready to go forward?

12 **MR. FINNEY:** I am, Your Honor.

13 **THE COURT:** Go ahead. Please call a witness.

14 **MR. FINNEY:** I call James Johnson.

15 **THE COURT:** Please come forward and take the oath of
16 a witness.

17 **WHEREUPON, SPECIAL AGENT JAMES LEE JOHNSON**

18 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

19 **MR. JOHNSON:** I do.

20 **DIRECT EXAMINATION BY MR. FINNEY**

21 Q. Please give us your full name.

22 A. James Lee Johnson.

23 Q. And, how are you employed?

24 A. I am employed as an Agent with The State Law
25 Enforcement Division, commonly referred to as SLED.

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- 1 Q. How long have you been employed there?
- 2 A. Approximately twenty-seven years.
- 3 Q. And are you assigned to the Pee Dee Region?
- 4 A. Yes, sir, I am.
- 5 Q. Does that include Chesterfield County?
- 6 A. Yes, sir, it does.
- 7 Q. Tell the Judge how you were called into this case,
8 please, sir?
- 9 A. On the evening of May 31st, I received a call from
10 headquarters telling me to come to Chesterfield County
11 to look into a shooting incident.
- 12 Q. Is there a reason they called SLED in instead of
13 Chesterfield doing the paperwork?
- 14 A. Yes, I believe Mr. Leon Douglas is employed by the
15 Chesterfield County Sheriff's Department, therefore it
16 was a conflict for their office to investigate the
17 case.
- 18 Q. And how long did it take you to arrive in Chesterfield
19 County that evening?
- 20 A. Approximately two, two and a half hours.
- 21 Q. Did you come alone?
- 22 A. Yes sir, I did.
- 23 Q. All right. Were other SLED agents summoned as well as
24 yourself?
- 25 A. Yes, sir.

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1 Q: Can you give me their names?

2 A. Agent John Fowler, who was assisting me on the
3 investigation. Karl Kenley from Crime Scene, and
4 Sabrina Zehanis from Crime Scene.

5 Q. So, about four SLED agents total?

6 A. Yes, sir.

7 Q. All right. Tell the Judge what you did that evening
8 when you arrived. This was at the home of Graham
9 Douglas.

10 A. Yes, sir.

11 Q. In Chesterfield County.

12 A. Yes, sir. Upon arrival at [REDACTED], I
13 met up with Agent Fowler who was already on the scene.
14 I also met up with investigators from the Chesterfield
15 County Sheriff's Department, Wayne Jordan, Deputy
16 Wallace Campbell, and Karnes. We waited until we got
17 the search warrant before we entered the residence.

18 Q. All right. Tell us a little bit about that.

19 A. I was told that Sergeant Wayne Jordan was securing a
20 search warrant so that we could go inside the
21 residence. So, we stood outside the residence until he
22 returned with the search warrant.

23 Q. I have noticed some pictures that we have in evidence
24 here, crime scene tape that was up around the house.
25 Was that done prior to your arriving?

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1 A. Yes sir, it was.

2 Q. The county deputies did that?

3 A. Yes, sir. I assume so.

4 Q. All right. At the time when you arrived at the house,
5 was Mr. Graham Douglas there?

6 A. No, sir, he was not.

7 Q. What was your first opportunity to interact with him,
8 if any?

9 A. At the Detention Center.

10 Q. You went to the Detention Center after you got to the
11 house?

12 A. Yes, sir.

13 Q. And is that because you had crime scene people who were
14 coming to process the house, and you went --

15 A. The Detention Center. I went to the crime scene to
16 take photos.

17 Q. Right. When you arrived at the Detention Center did
18 you see Mr. Douglas?

19 A. Yes sir, I did.

20 Q. Did he have any apparent injuries to him when you first
21 met him?

22 A. No, sir.

23 Q. All right. And how was he dressed when you first met
24 him?

25 A. He was dressed in a orange jumpsuit, a jail jumpsuit.

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1 Q. All right, sir. And, if I could show you Defendant's
2 Exhibit Number 29, did you take any photographs that
3 night?

4 A. The crime scene investigators did, yes, sir.

5 Q. All right. Did they come to the jail?

6 A. Yes, sir.

7 Q. And does that picture reflect how Mr. Douglas looked at
8 the jail several hours after your received the call on
9 May 31st?

10 A. Yes, sir.

11 Q. When that picture were taken, when you were in the jail
12 looking at Mr. Douglas, had midnight arrived yet, or
13 was it before midnight?

14 A. It was around about between 2:30 and three o'clock.

15 Q. So, we had passed over into June the 1st?

16 A. Yes, sir.

17 Q. And this would have been five or six hours after he was
18 taken away from his home?

19 A. Yes, sir.

20 Q. And that's a fair rendition of how he looked at that
21 time?

22 A. Yes, it is.

23 Q. Did you have an occasion to marandize him?

24 A. No sir, I did not.

25 Q. All right. And, was there anything that you asked from

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1 him, did you want to take blood, or hair, or anything
2 like that, that night?

3 A. No, sir.

4 Q. All right. How long did you stay at the house before
5 you left to go to the Detention Center?

6 A. It must have been four, four and a half hours.

7 Q. Did you stay at the house until the search warrant
8 arrived?

9 A. Yes, sir.

10 Q. And, did you partake in the search of the house?

11 A. Yes sir, I did.

12 Q. Was that done under your supervision, as far as SLED
13 supervising the search, or the county deputy?

14 A. I was the lead investigator. But, once we got inside
15 the residence, crime scene took over to do what they
16 had to do.

17 Q. Was evidence, items, collected at that time?

18 A. Yes, sir.

19 Q. And did you go through the house?

20 A. Yes, sir.

21 Q. Was Mr. Eden still in the kitchen on the floor?

22 A. Yes sir, he was.

23 Q. All right. How would you describe Mr. Eden Smith in
24 terms of his physical stature?

25 A. Well, when we walked into the house he was stretched

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1 out on the floor in the kitchen area. His head was
2 toward the dishwasher. Both arms was spread out from
3 the body, and his leg was up and kind of bent a little.

4 Q. What was that last part?

5 A. Bent, his leg was bent.

6 Q. Bent?

7 A. Yes, sir.

8 Q. There was a firearm in proximity to the body?

9 A. Yes sir, there was. It was lying at his right hand.

10 Q. His right hand?

11 A. Yes, sir.

12 Q. Would you say inches away from his right hand?

13 A. Yes, sir.

14 Q. Did that seem unusual to you?

15 A. Yes, sir. It did.

16 Q. All right. At that point in the investigation, did you
17 know what had happened as far as what facts you were
18 given that you already know?

19 A. Just the details. That the victim had been shot by a
20 Graham Douglas. Pretty much that was it.

21 Q. All right. Did you have an occasion to go throughout
22 the case and look at all the rooms in the house?

23 A. Yes sir, I did.

24 Q. Did the house seem to be disturbed to you in terms of -

25 -

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- 1 A. Well, it wasn't a neat house. There were clothes
2 everywhere, all over the house. There was a chair
3 turned over in one of the rooms. One of the bedrooms -
4 -- the guest bedroom was pretty neat. But the master
5 bedroom, I would say the room that Mr. Douglas
6 describes as the room that he slept in was pretty
7 messy.
- 8 Q. All right. The guest bedroom, is that in the position
9 of being close to the kitchen area?
- 10 A. He had to go through the kitchen, through what I might
11 say is the small den, then into the guest bedroom.
- 12 Q. Let me show you State's Exhibit Number 12. Did you go
13 into that room that is pictured in that picture?
- 14 A. Yes sir, I did.
- 15 Q. And what bedroom is that?
- 16 A. That is the guest bedroom.
- 17 Q. All right.
- 18 A. At the front of the house.
- 19 Q. I believe it has a comforter on the bed with star
20 shaped designs?
- 21 A. Yes sir, it does.
- 22 Q. What if anything did you see on the bed when you
23 entered that room?
- 24 A. When we entered the room we saw the pants neatly laid
25 across the bed, his wallet, glasses, and there was also

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1 a backpack to the right of the bed in the corner.

2 Q. All right. Do you know if those items --- You say the
3 wallet and the glasses. Are they pictured in that
4 picture?

5 A. Yes, sir.

6 Q. And that is State's Exhibit Number 12. Is that
7 correct?

8 A. Yes, sir. Yes, sir, it is.

9 Q. Is that the condition you found that room in?

10 A. Yes, sir.

11 Q. Was there anything turned over or discombobulated in
12 that room at all.

13 A. No sir, it was not.

14 Q. All right. The glasses were on the bed next to the
15 wallet, and both of those items were next to the pants?

16 A. Yes, sir.

17 Q. And you described the pants as being laid out?

18 A. Yes, sir. Neatly across the bed.

19 Q. Neatly?

20 A. Thrown across the bed, they were wrinkled up, or fold
21 up or anything.

22 Q. Was the belt still in the pants as the picture
23 indicates?

24 A. Yes, just as the picture here.

25 Q. And there was blood covering the pants?

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1 A. Yes, sir, both legs.

2 Q. As a result of seeing that, those items were taken into
3 evidence?

4 A. Yes sir, they were.

5 Q. All right. And did you have information as to who they
6 belonged to?

7 A. We believed from what we could see the wallet and the
8 glasses --

9 **MR. MOORE:** Objection, Your Honor, this is
10 speculation.

11 **THE COURT:** Let's do this. How about rephrase to lay
12 a foundation as to where he formed the belief.

13 Q. When you came into that room, you did not know who
14 those items belonged to?

15 A. No, sir.

16 Q. Were you able through investigation, were you able to
17 link those items to anybody connected to that house?

18 A. After talking to Sergeant Wayne Jordan, he stated that
19 he looked through --

20 **MR. MOORE:** Objection, Your Honor. Hearsay.

21 A. I was told that the wallet --

22 **THE COURT:** -- Just one moment. What do you say --

23 Q. As a result of what you were told --

24 **THE COURT:** Sustained.

25 Q. -- did you learn who those items belong to?

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1 A. Yes, sir.

2 Q. All right. Who did they --

3 **MR. MOORE:** Your Honor, I have to object to hearsay.
4 I mean, the only thing he knows is as a result of what he
5 was told.

6 **THE COURT:** All right. How do you get around the
7 hearsay rule on that, Mr. Finney?

8 **MR. FINNEY:** I'll try to rephrase the question.

9 **THE COURT:** Well, the objection is, the way he knows
10 it is someone else told him. So, the end result is a
11 hearsay result.

12 **MR. FINNEY:** Let me ask one question.

13 **THE COURT:** All right. Go ahead.

14 Q. Did you look in the wallet, officer?

15 A. Yes, sir, I believe I did. I don't recall doing so,
16 but I think I did. And from that --- and I want to
17 say, and I am not I sure, I can't say I'm positive, but
18 I did look at the ID, and it was Eden Smith. But I
19 can't be one hundred percent that I did.

20 **THE COURT:** I am going to overrule the objection.
21 That goes to weight and credibility. But the Court
22 believes that evidence is admissible.

23 **MR. FINNEY:** All right.

24 Q. The evidence could still be in the --- The crime scene
25 guys came in and collected those items?

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1 A. Yes, sir.

2 Q. All right. There was also, I believe you identified, a
3 red backpack?

4 A. There was a backpack in the corner, two or three. If
5 you are looking at this picture to the right of the
6 bed.

7 Q. And that is the same room you are looking at there?

8 A. Yes, sir.

9 Q. All right. Did you also --- Did you find any other
10 items that you learned as a result of your
11 investigation in regard to Eden Smith being in that
12 house?

13 A. Yes, sir. Inside the backpack was a toothbrush and a
14 camera. And on the camera was pictures of Eden Smith.

15 Q. Very good. Did you see any pictures of Graham Douglas
16 on the camera in the backpack?

17 A. I don't recall seeing that, sir.

18 Q. Any other items in the house you can say as a result of
19 your investigation connected with Eden Smith?

20 A. No, sir.

21 Q. Let me ask you this, officer. Did the body of Eden
22 Smith have a pair of shorts, I think they call them
23 cargo pants, I am going to show you Defendants' Exhibit
24 Number 61. Did he have on a shirt when you first him?

25 A. No, sir, he did not.

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1 Q. Were you able to determine whether he had on a shirt
2 prior to any prior to his death?

3 A. No, sir.

4 Q. All right. How about shoes. Did you find any shoes in
5 the residence that belonged to or could be attributed
6 to Mr. Eden Smith?

7 A. No, sir.

8 Q. All right. I am going to show you State's Exhibit
9 Number 11, and ask you if you remember seeing these
10 items in the house?

11 A. Yes, sir.

12 Q. Would you describe that for the Judge?

13 A. There were a pair of blue looking pants with a belt
14 thrown across one of the chairs in the room.

15 Q. All right. Was that room nearby the kitchen?

16 A. You come through the kitchen, and the room after you
17 come through the kitchen is a small room adjacent to
18 the room where the computer was at.

19 Q. All right, sir. Are those pants --- Why were they ---
20 If they were taken into evidence, why were they taken
21 into evidence?

22 A. They appear at first glance that there was blood on
23 them, and we told the crime scene guys to go ahead and
24 test them and check them for blood.

25 Q. All right. And that was done?

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1 A. Yes, sir.

2 Q. All right, sir. After leaving the house, did you have
3 an occasion before you left the house to look in or
4 check the vehicle that was out front, a black Land
5 Rover?

6 A. Yes, sir.

7 Q. All right. Did you find anything of evidentiary value
8 in the Land Rover?

9 A. No, sir.

10 Q. And I believe, just for the record, a search warrant
11 had been sought and obtained for searching the Land
12 Rover?

13 A. Yes, sir.

14 Q. After you left the area of the home, you went to the
15 Detention Center and met with Mr. Douglas?

16 A. Prior to leaving the house we talked to Mr. Leon
17 Douglas.

18 Q. I'm sorry. Mr. Graham Douglas. Did you go to the jail
19 and sit with and meet with him, Mr. Graham Douglas.
20 Did you leave the house?

21 A. Yes.

22 Q. And go to the jail?

23 A. Yes, sir.

24 Q. And what was your reason for going to the jail?

25 A. To take crime scene photos.

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- 1 Q. Of Mr. Graham Douglas?
- 2 A. Yes, sir.
- 3 Q. So, you accompanied a photographer to the jail?
- 4 A. Yes, sir.
- 5 Q. And you were there when the photographer asked him to
- 6 lift up his shirt and pants, and take pictures?
- 7 A. Yes, I was.
- 8 Q. Can you tell the Judge what you noted by your own eyes
- 9 as you were looking at him being photographed in terms
- 10 of injuries or anything unusual?
- 11 A. I noticed his knee had a small bruise, but I didn't
- 12 notice anything significant about his upper body.
- 13 Q. Okay. And when you say nothing significant about the
- 14 upper body, no dark purple marks, no black eye, no
- 15 scratches that needed a band-aid or stitches?
- 16 A. No, sir.
- 17 Q. Anything that would be considered a serious injury,
- 18 something that would have brought him close to death,
- 19 or serious bodily injury?
- 20 A. No, sir.
- 21 Q. Anything like that?
- 22 A. No, sir.
- 23 Q. Did you notice any bite marks?
- 24 A. No, sir, I did not.
- 25 Q. Did he make any statements to you all while you were

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1 there about any of the injuries that he had sustained?

2 A. No, sir.

3 Q. Beside you and the photographer from SLED, were local
4 deputies also there?

5 A. No, sir.

6 Q. Did he get Mirandized in your presence?

7 A. No, sir.

8 Q. And you made no attempt to question him, or get a
9 statement from him?

10 A. No, sir, I did not.

11 Q. After you left the jail, where did you go, what did you
12 do?

13 A. We secured for the night.

14 Q. And you returned to write a report?

15 A. Yes, sir.

16 Q. And start the investigation of items that were going to
17 be tested at the lab?

18 A. Yes, sir.

19 **MR. FINNEY:** Excuse me.

20 **THE COURT:** Yes, sir.

21 (PAUSE.)

22 **MR. FINNEY:** Thank you very much.

23 **THE COURT:** Cross examination.

24 **MR. MOORE:** May it please, Your Honor.

25 **CROSS EXAMINATION BY MR. MOORE**

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1 Q. Hay, Mr. Johnson.

2 A. How do you do, sir.

3 Q. Your rank with SLED is what?

4 A. Senior Agent.

5 Q. Senior Agent?

6 A. Yes, sir.

7 Q. And, your testimony is that you would have been the
8 lead investigator on this case?

9 A. Yes, sir.

10 Q. And, I would assume, since you were the lead
11 investigator that you had lots of experience
12 investigating scenes where people died violently in
13 some form or fashion?

14 A. Some.

15 Q. And in those many times that when people meet an
16 untimely death as a result of a violent act, they will
17 basically release their bowels, release their kidneys?

18 A. I have never seen an incident in which that had
19 happened.

20 Q. Let me show you Exhibit Number 61, you basically
21 indicated that you saw Mr. Smith; is that correct?

22 A. Yes, sir.

23 Q. Now, on those shorts there appears to be a very large
24 spot in the nature of --- in the area of from a person
25 would normally urinate; do you see that?

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1 A. Yes, sir.

2 Q. Now, since you are the lead investigator, and since you
3 were the person in charge of the crime scene, you can
4 tell us that that large spot would have been on Mr.
5 Smith as he laid on the floor can't you?

6 A. Yes, sir.

7 Q. Now, you can also tell us, since you are the lead
8 investigator, and since you had done your job, that
9 that is urine isn't it?

10 A. At the time I didn't know that, sir.

11 Q. You know it now?

12 A. Yes, sir.

13 Q. So, we know that there appears to have been a spot, a
14 large spot on Mr. Smith's pants that appears as if he
15 has urinated on himself?

16 A. That's correct.

17 Q. And, this is the way he would have looked when you got
18 there?

19 A. That is the way he looked when I got there.

20 Q. And it appeared that he had recently urinated on
21 himself, because it was still wet when you got there.

22 A. Well, I didn't touch it, I don't know if it was wet or
23 not, but it appeared to be.

24 Q. It looks wet doesn't it?

25 A. Yes, sir.

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1 **MR. MOORE:** May we hand this up, Your Honor?

2 **THE COURT:** Yes, sir. Thank you.

3 (PAUSE.)

4 **MR. MOORE:** This lady, she --- I don't know.

5 **THE COURT:** We are checking on that. Go ahead, if
6 you wish. That is fine.

7 **MR. MOORE:** Would you like for me to wait?

8 **THE COURT:** No, sir. You may go ahead.

9 Q. Now, sir, since you are the investigator, you have seen
10 the photograph that has recently been placed into
11 evidence of ---

12 **MR. MOORE:** Madame Court Reporter, the most recent
13 one we put in --- The State has put in? One of the last
14 ones we put in.

15 (PAUSE.)

16 **MR. MOORE:** Thank you.

17 Q. Now, you do know that earlier that morning Graham
18 Douglas had gone into a convenient store and bought
19 some ice and some cigarettes, because y'all got a
20 picture of him in the convenient store; right?

21 A. Yes, sir.

22 Q. And this would be a still photograph of what Graham
23 Douglas had looked like earlier that morning; correct?

24 A. Yes, sir, the clothing.

25 Q. And, those show his arms. We don't see any bruising on

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1 his arms in that photograph do we?

2 A. No, sir. It appears those bruises on his arms were a
3 little higher up. The sleeve would have covered it.

4 Q. But, you didn't see any bruises did you?

5 A. No, sir.

6 Q. Then how would you know that the bruises on his arms
7 would have been covered up if you never saw any
8 bruises?

9 A. I don't understand your question here.

10 Q. Well, you testified under oath that you did not see any
11 bruises?

12 A. No, sir, I did not.

13 Q. You did see bruises?

14 A. I did not see any.

15 Q. You saw those bruises?

16 A. No, sir.

17 Q. You testified that the shirt would have covered up the
18 bruises on his arms?

19 A. If there would have been bruises. I couldn't tell from
20 the photo here.

21 Q. Well, you certainly can see --

22 A. You can just see his elbow here, and a little above the
23 elbow.

24 Q. Actually, if you look at it, you can see a good bit of
25 his arm above his elbow can you not?

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1 **MR. FINNEY:** I am going to have to object, Your
2 Honor. The witness has testified.

3 **THE COURT:** Overruled.

4 A. In my opinion the bruising was a little higher up.

5 Q. What bruises were higher up?

6 A. If there were bruises, what you eluded to, it would
7 have been a little higher up, but I don't see any
8 bruises.

9 Q. How do you know that?

10 A. I don't see any.

11 Q. How do you know if there were bruises they would be
12 higher up?

13 A. If there were some, which I don't think there were,
14 they would have been covered, because the shirt sleeve
15 would have been covering it.

16 Q. Let me show you these.

17 A. Yes, sir.

18 Q. Here is a Exhibit Number 1, where we see bruising that
19 goes almost all the way down that right arm, almost to
20 the elbow doesn't it?

21 A. Yes, sir.

22 Q. That bruising on that right arm would be in the same
23 area where we see the man's right arm in the
24 photograph; correct?

25 A. I didn't see any bruises.

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1 Q. But you do now?

2 A. Oh this picture, I do.

3 Q. You don't see any bruises on the other one?

4 A. No, sir, I do not.

5 Q. But you see the same portion of the arm on the both
6 photographs don't you?

7 A. Yes, sir.

8 Q. And since you see that, we know that whatever bruising
9 took place on this boy's arm would have had to have
10 taken place between about 9:30 in the morning on May
11 31st and June 2nd of 2011?

12 A. That's correct.

13 Q. Now, did you have this young man examined by a
14 physician?

15 A. No, sir, I did not.

16 Q. Did anyone at the jail actually take photographs of
17 Graham?

18 A. I don't know if anyone at the jail did.

19 Q. Would it surprise you to learn that folks at the jail
20 did in fact take photographs?

21 A. (No response.)

22 Q. Let's just take a look here. Here is a photograph,
23 State's Exhibit Number 24, that was taken right there
24 on the scene that night. You don't see where somebody
25 has punched him in the eye?

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1 A. His eye may look a little swollen, but there is not a
2 visible coloring of the eye.

3 Q. Well, let me ask you this. We know now that the
4 photograph shows that his eye looked swollen; right?

5 A. Yes, sir.

6 Q. Can we now agree that what you saw him that night his
7 eye looked swollen?

8 A. Yes, sir.

9 Q. Okay. So, you saw a visible injury to his eye that
10 night when you went over to the jail?

11 A. Yes, sir.

12 Q. And, here is another scene, a bloody leg. Did you look
13 at his leg, or was it covered up when you saw it?

14 A. I looked at his leg.

15 Q. Now, we know that this blood would have been right
16 there on the scene that night. You didn't see any
17 damage to his leg?

18 A. As I said, there was a scrape on his knee. That all
19 that I see.

20 Q. All right. You did see an injury to his knee that
21 night?

22 A. Yes, sir, I did say that.

23 **MR. MOORE:** Okay. That's fine. I may not have heard
24 that. I apologize.

25 Q. Now, let's take a look at a photograph that was taken

JAMES LEE JOHNSON - CROSS EXAMINATION

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1 at the jail that night. Are you telling me you can't
2 see the bruises on that boy's right arm?

3 **MR. FINNEY:** Excuse me, sir. What exhibit?

4 **MR. MOORE:** I do apologize, Mr. Solicitor. Exhibit
5 Number 30.

6 **MR. FINNEY:** Thank you, sir.

7 A. I see a discoloration, but not as severe as it was in
8 the later photos.

9 Q. Oh, you have seen the later photos?

10 A. The ones you put in as exhibits.

11 Q. Right.

12 A. Yes.

13 Q. So, let's make sure that we understand then. When you
14 went over to the jail that night, you did see the
15 discoloration?

16 A. A little. It wasn't that much. What you see here is,
17 not I consider a sizable bruise.

18 Q. Sir, that bruise basically starts right above the elbow
19 and appears to go almost all the way up to his shoulder
20 doesn't it?

21 **MR. FINNEY:** I am going to object to the
22 mischaracterization by counsel, Your Honor. I'm sorry.

23 **THE COURT:** I am going to sustain that objection,
24 counsel, because again the Court can make a determination.

25 **MR. MOORE:** Thank you, Your Honor.

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1 Q. Sir, you see --- You saw a bruise on his right arm?

2 A. There is a small discoloration.

3 Q. All right. And, Exhibit Number 31 shows that place on
4 his knee?

5 A. Yes, sir. That is what I saw.

6 Q. Now, let's take a look at this one that was taken the
7 night at the jail when you were there, again on his
8 right arm.

9 **MR. FINNEY:** Same objection, Your Honor.

10 **MR. MOORE:** I'm sorry. Exhibit Number 32.

11 **MR. FINNEY:** Thank you, sir.

12 Q. Right significant discoloration there isn't it?

13 A. It is a reddish --

14 **MR. FINNEY:** Objection, Your Honor.

15 Mischaracterizing again. The witness can say --

16 **MR. MOORE:** Your Honor, it is cross examination, if
17 he disagrees.

18 **THE COURT:** I am going to overrule. He is on cross.
19 Again, we don't have a jury here, and the Court has some
20 understanding of the analysis of the evidence. You may
21 proceed.

22 **MR. FINNEY:** Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 Q. There is a right significant discoloration on those
25 arms is it not?

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1 A. Not as bad as it was in the later photos. But, there
2 is some discoloration there, yes, sir.

3 Q. Right. And you know with bruises sometimes as time
4 goes along they get worse before they get better?

5 A. That can happen, yes, sir.

6 Q. All right, certainly. This then would have appeared to
7 you to have been fresh bruising on these arms?

8 A. Yes, sir.

9 Q. So, we know then that you saw fresh bruising on his
10 arms, and you saw the beginning of a black eye?

11 A. Yes.

12 Q. And you saw the marks on his legs? And you have seen
13 the marks on his chest?

14 A. Yes, sir, I saw that.

15 Q. And you would have seen the bite marks on his leg?

16 A. I don't recall seeing a bite mark on the leg.

17 Q. Let's take a look.

18 A. All right, sir.

19 Q. You saw the damage to his legs?

20 A. I see the back of his leg you are referring to.

21 Q. Now, let's talk about the wallet. The wallet was found
22 on the bed in the front bedroom, right?

23 A. The guest bedroom, yes, sir. In the front of the
24 house.

25 Q. The glasses were on the bed on the guest bedroom?

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- 1 A. Yes, sir.
- 2 Q. The wallet wasn't found inside of the pants was it?
- 3 A. No, sir.
- 4 Q. Now, as a Chief Investigator, you had the blood on
5 these pants analyzed; right?
- 6 A. Yes, sir.
- 7 Q. We know the blood on those pants was not Eden Smith's
8 blood on it?
- 9 A. Yes, sir.
- 10 Q. The blood on those pants belonged to Graham Douglas?
- 11 A. Yes, sir.
- 12 Q. So, do you have anything to indicate whoever those
13 pants belonged to that any of Eden Smith's blood is on
14 those pants?
- 15 A. No, sir.
- 16 Q. All right. So, we know that the pants in the front
17 bedroom did not have any blood from Eden Smith?
- 18 A. Yes.
- 19 Q. We know that the pants in the front bedroom did have
20 blood from Graham Douglas?
- 21 A. Yes, sir.
- 22 Q. All right. Now, we also know that Graham Douglas had
23 pants on; right?
- 24 A. Yes, sir.
- 25 Q. The pants that he had on had his blood on them; right?

JAMES LEE JOHNSON - CROSS EXAMINATION

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- 1 A. Yes, sir.
- 2 Q. And we know that Eden Smith had pants on that had his
3 blood on them?
- 4 A. Yes, sir.
- 5 Q. In regards to the pants that Eden Smith was wearing,
6 there was nothing found that there was any bodily fluid
7 on those pants from Graham Douglas; right?
- 8 A. Yes, sir.
- 9 Q. Now, you were asked about the location of this gun. Do
10 you know that the gun was moved before you got there by
11 EMS?
- 12 A. At the time, no, sir, I did not that.
- 13 Q. You know it now?
- 14 A. Yes, sir.
- 15 Q. Do you know the name of the person who moved the gun?
- 16 A. No, sir. But, according to what I was told that they
17 didn't really move it that much. I don't think, in my
18 opinion, I don't think they moved it at all. But, then
19 I don't know. I was told it was moved.
- 20 Q. Who told you it was moved?
- 21 A. I talked to Wayne Jordan.
- 22 Q. Now, Wayne Jordan works for the Sheriff's Department?
- 23 A. Yes, sir.
- 24 Q. And he was there that night?
- 25 A. Yes, sir.

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1 Q. So, you learned in your notes that somebody had moved
2 the gun before you got there?

3 A. Yes, sir.

4 Q. Did you ever, since you were the Chief Investigator,
5 determine who it was that moved the gun?

6 A. It was one of the EMS workers?

7 Q. Do you know that person's name?

8 A. I did, but I don't recall the name, sir.

9 Q. All right. Now, since you were the Chief Investigator,
10 the lead investigator in this case, we have asked for
11 the SLED reports. Did you make a report?

12 A. Yes, sir.

13 Q. Do you now where that report might be?

14 A. I submitted the report to the Solicitor's Office.

15 Q. Did you sign it?

16 A. Yes, sir.

17 **MR. MOORE:** I don't have any further questions.

18 Thank you, Your Honor.

19 **THE COURT:** Is there redirect?

20 **MR. FINNEY:** No, Your Honor.

21 **THE COURT:** All right. Sir, you may step down. Do
22 you wish to call another witness?

23 **MR. FINNEY:** I have another witness.

24 **MR. MOORE:** If he would go ahead, that would be fine.
25 I have one more coming.

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1 THE COURT: Go ahead.

2 MR. FINNEY: Wayne Jordan, please.

3 THE COURT: Please come forward and take the oath of
4 a witness.

5 WHEREUPON, INVESTIGATOR WAYNE JORDAN

6 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

7 INVESTIGATOR JORDAN: I do.

8 DIRECT EXAMINATION BY MR. FINNEY

9 Q. Mr. Jordan, give us your full name?

10 A. Staff Sergeant Anthony Wayne Jordan. J-O-R-D-A-N.

11 Q. How long have you been associated with law enforcement?

12 A. October will be twenty years.

13 Q. All right, sir. And are you currently an investigator
14 or a detective?

15 A. I am a supervisor at the Sheriff's Office Investigation
16 Unit.

17 Q. All right, sir. And how long have you been employed
18 with the Sheriff's Office?

19 A. Since 2003.

20 Q. All right. Did you work the case of Graham Douglas as
21 far as the call, the 911 call that came out?

22 A. Yes, sir. I was called out by the Sheriff to respond
23 to [REDACTED]. When I arrived on scene, I was
24 told to secure the scene. The scene had already been
25 secured, and to call SLED due to one of our employee's

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1 family member being involved.

2 Q. All right, sir. And so SLED was called, and you would
3 have maintained the scene until SLED got there?

4 A. That's correct. We secured the scene, and we were told
5 to do nothing until SLED got there.

6 Q. Did you go inside the house?

7 A. I did walk through the house, and stepped back out just
8 to see what the --- just to observe the house.

9 Q. All right. Did you have an occasion to talk with, or
10 come in contact with Graham Douglas?

11 A. After I talked with the Sheriff, and Corporal --
12 Investigator Scott, and Investigator John James, and
13 was advised by the Sheriff not to take any action as
14 far as taking any statements, doing anything to the
15 scene, I was advised by the Sheriff to get Mr. Douglas,
16 put him in my vehicle, which is an unmarked SUV, and
17 take him to the Sheriff's Office until SLED agents
18 could get there to start an interview and start their
19 process.

20 Q. And did you do that?

21 A. I sure did. I took him out of a marked patrol unit, I
22 un-handcuffed him, I placed handcuffs in front of him,
23 and walked him to my car, which was probably fifty
24 yards away from where he was at.

25 Q. All right, sir. I want to show you a picture of Mr.

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- 1 Douglas that was taken that night. I will ask you to
2 look at Defendants' Exhibit Number 24, 25, 26, and 28.
3 And ask you to tell the Court, is that the way Mr.
4 Douglas appeared to you that evening?
- 5 A. Twenty-four is. This is when I pulled him out of the
6 vehicle, out of a patrol unit.
- 7 Q. Is that the shirt he had on at the time?
- 8 A. That is the shirt he had on at the time.
- 9 Q. All right, sir.
- 10 A. Twenty-five, he showed me his knee, because I saw blood
11 on his feet. On his right. I asked him to pull his
12 pant leg up, and he showed me a scrape across his right
13 knee that had blood --- no running blood, but dried
14 blood. Not total dried blood, but there was no blood
15 moving from the cut down his foot.
- 16 Q. How big would you say the cut was in circumference?
17 Was it a pin size, a dime size, a quarter size, a half-
18 dollar size?
- 19 A. A half a centimeter, maybe?
- 20 Q. Half a centimeter?
- 21 A. Yes. It wasn't much over a centimeter.
- 22 Q. All right. And the pants. Did you see in 26, was
23 those the pants he had on?
- 24 A. These were the pants he had on. Again, this was
25 outside of the marked patrol unit he was sitting in.

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1 Q. All right.

2 A. Did notice the blood on the pants and on the waste line
3 area.

4 Q. All right.

5 A. And this is another picture, and this is Defendant's
6 Number 26, and Defendant's 28. This is him pulling his
7 pant leg up. And again noticed the blood on his shin,
8 from his knee, to his shin, to his foot.

9 Q. As you look at those photographs, can you remember any
10 other injury on Mr. Douglas that you saw when you first
11 saw him that evening to his hands, arms, face?

12 A. The only thing that I do recall is his eye was a little
13 swollen.

14 Q. Which eye?

15 A. Which would have been his left eye, I believe it is.
16 Left on his body. I mean, it was just a little
17 swollen. There was no black. It was swollen right
18 below his eye.

19 Q. Was there any blood associated with that?

20 A. None whatsoever that I saw.

21 Q. All right, sir. What would you say his demeanor was?
22 What was his state?

23 A. To me he was very highly intoxicated. He was real
24 slurred on his speech. He was unsteady on his feet. I
25 had to escort him to my patrol unit from that patrol

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1 unit. Sat him down in the front seat of my car, placed
2 the seatbelt on him, and transported him over to the
3 Sheriff's Office.

4 Q. Did he cry at any time?

5 A. No, sir, he wasn't crying. He just kept slurring his
6 speech, he kept trying to make statements, and I
7 stopped him every time, asked him to please be quiet.
8 When he kept talking, I finally just read him his
9 Miranda.

10 Q. Where were you when you read him his Miranda?

11 A. I was sitting in my driver's seat in my patrol car. He
12 was sitting in the passenger front seat of my patrol
13 car. Again, which is a white SUV unmarked unit. And,
14 I looked at him, and I said, Graham, I have got to
15 Mirandize you if you are going to talk to me anymore.
16 I said, I am not taking a statement. This is an
17 unofficial statement. I am not taking your statement,
18 but these are your rights. I read him his rights
19 verbatim. As a matter of fact, I have my Miranda
20 Rights card over my interior light which I pulled down
21 and read it verbatim to him, and placed it back over my
22 interior light.

23 Q. At the time you read him the Miranda Rights, were you
24 actually driving the vehicle, or were you still parked?

25 A. We had just pulled off from his driveway.

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1 Q. All right, sir. Were you reading and driving at the
2 same time?

3 A. I had slowed down and almost come to a complete stop so
4 that I could read the Miranda and look at him while I
5 was reading it.

6 Q. All right. After you read Miranda, did he continue to
7 talk to you?

8 A. He continued to talk.

9 Q. And you were driving to the law enforcement center?

10 A. Driving to the Sheriff's Office.

11 Q. About how long of a drive, about how many minutes did
12 that take?

13 A. I would say it is a good five to seven, maybe eight
14 minute drive.

15 Q. And only the two of you were in the vehicle?

16 A. Just me and him.

17 Q. All right. Was he handcuffed?

18 A. In the front.

19 Q. All right. Was he handcuffed?

20 A. In the front, yes, sir.

21 Q. And did he have any shoes on?

22 A. His father brought some Brown leather shoes out, slip
23 ons.

24 Q. All right. So, he had those on?

25 A. Yes.

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1 Q. Did you promise him anything?

2 A. I didn't really say anything other than please stop
3 speaking. I said, Graham, please do not talk. I
4 cannot take your statement. I told him SLED was
5 involved. That SLED was coming. And I asked him
6 please do not talk.

7 Q. All right. As you drove and listened, and then arrived
8 at the Police Station, did you have an occasion to
9 accompany him inside to the interrogation room?

10 A. I pulled into the side door of the Sheriff's Office,
11 which is in the driveway of the Sheriff's Office.
12 Walked him into the side door of the Sheriff's Office.
13 I went down to the third office on the right, which at
14 the time was Corporal Investigator Scott and
15 Investigator John James' office. Sat him in a chair
16 inside the office, in front of Corporal Scott's desk,
17 where he sat. I called SLED. I called Roxanne Bethea,
18 which is the Lieutenant over SLED with the Pee Dee
19 Region, and she asked me to perform a GSR kit, and take
20 his clothing from him. I called the county jail, and
21 asked then for scrubs, which is dress out for an
22 inmate. They brought it to me. They brought it to me
23 and I asked him to remove his clothes. He removed his
24 clothes and I put them in a brown paper evidence bag,
25 performed the GSR kit, and then I began to get search

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1 warrants.

2 Q. All right. And, while you were in the process of
3 getting search warrant, Mr. Douglas was in an
4 interrogation room?

5 A. No, sir. He was never in an interrogation room. He
6 was in an office.

7 Q. All right.

8 A. He was inside --- He was three feet out of the hallway
9 inside of an office, in a chair, and he never went into
10 our interrogation interview room.

11 Q. All right. And he stayed there in that office until
12 the SLED official arrived?

13 A. He stayed there --- he stayed there a good while. I
14 would say into the after midnight we were sitting there
15 talking. We were sitting there with him, and then we
16 were finally advised by Senior Agent Johnson to take
17 him over to the county jail.

18 Q. All right. Besides you and Mr. Graham Douglas, who
19 else was in that office during that time?

20 A. I advised Investigator Scott to meet me at the office.
21 He met me at the office, and he sat behind his desk
22 watching Graham the whole entire time. Our victim's
23 advocate, Stephanie Lucas was with us, and at the time
24 our Investigator Administrator Assistant Robbie
25 Smallwood was along with us, sitting in the office.

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1 Q. Now, you testified a minute ago that you contacted a
2 magistrate about a search warrants?

3 A. I called Magistrate Vivian Patrick to secure some
4 search warrants. I secured two search warrants. One
5 for the residence, and one for Eden Smith's vehicle. I
6 left the Sheriff's Office --- Well, I walked to my
7 office, typed the search warrant up, took them down to
8 Judge Patrick's house, which was her residence in
9 Cheraw, which is about fifteen miles away. I presented
10 the search warrant to her. Swore and affirmed it.
11 Signed it in front of her. She signed it. Came back,
12 went to the crime scene, met up with crime scene
13 agents, and agents with --- Special Agent Johnson.
14 Then handed John James, which is an investigator for us
15 the search warrant, and they performed the search.

16 Q. Did you have an occasion to go into the house?

17 A. I did. I walked through the house with Agent Johnson,
18 and the crime scene unit.

19 Q. All right. The position of the body of Mr. Eden Smith
20 was on the kitchen floor?

21 A. That's correct.

22 Q. And as far as you know when you saw, it had not been
23 moved?

24 A. When I saw it, it had not been moved.

25 Q. All right. Was there a firearm by his right hand?

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1 A. Yes, it was.

2 Q. All right. And did it appear, for example, in one of
3 these photographs it appears that the firearm had been
4 opened. It was a .38 revolver.

5 A. No.

6 Q. I show you Defendant's Number 58. Can you remember
7 when you saw the firearm, had it been --

8 A. That is the position I saw the firearm in.

9 Q. All right.

10 A. I saw the body twice prior to SLED entering, and when I
11 went in with SLED.

12 Q. Did you receive information during the course of your
13 investigation that the firearm had been moved?

14 A. I was told it was moved by EMS to put the leads on the
15 victim to assess. Who told me that, I can not tell you
16 who moved the firearm if it was moved. I can't tell
17 you that. But, I do recall somebody advising me that
18 the gun had been moved slightly to do the EMS work.
19 But, again, who moved it, if it was moved, and who told
20 me, I cannot tell you that.

21 Q. All right. Would you give us a description of Eden
22 Smith as you saw him that night, and as he appeared in
23 that picture? Did he have anything else on beside
24 those cargo pants and black socks?

25 A. The only thing he had on when I saw him was the cargo

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1 pants and black socks.

2 Q. Did you notice anything unusual about the cargo pants?

3 A. That they were sort of half way down his body, not
4 fully on as if you would have your pants on. And you
5 could see his back side, his rear side, where I noticed
6 no underwear being on the victim.

7 Q. All right. Did you also have an occasion to go to
8 another room and see other items in the house?

9 A. I did a walkthrough with Agent Johnson and with the
10 crime scene. Again we went through Graham's bedroom,
11 his bathroom, walked through the kitchen, walked
12 through the den, the dining room, a little. what I
13 would consider a work room, a computer room, walked
14 down a hallway past what I would call the front door.
15 Walked into a second bedroom at the rear of the
16 residence.

17 Q. Is that the bedroom that has the four-poster bed in it?

18 A. That's correct.

19 Q. That would be the bedroom --

20 **MR. MOORE:** That photograph has been marked. Your
21 Honor, that photograph has not been marked. I am not sure
22 if the State is offering them or if I am offering them, but
23 I think one of us is offering the document into evidence.

24 **THE COURT:** Let's list them as State's Exhibits
25 because Mr. Finney picked them up to use them. If there is

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1 not an objection we will do it that way. ,

2 (PAUSE.)

3 **THE COURT:** All right. State's Exhibit Number 21 and
4 22 without objection in evidence.

5 **WHEREUPON, STATE EXHIBITS**

6 **NUMBERS 21 AND 22 WERE**

7 **ADMITTED INTO EVIDENCE WITHOUT**

8 **OBJECTION.**

9 **MR. FINNEY:** Thank you, Your Honor.

10 **THE COURT:** Thank you.

11 Q. I want to show you State's Exhibit Number 12. I think
12 it is a clear photograph. Do you remember that being
13 the quote, unquote guest bedroom?

14 A. Yes, sir.

15 Q. And is that the condition that you found it in?

16 A. Yes, sir.

17 Q. Was there anything upset or disheveled in that room
18 when you --

19 A. No, sir. There was nothing out of the ordinary in this
20 room.

21 Q. What items did you find that you took into evidence?

22 A. The pants which were laying on the bed.

23 Q. Describe them please?

24 A. A pair of kacki pants with a brown belt, with what
25 appears to be blood on the front right pant leg, and on

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1 the left pant leg.

2 Q. And what else on the bed?

3 A. A pair of glasses and a brown wallet.

4 Q. Did you investigate the wallet?

5 A. Yeah. We opened it up to see whose wallet it was and
6 we saw Eden Smith's South Carolina driver's license in
7 it.

8 Q. All right. Did you also note a red duffel bag?

9 A. There was a bag with a camera and something. I can't
10 remember what else was in it. But it was --- it would
11 have been down this way.

12 Q. Some distance from the bed?

13 A. Yes, sir.

14 Q. All right. Very good. Later on that evening, did you
15 have an occasion to go back to the Detention Center or
16 the law enforcement center and talk to Graham Douglas?

17 A. Yes, sir. After I went over the search warrant with
18 Agent Johnson and the crime scene unit, we went back to
19 the Sheriff's Office, because I think I had Stephanie
20 Lucas, our victim's advocate with me. I went back to
21 the Sheriff's Office, and that is where we stayed with
22 Graham until I was told to do otherwise.

23 Q. All right. And once he was transported to the
24 Detention Center did you see him any more that evening?

25 A. I didn't see him when he left the Sheriff's Office.

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1 Q. When you were transporting him to the Detention Center,
2 did you see him any more that evening?

3 A. I didn't see him when he left the Sheriff's Office.

4 Q. All right. And, so prior to him leaving the Sheriff's
5 Office, your time spent with Graham doubled was the
6 ride over in the car?

7 A. Ride over from the scene to the Sheriff's Office, and
8 then I would say every bit of three --- two and a half,
9 three hours at the Sheriff's Office with him.

10 Q. All right.

11 A. And that is me going back and forth in the --- in
12 Investigator Scott's office, going to my office, doing
13 paperwork, doing something, answering the phone, just
14 different things like that. But, as far --- I would
15 say two and a half three hours back and forth
16 interacting with him.

17 Q. During the ride over in the patrol car, after he had
18 been given Miranda, did he make any statements that
19 lead you to believe that he acted in self-defense or he
20 had been attacked by Eden Smith?

21 A. None whatsoever.

22 Q. All right. He was at the law enforcement center in
23 your custody care and control. Did he make any
24 statements about any injuries he had received from Eden
25 Smith?

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- 1 A. No, sir. He never told us anything about being injured
2 from a fight or anything with Eden Smith.
- 3 Q. You didn't see him at the Detention Center that evening
4 when he was being photographed?
- 5 A. No, sir.
- 6 Q. As to having any bruises or anything?
- 7 A. No, sir. Once he left the Sheriff's Office and
8 Investigator Scott took him to the jail. When he
9 walked out of the Sheriff's Office door, I didn't see
10 him again.
- 11 Q. All right. Let me go forward just a little bit. Are
12 you aware that on State's Exhibit Number 14, Graham
13 Douglas was seen at a convenient store earlier on the
14 day of the shooting buying ice?
- 15 A. Yes, sir.
- 16 Q. And cigarettes?
- 17 A. Yes, sir. I was informed I believe by Agent Johnson,
18 and we rode out to T&C Grocery, which is on Highway 145
19 and 742 and obtained that video.
- 20 Q. Have you seen the video?
- 21 A. Oh, yeah.
- 22 Q. And is that what Exhibit 14 is, a still photograph from
23 that video?
- 24 A. That is a still shot from the video.
- 25 Q. What does it show Mr. Graham Douglas wearing?

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1 A. I would call them light blue, may baby-blue long pants.
2 It appears to be some type of belt, and I would call a
3 golf shirt, multi-stripped golf shirt.

4 Q. All right. And where those items found at the house?

5 A. Yes, sir.

6 Q. The items he had on that day?

7 A. These items right here?

8 Q. Yes.

9 A. Yes, sir, I believe they were.

10 Q. All right. Was he wearing those items when he was
11 taken into custody?

12 A. No, sir, he wasn't.

13 Q. All right. As far as you know, were any clothing items
14 taken from the house that belonged to Eden Smith
15 besides the items that appeared in 12, on that bed in
16 the back?

17 A. None that I can see.

18 Q. No golf shirt?

19 A. None that I know of.

20 Q. No what we call street shoes?

21 A. None that I know of. The only thing I recall taking of
22 Eden Smith was his wallet, and we presumed that these
23 glasses were his.

24 Q. All right. In the kitchen area, where the body was
25 found, did you note any disturbances, any appliances,

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1 glassware, anything out of the ordinary in that kitchen
2 area that may have helped you as a crime investigator?

3 A. The only thing we noted was the dishwasher.

4 Q. What is that?

5 A. It was --- What I would call the door being broke,
6 laying on the floor. Again, the bottom being attached,
7 but the door --- the door laying on the floor, and I
8 guess the dish rack being out of the --- being out of
9 the dishwasher.

10 Q. Defendants' Exhibit Number 58, does it appear that
11 Eden's head is actually resting on the door of the
12 dishwasher?

13 A. It appears that way, which would be the right corner of
14 the door.

15 Q. Nothing else in that room was what you would consider
16 as evidentiary value that an investigator would have
17 for Eden Smith?

18 A. I don't recall any broken glass. I don't recall any of
19 that. No, sir.

20 Q. And Eden Smith's body other than the gunshot wound to
21 the chest, did he appear to have any other significant
22 injuries in terms of cuts, abrasions, blood, anything
23 else?

24 A. None.

25 **MR. FINNEY:** Beg court's indulgence, Your Honor.

WAYNE JORDAN - CROSS EXAMINATION

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1 (PAUSE.)

2 **MR. FINNEY:** Thank you, investigator. No further
3 questions.

4 **THE COURT:** How long do you believe your cross will
5 be counsel?

6 **MR. MOORE:** If the Court is considering a break, I
7 think it would be fine right here.

8 **THE COURT:** Let's do that. And, Officer Jordan, I am
9 going to ask you to not speak to lawyers on either side of
10 the case. You are certainly welcome to take a break as
11 well..

12 We will be in recess now about fifteen minutes, ladies
13 and gentlemen. Court is in recess.

14 **MR. MOORE:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 (Whereupon, a recess was taken from 3:15 p.m.
17 until 3:26 p.m.)

18 **THE COURT:** All right. Investigator Jordan, did you
19 get a break?

20 **INVESTIGATOR JORDAN:** I did.

21 **THE COURT:** All right, very good. Are you ready to
22 proceed, Mr. Moore, go ahead.

23 **CROSS EXAMINATION BY MR. MOORE**

24 Q. Mr. Jordan, I believe that you have known the Douglas
25 family for quite some while have you not?

WAYNE JORDAN - CROSS EXAMINATION

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1 A. Yes, sir, I have.

2 Q. You have basically been involved with the community
3 while Graham has been growing up?

4 A. I only started knowing Graham when I came back to the
5 Sheriff's Office.

6 Q. When was that?

7 A. 2003.

8 Q. In your time with law enforcement, you have never had
9 an occasion to know him being violent or anything like
10 that?

11 A. The only time I have ever interacted with Graham, he
12 was Judge Burch's law clerk, and to see him in the
13 courtroom.

14 Q. And, he was polite to you?

15 A. All the time.

16 Q. Mannerly?

17 A. Yes, sir.

18 Q. Relatively neat and shy?

19 A. Yes, sir.

20 Q. Sort of mild mannered?

21 A. Yes, sir.

22 Q. Never aggressive with you in any fashion? Never known
23 to be voiceterous or anything like that?

24 A. Not the times that I have dealt with him, no.

25 Q. Never given law enforcement a minutes of trouble as far

WAYNE JORDAN - CROSS EXAMINATION

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1 Was you know?

2 A. To my knowledge, no.

3 Q. And the incident that we are talking about actually
4 happened at Graham's home, did it not?

5 A. Yes, sir.

6 Q. And the little home he lived in was relatively small;
7 is that right?

8 A. That's correct.

9 Q. Like a old sharecropper's home that has been redone?

10 A. That's correct.

11 Q. And the rooms in the house have very low ceilings;
12 right?

13 A. Yes.

14 Q. And the rooms that we are talking about are tiny. All
15 the rooms are a little hard to move around in; would
16 you agree?

17 A. Yes, sir.

18 Q. The kitchen area; the kitchen is absolutely pitiful
19 about how small it is. It is real small isn't it?

20 A. It is fairly small, yes, sir.

21 Q. And, you have been in law enforcement for a long time?

22 A. Yes, sir.

23 Q. For how long?

24 A. October starts twenty.

25 Q. And in twenty years you have had occasions to

WAYNE JORDAN - CROSS EXAMINATION

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1 investigate cases where people have met their deaths in
2 an untimely fashion?

3 A. Yes, sir.

4 Q. And, it is not at all unusual for a person to evacuate
5 his kidneys at the time of his death?

6 A. I'd say so.

7 Q. You have seen that happen?

8 A. Yes, sir.

9 Q. And, it is fairly obvious when you arrived on the scene
10 that when this thing happened, whatever happened to
11 him, he evacuated his kidneys because there was wet
12 urine on his pants?

13 A. I would say it is wet. I don't know what was on the
14 front of his pants.

15 Q. All right. It looked like urine?

16 A. It was wet.

17 Q. So, it looked like a place where someone's kidneys
18 could have evacuated?

19 A. Could have, yes, sir.

20 Q. You don't have any indication that someone threw water,
21 or lemonade, or vodka, or anything on his pants?

22 A. No, sir, I don't.

23 Q. As far as we know what was on those pants was urine?

24 A. I can't say. I can't testify to that.

25 Q. All right. Now, and, of course, that would be up to

WAYNE JORDAN - CROSS EXAMINATION

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1 SLED to do the proper analysis?

2 A. That's correct.

3 Q. And we know that the analysis at SLED did indicate
4 urine on the front of his pants?

5 A. I can't answer that question.

6 Q. You haven't seen that report?

7 A. I haven't seen that report, no, sir.

8 Q. I understand. Now, there was a point in time when you
9 felt that you should Mirandize Graham; is that correct?

10 A. That's correct.

11 Q. Where were you when you felt it proper to Mirandize
12 him?

13 A. Well, there are two things. When I walked him from the
14 patrol car to my car, I was told by Deputy Karnes and
15 Corporal Wallace that Deputy Karnes had already gone
16 ahead and Mirandized him.

17 Q. He had already been Mirandized, okay.

18 A. When I sat him in my car and he continued to say that
19 he had shot Eden, and he was a murderer, I stopped him,
20 and I that is when I pull my Miranda card off my
21 interior light. I slowed down to almost a crawl, I
22 almost stopped. I said, Graham, please be quiet. I
23 am reading you Miranda. And I read it to him, and I
24 placed it back up.

25 Q. And, was there any point in time after you read him his

WAYNE JORDAN - CROSS EXAMINATION

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1 Miranda Rights that he asked for advice, and asked you
2 for advice from someone?

3 A. No, he never said that to me. He said he was a lawyer
4 out of Columbia, if I recall correct. And, he wanted
5 to talk to Judge Burch.

6 Q. Right. Basically, Judge Burch is a lawyer, right?
7 And, he knows --

8 A. Well, Judge Burch is a --

9 Q. -- Judge.

10 A. General Session Judge.

11 Q. Basically, what he said was, after you Mirandized him,
12 I again Mirandize Graham Douglas again while sitting in
13 my unmarked SUV while in route to the Sheriff's Office?

14 A. Uh'huh.

15 Q. Douglas began to say he was a lawyer, practicing in
16 Columbia, South Carolina, and he wanted to call Judge
17 Burch, because he use to be Judge Burch's law clerk?

18 A. Yeah, that is all he said. He said he wanted to call
19 him. He didn't say why. He just said he wanted to
20 call him.

21 Q. And, was he allowed to call Judge Burch?

22 A. No, sir, not by me.

23 Q. Well, did you indicate --- Did you understand that his
24 response that he wanted to talk with Judge Burch came
25 almost immediately after you had Mirandized him?

WAYNE JORDAN - CROSS EXAMINATION

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- 1 A. I don't know Judge Burch as a lawyer. I know him as a
2 judge.
- 3 Q. No. What I am saying is, when he told you he wanted to
4 talk to Judge Burch --
- 5 A. -- Uh'huh.
- 6 Q. That came right after you had told him about Miranda?
- 7 A. Somewhere in that ballpark, yes, sir.
- 8 Q. All right, sir. You read him Miranda?
- 9 A. Uh'huh.
- 10 Q. And his response is, I want to talk to Judge Burch?
- 11 A. He said he wanted to call him, yes.
- 12 Q. All right. And, of course, you didn't know why?
- 13 A. I didn't ask him why.
- 14 Q. And, when was it that he was allowed to call Judge
15 Burch?
- 16 A. To my knowledge he wasn't allowed --- he wasn't called.
17 I didn't let him call Judge Burch. And, to my
18 knowledge, he didn't call Judge Burch.
- 19 Q. Well, did anyone ever allow him to make a call to Judge
20 Burch after he indicated a response to your Miranda
21 that that was what he wanted to do?
- 22 A. To my knowledge, no.
- 23 Q. Well, now if the gentleman was asking to call someone
24 for advice --
- 25 A. -- He didn't ask to call for advice. He just wanted to

WAYNE JORDAN - CROSS EXAMINATION

195

1 call Judge Burch.

2 Q. But that was basically in response to your advising him
3 of his rights; correct?

4 A. He didn't ask for advice. He didn't even ask for an
5 attorney.

6 Q. Right. In any event, in the car on the way to the
7 police station, you read Miranda, and his response was
8 that he wanted to call Judge Burch?

9 A. Because he worked for him, yes, sir.

10 Q. Okay. Now, at some point in time, you did what is
11 called a GSR kit; is that right?

12 A. Yes, sir.

13 Q. Now, a GSR, that stand for gunshot residue; is that
14 right?

15 A. Yes, sir.

16 Q. And what the GSR kit is to determine is, if a gun is
17 fired in close range, the person firing it will have
18 gunpowder residue on their hands?

19 A. That's correct.

20 Q. And, if a person is in close proximity when hit, the
21 GSR will also show gunpowder residue on the person;
22 right?

23 A. That's correct.

24 Q. And, we know that there was a GSR done on Graham?

25 A. Yes, because I did it.

WAYNE JORDAN - CROSS EXAMINATION

196

1 Q. And, it didn't show any gunshot residue on Graham?

2 A. I can't answer that question.

3 Q. Would it surprise you to learn that the GSR that you
4 performed on Graham came back negative?

5 A. Nothing would surprise me, sir.

6 Q. Let's take a look at Defendant's Exhibit Number 44.
7 One GSR kit from Graham Franklin Douglas' right arm.
8 That is what you tested, right?

9 A. That is what I swabbed, yes, sir.

10 Q. Okay. And the result was, no gunshot residue was
11 found?

12 A. That is what the report said, yes, sir.

13 Q. Okay. So, now that you have seen the report, we know
14 that the gunshot residue test you did on Graham was
15 negative, because the SLED report found it that way;
16 right?

17 A. On the right palm, that is correct.

18 Q. Right. And you didn't test the left palm, did you?

19 A. Yes, sir, I did.

20 Q. What did it show there?

21 A. It said, no gunshot residue was found.

22 Q. Okay.

23 A. I did the right back. This is what it says. The
24 quantity of metal found did not indicate presence of
25 gunshot residue. Also did the left-back, right-back,

WAYNE JORDAN - CROSS EXAMINATION

197

1 back right palm, left palm, and left-back.

2 Q. Now, you know though that Graham shot him, because he
3 told you he did.

4 A. Yes, sir.

5 Q. Did you know that there was gunshot residue found on
6 Eden Smith?

7 A. No, I didn't.

8 Q. Now, I want to make sure that we understand. You have
9 been trained in the gunshot residue --- how to take it
10 and so forth and so on?

11 A. That's correct.

12 Q. You have had courses on that?

13 A. Yes, sir.

14 Q. Gunshot residue does not show up unless the person
15 involved was in very close proximity to the gun at the
16 time it was fired; is that correct?

17 A. That's correct.

18 **MR. MOORE:** Brooks, would you help me. Would you
19 please find that GSR test.

20 **MR. JORDAN:** It is right here.

21 Q. Basically, there was a gunshot residue kit taken on
22 Eden; is that right?

23 A. But it wasn't done by me.

24 Q. Right.

25 A. No.

WAYNE JORDAN - CROSS EXAMINATION

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1 Q. But we will see in the report, Exhibit 44, we know that
2 SLED did it, and the gunshot residue test is in
3 evidence.

4 A. Yeah, somebody did a GSR kit on his hand. I am
5 assuming it is going to be the crime scene guy.

6 Q. And we know that on Eden's left palm there was found
7 gunshot residue?

8 A. Yes, sir, that is what it says.

9 Q. All right. So, that would mean that at the time Eden
10 was shot he would have had to be in close enough
11 proximity to the gun to have had gunshot residue on his
12 hand.

13 A. That's correct, or he touched the gun, one of the two.

14 Q. Or he touched the gun, one of the two. He was either
15 touching the gun, or he was close enough with his hand
16 where the residue would show up?

17 A. That's correct.

18 Q. In order for gunshot residue to show up, the person on
19 who it shows must be within two feet of the gun;
20 correct?

21 A. I am not qualified to say that.

22 Q. Haven't you been trained in that?

23 A. I've been trained how to administer it, not the results
24 or the result.

25 Q. In your training, you do know that a person has to be

WAYNE JORDAN - CROSS EXAMINATION

199

1 in very close proximity to the gun in order for gunshot
2 residue --

3 A. -- that is correct, but I don't know distance and
4 footage.

5 Q. Right. One thing that you can say, as one of the
6 trained officers for the Sheriff's Department on the
7 scene, at the time Eden Smith was shot he would have
8 been very close proximity to the gun?

9 A. That's correct.

10 Q. And, at the time Eden Smith was shot, if it was Graham
11 Douglas that shot him, he would have been in very close
12 proximity to Graham Douglas?

13 A. That's correct.

14 Q. Now, you indicated that Graham Douglas didn't say
15 anything that indicated that he had shot in self-
16 defense. You realize this is a portion of your
17 statement don't you?

18 A. Yes, sir.

19 Q. See if you wrote these words. While in Scott's office,
20 I stepped out of the office to receive a phone call,
21 and was just outside the office door in the hall, and I
22 heard Douglas tell Scott that he was a murderer, I shot
23 Eden, Eden is dead, and I had to shoot him.

24 A. That is what he said.

25 Q. All right. So, he basically said, I had to shoot him

WAYNE JORDAN - CROSS EXAMINATION

200

1 before he shot me?

2 A. That is what he said.

3 Q. All right. So, we know then that as drunk as he was,
4 as intoxicated as he was, as under the influence of
5 medicine that he was, he was telling somebody and you
6 heard it, that this thing happened in self-defense?

7 A. He said he had to shoot him before he shot him.

8 Q. Right. Would you not interpret that as being a, I shot
9 him in self-defense?

10 A. If it went down this way, yes, sir.

11 Q. So; when you said that Graham didn't say anything ---
12 Did you say something about you didn't hear Graham say
13 something about self-defense?

14 A. No, I never heard him say anything about self-defense.

15 Q. Well, you heard him say that? That I had to shoot him
16 before he got me, before he shot me?

17 A. I heard him say that, but he didn't come out and say, I
18 shot him in self-defense.

19 Q. Oh, he didn't actually use the word --

20 A. -- No, he never used the word, no, sir.

21 Q. He used the words to the effect of, I shot him in self-
22 defense?

23 A. Yes, sir, that's fine.

24 Q. Isn't that what he said?

25 A. That's what he said. Yes, sir.

WAYNE JORDAN - CROSS EXAMINATION

201

- 1 Q. So, we know at the jail Graham called 911 --
- 2 A. At the jail?
- 3 Q. We know that Graham was the one that called 911?
- 4 A. Oh, Yes, sir. Yes, sir.
- 5 Q. And we know from the start that Graham told you he was
- 6 the one that shot him?
- 7 A. That's correct.
- 8 Q. And, he used words to the effect throughout that he
- 9 shot Eden in self-defense?
- 10 A. Along with murder, and electric chair, Yes, sir.
- 11 Q. And, he was distraught?
- 12 A. Yes, sir.
- 13 Q. And drunk?
- 14 A. Highly, yes, sir.
- 15 Q. Now, when you saw Graham, it was roughly how long after
- 16 this thing had happened?
- 17 A. Oh, I'd say forty-five minutes to an hour.
- 18 Q. You have seen the statement before coming here today?
- 19 A. Yes, sir.
- 20 Q. Is it true that Graham had obvious fresh injuries about
- 21 his body?
- 22 A. He had a fresh injury, yes, sir, over his eye.
- 23 Q. But he also had fresh injuries on his arms?
- 24 A. He didn't have anything two days later like that.
- 25 Fresh enough --- I noticed --- I noticed some bruising.

WAYNE JORDAN - CROSS EXAMINATION

202

1 I didn't notice it to that extent.

2 Q. All right. If you bruised before?

3 A. Yes, sir.

4 Q. It doesn't turn black and blue until later?

5 A. Right.

6 Q. The injuries that Graham had, we can agree that
7 whatever those injuries were, they appeared to be fresh
8 injuries; correct?

9 A. He had fresh ones, yes, sir.

10 Q. They had not matured into full blown black and blue
11 bruises by the time you saw him?

12 A. Saw which one?

13 Q. You indicated in your report that the injuries that you
14 found on Graham were all fresh injuries?

15 A. Yes, sir, I did.

16 Q. Did you find anyone else on the crime scene that night
17 that you would deem capable of inflicting these sorts
18 of injuries beside Eden Smith?

19 A. No, sir.

20 Q. The only people that were there on the scene that night
21 was Graham and Eden; right.

22 A. That's correct.

23 Q. And then next door Graham's Mom and Dad?

24 A. That's right.

25 Q. You don't have any indication that Graham inflicted

WAYNE JORDAN - CROSS EXAMINATION

203

1 these injuries upon himself do you?

2 A. I don't have any, no, sir.

3 Q. So, the only person that would have been in Graham's
4 home to have the proximity and the capability of these
5 fresh injuries would have been Eden Smith?

6 A. That's correct.

7 Q. So, as a result of the investigation, you have
8 concluded the most likely perpetrator of the injuries
9 to Graham was Eden Smith?

10 A. That's correct.

11 Q. Have you ever seen anyone in your law enforcement
12 career that grabbed an arm?

13 A. Yes, sir.

14 Q. Have you ever seen anybody bruise quite this bad by
15 being grabbed?

16 A. Not by being grabbed, no, sir.

17 Q. All right.

18 A. Because there would be a void spot in between the
19 fingers, not closed up.

20 Q. And Graham had blood on him?

21 A. Yes, sir, on his right shin. Right pant leg.

22 Q. Blood wasn't as bad as it looked when they cleaned him
23 up was it?

24 A. It wasn't that bad at all.

25 Q. Did you see the bite mark on his leg?

WAYNE JORDAN - CROSS EXAMINATION

204

1 A. I never saw a bite mark. Never.

2 Q. Did you look for one?

3 A. Didn't look for one, and was never told that there was
4 a bite mark.

5 Q. In your report, you put here both arms were black and
6 blue as if someone had grabbed him. What did you mean
7 by that?

8 A. That he just had some black and blue markings on his --
9 - what I will call his forearm. I call the humerus
10 arm.

11 Q. I'm sorry. I was trying to get that word. As if
12 someone had grabbed him. What you put in this report
13 is fresh marks, black and blue, as if someone had
14 grabbed him?

15 A. Uh'huh.

16 Q. What did you mean by that?

17 A. That somebody grabbed both of his forearms.

18 Q. So, it looked to you like the markings on his arms were
19 as if they had been caused by a grab like this?

20 A. The ones that I saw that night, yes.

21 Q. And, those are the ones that ultimately matured into
22 the marks that we have been parading around the
23 courthouse today; correct?

24 A. I assume so.

25 **MR. MOORE:** A moment, Your Honor.

WAYNE JORDAN - CROSS EXAMINATION

205

1 (PAUSE.)

2 Q. The marks you saw would be something like this,
3 referring to Exhibit Number 10; but it hadn't matured
4 yet; right?

5 A. That is close. Yes, sir.

6 (PAUSE.)

7 Q. You say, I relate this injury as if someone grabbed
8 Douglas and shook him.

9 A. Yeap.

10 Q. So, when you got there, those injuries that he had,
11 those fresh injuries looked to you as if someone had
12 grabbed him and shaken him?

13 A. Now, these are not the injuries that I saw the night I
14 took the clothes from him now.

15 Q. No, sir. Those are the injuries that were two days
16 later, but they were in the area. When you say those
17 are not the injuries, those are not the way the
18 injuries looked the night you took the clothes; is that
19 correct?

20 A. That's correct. That is not even close.

21 Q. Let me call your attention to Exhibit Number 33, that
22 is the way he looked at the jail; right?

23 A. I think so. Again, I didn't go to the jail.

24 Q. And Exhibit Number 34, that is the way he looked to
25 you?

WAYNE JORDAN - CROSS EXAMINATION

206

1 A. If I had went to the jail, yeah.

2 Q. And 35?

3 A. Yes, sir.

4 Q. And 36?

5 A. Yes, sir.

6 Q. And 37?

7 A. I don't recall that on his chest.

8 Q. And 38?

9 A. And I don't recall that on his back either.

10 Q. And 29?

11 A. I do recall his eye, but it wasn't that swollen.

12 Q. And basically what you can tell me is the marks that
13 you see taken pictures of June 2nd, are in the exact
14 same place as the marks you saw that night, they just
15 look different?

16 A. That's correct.

17 Q. You don't have any indication that anyone meant him any
18 additional harm while he was in jail?

19 A. I don't have any indication of that, no, sir.

20 Q. So, as far as we know, the injuries that he sustained
21 by the perpetrator, freshly that night, would be the
22 same injures taken June 2nd, they had just gotten
23 matured as time enough to see the difference?

24 A. That's correct. Yes, sir.

25 **MR. MOORE:** Thank you, for answering my questions.

WAYNE JORDAN - REDIRECT EXAMINATION

207

1 **THE COURT:** Redirect?

2 **MR. FINNEY:** Please, Your Honor.

3 **THE COURT:** Go ahead.

4 **REDIRECT EXAMINATION BY MR. FINNEY**

5 Q. Investigator, did you have an occasion to know Mr. Leon
6 Douglas?

7 A. Yes, sir. He works for the Sheriff's Office.

8 Q. And, what kind of fellow do you know him to be?

9 A. He is an upstanding guy. I mean, he will do anything
10 that we ask him to do.

11 Q. Do you think he is the kind of fellow that would be
12 upset if he found out that his son had been involved in
13 a shooting?

14 A. He was upset, yes, sir.

15 Q. Did you know that for a fact that he was upset that
16 night?

17 A. I mean, you could tell he was upset, yes, sir; his son
18 had just shot somebody. Yes, sir.

19 Q. Between the time that the 911 call was made and the
20 time the 911 people arrived, can you estimate for us
21 about how many minutes went by?

22 A. Are you referring to our deputies, or are you referring
23 to EMS, first person?

24 Q. First person. Do you think it was three minutes, seven
25 minutes, several minutes.

LEON DOUGLAS - DIRECT EXAMINATION

208

1 A. I would say anywhere from four to six minutes.

2 Q. I'm sorry. Four to six minutes, Graham Douglas was at
3 the house along with his father and his mother?

4 A. I would assume so, yes, sir.

5 Q. And, Mr. Douglas was upset when you got there?

6 A. Yes, sir.

7 **MR. FINNEY:** Nothing further.

8 **THE COURT:** All right, sir. You may step down.

9 Thank you.

10 Please call your next witness. Counsel, do you have
11 any further witnesses, are we going to go back to the
12 defense.

13 **MR. MOORE:** Your Honor, I might take a turn at this.

14 **THE COURT:** Go ahead.

15 **MR. MOORE:** I would like to call Leon Douglas.

16 **THE COURT:** Please come forward and take the oath of
17 a witness.

18 **WHEREUPON, LEON DOUGLAS**

19 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

20 **MR. DOUGLAS:** I do.

21 **THE COURT:** You may proceed.

22 **DIRECT EXAMINATION BY MR. MOORE**

23 Q. What is your name?

24 A. Leon Douglas.

25 Q. Mr. Douglas, how are you related to Graham?

LEON DOUGLAS - DIRECT EXAMINATION

209

- 1 A. He is my son.
- 2 Q. How old are you?
- 3 A. Sixty-five.
- 4 Q. What do you do for a living?
- 5 A. I work for the Sheriff's Department over at the jail at
- 6 the present time.
- 7 Q. What do you do over there?
- 8 A. Well, I am a Detention Officer.
- 9 Q. Do you and your wife own the property where Graham
- 10 lives?
- 11 A. Yes, sir.
- 12 Q. How is it that he is living there?
- 13 A. Well, the house was available. My wife's father-in-law
- 14 and mother owned the house originally, and both of them
- 15 are deceased now, and it was just open. So, it was
- 16 convenient for him to move in.
- 17 Q. So y'all were allowing Graham to live there at that
- 18 time?
- 19 A. Right; that is correct.
- 20 Q. Your house would be roughly how far away?
- 21 A. Probably a hundred yards.
- 22 Q. Do you recall coming home on may 31, 2011?
- 23 A. Yes, sir.
- 24 Q. Did you know that Graham and Eden were over there?
- 25 A. I saw Eden's vehicle in the driveway, so I assumed that

LEON DOUGLAS - DIRECT EXAMINATION

210

1 he was there.

2 Q. Did you have any idea what was going on in the house?

3 A. No, sir.

4 Q. What is the first thing that happened that lead you to
5 know that something was wrong?

6 A. Well, we were in the den of our home watching tv. I
7 don't know what tv program, it is immaterial. But,
8 anyway, Graham for the lack of a better term, barged
9 into the back door. I could tell when he entered from
10 the sound that something was wrong. I didn't know
11 whether he was injured, I didn't know. But anyway, I
12 went into the kitchen and he was on the phone, and he
13 just handed me the phone and said, Eden has been shot.
14 And, then he left out of the backdoor and went back
15 over to his house. And, of course, I gave the EMS
16 folks instructions, directions to the house. I think
17 it was on a tape this morning?

18 Q. The tape we heard this morning?

19 A. They asked me what was going on, and I said, I didn't
20 have a clue. So, anyway, I went --- left the kitchen,
21 went over and went into the back door of Graham's
22 house, and he was just walking in circles in the
23 kitchen. He was just absolutely beside himself. If
24 someone was having a nervous breakdown, he was ready
25 for one, you know, with what I saw. So, my main

LEON DOUGLAS - DIRECT EXAMINATION

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1 concern was, just to get him out of there and we were
2 in the backyard.

3 Q. Was Eden on the floor?

4 A. Yes.

5 Q. Could you tell he was pretty much dead?

6 A. Yes, sir. There was no doubt.

7 Q. So, you went into the house. Do you recall how Eden
8 was dressed?

9 A. No, sir. I empathized with Graham this morning when he
10 was testifying about what he had on, because I --- I
11 couldn't tell. I do remember seeing the gun close to
12 the body, and to --- in honesty, I just want to make
13 sure Graham didn't still have the gun, because I was
14 worried about his safety. The deputies must have been
15 about two blocks from the house. I have never known
16 them to respond as quick as they did. Graham and I
17 were in the backyard and in minutes they were there,
18 and they immediately took Graham into custody, and I
19 didn't get a chance to see him again until the
20 following weekend at the visitation at the jail.

21 Q. Graham historically --- has he ever had a propensity
22 towards violence?

23 A. Not towards violence. It is very obvious that he has
24 had some alcohol abuse problems from time to time, but
25 not a violent nature. I mean, he is like me or anybody

LEON DOUGLAS - DIRECT EXAMINATION

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1 else, you are going to get mad occasionally, but you
2 know not --- not violent, no.

3 Q. Has his dyslexia caused any problems over the years?

4 A. Very much so. Normal problems that we deal with day-
5 to-day, like you will ask him a question. And, I
6 always expect an immediately answer when somebody gives
7 me a question. Sometimes you ask him a question and
8 you get a blank stair. And, you think well, he didn't
9 hear me. And then he answers the question. His
10 thought process as a general rule just takes longer to
11 function than normally should.

12 Q. Does he ever get words in sentences out of context?

13 A. Yes.

14 Q. Can you give us an example?

15 A. Well, he has a lot of problems with numbers, right and
16 left is a big deal with him. If I am a passenger in
17 his vehicle, or if I am driving and he tells me to turn
18 left, ninety percent of the time I am going to turn
19 right, because I know that is where we need to go. He
20 gets right and left confused.

21 Q. Does his problem with the dyslexia, when he gets upset,
22 does it magnify at all?

23 A. Yes, sir. Like I said, his thought process is just
24 different, and yeah, it would be different than normal
25 people. It is hard to explain, but --

LEON DOUGLAS - CROSS EXAMINATION

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1 Q. But, did Graham appear to be injured at all when he
2 barged into your house?

3 A. I noticed that he was -- he just looked like his
4 clothes were as que, and he is normally a very neat
5 guy. A good looking guy, I think. But, you know, his
6 clothes were as que, and I noticed his face was puffy
7 looking. And like I said, we were in the backyard, and
8 they immediately came up. They handcuffed him and they
9 took him to a patrol car. He was outside of the patrol
10 car and I can't even remember which deputy, I think
11 maybe Deputy Campbell was with him, and he asked
12 Graham, he said what is wrong with your leg, because
13 his right knee was bloody, and there was blood down the
14 front of his pants. And I asked the deputy, may I lift
15 his pants up to see what is wrong, which I did, and
16 there was some type of injury to his right knee.
17 Somebody told me along the line that it was a bite
18 mark, but I don't know, but it was some type of
19 protrusion type injury on his right knee.

20 **MR. MOORE:** Thank you, Leon. Would you answer any
21 questions opposing counsel might have.

CROSS EXAMINATION BY MR. FINNEY

23 Q. Mr. Douglas.

24 A. Yes, sir.

25 Q. You have invested a lot of time and love into Graham

LEON DOUGLAS - CROSS EXAMINATION

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1 Douglas?

2 A. Yes, sir.

3 Q. And you found out by going into the kitchen that
4 afternoon that he had shot someone he knew as a friend,
5 you were disappointed, you were shocked?

6 A. Mr. Finney, you have got to realize, I knew this young
7 man. I knew his family. I was --- I was distressed.
8 I was not mad, I was just distressed, hurt, upset. I
9 was worried about Graham, his mental state. I was
10 worried about the Smith family, what they would be
11 going through. But, as far as being mad with Graham,
12 no. I mean, yeah, I would just --- I have gone through
13 the death of both of my parents, a brother and a
14 sister, both of my in-laws, a number of aunts, uncles,
15 and close friends. But I can unequivocally say that
16 this was the worst day of my life. It was a nightmare.
17 And, as far as being mad and upset, no. I was
18 concerned about all parties involved, but no, I would
19 not classify myself as being mad.

20 Q. And is it were true that you stayed with Graham from
21 the time you left the 911 until the officers arrive,
22 you were with him?

23 A. Well, like I said, he came --- and our house is right
24 next door to one another. And he came into the
25 backdoor of the kitchen. He handed me the phone, so I

LEON DOUGLAS - CROSS EXAMINATION

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1 was on the phone a while with 911 Emergency Services.
2 He left and went back to his home. I immediately left
3 and went over there. And like I said, he was just
4 pacing, and I wanted to get him out of that situation.
5 We just waited in the backyard, and like I said, it was
6 just a matter of minutes. You can probably check the
7 911 records, but it was just a very, very short time
8 until they were there.

9 Q. Minutes?

10 A. Minutes, yes, sir.

11 Q. When did you first realize he had been drinking?

12 A. Probably when I first saw him.

13 Q. And that was not unusual?

14 A. Well, it wasn't an everyday occurrence, but I had seen
15 him drinking before, yes.

16 Q. And, you understood and had told him in the past that
17 drinking did not go along with his dyslexia and his
18 other conditions that he had?

19 A. Well, Mr. Finney, I do not drink myself. I do not
20 condone drinking. I don't like drinking. I hate
21 alcohol. And for that reason, you know, I stay on his
22 case about it for various reasons.

23 Q. And he doesn't drink around you?

24 A. No.

25 Q. As far as his physical ability, he came into the house,

LEON DOUGLAS - CROSS EXAMINATION

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1 and I believe your word was, he barged in?

2 A. Right, yes, sir.

3 Q. So, he was not in any way hindered by any injuries in
4 terms of getting into the house, making the call,
5 informing you of what had happened, and running back to
6 the other house?

7 A. No. Like I said, his face was puffy.

8 Q. It wasn't his whole face was it Mr. Douglas?

9 A. The whole side of his face.

10 Q. Sir?

11 A. I thought the whole idea of protecting oneself is to
12 prevent getting in the shape where you are not able to
13 move, or not able to function. The degree of his
14 injuries, in my opinion, pretty much totally material.
15 I mean, he was apparently attacked, or somebody
16 attached him, and he was injured. But, no, he was not
17 incapable of moving around.

18 Q. And, of course he was not incapable of moving around.
19 You saw him come into your house quickly. Make a
20 report. Make a phone call. And leave quickly to go
21 back to the scene?

22 A. Yes, sir.

23 Q. And you watched him as he paced around --

24 A. -- We are talking about seconds here. Because, you
25 listened to the tape this morning, you saw how quick

LEON DOUGLAS - CROSS EXAMINATION

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1 the tape went, and then immediately the door is right
2 there at me. I walked out the backdoor and walked over
3 to Graham's house, and we are talking about seconds not
4 minutes.

5 Q. There was nothing wrong with his gape, there was
6 nothing wrong with his vision, and there was nothing
7 wrong with the use of his arms and extremities?

8 A. I really can't say that, because he was so distraught,
9 he was crying, he told me he was scared. Emotionally,
10 he was shot. He could have had a limp and I would not
11 have even noticed because he was so mentally distraught
12 at this time.

13 MR. FINNEY: Thank you very much.

14 MR. DOUGLAS: Okay.

15 THE COURT: Redirect, if any?

16 MR. MOORE: None, Your Honor.

17 THE COURT: All right, sir. You may step down

18 MR. DOUGLAS: Thank you.

19 THE COURT: Thank you.

20 MR. MOORE: We call Roy Drake.

21 THE COURT: Please come forward and take the oath of
22 a witness.

23 WHEREUPON, ROY DRAKE

24 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

25 MR. DRAKE: I do.

ROY DRAKE - DIRECT EXAMINATION

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DIRECT EXAMINATION BY MR. MOORE

1 Q. What is your name, please?

2 A. Sergeant Drake. Roy Drake.

3 Q. Sergeant Drake, where are you employed?

4 A. Sir?

5 Q. Where are you employed?

6 A. Cheraw Police Department.

7 Q. Are you familiar with an incident back in 2010
8 involving Eden Smith?

9 A. Yes, sir.

10 Q. Was Mr. Smith arrested?

11 A. Yes, sir.

12 Q. What was he arrested for?

13 A. Assault.

14 Q. Who had he assaulted?

15 A. Ms. Roland. Ms. Cynthia Roland.

16 **MR. FINNEY:** Your Honor, please let me interpose the
17 same objection that we had with the Myrtle Beach police
18 officer, and the same grounds. The fire incident, not
19 something that this officer talked with Mr. Graham about.
20 And therefore, it is leading the horse again, as we proceed,
21 Your Honor, with there being no real chance of curing it
22 later.
23

24 **THE COURT:** Mr. Finney for the same reasons given
25 previously, I am going to overrule your objection, and allow

ROY DRAKE - DIRECT EXAMINATION

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1 it in for completeness of the record. Your objection is
2 preserved. And please proceed.

3 **MR. MOORE:** Thank you, Your Honor.

4 Q. The incident that lead to his arrest, the place?

5 A. The [REDACTED] block of [REDACTED] street in Cheraw.

6 Q. Who had he assaulted?

7 A. Ms. Cynthia Roland.

8 Q. What did he do to her?

9 A. Bit her on the shoulder.

10 Q. Were you part of the team that arrested and
11 incarcerated him?

12 A. Yes, sir.

13 Q. When he was arrested, did you have any type of problem
14 with him?

15 A. Well, after --- He wasn't a problem until we got him to
16 the jail. And as I recall, he was sobbing about his
17 deceased sister, and he had a band on his arm that he
18 did not want to take off, and when we process, we
19 pretty much take everything they have. And after that
20 he got a little distraught, a little angry. We had to
21 forcibly put him in the cell.

22 Q. Was a Taser used?

23 A. Yes, sir.

24 Q. How many of you did it actually take to put him in the
25 cell?

RAY DRAKE - CROSS EXAMINATION

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1 A. Two of us.

2 Q. Were you able --- Were two of you able to put him in
3 the cell against his will without the use of a Taser?

4 A. Well, yes, sir, pretty much. But once we got him in he
5 charged back at us, and I attempted to taze him.

6 Q. Do you know what happened to those charges, the
7 criminal charges?

8 A. When we went to court, I think he pretty much plead
9 guilty to the incident.

10 **MR. MOORE:** Thank you, very much. If you would
11 answer any questions that the Solicitor may have for you.

12 **THE COURT:** Is there cross examination?

13 **MR. FINNEY:** Just a couple of questions, Your Honor.

14 **CROSS EXAMINATION BY MR. FINNEY**

15 Q. Did you have an occasion to have an understanding that
16 Mr. Smith had been drinking that night?

17 A. Yes, he was intoxicated.

18 Q. Was he highly intoxicated?

19 A. Highly intoxicated.

20 Q. Did he know this young lady that he supposedly
21 assaulted?

22 A. I don't know. I have no knowledge of that.

23 Q. My understanding is a call came to the officers to
24 respond to --- they responded to officers, and he was
25 still there?

RAY DRAKE - CROSS EXAMINATION

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1 A. Yes, sir.

2 Q. And, as a result of responding, you said you arrested
3 him without incident?

4 A. Without incident, but --

5 Q. -- But, you took him back to the jail?

6 A. Yes, sir.

7 Q. I'm sorry. The Detention Center for the City or the
8 County, are they the --

9 A. -- No, we got a jail at Cheraw Police Department.

10 Q. At the Police Department?

11 A. Yes, sir.

12 Q. And, he was taken to the Detention Center and
13 everything was fine until somebody wanted to take his
14 sister's --

15 A. -- Band off of his arm.

16 Q. And, he resisted that?

17 A. He resisted that.

18 Q. And, he became aggressive?

19 A. Aggressive, yes, sir.

20 Q. You did take the sister's bracelet off?

21 A. Yeah, we got the bracelet.

22 **MR. FINNEY:** Nothing further.

23 **THE COURT:** Redirect.

24 **MR. MOORE:** None, Your Honor.

25 **THE COURT:** Objection to the release of this witness?

RAY DRAKE - CROSS EXAMINATION

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1 **MR. FINNEY:** No objection.

2 **THE COURT:** All right, sir. You are not required to
3 leave, but you are free to go if you wish.

4 **MR. DRAKE:** Thank you, sir.

5 **THE COURT:** Have a good day, sir.

6 **MR. DRAKE:** You too.

7 **MR. MOORE:** Would the Court give us two or three
8 minutes to consult, Your Honor?

9 **THE COURT:** Yes, sir. We will just remain where we
10 are.

11 (PAUSE.)

12 **MR. MOORE:** Your Honor, that would be our case.

13 **THE COURT:** Thank you. The defense rest now with
14 their motions.

15 Tell me, how many witnesses do you have that you want
16 to call?

17 **MR. FINNEY:** Your Honor, please. Your Honor, I would
18 request that we be given a recess at this point so that we
19 can get ready for tomorrow.

20 **THE COURT:** Very good.

21 **MR. FINNEY:** Because we have a pathologist scheduled
22 for 2:30, one of our SLED agents, a firearm's GSR person, is
23 already subpoenaed to Spartanburg in the morning, and I was
24 hopeful that I could call her after the pathologist at 3:30.
25 That still leaves me the morning to do at least two chemical

RAY DRAKE - CROSS EXAMINATION

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1 people from SLED, and one crime scene expert witness who
2 will talk about the pants, and the other evidentiary things.
3 So, I think we have three SLED officers in the morning, then
4 the pathologist at 2:30 and maybe one other SLED officer at
5 3:30 if she can get here.

6 **THE COURT:** All right. Then let's adjourn then until
7 9:30 tomorrow morning. We will end for today so that you
8 can prepare for tomorrow. And, we will resume in this
9 courtroom tomorrow morning, ladies and gentlemen. Judge
10 Burch has kindly agreed to either go to the family court
11 room or the jury assembly room so that we will be back here
12 at that time.

13 Now, anything further before we close our record for
14 the day?

15 **MR. MOORE:** The only thing I want to ask the Court to
16 do, would the Court be willing to go and maybe walk through
17 this house with nobody there, just to take a look?

18 **THE COURT:** What say you to that, Mr. Finney?

19 **MR. FINNEY:** One moment, Your Honor.

20 (PAUSE.)

21 **MR. FINNEY:** No objection, Your Honor.

22 **THE COURT:** All right. If we do that, is it your
23 suggestion that the Court will go with counsel, or go by
24 myself?

25 **MR. MOORE:** I think it would be better for the Court

RAY DRAKE - CROSS EXAMINATION

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1 to go by yourself, and take a look. But I am willing to go
2 or not go, and certainly at the Court's leisure. This
3 afternoon, tomorrow, whenever. I will go with counsel,
4 without counsel, whatever the Solicitor discretion, whatever
5 he wishes.

6 **MR. FINNEY:** Your Honor, I would prefer to go with
7 the Court as an advocate for my case. Quite frankly, I
8 don't know if there would be any evidentiary value to the
9 trip, but I don't have an official reason to object, so I
10 won't object.

11 **THE COURT:** Well, let's do it this way. I will grant
12 your request, Mr. Moore, and we will do this in the
13 following way. I would like for counsel to go, that is one
14 counsel on each side to go. We will not take testimony, nor
15 will we discuss the facts or the arguments of the case, so
16 our record will be protected. And simply give an
17 opportunity to go in and look, just as if a jury was going
18 to the scene without testimony, again without discussion,
19 and then return to the courthouse.

20 Tell me, how far would that be from this location in
21 terms of minutes?

22 **MR. MOORE:** About five miles, Your Honor.

23 **THE COURT:** Do you want to do that today or do that
24 tomorrow, Mr. Moore?

25 **MR. FINNEY:** If I may, maybe because of the flow of

RAY DRAKE - CROSS EXAMINATION

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1 the witnesses tomorrow, we might have a early recess for
2 lunch, because witnesses may be joggling. We might break
3 and go to this place at 11:30 or twelve o'clock.

4 **THE COURT:** All right. We will take your witnesses
5 tomorrow. Then we will stand down. We will make that
6 visit. Then come back, and at 2:30 we will take up with
7 your professional witness.

8 All right. Then ladies and gentlemen, we with that
9 understanding, we will be in recess now until 9:30 tomorrow
10 morning.

11 (Whereupon, day one of this hearing concludes
12 at 4:12 p.m. on Tuesday, October 2, 2012.)

13 -- END OF DAY ONE --

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1 (Whereupon, day two of this hearing begins at
2 9:37 a.m. on Wednesday, October 3, 2012.)

3 -- DAY TWO OF HEARING --

4 **THE COURT:** Good morning. Please be seated. We are
5 here today in the matter of The State versus Graham Douglas.
6 Who wishes to go first?

7 Are you ready to go Mr. Finney?

8 **MR. FINNEY:** I am, Your Honor.

9 **THE COURT:** If you are, please call your first
10 witness.

11 **MR. FINNEY:** There have been some photographs that we
12 would like to get into evidence. Three photographs of the
13 crime scene. I have shown them to counsel, and he has no
14 objection. I would like to have these marked as State's
15 Exhibit Number

16 **THE COURT:** All right. We will take a moment and
17 mark those now.

18 **WHEREUPON, STATE EXHIBIT**

19 **NUMBER 23, 24, AND 25 WERE**

20 **ADMITTED INTO EVIDENCE WITHOUT**

21 **OBJECTION.**

22 **THE COURT:** Are you ready?

23 **MADAME COURT REPORTER:** Numbers 23, 24, and 25, Your
24 Honor.

25 **THE COURT:** All right. Are there objections to these

RAY DRAKE - CROSS EXAMINATION

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1 three exhibits?

2 **MR. MOORE:** None at all.

3 **THE COURT:** All right. And that is for the State?

4 **MADAME COURT REPORTER:** Yes, sir.

5 **THE COURT:** 23, 24, and 26 in evidence.

6 **MR. FINNEY:** Thank you, Your Honor. Additionally,
7 Your Honor, it has come to the attention of the State,
8 because of the testimony of Mr. Douglas yesterday, that we
9 need to call witness to confirm the ownership of the pants
10 in the front of the guest bedroom, and the items next to the
11 pants, which are a men's wallet and a pair of eyeglasses. I
12 have the aunt of the decease, Ms. Sandra Smith, who is
13 prepared to testify and authenticate those items. And we
14 would like to call her this morning, right now. I have
15 spoken to counsel about it and he has no objection.

16 **THE COURT:** Mr. Moore?

17 **MR. MOORE:** Your Honor, we have never been advised of
18 this witness. We have never heard of this witness until
19 this morning. We have never seen any type of statement from
20 this witness. The witness is not on any witness list, which
21 we have changed witness list. We were never given any
22 notification. There is nothing in the record.

23 You know, we have an issue in regard to those things
24 which haven't been disclosed. Yesterday the SLED agent
25 testified that he actually did a report, and apparently said

RAY DRAKE - CROSS EXAMINATION

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1 he gave it to the police department. We had never seen that
2 report from the SLED agent that testified yesterday.

3 There are huge numbers of things which we simply have
4 never seen. This is another example, in fact, that we now
5 have a witness at this late date whose name was never
6 disclosed, we know nothing about this person. We have seen
7 no statement from this person. And this morning when I
8 walked into the courtroom is the first time I have heard
9 this person might exist.

10 **THE COURT:** Let me ask you this, going beyond that
11 issue to the substance of the testimony. Do you dispute
12 what the witness says?

13 **MR. MOORE:** Yes, sir.

14 **MR. FINNEY:** If I may, Your Honor. The State has
15 been working with the theory that the pants belonged to
16 Charles Eden Smith, because the SLED personnel listed the
17 evidence taken from the house in terms of Graham Douglas and
18 Charles Eden Smith. The pants were located in the back
19 bedroom next to the wallet and glasses, and next to the red
20 duffle bag that he brought to the house that day. There has
21 been no contention through all of the reports --- there has
22 been no contention by the defense that those pants, which
23 were marked as Charles Eden Smith pants on several items in
24 the SLED report, did not belong to Charles Eden Smith.
25 Yesterday was the first time that the State was aware that

RAY DRAKE - CROSS EXAMINATION

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1 Mr. Douglas may have contended that they were in fact his
2 pants. And that he owned them and had them in the front
3 bedroom.

4 **THE COURT:** Right. I understand. I perceive the
5 nature of the testimony and the bases for the opposition to
6 it from the other side.

7 And this is the Court's decision. Mr. Moore, I am
8 going to respectfully deny your --- I guess overrule your
9 objection would be the best way to say it for the following
10 reasons.

11 First of all, this is a relative new area of the law.
12 We are in here today with the defense having a burden and
13 going first in what is a criminal matter, which reverses the
14 way we have all practiced criminal law for many years.
15 Typically, when you have a party that goes in and puts up a
16 case, the other party is able to reply. And sometimes in
17 reply, based on what comes out in the direct case, or the
18 main case, new or perhaps what was previously thought to be
19 unimportant or irrelevant evidence is suddenly important and
20 relevant.

21 And, for those reasons, I am going to allow the witness
22 to testify.

23 Now, if you are damaged by this however, when you come
24 back on reply, if you have a witness you want to call on
25 this point that hasn't testified previously, then we will

RAY DRAKE - CROSS EXAMINATION

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1 take that up at that time.

2 **MR. MOORE:** I certainly appreciate the Court's
3 ruling. Might I ask this? The officer yesterday, I believe
4 the lead investigator from SLED testified that he did a
5 report, gave it to the Solicitor, we have been begging for
6 that report. That has motions pending in regard to we do
7 not have that report. I would very greatly appreciate the
8 Court's assistance if that report could even at this late
9 date can be turned over to us. We don't even know what is
10 in it. We sure would like to know.

11 **THE COURT:** All right. Well, let me ask Mr. Finney,
12 based on what I am hearing, that would seem to be very
13 standard discoverable evidence. Tell me why that has not
14 been divulged?

15 **MR. FINNEY:** I went last night, Your Honor, and
16 looked for it. And the witness said -- Mr. Johnson said, he
17 prepared a report and I signed it. If there is a signed
18 report that has been turned over to me, I will be glad for
19 Mr. Johnson, who is in court, to see if he has the file, if
20 he has the report that he sent to the Solicitor's Office,
21 because one of the things I was working with is that the
22 report was prepared in Chesterfield and then forwarded to
23 Sumter. And, if he gave a report to Chesterfield, I would
24 like to see it myself. But, I did not find any signed
25 report from the officer.

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1 **MR. MOORE:** But, I believe his testimony yesterday,
2 and this may be a serious issue in regard to credibility.
3 He was fairly adamant yesterday on the stand that he had
4 given the report to the Solicitor's Office. That is what he
5 testified to. And I believe Mr. Finney, who says --- If Mr.
6 Finney tells me something, it is true as far as I am
7 concerned. But, we now have a situation where the officer
8 has apparently testified to something that the Solicitor is
9 now saying isn't true.

10 **THE COURT:** Well, rather than view it as a falsehood,
11 what I view it is in the transfer of evidence to where it
12 normally would not go to Sumter perhaps somewhere that paper
13 has been mislaid. But, clearly it hasn't disappeared,
14 because SLED would maintain a copy. I am certain there is a
15 copy of it somewhere. And I am as equally certain you are
16 entitled to Mr. Moore.

17 **MR. MOORE:** Thank you.

18 **THE COURT:** So, we will assist you. We may not be
19 able to resolve it this very moment, but the Court will
20 assist you in tracking that document down and providing it
21 to you.

22 **MR. MOORE:** We thank you.

23 **MR. FINNEY:** And I promise the Court that I will have
24 it by the end of this hearing today.

25 **THE COURT:** That is fair enough. So, Mr. Finney,

SANDRA SMITH - DIRECT EXAMINATION

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1 over objection, please call your first witness.

2 **MR. FINNEY:** We call Sandra Smith to the stand.

3 **THE COURT:** Please come forward and take the oath of
4 a witness. Come around this way will be fine.

5 **WHEREUPON, SANDRA SMITH**

6 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

7 **MS. SMITH:** I do.

8 **DIRECT EXAMINATION BY MR. FINNEY**

9 Q. Could you tell us your full name, please?

10 A. Sandra Sue Smith.

11 Q. And, Ms. Smith, where do you live?

12 A. [REDACTED], [REDACTED] in Chesterfield.

13 Q. All right. And how long have you lived there?

14 A. Approximately ten years.

15 Q. What relation are you to Eden Smith?

16 A. I am his aunt.

17 Q. And how is that maternally?

18 A. Paternally. My brothers -- paternally.

19 Q. All right. And, did Charles Eden Smith live with you
20 for the last months of his life?

21 A. Yes, he did.

22 Q. And was that in Chesterfield County?

23 A. Yes.

24 Q. And how long had he lived with you before his death?

25 A. He had lived there since --- Well, he had been back in

SANDRA SMITH - DIRECT EXAMINATION

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1 Chesterfield since November.

2 Q. All right. And he passed away May 31st?

3 A. May 31st.

4 Q. Was he continuously living with you every night, so to
5 speak, unless he was visiting family or friends, he was
6 in Chesterfield?

7 A. Yes. Uh'huh.

8 Q. Do you remember having a conversation with him at your
9 house the day before he went to play golf with Graham
10 Douglas?

11 A. Yes, I do.

12 Q. Would you tell the Judge the nature of that
13 conversation?

14 A. Eden was trying on a pair of slacks he planned to wear
15 to the golf course. And, he tried on the pants, and
16 came in and asked me if I thought they were too long.
17 And, I said, well, I really don't think so, but if I
18 hem them they will lose the cuff. So, the pants were
19 a light-weight summer material, and they had cuffs,
20 kacki pants.

21 Q. Did you see the pants?

22 A. Yes.

23 Q. And to your knowledge, the next day, did he wear the
24 pants?

25 A. Yes, he did. I saw him walk out of the house with the

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1 pants on.

2 Q. I want to show you what has been marked as State's
3 Exhibit Number 12, and ask if you can identify anything
4 in that picture, relative to your testimony just now?

5 A. That looks exactly like the pants that he had on.

6 Q. All right. And the pants in that picture are where?

7 A. On the bed.

8 Q. All right. And that is a four-poster bed?

9 A. Yes.

10 Q. Have you ever been to Graham Douglas' house?

11 A. No, I haven't.

12 Q. All right. Then you don't know the furnishings and the
13 contents thereof?

14 A. No.

15 Q. Those pants in that picture, State's Exhibit Number 12,
16 do they have cuffs?

17 A. Yes, they do.

18 Q. All right. And, let me also show you in State's
19 Exhibit Number 12, can you identify any other items on
20 the bed along with the pants?

21 A. The wallet and the glasses are Eden's.

22 Q. Let me show you State's Exhibit Number 21, which is a
23 little different view. And, State's Exhibit Number 22,
24 which is a little different view. Do those all seem to
25 be a photograph of the same pants, wallet, and glasses?

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1 A. Yes.

2 Q. And can you identify that wallet and glasses as
3 belonging to anyone?

4 A. They belong to Eden.

5 Q. And you saw him wear those glasses often?

6 A. Yes.

7 Q. How did --- What was your impression about how Eden
8 felt to go play golf?

9 A. He told me he was so excited to go play golf with
10 Graham, because he loved Graham like a brother. And,
11 they had not been out lately to do anything together.
12 And he said Graham had been somewhat depressed, and he
13 thought it would be good for Graham to get out.

14 Q. Those were his words to you?

15 A. Those were his words to me.

16 Q. All right. What time would you say that he left the
17 house that morning to go play golf?

18 A. He left about nine maybe --- nin'ish.

19 Q. All right. Would you tell us what type of shirt he had.
20 on if any?

21 A. He had on a shirt that belonged to my father.

22 Q. Your father?

23 A. My father. So, that would be Eden's grandfather. It
24 was a white short sleeve shirt, college shirt button
25 down the front, and it was white with a little round

SANDRA SMITH - CROSS EXAMINATION

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1 blue emblem all over the shirt.

2 Q. The little white blue pattern was on the back, front,
3 the arms, everywhere?

4 A. Yes, it was.

5 Q. It was a short sleeve shirt?

6 A. Short sleeve.

7 Q. Would it have been the type of shirt a fellow would
8 play golf in?

9 A. Oh, absolutely. It was very hot that day, and it was a
10 very thin shirt.

11 Q. Have you seen that shirt since Eden left the house?

12 A. I have not.

13 **MR. FINNEY:** Nothing further. Thank you, ma'am.

14 **THE COURT:** And now we will have cross examination,
15 ma'am.

16 **CROSS EXAMINATION BY MR. MOORE**

17 Q. Ma'am, as I understand it, Graham and Eden were good
18 friends?

19 A. Yes.

20 Q. As far as you know then, Graham would have had no
21 reason to have wanted Eden dead?

22 A. Not to my knowledge.

23 Q. You know of nothing that Graham would have had against
24 Eden?

25 A. No, I don't.

SANDRA SMITH - CROSS EXAMINATION

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1 Q. You know of no reason why Graham would have wanted to
2 kill him?

3 A. No.

4 Q. Now, you indicated that the pants that were in this
5 photograph you were shown looked like the pants that
6 Eden had on?

7 A. Yes.

8 Q. Did you know that the pants that you are talking about
9 were analyzed for blood, and the blood on the front of
10 those pants were Graham Douglas's blood?

11 A. I was told that yesterday.

12 Q. And, of course, if the --- You are saying these pants
13 look like the ones that Eden had on?

14 A. Yes.

15 Q. Of course, they are kacki pants?

16 A. Right.

17 Q. Lots of people have kacki pants?

18 A. Yes.

19 Q. And, since you say they look like the ones that Eden
20 had on, you are not totally positive those are the same
21 pants are you?

22 A. I couldn't be totally positive.

23 Q. All right. But, one of the things that we do know is,
24 that whoever pants they were, that from what you
25 understand, the blood on those pants were Graham's

SANDRA SMITH - CROSS EXAMINATION

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1 blood?

2 A. Yes.

3 Q. And, of course, you would have no idea if those pants
4 were in fact the pants of Eden Smith, you have no idea
5 how that much of Graham's blood got onto Eden's pants
6 would you?

7 A. No, I wouldn't.

8 Q. Yet, you have seen the photograph of those pants?

9 A. Yes.

10 Q. There is an awful lot of blood on there, isn't it?

11 A. Yes.

12 Q. And the blood that is on that pair of pants, whoever it
13 belongs to, starts basically up here and goes pretty
14 much all the way down, doesn't it?

15 A. I think that is right.

16 Q. Now, you were Eden's aunt; is that correct?

17 A. Yes.

18 Q. And he lived with you a month before this thing
19 happened?

20 A. Yes, longer than that.

21 Q. And, you knew he was scheduled to go very soon for his
22 sentencing for the rape charge?

23 A. I was not sure how soon.

24 Q. When was he going to be sentenced for the rape charge?

25 A. I do not know that.

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1 Q. But you knew that was imminent, that it was coming up?

2 A. Right.

3 Q. And, was he living with you because he needed to be
4 here to go do the plea of guilty to the rape charge?

5 A. He was living with me, because my mother has Alzheimer,
6 and he was living with me to help me take care of my
7 mother.

8 Q. All right. Did you know that he was actually planning
9 to go do the plea of guilty soon to the rape charge?

10 A. No, I did not.

11 Q. Did you know the person that he had raped?

12 A. He did not rape anyone. I knew the girl that --- I
13 knew the people that allegedly had accused him?

14 Q. And you knew he was planning to plead guilty?

15 A. No, I didn't know.

16 Q. All right. Now, the --- where was he employed up here
17 while he was living with you?

18 A. He was employed by a heating and air business out of
19 Cheraw.

20 Q. All right. And, Eden lifted weights on a pretty
21 regular basis didn't he?

22 A. He had started working out at the Y.

23 Q. And he was very proud of the fact that he was strong
24 and in good shape; right?

25 A. I think that he was more proud that he had lost some

SANDRA SMITH - REDIRECT EXAMINATION

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1 weight. He lost a good bit of weight.

2 Q. There is no question that he was in good shape; right?

3 A. I would say he was in fairly good shape.

4 Q. He was fairly strong wasn't he?

5 A. He was --- he was fairly strong.

6 Q. Right. Now, you have known Graham Douglas for a long
7 while too haven't you; correct?

8 A. Yes, I have.

9 Q. Have you ever known Graham to be violent?

10 A. Not to my knowledge.

11 **MR. MOORE:** Thank you, Your Honor. No further
12 questions.

13 **THE COURT:** And, redirect?

14 **MR. FINNEY:** Just a few, Your Honor.

15 **REDIRECT EXAMINATION BY MR. FINNEY**

16 Q. Ms. Smith, how well acquainted were you with Graham at
17 the time of Eden's Smith, in terms of 2011; had you
18 known him for years?

19 A. Yes.

20 Q. Who was the bigger man physically?

21 A. Um, it depends --- I think Eden was about six feet,
22 one-eight-five, I don't know what Graham's weight or.

23 Q. Would you have an opinion as to whether Graham wore a
24 larger size pants than Eden?

25 A. I would say that he did.

SANDRA SMITH - REDIRECT EXAMINATION

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1 Q. And, you don't know whether or not different size pants
2 were found in the house where Eden was found?

3 A. No.

4 Q. You said he had lost a lot of weight. Had he lost the
5 weight over a short period of time, or over a longer
6 period of time?

7 A. He had lost the weight over the past three months, I
8 think.

9 Q. All right. So, over not so long of a period of time?

10 A. Right.

11 Q. Would you say he started out over two hundred pounds?

12 A. Yes.

13 Q. And you said he got down to about one-eighty?

14 A. Uh'huh. One-eighty, one-eight-five somewhere around in
15 there.

16 **MR. FINNEY:** Thank you, ma'am. Nothing further.

17 **THE COURT:** Ma'am, you may step down and return to
18 your seat. Please watch your step as you exit the box.
19 Please call your next witness.

20 **MR. FINNEY:** If it please the Court, if I could call
21 Karl Kenley from SLED.

22 **THE COURT:** Please come forward and take the oath of
23 a witness.

24 **WHEREUPON, KARL KENLEY**

25 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

KARL KENLEY - DIRECT EXAMINATION

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1 MR. KENLEY: I do.

2 DIRECT EXAMINATION BY MR. FINNEY

3 Q. Good morning, sir.

4 A. Good morning sir.

5 Q. Can you tell me your full name?

6 A. My name is Karl Kenley. K-E-N-L-E-Y.

7 Q. How are you employed, sir?

8 A. I am a special agent with the SLED Crime Scene Unit,
9 The State Law Enforcement Division, commonly known as
10 SLED.

11 Q. Would you tell the Judge what that job entails on a
12 day-to-day basis?

13 A. The SLED Lab is located in Columbia, South Carolina,
14 and local agencies, Police Department, and Sheriff's
15 Departments, submit evidence to that lab to be
16 processed for fingerprint evidence. We also conduct
17 shoe and tire tread evidence comparisons. And also
18 when requested we respond to all forty-six counties in
19 the State of South Carolina to process crime scenes for
20 physical evidence.

21 Q. Were you called to Chesterfield County in May of 2011,
22 to process the scene of Mr. Charles Eden Smith?

23 A. Yes, sir.

24 Q. And, what was your major function in terms of
25 processing the crime scene?

KARL KENLEY - DIRECT EXAMINATION

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- 1 A. Photograph, and documentation, and collecting any
2 physical evidence that was located in the scene.
- 3 Q. So, you would be the man that actually picks up items
4 and puts them in the bag, and take them to the lab?
- 5 A. Yes, either myself or my partner, Sabrina Felkers.
- 6 Q. All right. I want to show you color photographs and
7 ask you to look at them to become familiar with them,
8 and then if you would talk about them by calling out
9 the little number on the sticker to be sure to identify
10 what item you are talking about.
- 11 A. Okay.
- 12 Q. When you arrived at the house, did you see the body of
13 Charles Smith on the kitchen floor?
- 14 A. Yes.
- 15 Q. It had not been removed?
- 16 A. Correct.
- 17 Q. You photographed it?
- 18 A. Sabrina would have taken the photographs.
- 19 Q. Sabrina is a partner with SLED?
- 20 A. A partner, correct.
- 21 Q. And, those photographs were taken throughout the house?
- 22 A. That's correct.
- 23 Q. And you would have been --- Were you supervising her or
24 was she supervising you -- coworkers?
- 25 A. Coworkers, correct. Primary and secondary. The

KARL KENLEY - DIRECT EXAMINATION

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1 secondary person is normally the person that takes all
2 of the pictures. Myself, being the primary,
3 responsible for the paperwork.

4 Q. Let's talk about two specific areas.

5 A. Okay.

6 Q. In the kitchen area where the body was found, did you
7 notice blood evidence and take pictures of blood
8 evidence?

9 A. Yes.

10 Q. Did you also take samples of the blood from the room
11 itself?

12 A. Let me check my notes.

13 (PAUSE.)

14 A. Yes.

15 Q. Would you please look at Exhibit Number 25, and tell us
16 what you see?

17 A. This is a photograph of a blood stain that was found on
18 the counter in the kitchen that was scaled and
19 photographed.

20 Q. And relative to the larger photographs in front of you,
21 Exhibit 46, 54, and 53 would show more of the kitchen
22 area. Can you tell us where that kitchen cabinet was
23 in relation to the body?

24 A. It would have been near the backdoor going toward the
25 backdoor.

KARL KENLEY - DIRECT EXAMINATION

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1 Q. And is that closer to Mr. Smith's head or foot?

2 A. Closer to his head.

3 Q. All right. So, the item you have in your lap, Exhibit
4 25 is a picture of a blood splatter?

5 A. Spatter.

6 Q. Could you tell the Judge what you consider blood
7 splatter?

8 A. Blood splatter is again a stain of blood that is either
9 from impact of coming off something that has blood on
10 it, and it impacts the surface. In this particular
11 incident, a cabinet and it leaves a stain.

12 Q. All right. Can you give an estimate based on the
13 photographs you are looking at as to how far that
14 splatter in 25 was from the head of Mr. Smith as he lay
15 on the kitchen floor?

16 A. Five to seven feet, roughly.

17 Q. From the head of Mr. Smith?

18 A. Correct.

19 Q. To the splatter?

20 A. Correct.

21 Q. Is that unusual for splatter to be found five to seven
22 feet from the body?

23 A. I depends on the circumstances. No, it is not.

24 Q. Very good. Now, would you please look at Exhibit 24.
25 Can you tell us what that is?

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- 1 A. This is again a blood stain, and again it is a transfer
2 or a smear, and in this particular situation it is a
3 combination. But it is when a bloody surface comes
4 into contact with a clean surface, and you leave what
5 is called a transfer stain.
- 6 Q. All right. And based on the picture you have there,
7 Exhibit 24, is that a small amount of blood or a large
8 amount of blood?
- 9 A. That is a small amount.
- 10 Q. All right. And, you would see that smear or what was
11 the other word you use?
- 12 A. Stain or transfer.
- 13 Q. A stain or a smear covered several inches --- a cabinet
14 in the kitchen?
- 15 A. Correct.
- 16 Q. All right. And is that cabinet in that kitchen that
17 you took that picture 24, is that a counter top island?
- 18 A. Correct.
- 19 Q. And, is it shown in Defendant's Exhibit 46?
- 20 A. It is.
- 21 Q. Now, is it on --- Can you tell which side that light
22 socket --- let me show you this picture. I have
23 another exhibit 23.
- 24 A. Okay.
- 25 Q. Is that the same counter top?

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- 1 A. Correct.
- 2 Q. Do you see the light socket or the plug?
- 3 A. Correct.
- 4 Q. Is that surface area where you see the stain and the
5 smear, is it shown in Exhibit 46?
- 6 A. You can't actually see it, but it is actually under the
7 counter top.
- 8 Q. Under the counter top.
- 9 A. That's correct.
- 10 Q. How far away from the body would that stain or smear
11 be?
- 12 A. In roughly five to seven feet.
- 13 Q. All right. And, that blood stain or smear would not be
14 the same as a spatter?
- 15 A. That's correct.
- 16 Q. It was placed there in a different way?
- 17 A. Correct. Again, this was a transfer stain. And
18 State's Exhibit Number 25 is basically --- something
19 that has blood on it, comes off and strikes the
20 cabinet.
- 21 Q. Agent Kenley, did you also find evidence of blood on
22 the clothing in the house in other rooms besides the
23 kitchen?
- 24 A. Yes.
- 25 Q. Can you give the Court of just some of the areas or

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1 items that you saw blood on that you collected and
2 where they were?

3 A. There were a pair of pants in the back bedroom, kacki
4 pants that had a pair of glasses and a wallet with it.

5 Q. Let me show you State's Exhibit Number 12.

6 A. That's correct.

7 Q. Is that the items you were referring to?

8 A. Yes.

9 Q. And that bedroom was somewhat a distance away from the
10 kitchen in the house?

11 A. That's correct.

12 Q. Those pants had blood on them?

13 A. That's correct.

14 Q. And you were able to collect and take it?

15 A. That's correct.

16 Q. Do your notes reflect what size those pants were?

17 A. They do not.

18 Q. Would there be other SLED documents that might have it?

19 A. Depending on how they were logged in and which
20 department they went to, they may have listed the size.

21 Q. Do you have those evidence login sheets?

22 A. I do.

23 Q. In your file? Can you check and see if there is any
24 size listed on those kacki pants?

25 **THE COURT:** Anc, counsel, let me just ask you while

KARL KENLEY - DIRECT EXAMINATION

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1 he is looking and think of the best evidence. Are those
2 pants no longer available?

3 **MR. FINNEY:** They are, and I hope they will be
4 brought this afternoon or this morning by another agent.
5 But, that agent has not arrived, and I am not sure.

6 **THE COURT:** Very good. Thank you.

7 A. I don't have a size listing.

8 Q. All right, sir.

9 **MR. FINNEY:** Do you have the pants?

10 AGENT: Yes, sir. They are in my car.

11 **MR. FINNEY:** They are in your car?

12 AGENT: Yes, sir.

13 **MR. FINNEY:** I'll wait until that witness is called.

14 **MR. FINNEY:** Thank you.

15 **MR. FINNEY:** Thank you.

16 Q. Mr. Kenley, in your walking around and making notes of
17 the house that evening, did you notice any door-jams,
18 window seals, or other physical damage out of place, or
19 in anyway consistent with somebody forcing themself
20 into the house that evening?

21 A. No, sir.

22 Q. Did you check for that?

23 A. Yes, we did. Initial walkthrough.

24 Q. The entire parameter of the house?

25 A. That's correct. An initial walkthrough was done before

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1 any photographs or evidence was collected.

2 Q. All right. Besides door-jams and window seals, did you
3 check any other items, any other --- and I know you
4 didn't go up on the roof. But I am saying, those are
5 the things you would normally check during the course
6 of your investigation?

7 A. Correct, any signs of forced entry.

8 Q. All right. Let me ask you this. Did you note any
9 damage to any counter-tops, or plates, dishes, or
10 anything like that inside the house especially near the
11 kitchen?

12 A. There was some furniture that was overturned, a few
13 chairs, and, of course, the dishwasher was damaged
14 also.

15 Q. All right. Anything else that you did before you
16 concluded your work that afternoon, or that evening and
17 left to take the evidence to the lab?

18 A. We also went to the Detention Center to photograph.

19 Q. All right. You and your partner?

20 A. Correct. And Agent Faulkner.

21 Q. All right. Let me just ask you if you could
22 familiarize yourself with those exhibits.

23 (PAUSE.)

24 A. Okay.

25 Q. All right, sir. Starting with Exhibit 29, I believe,

KARL KENLEY - DIRECT EXAMINATION

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- 1 does that show a closeup photograph of the face of Mr.
2 Graham Douglas, the suspect that evening?
- 3 A. Yes, it does.
- 4 Q. Were you there when that picture was taken?
- 5 A. Yes.
- 6 Q. Does it fairly and accurately represent how he looked
7 at the time you saw him?
- 8 A. Yes.
- 9 Q. Did you notice anything unusual about his face at that
10 time, scratches, bruises, cuts, blood, anything like
11 that?
- 12 A. Possibly a little bruise around one of his eyes.
- 13 Q. Anything showing up purple, or bloody, or anything like
14 that?
- 15 A. Not on his face.
- 16 Q. All right. Based on your observing him, how long would
17 you say you were in his presence that evening?
- 18 A. I can tell you exactly. We arrived at the Detention
19 Center at 2:30 and we left at 2:50.
- 20 Q. That would be a.m.?
- 21 A. Correct, a.m.
- 22 Q. So, 2:30 to 2:50?
- 23 A. Correct.
- 24 Q. Twenty minutes?
- 25 A. That's correct.

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1 Q. During the twenty minutes that you saw him, did he
2 appear to have any major injuries that required
3 stitches, treatment, any kind of --- anything like
4 that?

5 A. No, sir. We saw some bruises, but no open sores, open
6 wounds.

7 Q. Did you take a picture on Exhibit 31 of his right knee?

8 A. Correct.

9 Q. And there was a small cut there?

10 A. Correct.

11 Q. All right. And on Exhibit 32, his right arm.

12 A. Correct?

13 Q. Did you notice some discoloration?

14 A. Bruising on the biceps; correct.

15 Q. Was it severe?

16 A. It was bruising.

17 Q. How many inches wide would you say that Exhibit 32
18 shows on his right arm above his elbow?

19 A. Three to four inches.

20 Q. All right. And, the same bruising is shown on Exhibit
21 33 on the left biceps above the elbow?

22 A. That's correct.

23 Q. Officer, based on your looking at these pictures, the
24 bruising on the left biceps, is there any damage to the
25 rear area of his arm?

KARL KENLEY - CROSS EXAMINATION

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1 A. No, sir, not in that photograph.

2 Q. On this photograph, all the area that shows any
3 bruising is on the front?

4 A. Correct, on the inside.

5 Q. Have you ever seen anything like that before?

6 A. As far as bruising?

7 Q. Yes, sir. Anything that would show up where a man has
8 bruising on the right and the left, three or four
9 inches on each side?

10 A. No, not that I can recall.

11 Q. Have you worked a lot of crime scenes?

12 A. Yes, sir. Over two hundred.

13 Q. Any other marks on his body on any of these other
14 Exhibits 38, 39, 37, anything that would show up as a
15 cut, a bloody deep bruise or anything like that?

16 A. No, sir.

17 Q. Thank you, sir. After you took the photographs at the
18 jail at about 2:50 in the morning, you and your partner
19 left to go back to Columbia?

20 A. That's correct.

21 **MR. FINNEY:** Thank you, Your Honor.

22 **THE COURT:** All right. Cross examination?

23 **CROSS EXAMINATION BY MR. MOORE**

24 Q. Now, would your rank be detective?

25 A. Special Agent.

KARL KENLEY - CROSS EXAMINATION

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1 Q. Special Agent. Okay. How long have you been a special
2 agent?

3 A. Seven years.

4 Q. And you have worked over two hundred crime scene?

5 A. Yes, sir.

6 Q. And your job here was to basically do an examination of
7 the crime scene; is that correct?

8 A. That's correct.

9 Q. And I believe that you actually did a report wherein it
10 was indicated that there was no physical evidence
11 suitable for scientific analysis by The Crime Scene
12 Department?

13 A. That's correct.

14 Q. Okay. Now, I want to ask you about what you do on a
15 crime scene. A crime scene would consist of physical
16 evidence, a house, the blood, clothes, stuff; right?

17 A. That's correct.

18 Q. And it would also include any electronic evidence, like
19 computers or anything like that?

20 A. Correct, if they were relevant.

21 Q. And it would include people?

22 A. Correct.

23 Q. And when you got there you found two people?

24 A. Correct.

25 Q. You found one laying on the floor dead.

KARL KENLEY - CROSS EXAMINATION

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- 1 A. That's correct.
- 2 Q. And you found Graham, who obviously had some fresh
3 injuries on him; correct?
- 4 A. I don't know, Mr. Graham was there when I got there. I
5 don't know if he was --
- 6 Q. -- You saw him at the jail?
- 7 A. Correct.
- 8 Q. And you saw that he had fresh injuries on him?
- 9 A. Correct.
- 10 Q. And one of the things that you do in regard to
11 examining these fresh injuries, is as a special officer
12 in charge of the crime scene, you begin trying to
13 determine what happened based upon the physical
14 evidence which you see?
- 15 A. That's correct.
- 16 Q. And one of the questions is, who shot the man who is
17 dead?
- 18 A. Correct.
- 19 Q. And you know that Graham Douglas shot him?
- 20 A. That is what I was told when I arrived on the scene,
21 correct.
- 22 Q. And the next question you would have is, who inflicted
23 the injuries upon Mr. Douglas? Right?
- 24 A. That would be more in line with the field agents
25 specifically asking those questions.

KARL KENLEY - CROSS EXAMINATION

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- 1 Q. But like you say, one of the things that you do as the
2 crime scene specialist is you begin asking questions
3 like that; right?
- 4 A. (No response.)
- 5 Q. And, you were the special agent.
- 6 A. In charge of the crime scene; correct.
- 7 Q. Right. And you say the crime scene basically has to do
8 with people and things that started to deduce what
9 happened; right?
- 10 A. Correct?
- 11 Q. So, one of the questions is, who shot the dead man;
12 correct?
- 13 A. Correct.
- 14 Q. That is pretty simple. You get somebody to admit it,
15 right?
- 16 A. Correct.
- 17 Q. The next question that comes is who inflicted the
18 injuries upon Mr. Douglas; right?
- 19 A. Okay.
- 20 Q. Now, when you began to do that from what I can gather
21 on crime scene, there were not but four people in the
22 area of the so called crime scene at the time this
23 happened; right? There was Graham Douglas, Eden Smith,
24 Leon Douglas, and Leon Douglas' wife; right?
- 25 A. I don't know about the last two people you are

KARL KENLEY - CROSS EXAMINATION

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1 referring to.

2 Q. All right. So, the only two people you know of that
3 could have inflicted these injuries on Graham,
4 according to crime scene, would have been either Eden
5 Smith or Graham Douglas.

6 A. Correct. Those were the only two people that I was
7 aware of when I got there.

8 Q. From the crime scene analysis that you did, was there
9 any indication that Graham Douglas had inflicted the
10 injuries upon himself?

11 A. No.

12 Q. All right. So then, as the special agent in charge of
13 the crime scene, when you had the freshly inflicted
14 injuries upon Mr. Douglas that would lead you to the
15 conclusion that Mr. Eden Smith was the only person that
16 could have inflicted the injuries on Mr. Douglas?

17 A. Correct.

18 Q. So, the official position fo the crime scene
19 investigator is that the guy who did the shooting was
20 Graham Douglas, and the guy that injured Graham Douglas
21 was Eden Smith.

22 A. We knew that an altercation had took place between the
23 two. That is information that I was given; correct.

24 Q. And beside the gunshot wound, did you see any other
25 injuries on Eden Smith?

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1 A. No, we did not.

2 Q. But you saw injuries on Graham Douglas; right?

3 A. Yeah, the bruising at the Detention Center.

4 Q. And we know whatever injuries were inflicted upon
5 Graham Douglas, were inflicted upon him in his own home
6 where he lived?

7 A. I wasn't sure of that at the time.

8 Q. But you know it now?

9 A. That's correct.

10 Q. And then we know according the investigation, that SLED
11 had done, that the person who injured Graham in
12 Graham's home would have been Eden Smith?

13 A. Correct.

14 Q. So, whatever injuries Graham had, you know based upon
15 your concludes on the crime scene, that those injuries
16 were inflicted in Graham's home by Eden Smith?

17 A. Correct.

18 Q. So, before the gunshot there is no indication that Eden
19 Smith had any injuries on him; right?

20 A. I wouldn't know that.

21 Q. And we know that whatever injuries Graham had, had to
22 have been done before the gunshot, because Eden was
23 dead; right?

24 A. Correct.

25 Q. Okay. Now, one of the things you do is you take

KARL KENLEY - CROSS EXAMINATION

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1 photographs of the body of the victim; right?

2 A. Correct.

3 Q. And in these two hundred scenes that you have
4 investigated, you know that many times that when people
5 meet sudden deaths, they will basically evacuate a
6 portion of the bladder, right? They wet themselves?

7 A. That happens, correct.

8 Q. So, we know that Eden Smith wet himself at the time he
9 hit the floor, don't we?

10 A. I can't tell you when that happened.

11 Q. Well, as the crime scene investigator, it is certainly
12 important for you to investigate the crime scene?

13 A. That's correct.

14 Q. No doubt that that is urine on his pants? You are the
15 investigator, you know that don't you?

16 A. I don't know that that is urine.

17 Q. Certainly looks like it?

18 A. It is a stain on his pants.

19 Q. Now, if you were responsible for investigating the
20 crime scene, and that stain is on those pants as wet
21 and visible as it is, are you telling me that you
22 didn't bother to check to see what that stain was?

23 A. I did not.

24 Q. Well, if you are responsible for the crime scene, and
25 if the condition of the body is so important, and if

KARL KENLEY - CROSS EXAMINATION

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1 what is on the body is so important, and if what has
2 happened is so important, why, if you are the person
3 responsible for the crime scene, wouldn't you bother to
4 determine what that spot is?

5 A. The clothing would be collected at autopsy, and then
6 those clothing would be submitted to our SLED lab if
7 that was in question. That would not be my
8 responsibility on the scene.

9 Q. If that is the case, why would you write no physical
10 evidence that is suitable for scientific analysis?

11 A. There was nothing that we collected that I would have
12 processed in the lab as a crime scene examiner.

13 Q. All right. Now, you did do fingerprints of Eden Smith;
14 right?

15 A. Post mortem, correct.

16 Q. Well, we have asked for all the documentation, and we
17 have never seen those fingerprints. Did you give those
18 fingerprints to any of the other prosecutorial parties?

19 A. It would have been submitted back to the requesting
20 agency.

21 Q. Do you have any reason why we have not been shown the
22 fingerprints?

23 A. I don't know.

24 Q. Now, you talked about this blood smear, or the blood
25 spatter. Do you have any idea whose blood it is that

KARL KENLEY - CROSS EXAMINATION

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1 was smeared or splattered?

2 A. No, we just swabbed it and submitted it to the DNA
3 Laboratory.

4 Q. Oh, so this blood that you were asking about, the
5 smearing and the splattering and so forth, you have no
6 idea if that is Eden Smith's blood or Graham Douglas'
7 blood?

8 A. That's correct. I have not seen the report.

9 Q. And, you have no idea how that blood wound up on the
10 wall or wherever it wound up?

11 A. Other than the mechanism again of being a smear or a
12 transfer.

13 Q. It is a smear or a transfer?

14 A. That's correct.

15 Q. It has to be, because it was transferred from
16 somebody's body; correct?

17 A. Correct. That is what it is called. A transfer of
18 stain.

19 Q. Well, what that means is that it is on somebody's hand,
20 or somebody's body, and they touch it and it is
21 transferred from the body to the wall?

22 A. Bloody surface comes in contact with a non-bloody
23 surface; correct.

24 Q. All you can tell us is there was blood on the wall?

25 A. Correct.

KARL KENLEY - CROSS EXAMINATION

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1 Q. You don't know if it was Eden's blood?

2 A. That's correct.

3 Q. You don't know if it was Graham's blood?

4 A. That's correct.

5 Q. Don't have any idea how long it had been there?

6 A. That's correct.

7 Q. Don't have any idea how it got there?

8 A. Other than transfer, correct.

9 Q. You can't say that it came from Eden at the time he was
10 shot?

11 A. Not the transfer.

12 Q. Okay. Now, these pants that were in this front
13 bedroom, you took the pants and you sent them to
14 Columbia for evaluation; right?

15 A. That's correct.

16 Q. Now, we know according to what is in the evidence that
17 those pants in the front bedroom had Graham Douglas'
18 blood on them. If you will look, it is Item 26.1,
19 under the analysis, which is in evidence. Basically
20 indicates that the blood that was found --- Let me show
21 it to you right here. Item 26.1, these were the pants
22 that were in the front bedroom.

23 A. Okay.

24 Q. We go over to 26.1, matches the DNA profile of Graham
25 Douglas.

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- 1 A. That is what it says.
- 2 Q. All right. Well, of course, you took the pants and
3 sent them on to analysis for SLED; right?
- 4 A. That's correct.
- 5 Q. You didn't do the analysis yourself?
- 6 A. No, that is not my report.
- 7 Q. So, we know then based upon the SLED Analysis, that the
8 pants in the front bedroom didn't have Eden Smith's
9 blood on it; right?
- 10 A. If that is what the report says.
- 11 Q. And that is what it says, because you saw it?
- 12 A. Correct.
- 13 Q. And, I will be happy to let you look at it again, but
14 you have seen the report, right?
- 15 A. Yeah. But that is not my report. That is the first
16 time I have seen it, because I didn't do the report.
- 17 Q. That is the first time you have seen it?
- 18 A. Yes.
- 19 Q. So, today in court is the first time you knew that the
20 blood on the pants in the front bedroom was the blood
21 of Graham Douglas and not Eden Smith?
- 22 A. That's correct.
- 23 Q. And, of course, you have no idea how that blood got on
24 there?
- 25 A. Other than being transfer, correct.

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1 Q. Well, transferred from somebody?

2 A. Or some thing; that's correct.

3 Q. Actually that blood had to be transferred from Graham
4 Douglas, because it was his blood; right?

5 A. Correct.

6 Q. Now, when you went into that bedroom, that front
7 bedroom, and you took photographs of those pants in the
8 front bedroom, that was the way it looked on the scene
9 that night wasn't it?

10 A. That's correct.

11 Q. So, we know that the pants in the front bedroom had
12 dried blood on it?

13 A. Correct. That is how they were when we photographed
14 them.

15 Q. So, there is no way that as a crime scene specialist,
16 you would be able to tell us that that blood that was
17 on those pants on the evening of the shooting is it?

18 A. No.

19 Q. Now, the blood that you saw on Eden Smith, that was
20 fresh blood?

21 A. It appeared to be.

22 Q. And as a matter of fact, there was one other wound on
23 Mr. Smith, do you recall that his hand had a bruise
24 upon it?

25 A. Let me check my notes.

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1 (PAUSE.)

2 Q. I think I can help you. Exhibit Number 57 here.

3 A. Yeah, and we normally write it in the notes. That is
4 what I was looking for.

5 Q. You go ahead. You take your time.

6 (PAUSE.)

7 A. Correct. There was a bruise on his hand and we
8 photographed it.

9 Q. The bruise that was actually on Mr. Smith's hand would
10 have been on his right hand would it not?

11 A. Yes.

12 Q. That would be consistent with having knocked the heck
13 out of somebody wouldn't it?

14 A. Possibly.

15 Q. Well, bruises generally get on hands like that one, the
16 very way a person bruises his hands is to knock the
17 heck out of somebody isn't it?

18 A. That is a way to get a bruise on the hand.

19 Q. And actually the bruise on that right hand would have
20 pretty much corresponded with the injuries to Mr.
21 Douglas' eye wouldn't it?

22 A. I couldn't make that determination.

23 Q. It certainly would have been consistent wouldn't it?

24 A. It could happen.

25 Q. The bruise on his hand would have been consistent with

KARL KENLEY - CROSS EXAMINATION

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1 the bruise on Graham's eye?

2 A. That could happen, correct.

3 Q. The physical evidence being consistent with the fact
4 that Eden Smith had punched Graham Douglas in the eye?

5 A. I couldn't make that determination.

6 Q. It would be consistent with that though, wouldn't it?

7 A. That could happen.

8 Q. Do you know of any other way other than to have punched
9 Graham in the eye that that could have gotten on it?

10 A. He could have hit something else. I can't tell you
11 that it hit somebody's face.

12 Q. Very fine. And, of course, the urine on these pants,
13 or whatever was on these pants were still wet when you
14 got there too; Correct?

15 A. Correct.

16 Q. So, by the time you got there, whatever was on this
17 man's pants had not had time to dry; Correct?

18 A. That's correct.

19 Q. And, if that is the case, and the blood on the pants in
20 the front bedroom would not have had time to dry
21 either, would it?

22 A. It was dry when we got there.

23 Q. And, if the urine didn't have time to dry, then the
24 blood wouldn't have had time to dry; right?

25 A. I can't speak to how fast urine dries. I can tell you

KARL KENLEY - CROSS EXAMINATION

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1 how fast blood will dry.

2 Q. Okay. Now, we talked about these fingerprints that you
3 took of Eden that we have not been given a copy of. Do
4 you know what they did with the fingerprints?

5 A. I don't.

6 Q. Did they fingerprint anything in the house?

7 A. We did not.

8 **MR. MOORE:** Nothing further, Your Honor. Thank you,
9 sir. Officer thank you so much.

10 **MR. KENLEY:** You are welcome.

11 **THE COURT:** Is there redirect?

12 **MR. FINNEY:** No questions, Your Honor. Thank you ver
13 much, sir.

14 **THE COURT:** I have one. You said you can testify how
15 long it takes blood to dry. How long does it take blood to
16 dry on a pair of pants?

17 **MR. KENLEY:** Normally, on a pair of pants it is going
18 to absorb into the material, and that helps it dry a lot
19 faster. Urine, I just can't tell you. We don't deal with
20 urine.

21 **THE COURT:** All right. But, you don't necessarily
22 have a time frame for which blood would be determined to be
23 dried as opposed to still be wet?

24 **MR. KENLEY:** Again, that would depend on the
25 temperature in the house. Again, the surface. If it were

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1 to land on like a ceramic counter that is going to dry a
2 lot faster than a pair of pants, because it is not absorbed.

3 **THE COURT:** Thank you. Anything further from either
4 side?

5 All right, sir. You may step down. Any objection to
6 the release of this witness, or do you need him to stay?

7 **MR. MOORE:** No, sir.

8 **THE COURT:** You are free to leave. You are not
9 required to leave, but you are free to leave if you wish.

10 Please call your next witness.

11 **MR. FINNEY:** Paul Meeh.

12 **THE COURT:** All right, sir. Please come forward and
13 take the oath of a witness.

14 **WHEREUPON, PAUL MEEH**

15 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

16 **MR. MEEH:** Yes, I do.

17 **MADAME COURT REPORTER:** Please spell your name, sir?

18 **MR. MEEH:** Paul Meeh, M-E-E-H.

19 **THE COURT:** How about say that so we can all hear.
20 you, if you would.

21 **MR. MEEH:** My name is Paul Meeh, M-E-E-H.

22 **DIRECT EXAMINATION BY MR. FINNEY**

23 Q. Mr. Meeh, where do you work?

24 A. I work at SLED, also in the DNA Lab in the Forensic's
25 Lab.

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1 Q. How long have you been there?

2 A. Approximately five-years.

3 Q. And what is your job there?

4 A. I am a forensic scientist in the DNA Department.

5 Q. Did you receive as part of your job, evidence taken at
6 a crime scene in Chesterfield County back in May of
7 2011?

8 A. Yes, sir, I believe so.

9 Q. And was that evidence brought to you by agents that
10 worked the crime scene?

11 A. I actually pick up the evidence from Evidence Control,
12 which is located in our building. It is submitted ---
13 It can be submitted by any agency, but in this case I
14 believe it was submitted by a SLED Agent. And, I just
15 picked it up down in the Evidence Control, sir.

16 Q. All right, sir. Let me ask you. Once you pick it up,
17 and let's talk specifically at first about the clothing
18 items that were taken. Did you examine certain items
19 of clothing that was submitted to SLED to determine
20 whether or not there was evidence on them?

21 A. Ms. Verona Gibson in this case was the person --- We
22 have a DNA Processing Facility where evidence is
23 processed. And Verona Gibson in this case examined the
24 items and gave me the cuttings to identify the body
25 fluids.

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1 Q. All right. And can we go to first of all, in the
2 evidence we have a report signed by you from, I
3 believe, Defendant Exhibit 43.

4 A. Yes, sir.

5 Q. That is a December 2011 DNA analysis?

6 A. Yes, sir.

7 Q. Signed by you?

8 A. Yes, sir.

9 Q. And it lists several items that were submitted and
10 examined by different Departments at SLED?

11 A. Yes, sir.

12 Q. Okay. Hold onto that, and did you also submit at the
13 request of my office, additional cuttings and analysis
14 that came out in a March report?

15 A. Yes, sir.

16 Q. Do you have that March 22nd report?

17 A. Yes, sir.

18 **MR. MOORE:** I don't have any objection to this coming
19 into evidence, Your Honor.

20 **THE COURT:** All right. Let's take a moment and mark
21 it, if Mr. Finney wishes to place it into evidence.

22 **MR. MOORE:** I actually thought we already had it in.
23 If we don't, I have no objection.

24 **THE COURT:** Very good.

25 (PAUSE.)

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1 **THE COURT:** What number?

2 **MR. FINNEY:** State's Exhibit Number 26, Your Honor.
3 DNA Analysis signed by Paul Meeh on March 22, 2012.

4 **THE COURT:** State's 26 without objection in
5 evidence.

6 **WHEREUPON, STATE'S EXHIBIT**
7 **NUMBER 26 WAS ADMITTED INTO**
8 **EVIDENCE WITHOUT OBJECTION.**

9 Q. All right. Mr. Meeh, those are the two reports that
10 you submitted as a result of your investigation in this
11 case?

12 A. Yes, sir.

13 Q. On the initial report, the December Report, there were
14 several pairs of pants, several blood swabs, and shoes
15 submitted to your office for analysis?

16 A. That's correct.

17 Q. I would like for you to talk to the Judge about items
18 26, and ask you to show the Judge Item 26.

19 A. It should be located in a box over there. What I was
20 asked to do in this case was to identify body fluids
21 that were left on some items, some pants and shoes.

22 Item 26.1, which is our processing area makes
23 the cuttings from those, so if there is a spot of
24 blood, they will cut that off and give it to me to
25 identify. I am capable of doing those services,

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1 but I did not do it in this case.

2 So, Item 26.1 is labeled a cutting from pants
3 belonging to Charles Smith. And that result was
4 that it matched the DNA profile of Graham Douglas.

5 Q. All right. And the pants that were taken from the
6 house were put into evidence, and who did the actual
7 cuttings from the pants?

8 A. Veroná Gibson, she is in our DNA office.

9 Q. How many cuttings did SLED take from the pants that
10 were noted as Item 26?

11 A. Looks like four, 26.1, 26.2, and on to 4.

12 Q. All right. And would you also look at your analysis
13 dated March 23, that we put in as State's Exhibit
14 Number 26, and see if there was another item?

15 A. Oh, yes. They were later --- Excuse me. That was the
16 initial processing.

17 Q. You processed four cuttings?

18 A. Correct. And 26.5 appears on the March 22nd report.

19 Q. All right. And, as far as the cuttings from those five
20 cuttings that were taken from the pants that your
21 report indicated on the first report, which is Exhibit
22 43, that is relative to 26, the DNA or blood on those
23 pants belonged to Graham Douglas?

24 A. That's correct. The Item 26.5 was an attempt to do
25 ownership DNA, which would be a swab from inside of the

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1 waistband, but it was insufficient for interpretation.

2 We couldn't get enough DNA from that swab.

3 Q. Can you tell us whether there are notes as to the size
4 of pants marked as Exhibit 26?

5 A. Yes, there are. Those worksheets are included in my
6 case file.

7 Q. Would you look at the worksheet in your file to tell us
8 what size are those pants in 26?

9 A. The pants are labeled as size thirty-four.

10 Q. Thirty-four in the waist?

11 A. Correct.

12 Q. All right, sir. And these pants have been maintained
13 in the SLED Evidence Room since they were submitted?

14 A. Yes, sir.

15 **THE COURT:** Sir, would you have a length?

16 Q. Do you have a note as to the length?

17 A. That is not noted. Let me read the additional --

18 **THE COURT:** Thank you.

19 **MR. MEEH:** Yes, sir.

20 A. No, I apologize no length.

21 Q. All right, very good. Now, as to another item that was
22 submitted, Item 23.

23 A. The size on those is listed as thirty-six.

24 Q. And what is Item 23?

25 A. It is listed as pants, kacki pants, brand Columbia.

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1 Q. Columbia brand?

2 A. Correct.

3 Q. All right. And, Columbia would be the name of the
4 product?

5 A. Yes, sir.

6 Q. Did you bring those pants as well?

7 A. Yes, sir. As far as I know all items were brought.

8 Q. That was Item 23. Size thirty-six. Did you have a
9 length on those?

10 A. No, sir.

11 Q. And do you have a color?

12 A. Kacki.

13 Q. Do you have ownership?

14 A. I received a cutting, Item 23.1, which was blood
15 indicated and that belonged also to Graham Douglas, or
16 matched the DNA profile of Graham Douglas.

17 Q. All right. So, those pants were listed as belonging to
18 Graham Douglas, and they were listed as having his DNA
19 on them; is that correct?

20 A. I will have to look at the submission paperwork. This
21 is where --- Give me one second please. Please, bear
22 with me. There are several pairs of pants, and I don't
23 want to mis-speak.

24 The DNA profile from the blood which was
25 cutting 23.1 matches the DNA profile of Graham

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- 1 Douglas. The ownership as listed during
2 submission is listed as belonging to Graham
3 Douglas, or Douglas Graham, excuse me.
- 4 Q. Are you familiar with a report prepared by SLED called
5 The Department of DNA Analysis?
- 6 A. Yes, this is the evidence processing unit. This is
7 Verona Gibson's worksheet.
- 8 Q. All right. And do you have anything in your file that
9 matches that worksheet?
- 10 A. I have these exact worksheets.
- 11 Q. All right, sir. Can you look at what is in your file?
- 12 A. Yes, sir.
- 13 Q. As far as Item 26, the pair of pants that we just spoke
14 about in this box here. Are they marked on this
15 supplemental evidence processing worksheet with a
16 notation of the description?
- 17 A. Yes. They are kacki also.
- 18 Q. What is the brand name?
- 19 A. Kenneth Cole.
- 20 Q. Excuse me?
- 21 A. Oh, no, excuse me. Carribbean Joe.
- 22 Q. The pants are Carribbean Joe pants. What size?
- 23 A. Thirty-four.
- 24 Q. And described as having a belt?
- 25 A. Yes, sir.

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1 Q. And the belt is made by?

2 A. Kenneth Cole.

3 Q. All right. And that is the pants 26 that we talked
4 about a minute ago?

5 A. Yes, sir.

6 Q. On this thing, evidence worksheet, do you have a
7 description of Item 23?

8 A. Yes.

9 Q. All right. What is it?

10 A. Kacki pants, Columbia brand, size thirty-six.

11 Q. Size thirty-six. And do you have another notation as
12 far as the condition --- Those were belonging to Graham
13 Douglas?

14 A. Item 23 is listed during submission yes, as belonging
15 to.

16 Q. All right. Do you have as far as Item 23 is concerned,
17 a report from your December report showing that Charles
18 Eden Smith's blood in cutting 23.2 was on those pants?

19 A. Yes. The first report was in another report is that
20 the DNA profile developed from Item 23.2 matches the
21 DNA profile of Charles Smith.

22 Q. All right. And, Item 23.1 is a cutting from the same
23 pants?

24 A. Yes, sir.

25 Q. And that shows blood of Graham Douglas?

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- 1 A. Correct.
- 2 Q. So, on Item 23 we have both men's blood DNA evidence?
- 3 A. Yes, sir.
- 4 Q. All right. Can you tell the Court where those pants
5 were taken by the SLED agent who collected them and
6 brought them to your lab; where they were collected
7 from? Is there anyway you can look and see where they
8 were actually in Chesterfield, were they on somebody,
9 or in a room?
- 10 A. No, sir.
- 11 Q. All right. Let's go to one more Item, Item 25. Your
12 December report, did you take cuttings from Item 25?
- 13 A. Yes, it appears there are two cuttings listed on the
14 report. One was processed --- Item 25.1 was processed.
- 15 Q. All right. Item 25.1, there were two cuttings taken
16 but only one was processed?
- 17 A. Correct.
- 18 Q. Item 25.1 was analyzed, and did it come back as DNA
19 profile of Graham Douglas?
- 20 A. Yes, sir. It matched Graham Douglas.
- 21 Q. And from your evidence processing worksheet, Item 25,
22 is it listed?
- 23 A. Yes, it is.
- 24 Q. Read to the Court what it says about Item 25?
- 25 A. It is labeled as pants with belt, light blue with a

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1 brown belt, branded as Daniel --- I can not pronounce
2 the last name, Quari, (phonetic) it looks French. Size
3 thirty-six by thirty-four. Brand of belt is AE. There
4 is pink staining on pants, on the front right pocket.
5 Do you want the contents also?

6 Q. Yes, sir.

7 A. The contents of the front right pocket is four one
8 dollar bills, one five dollar bill, one white golf-tee,
9 the front left pocket contents are four pennies, two
10 quarters, one dime. All items from front pocket
11 returned to pocket.

12 Q. All right. So, we have three pairs of pants we have
13 talked about. Two of the pants are thirty-six in the
14 waist, one pair of kacki pants are thirty-four in the
15 waist?

16 A. Yes, sir.

17 Q. All right. Finally, sir, are you aware of an Item
18 Number 26?

19 A. Yes, that is the pants.

20 Q. I'm sorry, that is not correct. Item 8?

21 A. Yes, that would be a pair of shorts.

22 Q. How are they described in your evidence processing
23 worksheet?

24 A. They are described as Kacki shorts cargo style. The
25 brand is Ron question mark, size thirty-six. Very

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1 worn, several rips and tears.

2 Q. All right. It notes that they have tears in the pants?

3 A. Yes, sir.

4 Q. And they are tears or rips, and they are very worn, and
5 they are a size thirty-six?

6 A. Correct.

7 Q. Now, we have two pair of thirty-six --- Excuse me, we
8 have three pair of thirty-six, and one pair of thirty-
9 four?

10 A. Yes.

11 Q. Do you know where Item 8, the shorts came from?

12 A. The submission paperwork only lists them as just pants,
13 or shorts. It doesn't have any other ownership
14 information attached to it.

15 Q. All right, sir. And, can you tell me whether you
16 examined an Item Number 8 on your first report from
17 December 2011?

18 A. I did not.

19 Q. All right. When did you first examine Item 8?

20 A. It is reported on the March 22nd report, but I first
21 examined it on January 18 of 2012.

22 Q. And did you get any results from the examination in
23 January?

24 A. I did. I examined Item 8.1, it was a cutting for the
25 presence of semen, and it did. It had semen indicated

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1 on the front --- I assume the cutting is from the front
2 of the shorts in the crotch area, but that is from
3 memory. There are pictures of that I am sure. And,
4 when you process semen, or when you process for semen
5 there are two fractions. There is a non-sperm fraction
6 which is not contained in the actual spermatozoa, the
7 results of that analysis is that it was a mixture of at
8 least two individuals. The partial DNA profile of the
9 major contributor of that mixture matched the DNA
10 profile of Charles Smith, and the probability
11 associated with that. The partial DNA profile, the
12 minor contributor to that mixture was from an
13 unidentified individual, and was not suitable for entry
14 into COTUS. COTUS is a database for people where we
15 try to identify to whom that would have belonged. And
16 then from the sperm portion, which would have been from
17 inside the spermatozoa, it was insufficient.

18 Q. All right.

19 A. It also matched --- it is small. Excuse me, I mis-
20 spoke there. The partial DNA profile from the sperm-
21 fraction is also matches Graham Smith, but it is very
22 partial.

23 Q. Charles Smith.

24 A. Charles Smith, excuse me.

25 Q. Now, that was the item which was tested, Item 8, which

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1 was a pair of shorts, cargo style shorts?

2 A. Yes, sir.

3 Q. And, you don't know maybe where those pants came from?

4 A. No, I don't.

5 Q. Let me ask you this. Are you familiar with a document
6 that submitted by Karl Kenley, which is a --- You tell
7 me what this is. It looks like evidence logs.

8 A. I don't use these in my day-to-day work.

9 Q. You don't use those?

10 A. No, sir.

11 Q. Was there any other processing done, anything that
12 concerned those pants, the four pair of pants we have
13 talked about?

14 A. I think we have covered them all. I can't be sure.
15 There is --- It is kind of confusing. There are a lot,
16 but I think we have --

17 Q. But under the identification that we have went through,
18 there were three pair of pants that were size thirty-
19 six, there was one pair of pants that were thirty-four?

20 A. Correct.

21 **MR. FINNEY:** Just one moment, Your Honor.

22 (PAUSE.)

23 Q. Mr. Meeh, if the pants that were submitted at Item 8,
24 the shorts, have a stain that was consistent with urine
25 or some bodily fluid, would that have been tested by

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1 your lab?

2 A. Not necessarily. We no longer actually test for urine.
3 We stopped that test about a year ago. And, if there
4 were something under visible light, which urine, or
5 semen, or anything, it probably would have been sent up
6 to me as a cutting.

7 Q. All right. Can you tell from your notes whether the
8 cutting from Item 8, the shorts, where the cutting came
9 from?

10 A. I don't have the pictures listed in here, so I can't --
11 The cutting I received is listed as cutting from front
12 right of zipper.

13 Q. From the front right of the zipper?

14 A. Yes, sir.

15 Q. All right, sir. And that is the item --- There was
16 only one cutting from the shorts, 8.1?

17 A. That's correct.

18 Q. And that is the analysis you read in that March report?

19 A. Correct.

20 **MR. FINNEY:** Thank you for coming, sir.

21 **MR. MEEH:** Yes, sir.

22 **THE COURT:** All right. Mr. Finney, just as we try to
23 keep up with our documents, we note that you have taken one
24 of the exhibits to your desk. If you would just put it back
25 on the bar, we will make sure it doesn't get mixed in.

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1 **MR. FINNEY:** Thank you, Your Honor.

2 **THE COURT:** Thank you. And now cross examination

3 **CROSS EXAMINATION BY MR. MOORE**

4 Q. Sir, I would like to call your attention to your report
5 of March 22, 2012. Would you pull that for me please?

6 A. Yes, sir.

7 Q. I want to talk about this report dealing with the short
8 pants, the ones that were found on Eden's body when he
9 was found by the crime scene folks, okay? Do you know
10 the shorts that I am talking about?

11 A. I assume --- If it is Item 8, yes.

12 Q. Absolutely. Now, I want to make sure that when you do
13 these reports you basically issue a portion called
14 results; right?.

15 A. Yes, sir.

16 Q. Let's go over what you wrote in regard to the report.
17 It says under results, and I am reading, and correct me
18 if I read wrong.

19 A. Yes, sir.

20 Q. But DNA profile developed from the non-sperm fraction
21 of 8.1 is a mixture of at least two individuals; right?

22 A. Correct.

23 Q. So, we know that there was evidence on these shorts of
24 sperm?

25 A. Yes.

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1 Q. And, basically DNA from two people associated with that
2 sperm?

3 A. Well, what it is evidence of, that is correct in a way,
4 but what it is actually evidence of is probably sexual
5 activity.

6 Q. Sexual activity, yes.

7 A. Yes. Because, the --- It is a mixture of two
8 individuals, but it is in the non-spermatozoa fraction.
9 So, that means when you shed cells when you have sexual
10 activity, you shed your normal cells.

11 Q. Right. And there is no way you can tell how old that
12 sperm was; Correct?

13 A. Correct.

14 Q. But one thing is for certain. It sure says a whole lot
15 about who the pants belong to if their sperm is on
16 their pants doesn't it?

17 A. I would hope so. I can't speak to it, but I would
18 certainly hope so.

19 Q. And, it might also say who it doesn't. So, let's see
20 what that sperm says about who those pants may have
21 belonged to. It goes on and says the partial DNA
22 profile of the major contributor of this mixture
23 matches the DNA profile of Charles Smith; Correct?

24 A. Yes, sir.

25 Q. So, we know however old that sampling was, we know that

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1 part of that sperm was Eden Smith, the dead man; right?

2 A. Correct. But, again just to correct one thing, it is
3 part of the semen --- the non-epithelial fraction of
4 that semen. So, it would not be inside of the
5 spermatozoa, but yes that is correct.

6 Q. So, obviously what we have here is some very personal
7 bodily fluids that belonged to Eden Smith?

8 A. Yes, sir.

9 Q. We know that, right?

10 A. I believe so.

11 Q. Then it goes on and says the probability of randomly
12 selecting an unrelated individual having DNA profile
13 matches the major contributor is approximately one in
14 four hundred and fifty trillion, right?

15 A. Yes, sir.

16 Q. And the major contributor to that semen was Charles
17 Smith?

18 A. Correct.

19 Q. So, we know that unless it is one in four hundred and
20 fifty trillion, the semen belonged partially to Eden
21 Smith; right?

22 A. Correct.

23 Q. But then we go on and it says, the partial DNA profile
24 of the minor contributor is from an unidentified
25 individual, and is not suitable for entry into the

PAUL MEEH - CROSS EXAMINATION

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1 combined DNA index system; right?

2 A. Right.

3 Q. But it says that Graham Douglas is excluded as a
4 possible contributor to the mixture; right?

5 A. Correct.

6 Q. So, whoever was the individuals that were involved with
7 the seminal mix, it was not Graham Douglas?

8 A. Correct.

9 Q. So, we certainly can tell from these pants that there
10 was some very personal fluids from Eden Smith on those
11 pants; Correct?

12 A. Correct.

13 Q. But there was no sort of personal fluid from Graham
14 Douglas on those pants?

15 A. Correct. None that were detected.

16 Q. These pants, these short pants that were found on Eden
17 Smith had a quantity of sexual fluid that belonged to
18 Eden Smith but not Graham Douglas?

19 A. I believe that is correct.

20 Q. Now, we don't know when that personal fluid was on
21 there do we?

22 A. No, sir.

23 Q. But that would be a pretty good indicator that those
24 pants more than likely belonged to Eden Smith?

25 A. I hope so.

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- 1 Q. We would hope if he is going to have that sort of stuff
2 on his pants it is his?
- 3 A. Yes, sir.
- 4 Q. Not Graham's?
- 5 A. Yes, sir.
- 6 Q. As a matter of fact, there was no DNA from Graham
7 Douglas that appeared anywhere on the short pants?
- 8 A. From what was tested there was no indication of Graham
9 Douglas' DNA.
- 10 Q. So, we have talked about this seminal fluid, and here I
11 am in the courtroom talking about seminal fluid, but we
12 might as well get into it. There is no indication of
13 any type of sexual conduct between Graham Douglas and
14 Eden Smith that you found?
- 15 A. Not from this testing.
- 16 Q. But there is quite serious evidence that those pants
17 belonged to Eden Smith?
- 18 A. If that is the conclusion, yes, I would hope so, again.
- 19 Q. And, we also found that the DNA profile was developed
20 from those short pants, was sufficient for DNA
21 interpretation?
- 22 A. Yes.
- 23 Q. And, you did test to see if there was a urine stain
24 there. And, there is no doubt about it, there is DNA
25 from Eden all over those shorts; right?

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1 A. Correct.

2 Q. Now, we also looked at the pants that came from the
3 front bedroom, which are described as 26, Item 26;
4 Correct?

5 A. Yes.

6 Q. Those pants had blood on them that was Graham Douglas'
7 blood; correct?

8 A. Correct, Item 26.1.

9 Q. Those pants didn't have any blood from Eden Smith;
10 Correct?

11 A. Correct.

12 Q. And as far as we know, from the photographs we have
13 seen the only bleeding that was actually done
14 externally by Graham came from a knee; you don't know
15 that?

16 A. No, sir, I can't speak to that.

17 Q. Okay. Let me see if I get straight on what you have
18 told us. Graham Douglas' blood was found three
19 separate places. One would be on his shirt --

20 A. Do you have an Item Number, please?

21 Q. I don't, but you can take a look. I should have
22 written that down, and I apologize.

23 (PAUSE.)

24 Q. Let me ask you this. Graham's blood was found on his
25 shirt wasn't it, or do you know?

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- 1 A. Item 27.1?
- 2 Q. Yes.
- 3 A. That is a cutting from a shirt belonging to Graham
- 4 Douglas.
- 5 Q. And there was blood on it?
- 6 A. And that matched Charles Smith.
- 7 Q. But there is also another cutting that matched Graham;
- 8 right?
- 9 A. Not from Item 27. Cutting from shirt belonging to
- 10 Graham Douglas is listed as Item 27 for me. There is
- 11 only a single item tested and it matched Charles Smith.
- 12 Q. Okay. So, we know that --- Let's see if we can get
- 13 this straight.
- 14 How many different items of clothing were tested?
- 15 A. I think that can be confusing here. Item 23 is listed
- 16 as pants, so that would be one.
- 17 Q. Okay.
- 18 A. Item 25 is also listed as pants, so that would be two.
- 19 Q. All right.
- 20 A. Item 26 is listed as pants, so that would be three.
- 21 Q. All right.
- 22 A. Item 27 is a shirt, so that is four.
- 23 Q. Right.
- 24 A. Item 28, if you count a shoe is five.
- 25 Q. All right.

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1 A. A pair of shorts, Item 8, that is six. And we have
2 already done 26. So, I would say six items.

3 Q. And Item 8, Eden's shorts had whose blood on them?

4 A. There was no blood on the shorts. Item 8?

5 Q. Yes.

6 A. No blood. Did I see seminal fluid?

7 Q. Let me get this. Did you know that gunshot residue,
8 GSR, was found on Eden's left hand?

9 A. No, I don't have any results for gunshot residue.

10 Q. You are a scientist of what sort?

11 A. DNA.

12 Q. You don't know a whole lot about gunshot residue do
13 you?

14 A. No, sir.

15 Q. Okay. You say you quit testing for the urine how long
16 ago?

17 A. Approximately a year, maybe a year and a half ago. It
18 has been a while. I can't recall specifically.

19 Q. And you never actually even saw the shorts themselves,
20 all you would have seen was the cuts?

21 A. I may have seen them in passing, because I may have
22 gone down with Verona, that would be --- It has been
23 some time ago, so I can't exactly recall. But, I did
24 see some clothing from this, but I didn't make the
25 cuttings. So, I would not have been right there on top

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1 of them working with it.

2 Q. If they had wanted to test for a urine stain they could
3 have, they just simply changed the policy and they
4 don't do it anymore?

5 A. Yeah, I think they stopped because the test was kind of
6 unreliable, and we were not exactly comfortable with
7 the results all the time. We probably could have sent
8 it out or something to have it tested, I would assume,
9 but I would have to go back and ask.

10 Q. There was no indication that Graham had urinated on his
11 pants in anyway was it?

12 A. I didn't make any conclusions. I still haven't even
13 seen --- That was my first seeing of that picture
14 today, I think.

15 Q. Everything you have tested from these short pants had
16 DNA of Eden Smith on them?

17 A. Correct, listed as Charles Smith.

18 Q. Charles Smith.

19 **MR. MOORE:** One moment, please, Your Honor.

20 **THE COURT:** Yes, sir.

21 (PAUSE.)

22 Q. Do you know of anybody who did any testing on the blood
23 that was found on the counter tops or walls in order to
24 determine whose blood that may have been?

25 A. I have an Item 21 listed as a swab from the kitchen

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1 counter and that was not tested.

2 Q. Do you have an Item Number for the wall? Nineteen
3 would have been swab on the kitchen floor.

4 A. That was not tested.

5 Q. Item 20 would be the swab from underneath the kitchen?

6 A. Not tested.

7 Q. And Item 21 was a swab of the kitchen counter top?

8 A. Not tested.

9 Q. And Item 22 is a swab from the step to the back of the
10 door?

11 A. Not tested.

12 Q. Item 28.2 would be the cutting from the left shoe of
13 Graham Douglas?

14 A. Not tested.

15 Q. Item 26.4 is another cutting from the pants in the
16 front bedroom?

17 A. Yes, sir. Not tested.

18 Q. Item 26.3 is a cutting from the pants of Charles Smith?

19 A. Not tested.

20 Q. Item 26.2 is another cutting from the pants in the
21 front bedroom?

22 A. Not tested.

23 Q. How about 25.2, a cutting from the pants belonging from
24 Graham?

25 A. Not tested.

PAUL MEEH - REDIRECT EXAMINATION

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1 **MR. MOORE:** Thank you, Mr. Meeh, I don't have any
2 further questions.

3 **MR. MEEH:** Yes, sir.

4 **THE COURT:** Redirect?

5 **MR. FINNEY:** Yes, sir.

6 **REDIRECT EXAMINATION BY MR. FINNEY**

7 Q. Mr. Meeh, if a person had left urine on a pair of
8 pants, and the cutting of that pants were taken to our
9 lab, would it have been able to provide the cells that
10 you saw and reported as 8.1 results?

11 A. Possibly, but it wouldn't have given semen indicated.
12 That test would have --- Let me think about that. It
13 could have been a combination of the two.

14 Q. Let me ask you, hypothetically speaking. A man passes
15 out, is shot and killed on the floor, the theory is
16 that he has released his urine as a result of passing
17 away. That urine spot on his pants is cut and tested,
18 and the results come back as what you all have been
19 talking about as seminal fluid; is that possible?

20 A. It is possible but unlikely. I know this for a fact.
21 Urine can be tested for DNA. It would shed cells that
22 could be tested for DNA. In this example, I don't know
23 if urine was there or not just simply because it wasn't
24 tested for.

25 Q. But whatever was tested, in other words if somebody's

PAUL MEEH - REDIRECT EXAMINATION

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1 Solicitor, law enforcement asked you --- If I
2 understood your testimony correctly, in December you
3 had these pants. In January you looked at the pants
4 and did something, but you didn't perform any analysis.
5 Is that what you said to me about January on Item 8?

6 **MR. MOORE:** Object to leading, please, Your Honor.

7 **THE COURT:** Overruled. That was to some preliminary
8 issues. You may answer the question. If you need it
9 rephrased we can try again.

10 A. I am not sure that I understand completely. The first
11 time that I did testing on these pants was in January.
12 And I have a worksheet that can tell me the date if
13 that is what you are asking. I am not clear on ---
14 January 18th.

15 Q. On January the 18th, what did you test on those short
16 pants, Item 8?

17 A. I tested for the presence of P30, which is seminal
18 fluid, and then I took it to DNA.

19 Q. All right. Did you get a result from the test in
20 January?

21 A. Yes, that matched Charles Smith.

22 Q. Okay. And, that would have been from cutting 8.1?

23 A. Correct.

24 Q. All right. And then somehow somebody asked you to look
25 back at that same item in March?

PAUL MEEH - REDIRECT EXAMINATION

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- 1 A. Oh, no, I'm sorry. The report came out in March, but
2 that testing was initiated in January. This is all the
3 same line of testing.
- 4 Q. All right. So, in March you got another report on Item
5 8.1?
- 6 A. It is the same report.
- 7 Q. Okay. It just went to a different lab; is that what
8 you are saying?
- 9 A. No. No. The shorts were put into SLED. In January I
10 got a cutting from them, and I initiated testing, and a
11 report came out on march 22nd.
- 12 Q. All right. So, there was only one report from the
13 analysis of 8.1?
- 14 A. Correct.
- 15 Q. And that report shows the presence of some seminal
16 fluid?
- 17 A. Correct.
- 18 Q. And what I am asking is, could that seminal fluid have
19 been produced by the evacuation of his kidneys when he
20 passed away by urine?
- 21 A. I don't know. Not being a --- that may be a question
22 for a medical pathologist. This is right on the verge
23 of my area of expertise, because seminal fluid could
24 have been in his urethra, it could have been
25 theoretically, and this is purely theoretical, it could

PAUL MEEH - REDIRECT EXAMINATION

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1 have been deposited by the evacuation of a bladder, if
2 it were there.

3 Q. And you are saying it is not your speciality, but you
4 are saying that there may have also been another
5 situation where there may have been some sexual
6 activity which would account for what you found?

7 A. Correct.

8 **MR. FINNEY:** Thank you. Nothing further.

9 **MR. MEEH:** Yes, sir.

10 **THE COURT:** All right. Is there an objection to the
11 release of the witness?

12 **MR. FINNEY:** No objection.

13 **MR. MOORE:** None.

14 **THE COURT:** All right, sir. You are not required to
15 leave, but you are free to leave.

16 **MR. MEEH:** Thank you, sir.

17 **THE COURT:** Very good. Ladies and gentlemen, let's
18 take approximately -- you have one more witness or more than
19 one?

20 **MR. FINNEY:** I probably have two more this morning,
21 Your Honor.

22 **THE COURT:** Let's take about a ten minute break then.
23 We will be in recess about ten minutes.

24 (Whereupon, a recess was taken from 11:07
25 a.m. until 11:17 a.m.)

SHANA SHORRELLS - VOIR DIRE EXAMINATION

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1 **MR. MOORE:** May we approach?

2 **THE COURT:** Yes, sir, you may.

3 (Whereupon, a bench conference was
4 held.)

5 **THE COURT:** I am told by counsel that rather than Mr.
6 Finney call the next witness, the defense has a witness
7 while we are waiting on the officers to arrive. So, go
8 ahead, Mr. Moore.

9 **MR. MOORE:** Your Honor, we would call Shana Sorrells.

10 **THE COURT:** Please come forward and take the oath of
11 a witness.

12 **WHEREUPON, SHANA SHORRELLS**

13 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

14 **MS. SORRELLS:** Yes ma'am.

15 **THE COURT:** And let me get you to state your full
16 name and spell it for us please ma'am.

17 **MS. SORRELLS:** Shana Sorrells. S-O-R-R-E-L-L-S.

18 **THE COURT:** Thank you.

19 **VOIR DIRE EXAMINATION BY MR. MOORE**

20 Q. Ms. Sorrells, by whom are you employed?

21 A. I am with SLED also.

22 Q. What is your position with SLED?

23 A. I am a forensic toxicologist.

24 Q. As a forensic toxicologist, what do you do?

25 A. We analyze biological and chemical samples for the

SHANA SHORRELLS - VOIR DIRE EXAMINATION

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1 presence alcohol, drugs, and other poisons, and
2 interpret those findings in courts of law, to coroners,
3 and to officers.

4 Q. How long have you been a forensic toxicologist?

5 A. Six and a half years.

6 Q. And have you worked for SLED the whole time?

7 A. Yes, I have.

8 Q. What is your educational background?

9 A. I have a bachelor's degree in chemistry from The
10 University of South Carolina. And a Master's Degree in
11 Analytical Chemistry also from The University of South
12 Carolina.

13 Q. Would you explain to the Judge what analytical
14 chemistry is?

15 A. Analytical chemistry is basically a chemistry that can
16 be quantitated. You have a sample and you can actually
17 put a number to it, instead of just making different
18 chemicals.

19 Q. And, as part of your job for the past six years, have
20 you done blood and alcohol screening on various samples
21 provided to you?

22 A. Yes, I have.

23 Q. And in regards to forensic toxicology, are you able to
24 make comparisons in regard to substance levels with the
25 impact it would have on a person's personality?

SHANA SHORRELLS - DIRECT EXAMINATION

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1 A. Yes, I am.

2 Q. You have training in that?

3 A. Yes, I do.

4 Q. And you have experience in that?

5 A. Yes, I do.

6 Q. Now, as a result of the incident that brings us here
7 today, did you do a toxicology study on Mr. Charles
8 Smith?

9 A. Yes, I did.

10 Q. And were you able to determine a blood alcohol level on
11 Mr. Smith?

12 **THE COURT:** Let me stop you there. You qualified the
13 witness as an expert. You have asked the basic questions.
14 Is there an objection to expertise?

15 **MR. FINNEY:** No, Your Honor. We accept this witness'
16 testimony as an expert witness.

17 **THE COURT:** All right. So, qualified then. Go
18 ahead, you may proceed.

19 **MR. MOORE:** Thank you, Your Honor.

20 **DIRECT EXAMINATION BY MR. MOORE**

21 Q. Ms. Sorrells, you have a masters, not a Ph.D., right?

22 A. Right.

23 Q. The report that you did, was that on the post mortem
24 report?

25 A. It is, yes.

SHANA SHORRELLS - DIRECT EXAMINATION

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1 Q. Could you please give me your opinion, based upon a
2 reasonable degree of professional certainty as to the
3 amount of alcohol that was contained in Mr. Smith's
4 body at the time he met his death?

5 A. At the time of his death the blood alcohol level was a
6 .216.

7 Q. And do you have a reasonable opinion, based upon --- an
8 opinion based upon a reasonable degree of professional
9 certainty as to what sort of impact a blood alcohol of
10 that level would have upon a person?

11 A. On an acute drinker or somebody that does not drink
12 very often, that level would pretty much knock them
13 unconscious. I overheard that he was about six feet, a
14 hundred and eight-five pounds. That level, if this had
15 been one of his first times drinking, that level would
16 have definitely knocked him out. For a more
17 experienced drinker, someone who has had experience
18 with it, and has drunken over time on a more regular
19 basis, that level can actually cause severe aggression,
20 emotional instability, it can also cause violence.

21 Q. Very fine. Are those the sorts -- On an experienced
22 drinker, are those the types of conduct you would
23 expect with a blood alcohol level of this level?

24 A. At that type of conduct you would definitely see some
25 severe mood swings.

SHANA SHORRELLS - CROSS EXAMINATION

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1 Q. Very fine.

2 MR. MOORE: Thank you, Your Honor, I have no further
3 questions.

4 THE COURT: Is there cross examination?

5 MR. FINNEY: Thank you, Your Honor.

6 CROSS EXAMINATION BY MR. FINNEY

7 Q. Ms. Sorrells, you don't have any way of knowing how Mr.
8 Smith acted that day?

9 A. No, I do not.

10 Q. You have not read anything or done any investigation?

11 A. No, I have not.

12 Q. You don't know what type of beverage he was drinking?

13 A. No, I do not.

14 Q. Or what quantities he consumed?

15 A. He consumed enough alcohol to get him to a blood
16 alcohol level of a .216. It doesn't matter what he
17 consumed or how much he drank. It just depends on how
18 much alcohol was in the drink. And he drank enough
19 alcohol to get him to a .216

20 Q. And are you familiar with the process of absorption and
21 expulsion?

22 A. Yes, I am. We call it elimination, but yes.

23 Q. Elimination, thank you.

24 A. Yes.

25 Q. Is it possible that --- It is possible is it not, that

SHANA SHORRELLS - CROSS EXAMINATION

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1 he may have been higher on the alcohol scale an hour
2 before he met his death than he was at the time of his
3 death. Is that true?

4 A. It is. You usually eliminate at a rate of .015 every
5 hour. So, an hour prior to his death, if he was
6 higher, he would have been at a .231, which would still
7 be in the same range.

8 Q. Right. It would be high?

9 A. He would still be high.

10 Q. We don't today here, you and I don't know what his
11 experience level was for drinking?

12 A. No, I do not.

13 Q. Now, would his blood alcohol level have anything to do
14 with any kind of activity he might have been involved
15 in, or if he were playing football and drinking beer
16 while he is playing football, does that have any
17 effect, any physical exertion while he is drinking?
18 Does that have any impact on how he would have reacted
19 to the .216?

20 A. I don't think I quite understand the question. Can you
21 rephrase it?

22 Q. Yes ma'am. You have said, I believe, that a person who
23 is normally associated with drinking on a regular basis
24 and who has this blood alcohol level would be
25 aggressive and what was the other word you said?

SHANA SHORRELLS - CROSS EXAMINATION

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1 A. He can be aggressive, and cause major mood swings, and
2 can cause violence, yes.

3 Q. But those are not necessarily the characteristics of
4 everybody who has a .216?

5 A. No, it is not.

6 Q. Is alcohol a depressant?

7 A. It is a depressant, yes.

8 Q. And that means that it depresses the system, the
9 thinking, the speech, the motor skills?

10 A. It can slow it down, yes.

11 Q. All right. So, by its very nature alcohol can do the
12 opposite of what you just testified about being
13 aggressive, and having mood swings, and all of that.

14 A. Like I said, for a more inexperienced drinker, one that
15 does not have it, it would most likely cause a person
16 to be unconscious.

17 Q. I heard you say that. I am not talking about that
18 person. I am talking about a person who drinks
19 regularly, and has a .216, you can't say for certain
20 that he might not be depressed, and sitting in a corner
21 just high as a kite, as opposed to being aggressive,
22 and having mood swings, and being adjudicated.

23 A. No, but it has been shown that usually at that level
24 you do see increased agitation and mood swings. But no
25 that does not occur in everybody, that is just on

SHANA SHORRELLS - EXAMINATION BY THE COURT

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1 average.

2 Q. You don't have any facts to say that Charles Eden Smith
3 was acting aggressive, or undergoing mood swings, you
4 just have the fact that he had a .216 blood alcohol
5 level?

6 A. That is correct.

7 **MR. FINNEY:** Thank you, ma'am. Nothing further.

8 **MR. MOORE:** Thank you, Your Honor. I have no
9 questions, and have no objection to this witness being
10 excused.

11 **MR. FINNEY:** No objections from the State.

12 **THE COURT:** All right. Ma'am, let me ask a question
13 if I may.

14 **MS. SORRELLS:** Yes.

15 **THE COURT:** You said, I believe the term you used was
16 a rate of elimination of .015.

17 **MS. SORRELLS:** On average, yes.

18 **THE COURT:** All right. And is that true for a
19 deceased individual as well as a living individual?

20 **MS. SORRELLS:** As soon as you die the elimination
21 stops, because the heart slows down, the metabolism stops,
22 so you stop eliminating.

23 **THE COURT:** All right. And, do you know from where
24 the blood was drawn from Mr. Eden Smith?

25 **MS. SORRELLS:** Yes, sir. It was drawn from the iliac

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1 vein.

2 **THE COURT:** And is that the standard place from where
3 blood is drawn from a deceased individual?

4 **MS. SORRELLS:** Blood can actually be drawn from
5 anywhere. From a toxicologist standpoint, we prefer the
6 femoral artery or the iliac vein, because at that point the
7 blood can be cut off, and a certain amount can only be drawn
8 from that, so you don't get any excess anywhere else.

9 **THE COURT:** All right. And, then is it your
10 testimony that it doesn't make a difference how long that
11 individual, and in this case Mr. Smith, may have been
12 deceased, because the process of elimination stops at the
13 point that life ends?

14 **MS. SORRELLS:** That is correct, yes.

15 **THE COURT:** All right. And then one last question.
16 Might there be in that period after life ends some factors
17 which might have caused additional fermentation, or an
18 increase in the blood alcohol level, depending on
19 conditions?

20 **MS. SORRELLS:** Usually that only occurs when the body
21 is pretty much rotting, I guess is the right word. We will
22 see elevated levels in deceased victims that have not been
23 found for weeks, which is why we most often look at the
24 ocular fluid also, as well as the blood. Nothing can pass
25 back and forth between the ocular membrane and bacteria does

SHANA SORRELLS - RE-EXAMINATION BY MR. MOORE

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1 not tend to grow in the ocular fluid.

2 **THE COURT:** All right. And thank you, ma'am.

3 Now, any questions based on what the Court has asked,
4 follow up by counsel?

5 Hearing none, then you are not required to leave, but
6 you are free to leave.

7 **RE-EXAMINATION BY MR. MOORE**

8 Q. Was the ocular fluid also tested?

9 A. Yes, it was.

10 Q. So, you are certain based upon a reasonable degree of
11 medical certainty that 2.216 would have been accurate?

12 A. The level at the time of death in his blood was a .216.
13 In the ocular fluid it was a .24.

14 **MR. MOORE:** Thank you, very much.

15 **THE COURT:** Thank you, ma'am. Have a good day.

16 **MS. SORRELLS:** Thank you.

17 **THE COURT:** Now we will switch back to the State?

18 **MR. FINNEY:** Thank you, Your Honor.

19 **THE COURT:** Please call your witness.

20 **MR. FINNEY:** Mr. Dana Wallace.

21 **THE COURT:** Please come forward and take the oath of
22 a witness.

23 **WHEREUPON, DANA WALLACE**

24 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

25 **MS. WALLACE:** I do.

SHANA SORRELLS - RE-EXAMINATION BY MR. MOORE

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1 **MR. FINNEY:** Your Honor, please. This witness is a
2 Chesterfield County Sheriff's Departments Officer, who I
3 believe wants to question about his recollection of that
4 night. He was a first responder to the scene. We also want
5 to show him Item 8.0, the shorts that Mr. Charles Eden Smith
6 was wearing. And, just for the record, when we open the box
7 that Mr. Meeh has brought from SLED, we are going to want to
8 make sure that Mr. Meeh or Chesterfield County can retain
9 the evidence after today, and we wanted to make sure the
10 defense and the Court were all on the same page with the
11 State about how that item would be handled after today.

12 **THE COURT:** Very good. The Court has no objection to
13 that procedure, up until today, that is opening it here in
14 the courtroom. First of all, is there an objection to that,
15 Mr. Moore?

16 **MR. MOORE:** Your Honor, we have no objection. The
17 only thing we would want, of course we have never seen the
18 item.

19 **THE COURT:** Well, my suggestion would be that Mr.
20 Meeh, because he brought it here, should leave with it as
21 well if he takes the other evidence back with him. If all
22 the other evidence stays, then it should stay as well. And
23 we will leave that determination to you, whichever is most
24 efficient going forward for the prosecution so that the
25 chain of custody will be intact, and will be similar to all

DANA WALLACE - DIRECT EXAMINATION

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1 of the other items brought as well.

2 MR. FINNEY: Thank you.

3 THE COURT: Go ahead.

4 DIRECT EXAMINATION BY MR. FINNEY

5 Q. Please give us your full name?

6 A. Dana Wallace.

7 Q. Mr. Wallace, where are you employed?

8 A. Chesterfield County Sheriff's Office.

9 Q. And how long have you been a deputy?

10 A. Eight years..

11 Q. Are you a line officer, a patrol officer, how do you --

12 - What is your --

13 A. -- Patrol.

14 Q. Patrol.

15 A. Yes, sir.

16 Q. Have you been doing that for a long time?

17 A. Twenty-three years.

18 Q. Other places besides Chesterfield?

19 A. Yes, sir.

20 Q. All right. Did you have an occasion to respond to the
21 911 call that went out from Mr. Douglas' house on May
22 31, 2011?

23 A. Yes, I did.

24 Q. Were you the first Deputy Sheriff to arrive at that
25 scene?

DANA WALLACE - DIRECT EXAMINATION

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- 1 A. Yes.
- 2 Q. All right, sir. And would you tell the Judge what you
3 saw when you got there, what did you do as part of your
4 responding to the call?
- 5 A. When I pulled up on the scene, myself, Deputy Campbell,
6 and Deputy Karnes, we approached Mr. Douglas and
7 Graham, they were standing in the back yard.
- 8 Q. All right. Be clear, Mr. Leon Douglas --
- 9 A. Mr. Leon Douglas yes, and Mr. Graham.
- 10 Q. They were standing in the backyard of which, of which
11 residence?
- 12 A. Graham's residence.
- 13 Q. All right, sir.
- 14 A. I looked at Graham, and I said, what is going on? He
15 said, he come at me with a gun and I shot him.
- 16 Q. That is what Graham said to you?
- 17 A. Graham said that to me.
- 18 Q. Would you tell the Judge how he appeared to you at that
19 time when you first got there; Graham Douglas?
- 20 A. He appeared to me as highly intoxicated.
- 21 Q. All right. Was he disheveled looking, clothes? Was he
22 neat and clean, or was he looking disheveled?
- 23 A. Disheveled.
- 24 Q. All right. Did he have any blood on him?
- 25 A. I didn't notice.

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- 1 Q. All right. Was he fully clothed? Did he have a
2 shirt, a pair of pants, shoes; can you remember that?
- 3 A. I do remember pants and a shirt. I am not sure about
4 the shoes.
- 5 Q. All right, very good. After he said that statement to
6 you, what did you do?
- 7 A. I said, where is he at. And Mr. Leon said he was in
8 the house.
- 9 Q. All right. Let me stop you right there. At this
10 point, when you first got there, did you know Leon?
- 11 A. Yes, I did.
- 12 Q. Had you known him for years?
- 13 A. Yes, sir.
- 14 Q. How about Graham? Did you know Graham?
- 15 A. I knew of him, yes.
- 16 Q. All right. When he said what he said to you, I shot
17 Eden, he came at me with a gun, whatever; did you know
18 Eden? Did you know who they were talking about?
- 19 A. Yes.
- 20 Q. All right. Did you know them to be close, Eden,
21 Graham, Leon?
- 22 A. I did not know that.
- 23 Q. All right, sir. Go ahead with your story. You told
24 the officers to do something, and you did what?
- 25 A. When Mr. Douglas, Mr. Leon said he is in the house, I

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1 turned to the deputies Karnes and Campbell, and I said,
2 detain him, and read him his Miranda, and then I went
3 into the house.

4 Q. All right. What did you do when you went in the house?

5 A. I walked in the backdoor, I call it the laundry room.
6 I think it was the laundry room or something. Then I
7 stepped into the kitchen and seen Eden laying in the
8 floor.

9 Q. All right. How many steps from the backdoor to where
10 Eden was on the floor, would you say?

11 A. Ten, fifteen maybe, I'm not sure.

12 Q. Ten or fifteen steps, or feet, or inches, or what?

13 A. Steps. I'd say steps, I'm not real sure.

14 Q. All right. From the backdoor to Eden's body about ten
15 steps?

16 A. Approximately.

17 Q. All right. Let me show you Defendant Exhibit Number
18 55, is that an accurate representation of Eden, Charles
19 Eden Smith's body on the floor of the kitchen?

20 A. Yes.

21 Q. And is that how you saw it?

22 A. That is exactly how I saw it.

23 Q. Do you remember seeing a weapon near his right hand on
24 the floor?

25 A. Yes, I did.

DANA WALLACE - DIRECT EXAMINATION

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1 Q. Did you touch the weapon and move it?

2 A. No, I didn't.

3 Q. All right. Once you saw the State of the house, the
4 kitchen area, did you go through the house to see if
5 anything else was going on in the house?

6 A. Not at that time.

7 Q. So, the house was not cleared, I believe that is the
8 term police use?

9 A. Correct.

10 Q. All right. You backed out of the room and went back
11 outside?

12 A. And I went back outside and then the EMT responders
13 came, and then I went back inside with them.

14 Q. All right. Would you look at that picture, which is
15 Exhibit Number 55, and tell me if you notice anything
16 unusual about Eden's body? Did he have on a shirt?

17 A. No shirt. The pants he had on were just like that.
18 They wasn't pulled all the way up. And, they appeared
19 to have a tear on each side.

20 Q. All right. Can we see the pants please, and I would
21 ask you to put on the gloves so that you can pick up
22 the pants and examine them.

23 (PAUSE.)

24 Q. Are those the shorts that you saw on the body of Mr.
25 Eden Smith that night?

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1 A. They appear to be, yes.

2 Q. All right, sir. And, would you describe them please,
3 the color and the style?

4 A. They appear to be beige cargo shorts is what I would
5 call them.

6 Q. Now, as you are holding them right now in court, they
7 are inside out; is that correct?

8 A. Yes, sir.

9 MR. WALLACE: Your Honor, do you mind if I stand up?

10 **THE COURT:** No, sir, go ahead, please do.

11 **MR. MOORE:** Your Honor, may I ask a question?

12 **THE COURT:** Yes, sir.

13 **MR. MOORE:** The portion that I am incredibly
14 interested in appears to be missing. Appears to be cut out.

15 **MR. FINNEY:** That is Item 8.1?

16 **MR. MOORE:** Yes, sir.

17 **THE COURT:** We will give you cross on those issues.

18 **MR. MOORE:** I would just like to see it.

19 **THE COURT:** Okay. We will let you do that. We will
20 let you do that on cross.

21 Q. Those pants are inside out as they appear today in
22 court; is that correct?

23 A. Yes, sir.

24 Q. And, refreshing your memory from the picture that we
25 put into evidence, Exhibit Number 55, were the pants

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1 inside out that day?

2 A. No, sir.

3 Q. Do you see anything as far as --- that you saw that day
4 about the pants --- that brought the pants into your
5 attention?

6 A. Yes, sir. On each side of the pants they had a tear in
7 them.

8 Q. Yes, sir. Can you show the Court that tear?

9 A. This tear is on the side right beside the pocket.

10 Q. Where is the tear at?

11 A. Right beside the pocket in the seam.

12 Q. All right, sir. Can you look on this picture and see
13 that tear in Exhibit Number 55?

14 A. Yes.

15 Q. Which side was it on when the pants were on Eden?

16 A. It would be on his right side.

17 Q. Right side. All right, sir. And did you notice the
18 pants being in a position on his body that lead you to
19 believe that something was unusual about them?

20 A. Yes. They were not all the way up on his body.

21 Q. All right, sir. Did he have any underwear on?

22 A. Not that I could tell.

23 Q. Any shoes?

24 A. No, sir.

25 Q. All right, sir. As the body lay on that floor, he had

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1 on just those shorts and a pair of short black socks?

2 A. That's correct.

3 Q. All right, sir. Let me ask you this. I believe these
4 are the socks in the bag with the pants?

5 A. They appear to be.

6 Q. All right, sir. Let me ask you. Did you notice any --
7 - Can you look at the pants and tell me whether there
8 were any blood on the pants? Any noticeable amount of
9 blood on the pants?

10 **THE COURT:** First of all, you can turn them right
11 side out if you wish as opposed to being inside out. Go
12 ahead.

13 A. There were blood on the pants, on the front of the
14 pants.

15 **THE COURT:** Let's let the record reflect that the
16 witness has turned the pants now so they are correct side
17 out.

18 Q. All right, sir. And the blood that you have notated or
19 saw on the pants, what side of the pants would that be
20 on?

21 A. This would be on the right side of the pants, on his
22 right side.

23 Q. On his right side. And the area that has been cut out
24 and removed by the SLED Lab, is that also on the right
25 side of the pants?

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1 A. Yes, it is.

2 Q. Is it on the front?

3 A. Yes.

4 Q. To the right of the zipper?

5 A. Yes, sir.

6 Q. All right, sir. On the back of the pants do you notice
7 any blood or anything?

8 A. It appears to be a spot on the back.

9 Q. All right, sir.

10 **THE COURT:** Counsel, just one moment. Gentlemen, I
11 know your conversation is confusing our court reporter who
12 is trying to keep up with the official conversation.

13 **MR. MOORE:** I do apologize.

14 **THE COURT:** That's alright, no problem.

15 **MR. MOORE:** This is just the first time we have ever
16 seen it, Your Honor.

17 **THE COURT:** We will give you a few moments to examine
18 them.

19 Q. On the left front pocket area on the bottom, does it
20 appear to be blood on that area of the pants?

21 A. Yes.

22 Q. Can you tell me sir, by looking into the pants, who
23 makes the pants and what size they are?

24 A. They are size thirty-six, and I can't tell you who
25 makes them.

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1 Q. All right, sir, very good.

2 MR. FINNEY: We can put them back in the envelope
3 now, unless the defense may have a question about them.
4 Please just leave them in that area. Just sit them on that
5 rail right there.

6 THE COURT: Keep the gloves on a little bit, if you
7 wish.

8 Q. Did you conclude that Mr. Graham Douglas had his rights
9 read to him after you instructed the officers to do
10 that? Did you get confirmation that he had been read
11 his rights?

12 A. Yes. Yes.

13 Q. Did he make any further statements at that time in your
14 presence?

15 A. Not in my presence, no.

16 Q. Did you have any contact with Mr. Graham Douglas again
17 after coming or leaving him with Karnes and the other
18 officer?

19 A. I did not.

20 Q. You did not transport him away from the scene?

21 A. No, sir.

22 Q. And you did not see him later on in the Detention
23 Center?

24 A. No.

25 Q. Would you tell us a little about the level of his

DANA WALLACE - DIRECT EXAMINATION

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1 intoxication; was he talking or would be able to talk?
2 Let me ask you this. Was he crying? Did you ever see
3 him cry or get emotional?

4 A. He wasn't crying that I remember when I pulled up. I
5 mean, his speech was slurred, and he appeared to me to
6 be highly intoxicated.

7 Q. Did he have any problems moving around? Was he holding
8 his arm as if it were broken, or his leg, or limping or
9 anything like that?

10 A. No.

11 Q. Was he moving around --

12 A. -- freely, yes.

13 Q. Freely. All right, sir. Did you ever handcuff him?

14 A. No, sir.

15 Q. Did you ever see him handcuffed?

16 A. No.

17 Q. All right, sir. And other than the initial statement
18 that he responded to your question, what's going on, he
19 never made any other statement?

20 A. Not to me.

21 Q. And the statement that you heard him say was what?

22 A. He came at me with a gun and I shot him.

23 **MR. FINNEY:** I have no further questions. Please
24 answer any questions Mr. Moore may have.

25 **THE COURT:** Mr. Moore, are you going to ask the

DANA WALLACE - CROSS EXAMINATION

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1 witness to handle the pants or the swatch from the pants?

2 MR. WALLACE: I can leave them on, Your Honor.

3 **THE COURT:** I know they are a little uncomfortable.

4 MR. WALLACE: That's alright.

5 **MR. MOORE:** That's alright, officer. I will leave
6 you alone on that.

7 MR. WALLACE: I mean, I am fine if I need to.

8 **MR. MOORE:** Does that feel better?

9 MR. WALLACE: Yes, sir.

10 **CROSS EXAMINATION BY MR. MOORE**

11 Q. Officer, as I understand it, you were one of the first
12 people there on the scene?

13 A. Yes, sir.

14 Q. You went to the room and you saw Eden basically lying
15 on the floor?

16 A. Yes, sir.

17 Q. Are you the person who took the photographs?

18 A. No, sir.

19 Q. Would this be a Exhibit Number 62, Defendant Exhibit
20 Number 62, would be a good representation of what you
21 saw on the floor; right?

22 A. Yes.

23 Q. Now, we can look at Exhibit Number 62, and see a wet
24 spot on those short pants that corresponds with the
25 holes that has been cut out of those pants; correct?

DANA WALLACE - CROSS EXAMINATION

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1 A. Correct.

2 Q. Now that is exactly what Eden would have looked like
3 when you showed up; right?

4 A. Yes.

5 Q. He would have been laying on the floor, and there was a
6 wet spot in the front of his pants?

7 A. Correct.

8 Q. Now, I am going to show you a photograph that was taken
9 later. Exhibit Number 55, do you see that?

10 A. Yes.

11 Q. Now, this was taken by the SLED Crime Scene folks who
12 got there thirty minutes or so later. Okay?

13 A. Yes, sir.

14 Q. By the time that photograph was taken, does it appear
15 that the wet spot was dry?

16 A. It does.

17 Q. So, we know that the spot that was on these pants was
18 wet at the time you got there; correct?

19 A. Correct.

20 Q. And we also know that it dried rapidly?

21 A. Correct.

22 Q. Now, wouldn't there have been some pants in the front
23 bedroom that you ever saw?

24 A. Sir, I didn't go in the front bedroom.

25 Q. We know that Graham is the person that called 911; did

DANA WALLACE - CROSS EXAMINATION

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- 1 you know that?
- 2 A. Yes.
- 3 Q. And when you got there Graham and his Dad were in the
- 4 backyard?
- 5 A. Right.
- 6 Q. Graham seemed like he was drunk?
- 7 A. Correct.
- 8 Q. Have you ever seen anybody who has been hit in the head
- 9 act funny?
- 10 A. Yes.
- 11 Q. Have you ever seen anybody who has been hit in the head
- 12 act like they are drunk?
- 13 A. Yes.
- 14 Q. Have you ever seen anybody on medication act drunk?
- 15 A. Yes.
- 16 Q. Have you ever seen anybody drunk on alcohol act drunk?
- 17 A. Yes.
- 18 Q. All right. One thing for certain, Graham did not act,
- 19 appear to be in his right mind that day in the back
- 20 yard?
- 21 A. That's correct.
- 22 Q. But he was also telling you without any question that
- 23 he had shot Eden. He told you that?
- 24 A. Yes, he told me that.
- 25 Q. And he said that Eden was coming at me with a gun and I

DANA WALLACE - CROSS EXAMINATION

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1 shot him?

2 A. That's correct.

3 Q. You understood by that he was telling you that he shot
4 Eden in self-defense?

5 A. I understood he told me he shot him.

6 Q. Yes.

7 A. Yes.

8 Q. Eden was coming at me with a gun and I shot him.

9 A. Right.

10 Q. You understood that he was telling you that he did that
11 in self-defense; didn't you? That is what he was
12 telling you?

13 A. That is what he told me.

14 Q. That is what you understood him to say?

15 A. Right.

16 Q. Okay. And when you got there, did you know that Graham
17 had some right significant injuries on his body?

18 A. No, sir. I did not know that. I didn't notice it.

19 Q. But, if we look at these photographs from the jail,
20 Exhibit Number 36, Exhibit Number 35, Exhibit Number
21 33, Exhibit Number 38, Exhibit Number 39, Exhibit
22 Number 37, Exhibit Number 32, Exhibit Number 34,
23 Exhibit Number 30, Exhibit Number 31, and Exhibit
24 Number 29, these were taken right after you got there.
25 You can see that Graham did have some pretty

DANA WALLACE - CROSS EXAMINATION

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1 significant injuries on him, didn't you?

2 A. I see them in those photos.

3 Q. And you got there as a first responder, and you had
4 somebody dead in the floor, you really wasn't all that
5 interested in looking at Graham's injuries, you were
6 trying to concentrate on the dead guy?

7 A. Yes, sir, that is correct.

8 Q. Now that you see the photographs, you do know that
9 Graham had some right significant injuries there?

10 A. Yes.

11 Q. Now, I am trying to get to if there was anybody around
12 that could have inflicted those injuries. You had no
13 evidence that Graham inflicted those injuries on
14 himself; correct?

15 A. No, sir.

16 Q. And he had Leon Douglas there in the backyard with him.
17 Leon did not appear that he had been in a fight or
18 beating up anybody did he?

19 A. No, he did not.

20 Q. You did not have any reason to believe that the person
21 who had inflicted those injuries would have been Leon
22 Douglas?

23 A. No.

24 Q. And Mrs. Douglas, she was still in the house?

25 A. I believe so.

DANA WALLACE - CROSS EXAMINATION

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1 Q. And that was her house?

2 A. Yes.

3 Q. And Graham had been --- This whole thing had happened
4 inside of Graham's house?

5 A. Yes.

6 Q. Was there anybody you found on the scene that night as
7 a first responder that could have inflicted these
8 injuries on Graham other than Eden Smith?

9 A. No.

10 Q. So, as far as we know, based upon your investigation
11 and what you found, the person who inflicted these
12 injuries upon Graham Douglas would have been Eden
13 Smith?

14 A. Yes, sir.

15 Q. Now, had you know Eden for quite a while?

16 A. Knew of him. I mean, I knew of him. We weren't
17 friends, but I knew him.

18 Q. You didn't hang out with him?

19 A. No, sir.

20 Q. You knew that he had been in trouble before?

21 A. Right.

22 Q. You knew Eden drank a good bit?

23 A. Yes.

24 Q. And law enforcement knew to keep an eye on him?

25 A. I guess.

DANA WALLACE - CROSS EXAMINATION

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- 1 Q. I mean, it was any secret in town that Eden drank
2 pretty heavy?
- 3 A. Right. That's correct.
- 4 Q. And you got there, Eden was on the floor, and you
5 simply remained there with Graham until somebody to
6 help?
- 7 A. I stayed there until the EMT came up.
- 8 Q. And EMT came?
- 9 A. Yes, sir.
- 10 Q. And then you left?
- 11 A. No, sir. I went back inside when they went in there.
- 12 Q. How long did you stay on the scene that night?
- 13 A. I stayed outside until SLED cleared.
- 14 Q. Until EMT cleared?
- 15 A. SLED.
- 16 Q. Until SLED cleared.
- 17 A. Yes.
- 18 Q. And what did you do while you were outside?
- 19 A. I stayed outside and stayed on the crime scene outside.
- 20 Q. And at some point in time you left?
- 21 A. Yes.
- 22 Q. And here you are today?
- 23 A. Yes, sir.
- 24 **MR. MOORE:** Nothing further. Thank you, Your Honor.
- 25 **THE COURT:** And, redirect?

DANA WALLACE - REDIRECT EXAMINATION

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1 **MR. FINNEY:** A few questions, Your Honor.

2 **THE COURT:** Go ahead.

3 **REDIRECT EXAMINATION BY MR. FINNEY**

4 Q. Mr. Wallace, the whole time you were out there waiting
5 for SLED to clear, was it hours that you were out
6 there?

7 A. Yes, hours.

8 Q. Did you see Mr. Leon Douglas out there at the parameter
9 of the crime scene?

10 A. Yes.

11 Q. Did he leave during those hours?

12 A. I don't believe he did.

13 Q. He stayed outside watching you guys do your work?

14 A. Yes.

15 Q. Did he appear to be very concerned, very upset about
16 what had apparently happened?

17 A. Yes, he did.

18 Q. And would it have shocked you to find out later on the
19 next day or the day after that, that he had grabbed his
20 son, and shook his son, and held his son and said, why
21 did you do it? What happened? Would you have been
22 shocked by that based on what you know about Mr. Leon?

23 **MR. MOORE:** Your Honor, I would object to the
24 leading, and I would also object --- He is cross examining
25 on something that is not in the record. There is nothing in

DANA WALLACE - REDIRECT EXAMINATION

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1 the record that Leon Douglas did anything like this.

2 **THE COURT:** All right. First of all, this is your
3 witness. So, I am going to sustain --- Tell me why that is
4 not a leading question, counsel?

5 **MR. FINNEY:** Because -- If you don't mind I will back
6 up and ask a preliminary foundation question.

7 **THE COURT:** Please do that.

8 Q. When you were asked by my co-counsel that you couldn't
9 think of anybody else who did these injuries to Graham
10 beside Charles Eden Smith, did you do any work,
11 investigation asking about that? Or were you just
12 being nice to this lawyer?

13 A. No.

14 Q. Do you know who put the injuries on him?

15 A. No, I do not know.

16 Q. Do you know when they got on him?

17 A. No, I do not know.

18 Q. Did you do any investigation about that?

19 A. No.

20 Q. So, all you know is what these pictures say, and maybe
21 if you had been in court, what Graham Douglas said how
22 he got them?

23 A. Yeah, this is the first time these pictures --- I have
24 seen these bruises.

25 Q. All right. Did Graham Douglas tell you that night that

DANA WALLACE - REDIRECT EXAMINATION

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1 he had been bruised?

2 A. No.

3 Q. Did he tell you when he had been bruised?

4 A. No.

5 Q. Did he tell you who bruised him?

6 A. No, sir.

7 Q. You didn't see any bruises?

8 A. I did not.

9 Q. All right. This lawyer ask you, was there anybody
10 there besides Eden Smith that could have done this and
11 you said, no, sir. And what I am asking you is, are
12 you sure --- can you swear that nobody else could have
13 done this but Eden Smith?

14 A. No, I can't swear on that.

15 Q. Could Leon Douglas have shaken his son after finding
16 out that a man's life had been taken and caused
17 injuries like that to his son?

18 A. I suppose he could.

19 Q. Could somebody else had done it before Graham Douglas
20 shot Eden? Could somebody else have somehow another
21 put some bruising marks on Graham Douglas before?

22 A. I suppose so, yes.

23 Q. You don't know?

24 A. No, I don't know.

25 Q. Nobody told you?

DANA WALLACE - EXAMINATION BY THE COURT

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1 A. Correct.

2 Q. Did you do any investigation about how this man got
3 those bruises?

4 A. No.

5 Q. Was there at anytime that night or since that you found
6 two guns connected with this house?

7 A. No.

8 **MR. FINNEY:** Thank you, nothing further.

9 **THE COURT:** Just one moment. May I see the picture
10 of the one that has the weapon? This is Exhibit Number 55.
11 Do you see the pistol there?

12 **MR. WALLACE:** Yes, sir.

13 **THE COURT:** Was that the position the pistol was in
14 when you first walked in the door that night?

15 **MR. WALLACE:** Yes, sir. It appears to be.

16 **THE COURT:** All right. Are you certain of that?

17 **MR. WALLACE:** Yes.

18 **THE COURT:** And to your knowledge, did anyone remove
19 or move that pistol at anytime, the EMTs or someone who may
20 have been attempting treatment?

21 **MR. WALLACE:** To my knowledge, no, sir. Because when
22 they came in they made mention of the pistol. And I said,
23 do not touch it unless you have to. And to my knowledge
24 they did not touch it.

25 **THE COURT:** So, when the photograph was taken, you

DANA WALLACE - EXAMINATION BY MR. MOORE

330

1 believe that pistol was in the same position when you first
2 walked in the door as the first responder that night?

3 MR. WALLACE: It appears to be, yes, sir.

4 THE COURT: All right. Thank you. Now, is there
5 followup questions on anything the Court has asked?

6 MR. FINNEY: Nothing from the State.

7 EXAMINATION BY MR. MOORE BASED ON COURT'S QUESTIONS

8 Q. That pistol was actually not located in Eden's hand was
9 it?

10 A. No, sir. It is not in his hand.

11 Q. Do you know if there were any fingerprints ever found
12 showing that the gun had actually been placed in Eden's
13 hand?

14 A. I don't know that, no.

15 MR. MOORE: Thank you. Nothing further.

16 THE COURT: All right. Thank you, sir. You are free
17 to step down, and you are free to leave if you wish.

18 MR. WALLACE: Thank you.

19 MR. FINNEY: And, Your Honor, now if we can take that
20 piece of evidence and put it back in custody.

21 THE COURT: You may repackage that, and turn it back
22 over to Mr. Meeh.

23 MR. FINNEY: We call Daniel Scott.

24 THE COURT: Please come forward and take the oath of
25 a witness.

DANIEL C. SCOTT - DIRECT EXAMINATION

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WHEREUPON, DANIEL C. SCOTT

AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. SCOTT: Yes ma'am

THE COURT: And before we start, are you going to turn that over to Mr. Meeh now?

MR. FINNEY: Chesterfield County is going to take custody of it.

THE COURT: All right. We don't have to do that now, we just wanted to make sure it did not get misdirected.

Please proceed.

MR. FINNEY: Thank you, sir.

DIRECT EXAMINATION BY MR. FINNEY

Q. Give us your name, please, sir?

A. Daniel C. Scott.

Q. What is your position?

A. Criminal Investigator, Chesterfield County Sheriff's Office.

Q. How long have you been an investigator for Chesterfield?

A. Four years.

Q. All right, sir. Do you do case identification on serious cases involving shootings, homicides, and things like that?

A. Yes, sir.

Q. Did you get a call, and did you respond to the house of

DANIEL C. SCOTT - DIRECT EXAMINATION

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1 Graham Douglas back in May of 2011?

2 A. Yes, sir.

3 Q. Can you tell the Judge when you arrived, were you one
4 of the first officers or second wave?

5 A. There were several officers on the scene prior to my
6 arrival. When I got there Sheriff Parker was there,
7 and made us aware that we needed to go ahead and
8 contact SLED, in which that's we did. I walked in the
9 house for briefly a second, and just walked back out
10 due to SLED was being called to come to the scene.

11 Q. Did you see Graham Douglas there?

12 A. I didn't see Mr. Douglas there. I assume they had
13 already put him in the car. The only individual I seen
14 was Mr. Leon Douglas, because I talked to him for a few
15 minutes.

16 Q. All right, sir. Did you know him for years?

17 A. Yeah. I know Mr. Douglas.

18 Q. All right. Now, once you got to the scene and you were
19 told that SLED was coming in, did you have to stay at
20 the scene, or did you then go somewhere else?

21 A. I left and went back to my office at the Sheriff's
22 Office.

23 Q. All right. And the Sheriff's Office is right here
24 downtown?

25 A. ██████████ Road.

DANIEL C. SCOTT - DIRECT EXAMINATION

333

- 1 Q. When you got there was Graham Douglas there?
- 2 A. Mr. Douglas was brought to the office by Sergeant
3 Wayne Jordan.
- 4 Q. All right. And, was he put in your office?
- 5 A. Yes.
- 6 Q. All right. Was that an interrogation room or an
7 office?
- 8 A. Just my office.
- 9 Q. What is in your office?
- 10 A. Two desks, filing cabinets, and a couple of pictures on
11 the wall.
- 12 Q. All right. And was Mr. Douglas in street clothes or
13 had he changed, or been changed?
- 14 A. I can't remember if he changed at the office or he had
15 already changed clothes prior to arrival.
- 16 Q. All right. And did you have a conversation with Mr.
17 Douglas?
- 18 A. Oh, yeah. We talked for a long --
- 19 Q. -- Did you know Mr. Douglas prior to this incident?
- 20 A. I knew Mr. Graham Douglas through his father. I knew
21 his father, and I knew he was Mr. Douglas' son.
- 22 Q. All right. Mr. Graham Douglas, was he advised of his
23 rights, his Miranda Rights by you?
- 24 A. Not when he first got there. Mr. Graham kept
25 constantly talking, talking, talking. I bordered on

DANIEL C. SCOTT - DIRECT EXAMINATION

334

1 several different occasions to ask him to stop talking.
2 Turn the television up and I said, Graham just please
3 stop talking. If you don't I'm going to have to advise
4 you of your rights. He kept on and finally I did
5 advise him of his rights.

6 Q. All right. How did you advise him of his rights?

7 A. Verbally.

8 Q. All right. And did you verbally advise him of all of
9 his Miranda Rights that you have been trained to give?

10 A. Sure did.

11 Q. Do you believe he understood those rights?

12 A. Yes.

13 Q. All right. And, do you believe that he was capable of
14 understanding based on his state of mind, state of
15 health at that time?

16 A. Yes.

17 Q. Did you notice any injuries on him? Any black eyes, or
18 purple marks, or blood, or anything?

19 A. I noticed there was some discoloration up under --- I
20 don't have my report in front of me.

21 Q. All right.

22 A. Up under his --- I think.

23 Q. I will show you --

24 A. -- His left eye.

25 Q. A picture taken of him at the jail that night. This is

DANIEL C. SCOTT - DIRECT EXAMINATION

335

1 Item 29, I believe, if I can find it. Item 29.

2 A. Yes. I noticed that up under his right eye.

3 Q. Up under his right eye was some discoloration or
4 puffiness?

5 A. Yes, sir.

6 Q. Was there any blood?

7 A. There was no blood on his eye.

8 Q. Any scratches?

9 A. Not on his eye.

10 Q. Any discoloration in terms of some sort of trauma to
11 the eye?

12 A. Not to my knowledge.

13 Q. All right. Did he complain of not being able to see
14 out of the eye, or any vision problems, or anything
15 like that?

16 A. No, he sure didn't.

17 Q. Now, I know he wasn't walking around in your office,
18 but as far as when you saw him come in, or leave, did
19 he have any physical ailments or disabilities of any
20 kind?

21 A. No.

22 Q. All right. You said he talked a lot. You said you
23 read him the Miranda Warning, did he make a statement
24 that you could tell the Court today about what happened
25 at the house that night?

DANIEL C. SCOTT - DIRECT EXAMINATION

336

1 A. Only thing he talked about was Eden came on him with a
2 gun. I believe it is in my statement, if you have it.

3 Q. All right.

4 A. I would rather read it from a statement, because it has
5 been a year ago so I won't take anything out of
6 context.

7 Q. You gave a statement to who? Did you write it out like
8 an incident report or something?

9 A. I wrote a statement out for SLED.

10 Q. For SLED office. Once you talked to Mr. Douglas, and
11 he said --- I guess he said --- He admitted to you
12 basically that he had shot the gun?

13 A. Yes.

14 Q. At that point did you know that there was a 911 call
15 that had come in?

16 A. No.

17 Q. And he said basically --- was he saying to you --- What
18 was your understanding about what he said happened that
19 day?

20 A. From my understanding he told me Eden came on him with
21 a gun and he shot him in self-defense, and I believe I
22 put that in my statement.

23 Q. All right, very good. Did you ask any questions or
24 interrogate --

25 A. -- No --

DANIEL C. SCOTT - DIRECT EXAMINATION

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- 1 Q. -- in any fashion? Tell me a little bit about how you
2 found him to be, Mr. Graham Douglas, while he was in
3 your office? First of all, tell us how long were you
4 together in the office?
- 5 A. Several hours.
- 6 Q. Several hours. Is this the same period of time that
7 Mr. Jordan was trying to get the search warrant
8 effected?
- 9 A. Yes, sir.
- 10 Q. All right. So, while Mr. Jordan was doing that you
11 were basically watching Graham in your office?
- 12 A. Yes, sir.
- 13 Q. All right. Did you happen to transport Graham later on
14 to the Detention Center?
- 15 A. I can't remember if I transported Mr. Douglas to the
16 Detention Center, or if SLED transported him.
- 17 Q. Would you like to look at your statement to refresh
18 your memory?
- 19 A. Yes, if you don't mind.
- 20 Q. Can you tell from this document when you gave that
21 statement?
- 22 A. On 5/31/11.
- 23 Q. And who did you give it to?
- 24 A. Actually wrote it out for Agent Johnson.
- 25 Q. After you refresh your memory, tell us anything that

DANIEL C. SCOTT - DIRECT EXAMINATION

338

1 you remember happened between you and Graham Douglas?

2 A. If you don't mind, I will just read it from what
3 happened from the time that Sergeant Jordan actually
4 brought him in.

5 Mr. Douglas had blood on his feet, and blood
6 on him and his clothing. Mr. Douglas had blood on
7 his feet and hands. He also had bruises on both
8 arms, bruises on his left eye. While I,
9 Investigator Scott, was sitting in the office with
10 Mr. Douglas he asked me if --

11 **MR. FINNEY:** -- Please, slow down.

12 A. Oh, I apologize. Okay. I investigator Scott, was
13 sitting in the office with Mr. Douglas. He asked me if
14 Charles Smith was dead, and I said, yes. Mr. Douglas
15 went on to say that I killed Eden. He pulled a gun on
16 me first. And I shot him, but it was in self-defense.
17 I then asked Mr. Douglas to be quiet, and not make any
18 more statements, and if he continue I would have to
19 make him aware of his Miranda Rights. Mr. Douglas
20 continued talking, so I had no other choice but to
21 advise him of his rights. He kept stating, I killed
22 Eden. I murdered my friend. I didn't mean to do it.
23 It was in self-defense. I just dishonored my family.
24 And Mr. Douglas went on making those same statements
25 for about five hours. Around three a.m. on 6/1/11, Mr.

DANIEL C. SCOTT - CROSS EXAMINATION

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1 Douglas transported to Chesterfield County Detention
2 Center.

3 **MR. FINNEY:** Thank you, sir. Nothing further.

4 **THE COURT:** And cross examination.

5 **MR. MOORE:** Please, Your Honor, very short.

6 **CROSS EXAMINATION BY MR. MOORE**

7 Q. Corporal Scott, how are you?

8 A. Fine, how are you?

9 Q. I am fine. I want to make sure that I understand. You
10 were one of the first responders, I believe?

11 A. No, I was not one of the first responders.

12 Q. You were the second wave?

13 A. No, I wasn't the second. It was several officers on
14 the scene prior to my arrival.

15 Q. All right. When you got there, Graham had enough blood
16 on him where it was pretty visible?

17 A. I couldn't testify to that. I didn't see Mr. Douglas.

18 Q. Well, if you take a look at your statement.

19 A. When he got to my office. You asking me about scene
20 versus office.

21 Q. At your office.

22 A. Okay.

23 Q. Y'all actually removed his clothing due to the amount
24 of blood on his clothing; right?

25 A. I didn't remove his clothing.

DANIEL C. SCOTT - CROSS EXAMINATION

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1 Q. But his clothing was removed due to the amount of blood
2 on him?

3 A. I think Sergeant Jordan remove his clothes.

4 Q. If you look at your statement.

5 A. Uh'huh.

6 Q. About half way down. You wrote the words. And his
7 clothing was removed due to the amount of blood on him
8 and his clothing. --

9 A. -- Clothing --

10 Q. -- What did you you mean by what you wrote?

11 A. Well, normally if incidents occur we normally collect
12 individual clothing and if we see any blood for
13 evidence purposes.

14 Q. Actually what you wrote was, his clothing was removed
15 due to the amount of blood on him and his clothing?

16 A. Yeah, he had blood on him and his clothes.

17 Q. And you also saw bruises on both of his arms?

18 A. I sure did.

19 Q. And you basically saw where he had a bruise on his eye?

20 A. Yes, sir.

21 Q. Those were pretty evident weren't they?

22 A. Well, you could see the puffiness and the only reason I
23 saw the bruises on his arm, Mr. Douglas actually pulled
24 the sleeve to shoulder.

25 Q. And you could see that Graham was affected by

DANIEL C. SCOTT - CROSS EXAMINATION

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- 1 something, either drugs, alcohol, or a combination ---
2 a hit on the head or something, he was certainly out of
3 it?
- 4 A. Yes, sir.
- 5 Q. And, he talked to you for a long time?
- 6 A. He sure did.
- 7 Q. You couldn't shut him up?
- 8 A. No, sir.
- 9 Q. Graham is known to talk isn't he?
- 10 A. From what his father says, yes.
- 11 Q. Sometimes words come out backwards too don't they?
- 12 A. I can't say that.
- 13 Q. One thing he told you though was he shot Eden. He made
14 it very clear that he killed his friend?
- 15 A. He sure did.
- 16 Q. And he also told you he had to because it was self-
17 defense?
- 18 A. Yes, sir.
- 19 Q. No doubt about it?
- 20 A. According to his statement.
- 21 Q. He was adamant about two things. He had done it and he
22 did it because it was in self-defense?
- 23 A. Yes, sir.
- 24 Q. And if you look at the physical condition of his body,
25 it is pretty obvious that somebody was working out on

DANIEL C. SCOTT - CROSS EXAMINATION

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1 him pretty good isn't it?

2 A. Well, this is actually --- I have seen that closely. I
3 didn't see his knee caps or anything.

4 Q. But you were able to see these bruises?

5 A. I seen the bruise on his arm.

6 Q. Somebody worked him over pretty good didn't they?

7 A. Well, according to these photos, if you look at that,
8 yes, sir.

9 **MR. MOORE:** I don't have any further questions.

10 Thank you.

11 **MR. SCOTT:** You are more than welcome.

12 **THE COURT:** Redirect?

13 **MR. FINNEY:** No, Your Honor.

14 **THE COURT:** All right. Sir, then you may step down.
15 You are free to leave if you wish. You are not required to
16 leave, but you may step down.

17 All right. Are there further witnesses at this time
18 from the State?

19 **MR. FINNEY:** No, Your Honor, not at this time.

20 **THE COURT:** And from defense?

21 **MR. MOORE:** Not right now. I do have one more if I
22 can, one more very rapidly. I would like to recall Leon
23 Douglas to the stand.

24 **THE COURT:** I'll let you speak with Mr. Finney about
25 that, and see if there is an objection.

LEON DOUGLAS - REPLY TESTIMONY

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1 **MR. FINNEY:** I wouldn't object to that, Your Honor.

2 **THE COURT:** All right. Then please return to the
3 stand, Mr. Douglas.

4 And do you recall that you remain under oath from
5 yesterday?

6 **MR. DOUGLAS:** Yes, sir.

7 **THE COURT:** Please proceed.

8 **REPLY TESTIMONY BY MR. MOORE**

9 Q. Leon, have you been in court this morning?

10 A. Yes, sir.

11 Q. What if anything, did you do to cause the bruises on
12 your son?

13 A. I had nothing to do with that, and I resent the
14 implication that I was involved in that.

15 Q. Don't worry about resenting. I just want to make sure.
16 Did you grab your son and shake him?

17 A. No, sir. I did hug him, but I didn't --

18 Q. Did you do anything that would cause the damage that
19 you see here?

20 A. Absolutely not.

21 **MR. MOORE:** No further questions.

22 **THE COURT:** Cross on these issues?

23 **MR. FINNEY:** No questions, Your Honor.

24 **THE COURT:** All right. Sir, you may step down.

25 **MR. DOUGLAS:** Thank you.

THE STATE VERSUS GRAHAM DOUGLAS

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1 **THE COURT:** Thank you. All right. There being no
2 further witnesses at this time, then just one moment please,
3 ladies and gentlemen.

4 (PAUSE.)

5 **THE COURT:** All right. Now, we had discussed
6 yesterday going to the scene. What I would like to do is,
7 we are going to have our court reporter go in the event,
8 although it is not anticipated there would be any
9 discussion, so that she can first of all, is there is take
10 that down. But secondly, be available as a witness that
11 there was no discussion. That no record was made there at
12 the scene. I will also take my law clerk and our clerk of
13 court as the administrative officer of the Court.

14 What I would ask you to do, if each side of this case
15 would chose one attorney to go, then that would be six of
16 us, and then we will go.

17 Now, is there any objection to that?

18 **MR. FINNEY:** There is no objection, and I will
19 represent the State, Your Honor.

20 **THE COURT:** Okay.

21 **MR. MOORE:** Your Honor, there is no objection here.
22 I may send Trey, because he knows how to get out there.

23 **MR. COCKRELL:** I will be glad to go, Your Honor.

24 **THE COURT:** Very good. Mr. Cockrell will go then for
25 the defense. And, just in the event, we will also take one

THE STATE VERSUS GRAHAM DOUGLAS

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1 of our security officers with us, or bailiffs. I will let
2 you choose among yourself who wishes to go.

3 But, ladies and gentlemen, we will reconvene then back
4 here in this courtroom, your witness will be here at 2:30.

5 Then we are going to stand down here, reconvene at 2:30
6 for the purposes of taking the final witnesses. And court
7 will be in recess until that time.

8 Let me also make it clear. I realize that we are going
9 to property that belongs to the Douglas'. But so there will
10 be no question, none of the Douglas' will be present in the
11 room where we go, nor to the building to which we go, nor
12 will any of the Smith family. All right. Fair enough?

13 **MR. MOORE:** Your Honor, I am now sending Mr. Leon
14 Douglas out there with the key to unlock it, and to make it
15 available.

16 **THE COURT:** All right, very good. Then with that
17 done we will stand in recess here in the courtroom until
18 2:30.

19 (Whereupon, a recess was taken from 12:25
20 p.m. until 2:31 p.m.)

21 (Whereupon, a walkthrough was taken of the
22 scene with the above mentioned individuals present. There
23 was no conversation during the walkthrough.)

24 **THE COURT:** All right. We are back in session for
25 our afternoon session. We are in the State's response case.

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION 346

1 So, Mr. Finney, please call your witness.

2 **MR. FINNEY:** If it please the Court, Dr. Janice Ross.

3 **THE COURT:** Please come forward and take the oath of
4 a witness.

5 **WHEREUPON, JANICE EDWARDS ROSS, M.D.**

6 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

7 **DR. ROSS:** I do.

8 **MR. MOORE:** Your Honor, we will stipulate her
9 qualifications as a medical doctor, as a pathologist, and as
10 a forensic pathologist.

11 **THE COURT:** The Court is familiar with Dr. Ross as
12 well. It is not necessary to make a record, but if you may
13 go straight to questioning.

14 **MR. FINNEY:** Thank counsel and the Court.

15 **DIRECT EXAMINATION BY MR. FINNEY**

16 Q. Dr. Ross, your full name, please?

17 A. Janice Edwards Ross.

18 Q. And you work with Newberry Pathologist?

19 A. Yes.

20 Q. How long have you been there?

21 A. Since May of 2000.

22 Q. And as a forensic pathologist, are your duties to
23 perform autopsies when requested by law enforcement?

24 A. And the coroner, yes.

25 Q. And the coroner?

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION

347

- 1 A. Yes.
- 2 Q. Did you do a autopsy on one Charles Eden Smith back in
3 June of 2011?
- 4 A. Yes, I did.
- 5 Q. Would you tell the Court a summary of your findings as
6 a result of your autopsy with that gentleman?
- 7 A. Yes. I found a gunshot wound that went from the left
8 chest -- front of the chest backwards, downwards, and
9 the bullet was found underneath the skin of the right
10 back. The bullet went through the heart and caused
11 excessive bleeding internally in the chest cavities and
12 in the pericardial sac which is around the heart. I
13 also found multiple bruises on the body, basically on
14 the arms and the back of the hand.
- 15 Q. This gentleman, according to your report, was twenty-
16 seven years old?
- 17 A. Yes.
- 18 Q. Was he in good shape?
- 19 A. Yes.
- 20 Q. All right. Would you say that you saw any evidence of
21 abnormal strength, or big muscles, or anything that
22 makes him look unlike other twenty-seven year old white
23 males?
- 24 A. His muscles were well defined. I would not say he was
25 overly --

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION

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1 Q. Was he overweight or was he normal weight?

2 A. Normal weight.

3 Q. And as far as your examination of his body, did he have
4 any disease or symptoms of any kind, heart condition,
5 or anything like that?

6 A. No, he did not.

7 Q. You mentioned just now that you noted areas on his body
8 that looked like they had bruising?

9 A. Correct.

10 Q. Was the bruising --- Can you tell us where on the body?

11 A. The back of the forearm on the left, and on the back of
12 the hand on the right, and the right wrist.

13 Q. All right.

14 A. Mostly.

15 Q. Would you say more than a dozen spots, or fewer than a
16 dozen?

17 A. Fewer than a dozen, but several circular small ones.

18 Q. Did the evidence that you saw of these bruises, were
19 they consistent with things that might have been done
20 offensively by the person or defensively to protect a
21 person?

22 A. They are in the areas we call defense wounds. If the
23 person is in a defensive mode, then those areas, the
24 backs of the hands, and the back of the forearms are
25 exposed.

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION 349

- 1 Q. All right. Did you note any other significant injuries
2 beside the gunshot wound to the chest, where there were
3 blood, scrapes, tearing of skin, anything like that?
- 4 A. No. There was one other little bruise I think, on the
5 left knee, that's it.
- 6 Q. Left knee?
- 7 A. Yes. And a small circular bruise.
- 8 Q. Can you tell if was a scratch or you were not sure?
- 9 A. Not sure. You can't tell.
- 10 Q. Very good. Could you give us a height and weight of
11 the gentleman you examined, Mr. Smith?
- 12 A. We measured him as seventy-one inches tall, which is
13 five feet eleven inches. Our weight, we don't have a
14 scale in the morgue, but we estimated between a hundred
15 and fifty and a hundred sixty pounds.
- 16 Q. All right. Would you characterize the gunshot wound to
17 the chest as a close range, or intermediate range, or
18 distant gunshot wound?
- 19 A. It was a intermediate range. There was stippling
20 around the wound.
- 21 Q. All right. Would you please tell the Court what you
22 mean by stippling?
- 23 A. Stippling is caused by powder, some burning, some not
24 burning, coming out of the gun along with the bullet,
25 and that powder only goes a certain distant. So, that

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION 350

1 powder obviously hit the skin along with the bullet
2 making the end of the gun, depending on the gun and the
3 ammunition, probably within a couple of feet --- the
4 end of the gun probably a couple of feet from the skin.

5 Q. All right. Now, two questions. If you had a situation
6 where the injury, gunshot was inside in a enclosed
7 space rather than being outside in the elements, would
8 that affect the stippling in your opinion, as to
9 whether the gunshot was closer or further?

10 A. No.

11 Q. Did you find stippling in this case?

12 A. Yes.

13 Q. Based on the stippling that you found, did you have an
14 opinion or do you have an opinion as to whether or not
15 the deceased, who was turned over to you with no shirt,
16 whether he had on a shirt at the time of his death or
17 was it more likely he was bare-chested?

18 A. It was more likely that he was bare-chested. The
19 clothing would have caught a lot of that powder.

20 Q. All right. We were also talking earlier about whether
21 or not a person who has received a gunshot wound would
22 have released any bodily fluids as a result of his
23 passing away suddenly from a gunshot wound. Did you
24 see pictures of the shorts that Mr. Smith had on when
25 he was brought to you in Newberry?

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION 351

1 A. Yes.

2 Q. All right. If you --

3 **MR. FINNEY:** and if the Court will give me a moment,
4 I will try to find the picture.

5 (PAUSE.)

6 Q. I want to show you Defendant's Exhibit 62. Can you see
7 in the area of the right side of the zipper on the
8 pants, there would be a wet spot?

9 A. Yes.

10 Q. All right. Would it be consistent that a person of his
11 age, size, if he were shot might release bodily fluids
12 at the point when he was shot?

13 A. Yes, it is possible.

14 Q. Would you have an opinion as to whether or not those
15 fluids could be released if he was in a position of
16 being naked with no clothes on when he was shot, and
17 the pants were put on him shortly after he was shot?
18 Would the moving of the body cause a release of bodily
19 fluids such as it might show up on the pants like that?

20 A. I don't believe so, no.

21 Q. All right. Defendant's Exhibit Number 57, can you tell
22 us what that is?

23 A. That is the back of his right hand with a bruise on the
24 back of the hand, and a couple of bruises on the back
25 of the wrist to the lower forearm.

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1 Q. All right. Do you believe those bruises would be more
2 consistent with a defensive action rather than an
3 offensive action?

4 A. Yes.

5 Q. Would you have an opinion as to how long Mr. Smith
6 might have lived after he was shot?

7 A. He could have probably gone unconscious within a
8 minute, and then died within four or five minutes.

9 **MR. FINNEY:** All right. Thank you very much. Answer
10 any questions the defense may have.

11 **THE COURT:** Cross examination.

12 **CROSS EXAMINATION BY MR. MOORE**

13 Q. Hey, Dr. Ross.

14 A. Hi.

15 Q. We have met before, I believe?

16 A. Yes.

17 Q. How are you?

18 A. Busy.

19 Q. It is a shame that your job is as it is.

20 A. It is. It is.

21 Q. Doc. Let's talk just a minute, if I can find what I'm
22 looking for. Now, you have been a board certified
23 pathologist for quite some while?

24 A. Yes.

25 Q. And, one of your jobs, you are not only a pathologist,

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1 but you are also what is known as a forensic
2 pathologist?

3 A. Correct.

4 Q. And a forensic pathologist will examine bodies,
5 photographs, and so forth, and basically enter opinions
6 as to cause and effect, and the nature of medical
7 injuries; correct?

8 A. Yes.

9 Q. And as a pathologist, you are actually -- before you
10 can become a pathologist you have to be an actual
11 certified medical doctor?

12 A. Yes.

13 Q. So, you are a medical doctor, and then you have the
14 specialty of pathology; correct?

15 A. Yes.

16 Q. Doc. I want to show you Exhibit Number 1, which will
17 be a photograph of my client taken June 2, 2011. The
18 incident happened on the night of June the first. On
19 his left arm, do you see something there, a mark?

20 A. It is a bruise.

21 Q. Would there be a medical term for that bruise?

22 A. Contusion.

23 Q. And, on his right arm there is also a contusion; is
24 that correct?

25 A. Correct.

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- 1 Q. Now, as I understand what a contusion basically is, is
2 that under the skin there is bleeding which takes
3 place; correct?
- 4 A. Correct.
- 5 Q. The small capillaries in the muscles are actually
6 broken to where there is internal bleeding; correct?
- 7 A. Correct.
- 8 Q. So, the bruise on the left arm would be evidence of
9 internal bleeding; is that correct?
- 10 A. Under the skin, bleeding under the skin; yes.
- 11 Q. And, there would be a difference between internal
12 bleeding and bleeding under the skin; correct?
- 13 A. I'm --
- 14 Q. A internal bleeding would be more like in the
15 peritoneal cavity or something of that nature?
- 16 A. That is what you think of, yes.
- 17 Q. So, this is what is basically what is called a subdural
18 bleed?
- 19 A. A subcutaneous bleed.
- 20 Q. So, there is evidence here that he had significant
21 subcutaneous bleeding both in his left arm and in his
22 right arm?
- 23 A. Correct. Yes.
- 24 Q. And can you just give me an idea of the size of those
25 subcutaneous bleeds?

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- 1 A. Well, it is the size that you see there. That just
2 means that that area of the skin had enough pressure
3 put on it to cause as you say, crushing of the
4 capillaries under the skin to release blood in the
5 tissue.
- 6 Q. And I understand that as those subcutaneous capillaries
7 are damaged by trauma and begin to bleed, but the
8 bruise will actually mature over time as the bleed
9 continues; is that correct?
- 10 A. It will continue for a certain amount of time, and then
11 as the blood cells break down you get various colors.
- 12 Q. So, that is what cause --- You have your insult, and
13 then it turns black and blue because it continues to
14 bleed until it stops bleeding?
- 15 A. Yes.
- 16 Q. So, what you see here is more of a mature bruise on the
17 two biceps?
- 18 A. Correct.
- 19 Q. Now, the way a bruise basically heals is that the body
20 generally will absorb the subcutaneous bleed; is that
21 correct?
- 22 A. Yes.
- 23 Q. But, there are times when the body does not absorb that
24 subcutaneous bleed; correct?
- 25 A. It will absorb it unless it is walled off by scar

1 tissue.

2 Q. Or sometimes it will clot?

3 A. Well, we are talking about a couple of different
4 things. But, bruises will usually resolve over a
5 period of time, but they turn different colors as they
6 resolve.

7 Q. Actually what you have in bruises of these size is
8 basically a subcutaneous pooling of the blood up
9 underneath the skin; correct?

10 A. Yes.

11 Q. Now, it is certainly possible if that --- You are
12 familiar with the concept of pooling of blood; correct?

13 A. Yes. This is underneath the skin, so the red blood
14 cells that go out through the soft tissue --- it is not
15 like it pools into a big blood clot.

16 Q. All right. And we also have here, not only does he
17 have --- It would have taken a significant amount of
18 force to create bruising of that type on those arms;
19 would it not?

20 A. Enough to crush the capillaries. It varies with
21 different people, and I think everybody has hit their
22 leg on a table, and you can tell yourself --- give
23 yourself an idea of how much pressure that takes.

24 Q. Well, let me ask you this.

25 **THE COURT:** Dr. Ross, please pull that microphone

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1 down, so the Court can hear you better.

2 DR. ROSS: Thank you.

3 Q. Doctor, based upon a reasonable degree of professional
4 certainty in a healthy young male such as Mr. Douglas,
5 would it have taken a significant amount of trauma to
6 crush that much capillary space?

7 A. Yes.

8 Q. And, we also see a subcutaneous injury to his eye; is
9 that correct?

10 A. Yes.

11 Q. That is what we would refer to in the vernacular as a
12 black eye?

13 A. Correct.

14 Q. What sort of force would it take in order to black an
15 eye like that?

16 A. Well, it is hard to measure force like --- But again
17 it is a fairly significant amount of force.

18 Q. Would you please look at Exhibit Number 2, and tell me
19 if you see any form of injury to the subject's body, to
20 his actual chest cavity area?

21 A. If I see any injury to his chest?

22 Q. Yeah, any type of scratches, marks, or anything of that
23 nature?

24 A. There is some little mark above the right nipple, but I
25 can't tell what it is.

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1 Q. All right. Exhibit Number 7 here, there appears to be
2 a change, it appears to be not only one but two bruises
3 to Mr. Douglas. Would that be consistent with that
4 photograph?

5 A. Are you talking about the chest?

6 Q. No, I am talking about the one I just handed you. Do
7 you see where the bruises look to be just two different
8 types?

9 A. Well, it depends on the depth of the bleeding.

10 Q. Well, there is no doubt that the capillaries in both
11 arms are significantly insulted by trauma; correct?

12 A. Correct.

13 Q. In medical terms, would these bruises be deemed to be a
14 significant injury?

15 A. Yes.

16 Q. And, if we take a look here at Exhibit Number 9, where
17 the size of the bruises are compared to a dime, would
18 you describe for me the size of the significant
19 bruising to Graham Douglas' arms?

20 A. Not sure what your question is. How big that is?

21 Q. I'm sorry. Yes ma'am. I am trying to talk too much in
22 medical terms. How big are those bruises? Those
23 significant injuries to his arm, how big are we
24 talking?

25 A. Well, several inches. But a bruise as it ages, as it

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1 develops will get larger than what the original was.

2 Q. Right. And that is because the capillaries continue to
3 bleed until they stop?

4 A. Correct.

5 Q. Now, let me show you Exhibit Number 15, which is
6 another photograph of Mr. Douglas. Would you please
7 describe for me the medical insult you see in that
8 photograph?

9 A. It appears to be a slight bruise on the back of the ---,
10 I guess it is the right elbow.

11 Q. Roughly how big would that bruise be?

12 A. Hard to say, but there is not tape there. An inch and
13 a half maybe.

14 Q. Would that bruise also be medically significant?

15 A. It is a bruise.

16 Q. All right. Based upon a reasonable degree of medical
17 certainty, what does that bruise show you?

18 A. An injury to the back of the elbow.

19 Q. Now, I am going to show you --- Would that have also
20 been caused by some sort of trauma?

21 A. Yes.

22 Q. And where does trauma come from?

23 A. Forceful injury.

24 Q. All right. I am going to show you Exhibit Numbers 14
25 and 31. These are also photographs of Mr. Douglas. Do

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1 those also show injury to Mr. Douglas' body?

2 A. It looks like a small bruise on the left calf, and
3 maybe an abrasion, a small abrasion on the right knee.

4 Q. All right. Now, I am going to show you Exhibit Number
5 37. Do you see any type of mark on Mr. Douglas' hands
6 to indicate where he would have struck anyone?

7 A. Not on the back of the hands that I can see.

8 Q. Well, let me show you Exhibit Number 33. Is there any
9 evidence that Graham Douglas has hit anybody with those
10 hands?

11 A. There is a shadow there, I can't tell.

12 Q. All right. Let me show you another picture of his
13 hand. His left thumb would appear to be swollen in
14 Exhibit Number 18, would it not?

15 A. Again, it is a difference in lighting, I can't tell.

16 Q. Do you see any marking on his hand in that photograph
17 that indicates evidence where he had struck, hit,
18 beaten anybody?

19 A. No.

20 Q. Now, I am going to show you Exhibit Number 17, and it
21 also is blurred, and if you can't tell that is fine.
22 But, these red marks that appear on Graham's body, can
23 you tell me what those would be?

24 A. They are blurred, but it could be what we call scratch
25 abrasions.

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- 1 Q. What would cause scratch abrasions such as that?
- 2 A. Something like maybe fingernails.
- 3 Q. I am going to show you what the evidence has indicated
- 4 to be a bite mark, which is Exhibit Number 22 and 23.
- 5 The photographs aren't great, but those round marks
- 6 would be consistent with someone having been bitten,
- 7 would they not?
- 8 A. It is possible.
- 9 Q. Okay. Thank you.
- 10 A. It is hard to tell.
- 11 Q. When we look at the photographs that you and I have
- 12 been over of Mr. Douglas, we can agree that there is
- 13 traumatic injury to his eye; correct?
- 14 A. Yes.
- 15 Q. Traumatic injury to both arms?
- 16 A. Yes.
- 17 Q. Apparently traumatic injury to his elbow?
- 18 A. Yes.
- 19 Q. Traumatic injury to his legs?
- 20 A. Yes.
- 21 Q. And what appears to be a bite mark of some sort?
- 22 A. Well, that's --- I can't say yes or no for the bite
- 23 mark.
- 24 Q. With the photographs that we have been over, can you
- 25 think of any part of his body that does not appear to

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1 be marked in some form or fashion?

2 A. His back, back of his legs.

3 Q. Well, would it surprise you to learn that I can show
4 you some injuries to his back and the back of his leg?

5 A. No.

6 Q. It would appear that almost every extremity that this
7 mans got has some kind of traumatic injury to it,
8 doesn't it?

9 A. The ones that I have seen, yes.

10 Q. And, there doesn't appear any marks that you have seen
11 on any photograph to indicate where there was any form
12 of offensive hitting, kicking, or punching by Mr.
13 Douglas does it?

14 A. In the areas that I can see.

15 Q. And you have seen his hands, his arms, his legs, his
16 head, you have seen all of that right?

17 A. Most of them.

18 Q. So, from what you have seen, if the bruises on Mr.
19 Smith are defensive, it doesn't appear that there are
20 any offensive marks from Graham that would correspond
21 with those defensive bruising is there?

22 A. Well, I mean you can hit something without bruising
23 your knuckles.

24 Q. Sure.

25 A. If you hit something soft.

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- 1 Q. In regards to marks on Graham, did it indicate that he
2 did anything offensively to anybody -- there is no
3 physical evidence that you have seen indicating that
4 Graham Douglas did anything to anybody on May 31, 2011?
- 5 A. Not with the pictures that I have seen.
- 6 Q. And, if I were to take my hand and backhand somebody
7 like this in the eye, that could bruise my hand could
8 it not?
- 9 A. It could.
- 10 Q. So, just because it is something that you may
11 characterize as a defensive bruise does not mean that
12 it was not actually used as a weapon does it?
- 13 A. No.
- 14 Q. As a matter of fact, the bruise on this boy's hand
15 would pretty much correspond with the black eye on
16 Graham's head wouldn't it?
- 17 A. You are talking about the victim's hand?
- 18 Q. The bruise on his hand would pretty much correspond
19 with knocking the heck out of Graham in the eye?
- 20 A. Not necessarily. I mean, I can't connect it. There
21 were no wounds over the knuckles on the victim, they
22 were just on the back of the hand.
- 23 Q. On the back of the hand, yes, ma'am. The photographs
24 that you have seen of Graham was evidence of a right
25 serious beating, would they not?

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1 A. A beating. I mean, there is no underlying fractures, I
2 assume he would have brought those out. There is no
3 underlying internal injury.

4 Q. Well, a subcutaneous bleed would be a traumatic injury?

5 A. Yes.

6 Q. You can beat somebody badly and not break a bone?

7 A. Correct.

8 Q. Without breaking the bone, this is a pretty good
9 beating that somebody put on this boy, isn't it?

10 A. It is a beating, yes.

11 Q. And from a medical standpoint, it is a significant
12 beating?

13 A. I don't know how you define significant, but it is a
14 beating.

15 Q. Let me ask you this. As a medical doctor, with a
16 person traumatized to the extent that Graham Douglas
17 was traumatized as evidenced by these photographs, he
18 should have been seen by a doctor shouldn't he?

19 A. I don't know. Let me take that -- As far as a beating
20 goes, I can't say it is a beating. It is a blunt force
21 injury to the skin by whatever means.

22 Q. The records indicate the only evidence in the case so
23 far indicates that it was a beating, but I will call it
24 a blunt force injury.

25 A. Yes.

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- 1 Q. All right?
- 2 A. Thank you.
- 3 Q. And, because that is more in line with what you do as a
4 pathologist. You can't say how it happened; right?
- 5 A. Correct.
- 6 Q. As a result of the significant blunt force trauma to
7 Graham Douglas as evidenced by these photographs, he
8 should have been seen by a doctor should he not?
- 9 A. It depends on his symptomatology, if he had fainting,
10 or if he had any other evidence of fracture or
11 whatever.
- 12 Q. You are familiar with basically a concessive traumatic
13 brain injury are you not?
- 14 A. Yes.
- 15 Q. That is what we refer to as ordinary people as a
16 concussion; right?
- 17 A. Correct.
- 18 Q. And generally a concussion is caused when the brain
19 inside the skull is shaken?
- 20 A. Yes, basically.
- 21 Q. And the way a concussion is generally diagnosed is
22 clinically by symptomatology; right?
- 23 A. Yes.
- 24 Q. The symptoms of a concussion, confusion would be one;
25 right?

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- 1 A. Usually you go unconscious first.
- 2 Q. Sure. If not unconscious, you are at least knocked
3 out, right?
- 4 A. Yes.
- 5 Q. Like the football players, we see them all the time
6 having concussions, and they walk off the field; right?
- 7 A. Yes.
- 8 Q. They are not knocked unconscious.
- 9 A. Well, some of them are for seconds.
- 10 Q. And some of them are just basically addled; right?
- 11 A. Yes.
- 12 Q. So, we look at the concussion syndrome and they would
13 include confusion, right?
- 14 A. Yes.
- 15 Q. Disorientation?
- 16 A. Yes.
- 17 Q. Slurred speech?
- 18 A. Yes.
- 19 Q. Imposed words?
- 20 A. Yes.
- 21 Q. Incoherent speech?
- 22 A. Yes.
- 23 Q. Transposing one word for another?
- 24 A. Yes.
- 25 Q. Actually, a person who is suffering from a

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1 concussivesyndrome would have many of the same symptoms
2 of somebody who is falling down blind drunk wouldn't
3 they?

4 A. Yes.

5 Q. Let us assume for a moment that Graham had the
6 symptomology I have just described, transposing words,
7 confused, disoriented, and let's assume he consumed a
8 bunch of alcohol and even some anti-anxiety pills. Is
9 there anyway from a differential diagnosis that you can
10 tell me if his conduct is caused by a
11 concussivesyndrome, by the pills, by the alcohol, or by
12 a combination?

13 A. Well, you are giving me a differential diagnosis.

14 Q. Sure. You have a differential diagnosis there of a
15 number of things or a combination of things that can
16 cause that sort of behavior; right?

17 A. Yes.

18 Q. And with those symptoms, this boy should have been seen
19 by a doctor shouldn't he?

20 A. If that is what his symptoms were. I am not a
21 clinician, so don't ask me clinical questions.

22 Q. If in fact those symptoms are there, those would be
23 classic symptoms of the concussivetraumatic brain
24 injury would it not?

25 A. Yes.

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1 Q. Those would be the classic symptoms of what we refer to
2 as a concussion would they not?

3 A. Yes.

4 Q. Do you know if this young man after having this
5 traumatic insult to his body such as this was ever
6 shown the examination of an actual trained medical
7 doctor?

8 A. I do not know.

9 Q. Okay. All right. Did you know that in the altercation
10 that caused the blunt traumatic injury that Mr. Douglas
11 actually hit his head?

12 A. I did not know, no.

13 Q. A concussion, a concussive injury, one of the symptoms
14 too is that the person who was victimized by the
15 traumatic force causing the concussion can actually go
16 weak in the extremities and weak in the knees; right?

17 A. Yes.

18 Q. So, one of the classic symptoms of a concussion is a
19 weakening, and basically the collapsing of the
20 extremities and the collapsing of the legs?

21 A. Yes.

22 Q. Now, if we assume for a moment that the young man was
23 grabbed by the arms, lifted up in the air, pushed back
24 against a refrigerator, hits his head, becomes weak in
25 the knees where he falls to the floor, and cannot hold

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1 himself up and has to crawl off to his bedroom, based
2 upon those facts that would be significant evidence
3 that the gentleman who was the victim of such an attack
4 has sustained a concussive injury; would it not?

5 A. Yes.

6 Q. Now, if those facts which are in evidence are true
7 then, it would be your opinion, based upon a reasonable
8 degree of medical certainty, that a concussive event had
9 taken place; right?

10 A. Yes.

11 . And, after a concussion nothing the young man would
12 have said would have had a significant degree of
13 reliability based upon the brain injury which had been
14 sustained by the insult; correct?

15 A. I can't answer that.

16 Q. It would certainly have been significantly suspect
17 medically; correct?

18 A. I am not a clinician, I don't have experience with
19 people who have concussions.

20 Q. But confusion, disorientation, headaches, muscle
21 weakness, slurred speech, and transposed words are all
22 part of the concussive syndrome?

23 A. Yes.

24 Q. And we know if he hit his head, went weak in the knees,
25 that that is a classic evidence of having had a

1 concussion?

2 A. It can be, yes.

3 Q. Actually, the way concussions are generally diagnosed
4 is by way of clinical symptomology; correct?

5 A. Yes.

6 Q. You really can't see a concussion generally on a MRI or
7 a CT scan can you?

8 A. Correct.

9 Q. So, if we assume that immediately following the
10 accident, or the injury, the traumatic insult, where
11 Graham struck his head, and became weak in the knees
12 and collapsed, it would be your opinion more than
13 likely that he had sustained a concussive injury as a
14 result of the traumatic insult he sustained?

15 **MR. FINNEY:** I object.

16 **THE COURT:** Sustained. Asked and answered.

17 **MR. MOORE:** I do apologize.

18 **THE COURT:** Go ahead, to your next area.

19 Q. Now, your report indicates that your findings might
20 have to be updated if it were later concluded that
21 there was a significant serum blood alcohol found; did
22 you see that in your report?

23 A. Yes.

24 Q. Have you since learned that the victim --- Do you call
25 it victim, subject, or patient? I do apologize.

1 A. Either or any of the above.

2 Q. The subject, Mr. Smith, you learned --- Did you know
3 that he had a .24 blood alcohol by way of ocular fluid?

4 A. Yes, that is vitreous fluid, yes.

5 Q. And a .26 -- 2.16 by the iliac vein?

6 A. 2.16, yes.

7 Q. Doctor, we have in the medical profession, you have
8 various terminology for people who are under the
9 influence of alcohol; is that correct?

10 A. Yes.

11 Q. A person with a blood alcohol level of .24 would be
12 grossly intoxicated would he not?

13 A. Yes.

14 Q. And, a person with such a high blood alcohol level who
15 is grossly intoxicated, some of the things that are
16 consistent with gross intoxication are aggressive?

17 A. Can be.

18 **MR. FINNEY:** I am going to ask that the witness be
19 qualified in this area, if she is. I don't know that she
20 has been qualified to give an opinion in this area.

21 **THE COURT:** I am going to sustain that. We have
22 agreed that she is an expert in the area of pathology and
23 forensic pathology. You are not talking about a living
24 individual, so you will need to qualify her in this
25 particular area if you wish to proceed.

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1 Q. Doctor, you are actually a medical doctor as well,
2 correct?

3 A. I have a M.D., yes.

4 Q. And your medical degree was from where?

5 A. Upstate Medical Center in Syracuse, New York.

6 Q. In order to become a medical doctor you basically have
7 to take courses in toxicology?

8 A. We have had very few.

9 Q. You have been trained in toxicology have you not?

10 A. Some, yes. But I am not a toxicologist.

11 Q. Do you have enough expertise to be able to opine as not
12 what a person with such a alcohol level, how they would
13 act?

14 A. Not really. It depends so much on the tolerance and
15 experience of the drinker. So, I really prefer not to
16 get into the toxicology.

17 Q. Fine. But, there are clinically at certain levels of
18 alcohol there are recommendations made just to the
19 general profession in regards to the --- in regards to
20 what is gross intoxication. A .24 would clearly be
21 gross intoxication would it not?

22 A. Again, it depends on tolerance and experience of the
23 person.

24 Q. Can we agree that there was only one shot that entered
25 Mr. Smith's body?

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- 1 A. Yes.
- 2 Q. Can we agree that that shot appears to have come
3 straight on and not at an angle?
- 4 A. It went from left to right and front to back, so.
- 5 Q. It also basically --- When you say from left to right,
6 it appears that it was a straight on shot would it not;
7 or could you tell?
- 8 A. Bullets go straight, so all I can say is it went from
9 left to right, and front to back, and slightly
10 downward.
- 11 Q. And, when you saw him he had on a pair of tan shorts?
- 12 A. Correct.
- 13 Q. And that would indicate to you, based upon the spots
14 you have seen on those shorts, it would appear that his
15 body evacuated upon being shot?
- 16 A. Well, I just saw that in the picture, but at the time
17 of the autopsy that had dried.
- 18 Q. Right. But by looking at the photograph, it would
19 appear that the body would have evacuated upon being
20 shot?
- 21 A. Correct.
- 22 Q. And that is not at all unusual is it?
- 23 A. No.
- 24 Q. Because what happens is the sphincter muscle relaxes
25 and a certain amount of the fluid is going to balance,

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1 and a certain amount of the urine is going to
2 discharge?

3 A. Correct.

4 Q. So, based upon that, since you are a forensic
5 toxicologist, based upon the urine stain that you see
6 on the pants, you can say based upon a reasonable
7 degree of medical certainty those were the pants he was
8 wearing at the time he was shot?

9 A. It appears to be, yes.

10 Q. Now, there was gunshot residue on his left hand; is
11 that correct?

12 A. I don't have GSRs. We don't get those reports, so I
13 don't know.

14 Q. I have it here somewhere in all of the documents that
15 we have put into evidence. Let me show you this,
16 Exhibit Number 44. I am going to show you the report
17 that is in evidence by Ms. Simmons, the forensic
18 scientist from SLED, which basically indicates there
19 was gunshot residue found on Mr. Smith's left palm. Do
20 you see that?

21 A. Yes.

22 Q. Now, as a forensic scientist you know what gunshot
23 residue is; is that correct?

24 A. Yes.

25 Q. What is that?

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1 A. It is part of suet that comes out of the gun along with
2 the powder stippling -- the powder in the gun and it
3 only goes a certain distance.

4 Q. As a matter of fact, it only goes about one foot from
5 the gun; correct?

6 A. It depends on the gun. That is a ballistics question.

7 Q. It doesn't go very far though?

8 A. No.

9 Q. The fact that gunshot residue was found on Mr. Smith's
10 left hand would indicate that at the time this gun was
11 fired, that left hand would have been in very close
12 proximity to the gun; would it not?

13 A. It is possible. One possibility.

14 Q. Can you think of anyway there would have been gunshot
15 residue on the left hand of Mr. Smith if he had not
16 been --- had his hand not been very close to the gun at
17 the time it was fired?

18 A. It just could have been --

19 **MR. FINNEY:** I object, Your Honor. I am sorry. I
20 just don't feel like this witness is qualified in this
21 regard. And I do believe that counsel knows that the next
22 witness is the GSR lady from SLED.

23 **THE COURT:** I am going to sustain unless you can lay
24 a foundation with the witness' expertise on this issue.

25 Q. Now, Doctor you are a forensic pathologist; correct?

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1 A. Yes.

2 Q. Now, as a forensic pathologist you not only examine
3 autopsies for the cause of death, you basically give
4 opinions as to all sorts of things in regards to
5 location, where things are, and how things happen;
6 right?

7 A. Yes.

8 Q. That is part of what you have been trained to do;
9 right?

10 A. Yes.

11 Q. And in order to be a forensic pathologist you had
12 better understand things like bullet angles; correct?

13 A. Yes.

14 Q. You have to understand things like stippling?

15 A. Yes.

16 Q. You have to understand things like gunshot residue?

17 A. Yes.

18 Q. You have to understand how guns work?

19 A. Yes.

20 Q. You have to understand what certain findings mean in
21 regard to proximity?

22 A. Yes.

23 Q. And that is all part of forensic pathologist that you
24 have been trained in; correct?

25 A. Yes.

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- 1 Q. And many, many times you have testified in the courts
2 of this state as a forensic pathologist about what
3 findings of gunshot residue mean, haven't you?
- 4 A. No, not directly.
- 5 Q. You have testified many times in regards to fight
6 wounds?
- 7 A. Yes.
- 8 Q. Now, do you have any idea at all what it means by
9 virtue of the fact there was gunshot residue on the
10 decedents left hand?
- 11 A. It means to me that that part of the hand was opened to
12 and exposed to the gunshot. Now, how close it could
13 be, where it could be, I defer to ballistics.
- 14 Q. And you don't know if it was open like this, like this,
15 like this, all you can tell me is the hand was in close
16 proximity to the gun, and was open?
- 17 A. Correct.
- 18 Q. Well, this gunshot residue that was on the hand, would
19 it coincide with the stippling that was on the chest;
20 right?
- 21 A. It indicates an intermediate range shot.
- 22 Q. When we talk about intermediate range, the literature
23 of forensic pathologist would indicate that stippling
24 is not found at a distance greater than two feet?
- 25 A. Again, it depends on the ammunition, the type of gun,

JANICE EDWARDS ROSS, M.D. - DIRECT EXAMINATION 378

1 the length of the barrel, etcetera. Multiple factors,
2 that again a ballistics person could better --

3 Q. Are you familiar with --- Let me ask you this. Do you
4 know on a thirty-eight revolver what is the maximum
5 distance that stippling will come?

6 A. No, again it depends on the type of weapon, type of
7 ammunition, and various other factors.

8 Q. Well, if there is gunshot residue on the left hand and
9 stippling on the chest that is going to basically
10 indicate would it not, that this gun was probably fired
11 at a range of about two feet?

12 A. I will leave that to a ballistic's expert.

13 Q. Do you know, do you have an opinion as to how close
14 this gentlemen was when he was shot?

15 A. Could be within two feet. Exactly what I cannot tell.

16 Q. If we were going to have to say to a reasonable degree
17 of professional certainty, based upon the stippling on
18 the chest and the gunshot residue on the hand, more
19 than likely the range is going to be about two feet is
20 it not?

21 A. Within two feet. That is all I can say.

22 Q. Within two feet, either two feet or less; correct?

23 A. Most likely. Again, I am not an expert.

24 Q. And if the bullet went into the chest, and there is
25 stippling, and the hand has gunshot residue, doesn't

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1 mean the hand would have been raised at about the point
2 where the bullet would enter the chest at the time he
3 was shot; would it not?

4 A. The bullet went into the left chest, fifteen inches
5 above the top of the head, and three and a half inches
6 to the left of midline.

7 Q. Right.

8 A. So, it is not in the midline, it is over here toward
9 the side.

10 Q. Yes. But my question is, if the hands got the gunshot
11 residue, and the chest has the stippling, that is going
12 to indicate that the hand would have been lifted to
13 about the point where the bullet hit him at the time of
14 the incident?

15 A. I can't say where the hand was.

16 Q. All right. But we can say this. If there is gunshot
17 residue on the hand, the hand would have been about the
18 same level of the gun at the time the gun was fired
19 wasn't it?

20 A. It could be under the gun too.

21 Q. Right. And his arms, if he is seventy-one inches, his
22 reach is going to be what, two, two and a half feet?

23 A. I don't know.

24 Q. All right.

25 **MR. MOORE:** It is nice to see you again.

JANICE EDWARDS ROSS, M.D. - REDIRECT EXAMINATION 380

1 DR. ROSS: Thank you.

2 MR. MOORE: Thank you so much for answering my
3 questions.

4 Your Honor, I have no further questions. Very good.
5 Redirect?

6 MR. FINNEY: Thank you, Your Honor, just a few.

7 REDIRECT EXAMINATION BY MR. FINNEY

8 Q. Doctor, may I get you some water?

9 A. I am fine, thank you.

10 Q. Doctor, can you say for certain whether the victim, Mr.
11 Smith, was standing when he got shot?

12 A. I can't tell.

13 Q. Because of the I believe you said left to right and
14 downward?

15 A. Correct.

16 Q. Pattern of the bullet, is it possible that he was
17 kneeling or bending, or in some other way not standing
18 straight when he got shot?

19 A. That is possible.

20 MR. MOORE: Objection to leading, Your Honor. I
21 believe he is leading his witness.

22 THE COURT: Counsel, don't lead, this is your
23 witness.

24 MR. FINNEY: Thank you, Your Honor.

25 Q. Let me ask you this. There was a number of questions

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1 asked to you by counsel regarding a traumatic impact
2 and concussions, and whether or not somebody who
3 suffered from traumatic impact, got hit in the head
4 might have some medical issues. If a person like that
5 was going to be treated by a medical doctor, would they
6 normally ask questions of the person who was injured to
7 determine if there were symptoms, pain, signs, anything
8 like that? I believe the lawyer you asked you about
9 clinician or clinical, he needs to see a clinical
10 doctor.

11 A. Yes.

12 Q. Are you familiar with jail procedures when person is
13 booked into jail, and they are asked by nurses on
14 duties questions about their health? Are you familiar
15 with those types of procedures?

16 A. In general.

17 Q. If a person had been asked at the time of his arrest
18 shortly after he sustained traumatic injuries certain
19 questions, would those questions have lead medical
20 personnel at the jail to take him to the doctor?

21 **MR. MOORE:** Your Honor, I would object to the
22 speculation.

23 **THE COURT:** I am going to sustain as to speculative,
24 counsel. The way it is worded.

25 **MR. FINNEY:** Well, let me see if I can rephrase it.

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1 Q. Mr. Graham Douglas was arrested shortly after the 911
2 call was made that night, taken to Chesterfield
3 Detention Center and he saw a nurse who was on staff
4 there. And she filled out a medical questionnaire and
5 a mental health questionnaire, a screening form. Are
6 you familiar with that process in terms of people being
7 booked in the jail?

8 A. In general, but I don't know the questions that they
9 ask.

10 Q. All right. If I were to ask you or tell you questions
11 that were asked of him, would it help you to know
12 whether or not this was a first step like a screening
13 step as to whether or not he needed to see a doctor?

14 A. Yes.

15 Q. All right. And it appears from this form, which is
16 State's Exhibit Number 13 that he was asked twenty-five
17 questions by the medical personnel that evening,
18 including had you recently had head injury. And the
19 answer that he signed for in his own initials at 2:19
20 that evening in the a.m., was that he had not had a
21 head injury. He was asked had he taken any medication?
22 He described that he did not take any medication. Do
23 those questions make you feel more comfortable about
24 whether or not a person would have been suffering from
25 some type of trauma?

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- 1 A. Apparently he was screened --- just from what you have
2 said, he didn't indicate that he had a head injury.
- 3 Q. And this type of screening would be done in normal
4 course of business at a medical doctor --- if they had
5 taken him to a medical doctor or an Emergency Room,
6 they would have done the same type of screening?
- 7 A. Yes.
- 8 Q. You testified that the bruising on Mr. Eden Smith could
9 have been caused by defensive injury. Counsel for Mr.
10 Douglas asked you whether or not there was evidence
11 that he could have used his hands in an offensive
12 manner --- Excuse me, let me rephrase. Counsel for Mr.
13 Douglas asked you whether there was any indication that
14 Mr. Douglas used his hands in an offensive manner, and
15 you said there was no evidence of that.
- 16 A. Correct.
- 17 Q. Could Mr. Douglas, armed with a handgun inflicted the
18 kinds of injuries on Mr. Smith that you saw at the
19 autopsy?
- 20 A. It is possible. There were not any patterns to the
21 bruises.
- 22 Q. Would a handgun striking a person in different places
23 on his body leave a pattern?
- 24 A. It could, depending on if it were the end of the gun,
25 or the rod shape, the barrel of the gun.

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1 Q. The wounds that you saw on Mr. Smith at the autopsy,
2 the one on the right hand is kind of round, it is
3 quarter shape?

4 A. Yes.

5 **MR. MOORE:** Your Honor, I would ask --- Could have
6 been, I think the appropriate question of an expert would be
7 based upon a reasonable degree of professional certainty,
8 and I would ask counsel to do that.

9 **MR. FINNEY:** I will withdraw the question. Court's
10 indulgence.

11 (PAUSE.)

12 Q. Doctor, you were asked whether or not the injuries that
13 you saw that were reported by Mr. Douglas to have been
14 caused by trauma to his body, whether I believe counsel
15 referred to them as significant.

16 A. Correct.

17 Q. Would you say that any of the injuries you saw in these
18 color photographs rose or arose to the level of great
19 bodily injury which could create a substantial risk of
20 death, or which would have caused serious permanent
21 disfigurement?

22 A. There is evidence of blunt force injuries. Whether or
23 not it is serious enough for being lethal or not
24 depends on his symptoms.

25 Q. If he were to be symptom free following the report of

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1 these injuries, no treatment by a doctor, no treatment
2 by a nurse, no special medication, no band-Aids, no ice
3 pack, would you say he suffered injury at this point to
4 a reasonable degree of medical certainty, that he
5 sustained substantial risk of death, or was exposed to
6 serious permanent disfigurement?

7 A. It does not appear to, no.

8 Q. Do you feel to a reasonable degree of medical certainty
9 that he would have a protracted loss or impairment of
10 the function of a body member or organ?

11 A. No.

12 **MR. FINNEY:** Thank you, Dr. Ross. Nothing further.

13 **THE COURT:** All right. Ma'am, let me ask you a
14 question or two if I may.

EXAMINATION BY THE COURT

15
16 **THE COURT:** The bruising process, does it occur in a
17 deceased body in the same progression and at the same speed
18 you would expect in a living body?

19 **DR. ROSS:** After death it does not continue. It may
20 become more visible. For instance, if there is bruising on
21 the front of the body, and after death the person is lying
22 on their back, then blood pools to the back, but it may ---
23 the bruising may show up more because of the decreased blood
24 around it. Does that make sense?

25 **THE COURT:** Well, it does. But the purpose of my

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1 question is really and maybe a better way to ask it would be
2 this.

3 Would you expect that the bruises which you found on
4 the deceased to have been received immediately before death
5 or at the time of death?

6 **DR. ROSS:** The date of bruising is very difficult,
7 even if you look at it under a microscope. So, these could
8 have been within minutes to hours of death.

9 **THE COURT:** All right. And, there were some
10 questions asked about the release of body fluids upon death.
11 And, I ask you ma'am, is that an immediate occurrence or
12 might it be a seepage or a slower process that could occur
13 over a period of minutes or longer?

14 **DR. ROSS:** It is usually fairly immediate.

15 **THE COURT:** All right. And can it be of such force
16 that it may contain, for example if urine is released that
17 it could also contain ejaculate or semen?

18 **DR. ROSS:** Well, it wouldn't be so much force, but
19 you have semen comes out the urethra the same as urine, so
20 it may have washed some out. Or it may have been semen that
21 was there previous to the injury.

22 **THE COURT:** All right. Thank you. Now, I have asked
23 questions. Are there followup questions from either side
24 based on what the Court asked. First from the State?

25 **MR. FINNEY:** Not from the State.

ILA SIMMONS - VOIR DIRE EXAMINATION

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1 **THE COURT:** And from the defense?

2 **MR. MOORE:** Nothing further, Your Honor.

3 **THE COURT:** All right. Is there any objection to the
4 release of our witness?

5 **MR. FINNEY:** No, we do not object.

6 **THE COURT:** Hearing none, ma'am, you are not required
7 to leave, but you are free to leave. Have a good day.

8 **DR. ROSS:** Thank you.

9 **MR. MOORE:** We have no objection to Dr. Ross being
10 released.

11 **THE COURT:** Thank you. Please call your next
12 witness.

13 **MR. FINNEY:** The State calls Ila Simmons, Your Honor.

14 **THE COURT:** Please come forward and take the oath of
15 a witness.

16 **WHEREUPON, ILA SIMMONS**

17 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **MS. SIMMONS:** I do.

19 **DIRECT EXAMINATION BY MR. FINNEY**

20 Q. Good afternoon, Ms. Simmons?

21 A. Good afternoon.

22 Q. Tell us what you do for a living?

23 A. I am a forensic scientist at SLED.

24 Q. Can I get you some water?

25 A. No, I am okay.

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1 Q. How long have you been at SLED?

2 A. Thirteen years.

3 Q. And have you been qualified as an expert witness
4 before?

5 A. Yes, sir.

6 Q. In State and Federal Court?

7 A. State, Federal and Civil, yes, sir.

8 Q. And how many times have you testified as an expert
9 witness?

10 A. Over two hundred and fifty.

11 **MR. MOORE:** Your Honor, we stipulate to Ms. Simmons
12 as an expert. I am not sure I know which field it is, but
13 whatever he says she is an expert in, I agree.

14 **MR. FINNEY:** Trace evidence.

15 **THE COURT:** Very good. You may proceed if you wish.

16 **MR. FINNEY:** Thank you, Your Honor. Thank you,
17 Counsel.

18 **DIRECT EXAMINATION BY MR. FINNEY**

19 Q. Ms. Simmons, did you have an occasion to receive
20 evidence in Chesterfield County in regard to a shooting
21 death of Charles Smith?

22 A. Yes, sir.

23 Q. And did you analyze GSR kits that were submitted on
24 both Mr. Graham Douglas' hands and the hand of the
25 deceased, Charles Smith?

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1 A. I did.

2 Q. And did you write a report, submit a report of your
3 findings?

4 A. Yes, I did.

5 **MR. FINNEY:** All right. For the Court, do you want
6 me to go in to what GSR is, and why it is important?

7 **THE COURT:** It is not necessary.

8 **MR. FINNEY:** Thank you, sir.

9 Q. GSR was performed and tested on Graham Douglas?

10 A. Yes, sir.

11 Q. The suspect in this case?

12 A. Yes, sir.

13 Q. What were your findings as to his right and left hands?

14 A. On the right palm no gunshot residue was found. On the
15 back of the right hand the quantities of metals found
16 did not indicate the presence. And the difference
17 between those two results is gunshot residue is
18 conducted in a two step process. It is a two part
19 test. The first part we analyze swabs to see if the
20 quantities of metals that are present on the hands are
21 consistent with somebody being in the presence of a gun
22 when it was discharged. And if the threshold levels
23 are met, then we go to the second portion of the test.
24 And the threshold levels were met on the right palm,
25 but the particles we were looking for were not found.

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1 That is why one says no gunshot residue was found and
2 the other one says quantities and metals.

3 Q. All right. So, once you retested the right back hand,
4 you got a so to speak a green light on the first test,
5 which then lead you to go do another test, or look for
6 a certain amount of particles?

7 A. Yes, sir. On the right palm. Yes, sir.

8 Q. On the right palm. And you tested for those particles
9 but did not find a sufficient quantity to test a
10 positive result?

11 A. That's correct.

12 Q. All right. Now, is gunshot residue very easy to get
13 off of the hands?

14 A. Yes, sir, it is.

15 Q. And could it be removed from a person's hand by
16 changing clothes?

17 **MR. MOORE:** I would object, Your Honor, she is being
18 called as an expert. I believe she would have to be asked
19 upon a reasonable degree of professional certainty what
20 actually happened, other than speculate what may or may not
21 have been.

22 **THE COURT:** Overruled. You may proceed.

23 A. Gunshot residue has the consistency of flour. So, it
24 is very easily removed. If someone were to put their
25 shirt on and off it can remove it. If they were to

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1 wash their hands, use hand sanitizer, shower, any of
2 those sorts of things can remove gunshot residue, or
3 destroy the morphology of the particles we are looking
4 for?

5 A. All right. So, if there were the presence of gunshot
6 residue and something disturbed it, it could take the
7 residue off so that you could not find a positive
8 result, but it would still indicate the presence of the
9 metal?

10 A. Yes, sir. That is a possibility, yes.

11 Q. And that is what happened in this case?

12 A. Yes, sir. We had the threshold levels were met in our
13 first portion, but the round particles that we were
14 looking for were not found in the second portion.

15 Q. All right. And, we are talking about the right hand of
16 Mr. Douglas?

17 A. The right palm, yes, sir.

18 Q. Did the left hand come up --- Did you have any results
19 as far as that one?

20 A. Yes, sir. The left palm also no gunshot residue was
21 found. That means that the threshold levels were met
22 in our first portion. The round particles were not
23 found in the second portion of the test. And on the
24 back of the left hand the quantity of metals we found
25 did not indicate the presence of gunshot residue. The

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1 first part of the test was not passed, so we did not go
2 to the second portion.

3 Q. All right. Now, just for my understanding, we found
4 the presence of certain metals on the right back?

5 A. On the right palm.

6 Q. The right palm?

7 A. Yes, sir.

8 Q. And on the left --- was it the palm --

9 A. -- On the palm as well.

10 Q. Both palms of Mr. Douglas indicated for the first test
11 but not for the second test?

12 A. That's correct.

13 Q. Very good. Now you also tested Charles Smith's hands?

14 A. That's correct.

15 Q. What was the results of those tests?

16 A. On the right palm it did not pass the first portion of
17 the test. We did not find significant levels. On the
18 back of the right hand also we did not find significant
19 levels to go to the second portion of the test. On the
20 palm of the left hand we found gunshot residue
21 particles, which means it passed the first portion of
22 the test with our threshold levels, and the round
23 particles were found.

24 Q. All right. And, on the back of the left?

25 A. The quantities of metals did not indicate the presence

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1 of gunshot residue, so it did not pass our first test.

2 Q. Very good. Now, there has been some questioning in the
3 last few minutes of this courtroom about gunshot
4 residue. Do you have an opinion to a reasonable degree
5 of professional certainty as to whether or not the palm
6 of the deceased, the left palm having been tested for
7 gunshot residue whether that indicates that his left
8 palm was close to the gun when it was fired?

9 A. That is one possibility.

10 Q. Does it indicate to you anything about where the hand
11 was when the gun was discharged?

12 A. It was a .38 caliber pistol, gunshot residue can travel
13 five to six feet away from the muzzle, but it also goes
14 out in circumference. So, if someone's hand was five
15 feet away and below the gun, that is also a
16 possibility, because it can go two or three feet around
17 the muzzle of the gun, or if it were to the side. It
18 would just have to be within a five feet to six feet
19 range of the muzzle of that gun when it was discharged. Q.
20 That five feet range, could it be increased by being
21 inside of a small residence?

22 A. That is a possibility. If you are outside in the
23 elements, that can always cause the gunshot residue to
24 dissipate prior to reaching the five feet level.

25 Q. And, is it possible from a reasonable degree of

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1 professional certainty, that the left palm indicating
2 gunshot residue on Mr. Charles Eden Smith shows that
3 that hand could have been in a defensive position at
4 the time he received the gunshot residue?

5 **MR. MOORE:** Object to the leading, Your Honor.

6 **THE COURT:** Overruled.

7 A. Yes, sir, it could have been. That is a possibility.

8 Q. And, you testified just now that the hand could have
9 been below the gun at a further distance and still
10 receive the gunshot residue to his hand?

11 A. Yes, sir. Because the gunshot residue comes out around
12 the muzzle as well as going forward, it also comes out
13 in a plume almost in a cone shape.

14 Q. All right. If Mr. Smith had not fired a weapon, would
15 you expect gunshot residue to be in his left hand under
16 normal situations?

17 A. The ways that someone can get gunshot residue on their
18 hands is, they can shoot a gun, they can be in the
19 vicinity of a gun when it is discharged, or they can
20 touch something that has gunshot residue on it, or it
21 can be transferred to the hand in that way.

22 Q. All right, very good.

23 **MR. FINNEY:** Thank you very much for coming this
24 afternoon. Please answer any questions defense may have.

25 **THE COURT:** Cross examination.

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CROSS EXAMINATION BY MR. MOORE

1
2 Q. Ma'am, when the gunshot residue got on Mr. Smith, he
3 could have been in a defense posture, an aggressive
4 posture, trying to shake hands, waving, doing all sorts
5 of things, right?

6 A. I can't testify as to how the hand was bladed, except
7 it was exposed to the gunshot residue.

8 Q. Okay. Now, we do know -- Let me ask you this question.
9 Based upon a reasonable degree of professional
10 certainty, are you able to say that there was gunshot
11 residue on Graham Douglas' hands?

12 A. No, sir, I can not.

13 Q. Based upon a reasonable degree of professional
14 certainty, are you able to say that there was gunshot
15 residue found on the left palm of Mr. Smith?

16 A. Yes, sir.

17 Q. Based upon a reasonable degree of professional
18 certainty, that finding would indicate that that left
19 hand was have been in close proximity of a gun at the
20 time the gun was fired?

21 A. Yes, sir, within five feet or six feet.

22 Q. And are you also familiar with stippling, correct?

23 A. Yes, sir.

24 Q. Stippling normally doesn't appear any more than two
25 feet; is that correct?

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1 A. Yes, sir, that's correct.

2 Q. So, if we have stippling on the chest, gunshot residue
3 on the hands, based upon a reasonable degree of
4 professional certainty, that would indicate that the
5 man's body would have been within two feet of Mr.
6 Douglas when he fired the gun?

7 A. Of the muzzle, yes, sir, because the stippling goes
8 from the muzzle of the gun to the contact of the skin.

9 Q. And if the chest was within two feet, the hand would
10 have been within two feet of the gun at the time it was
11 fired?

12 A. Depending upon the person's arm length, yes, sir.

13 Q. That makes all the difference in the world doesn't it?

14 A. It is a possibility. Yes, sir.

15 Q. That is probable too isn't it. I mean, the body is
16 there...

17 A. If his body is within two feet of the weapon --

18 Q. -- We know that it was because of the stripping is
19 there, isn't it?

20 A. Yes, sir.

21 Q. So, he was within two feet, his hand would have been
22 within two feet?

23 A. Yes, sir.

24 Q. So, we know that based upon your testimony, based upon
25 a reasonable degree of professional certainty, the

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1 decedent would have been two feet or closer away from
2 Mr. Douglas at the time the gun was fired?

3 A. Yes, sir. From the muzzle of the gun, yes, sir.

4 Q. And we also know within that two feet Mr. Smith's hand
5 would have been very close to that gun at the time it
6 was fired; right?

7 A. Yes, sir, it could have been, yes, sir.

8 Q. And more than likely based upon a reasonable degree of
9 professional certainty, it would have been?

10 A. Yes, sir. If the chest was within two feet of the
11 muzzle of the gun.

12 Q. So, based upon your studies, coupled with all the other
13 wonderful experts we have had, we know that Mr. Smith
14 was facing Mr. Douglas at the time he was shot. And
15 the stippling was on his chest, gunshot residue on his
16 hand, and they would have been within two feet of each
17 other at the time the shots were fired?

18 A. Yes, sir, if there was stippling on the chest, yes,
19 sir.

20 **MR. MOORE:** I don't have any further questions.

21 Thank you so much for answering my questions.

22 **THE COURT:** Is there redirect?

23 **MR. FINNEY:** No, Your Honor.

24 **THE COURT:** Any objection to the release of our
25 witness?

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1 **MR. FINNEY:** I thank the witness for her patience.

2 **THE COURT:** Hearing none, have a good day, ma'am.

3 **MS. SIMMONS:** Thank you.

4 **THE COURT:** All right. Counsel are there additional
5 witnesses?

6 **MR. FINNEY:** May I have a moment, Your Honor?

7 **THE COURT:** Go ahead.

8 (PAUSE.)

9 **MR. FINNEY:** State rest, Your Honor.

10 **THE COURT:** All right. And, counsel, do you wish to
11 make a closing statement based on what you believe the
12 evidence has shown? Does either side wish to do that? What
13 says the State?

14 **MR. FINNEY:** We would like a five minute summary,
15 Your Honor.

16 **THE COURT:** And, you are the moving party. Do you
17 wish the same, Mr. Moore?

18 **MR. MOORE:** Your Honor, I am happy to respond if
19 counsel does.

20 I understand that there may have been a discussion
21 about counsel meeting with the Court separately.

22 **THE COURT:** Right.

23 **MR. MOORE:** And we would have no objection to that
24 process. I would highly recommend that maybe we do it
25 before we make any closing arguments. But, I am certainly

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1 Certainly new here in its application in Chesterfield
2 County. To my knowledge is the first case of which I am
3 aware here in this judicial circuit, and in Chesterfield
4 County.

5 What we would like to do at this point is allow the
6 lawyers to make a closing statement, if they wish. We are
7 here, of course, on the motion of the defense, so I will
8 hear from the defense first. Give an opportunity to the
9 State unless there is some objection to that procedure.
10 Otherwise, without objection we will move forward in that
11 fashion.

12 Mr. Moore, do you want to be heard?

13 **MR. MOORE:** Please, thank you, Your Honor.

14 **THE COURT:** Go ahead.

15 **MR. MOORE:** Before I begin, I would like to express
16 my appreciation to the prosecutor's office for the way in
17 which they have handled this trial. I think they have been
18 very kind to us, and very professional. And I have enjoyed
19 working with them.

20 I would also like to express my appreciation to the
21 Court, for the courtesies that have been extended. I have
22 tried numerous cases in this state, and I am not sure I can
23 remember one where I have received as much courtesy,
24 respect, and cooperation as I have in this one. And, I am
25 honored to have appeared before this Court. And I mean that

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1 sincerely,

2 **THE COURT:** Thank you.

3 **MR. MOORE:** Your Honor, this may be inappropriate,
4 and if it is I am sure someone will hush me up. But, this
5 is a horrible, horrible, horrible, horrible tragedy. My
6 clients have asked me to express to the Court, and the
7 family of Mr. Smith, just how grieved they are about what
8 has happened. This tragedy is not something that anyone
9 would have wished on anybody. The Douglas family is quite
10 upset and concerned about the family of the Smiths, and they
11 wish to express to them their condolences, and their sadness
12 over what has actually happened.

13 I hope that was not inappropriate. And I can assure
14 the Smiths that it was a sincerely apology for what has
15 taken place. And that all of us should share in the sadness
16 which resulted from the activities of May 31, 2011.

17 **CLOSING STATEMENT**

18 **MR. MOORE:** Your Honor, I guess now I will move to my
19 closing argument. I will put my lawyer hat back on.

20 Your Honor, the Castle Doctrine as we know is new.
21 And, it is a creature of the legislature that is unlike
22 anything that we have ever seen before. It is my humble
23 opinion that the Castle Doctrine is somewhat unfair to the
24 Judiciary. It basically takes concepts that we have known
25 historically and dealt with in the criminal law, and places

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1 it in a non-jury posture, and forces a judge to be the Judge
2 and the jury, and to in effect pre-try the case. If that is
3 not tough enough on the judges, it changes the entire burden
4 of proof. If this case has to be decided beyond any
5 reasonable doubt there is no question that there would be a
6 whole different set of considerations. This case is not
7 considered based upon a reasonable doubt. And the case is
8 not considered as simply a motion or a preliminary hearing.
9 What the legislature has done is to set forth several
10 different scenarios, whether it is an actual trial, or
11 before a trial, and the question is not is there sufficient
12 evidence to go to a jury? Is there any question of fact?
13 All of those are the typical things that we deal with when
14 we deal with preliminary hearings. And, we are all use to
15 those. This is a creature of the legislature. What they
16 have put the unbelievable burden on the courts to say you
17 have got to try the case in advance. And, you decide the
18 case based upon the civil standard of preponderance of the
19 evidence. So, the question becomes in regard to the Castle
20 Doctrine, have we proven simply by the greater weight of the
21 evidence that Graham Douglas is entitled to protection of
22 it.

23 I am not even going to talk at this moment about
24 Section A of the Castle Doctrine. I simply want to talk
25 about Section C.

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1 *"This is a person who is not engaged in an*
2 *unlawful activity and who is attacked in another*
3 *place where he has a right to be, including, but*
4 *not limited to, his place of business, has no duty*
5 *to retreat and has the right to stand his ground*
6 *and meet force with force, including deadly force,*
7 *if he reasonably believes it is necessary to*
8 *prevent death or great bodily injury to himself or*
9 *another person or to prevent the commission of a*
10 *violent crime as defined in Section 16-1-60."*

11 Regardless of what just took place in Graham's home,
12 the law basically says, wherever he was, if he was not
13 acting illegally, then he had a right to use deadly force in
14 order to prevent great bodily injury to himself. As I read
15 Section C of The Castle Doctrine, that is what it says.

16 So, the question is, first of all. Was Graham engaged
17 in an unlawful activity? My understand is, it is lawful to
18 drink in one's home. My understanding is, it is lawful to
19 be drunk in one's home. They did a drug screen on Graham
20 that showed no illegal drugs in his system. So, there is no
21 indication that on the day in question Graham Douglas was
22 engaged in any unlawful activity. I would respectfully
23 submit there is nothing in this record to indicate that
24 Graham was engaged in any unlawful activity. So, the first
25 prong of The Castle Doctrine, we believe, has been met. Is

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1 he attacked? And the place where he has a right to be.
2 Certainly a man has a right to be in his home, including his
3 business. It was his home. So, he had a right to be in his
4 home. So, we know that we met the second prong. He has a
5 right to be there. I respectfully submit that is basically
6 been stipulated. We have a stipulation of the fact in the
7 record which indicates that Graham was attacked in his home.
8 And it says he has no duty to retreat, and has the right to
9 stand his ground, and use deadly force as he reasonably
10 believes is necessary to prevent great bodily harm to
11 himself. So the question becomes, whether by a
12 preponderance of the evidence as a non-jury trial, Graham
13 Douglas had a reasonable belief that he had to prevent ---
14 to use force to prevent great bodily harm to himself. That
15 is the question of fact that the Court has to answer. If
16 the answer to that is yes, that he had a reasonable belief
17 that he was about to be harmed, then he had a right to use
18 deadly force to protect himself; whether he was in his home
19 or away from his home.

20 Now, the question then becomes, based upon the
21 preponderance of the evidence, what was in his mind and what
22 did he know? Not beyond a reasonable doubt, and not with a
23 preliminary hearing. But the question is, did he have a
24 reasonable belief that he was about to be subjected to great
25 bodily harm. The law does not say that one, we sit back and

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1 let somebody break your arm. The law does not say that he
2 must sit back and allow someone to disfigure you. The law
3 simply says that if you have a reasonable belief that you
4 are going to be potentially subject to great bodily harm,
5 you can stand your ground and you can use reasonable and
6 deadly force to repel it. So the question becomes, what did
7 he have here? Did he have a reasonable belief that he was
8 about to be subjected to great bodily harm? I would
9 respectfully submit that if he had a reasonable belief that
10 he was about to be subjected to great bodily harm, under
11 Section C of the new statute, he is immune from prosecution.
12 That is what the law says. The problem is, I didn't write
13 it, the Court didn't write it, and nobody in the courtroom
14 wrote it. But to tell this Court you have one question.
15 Did Graham Douglas have a reasonable belief that he was
16 about to be subjected to great bodily harm. If, under a
17 preponderance of the evidence the answer to that question is
18 yes, he is totally immune from prosecution.

19 Well, let's see what the facts are, which are basically
20 either undisputed or proven so conclusively that, I would
21 respectfully submit, that the greater weight of the evidence
22 basically proves it.

23 The first thing that we know is that when Eden Smith
24 came into the house he came as a social guest. A social
25 guest is a licensee. The licensee of a social guest may be

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1 revoked at the will of the will of the licensor. When a
2 person is told to leave and doesn't the status of the social
3 guest, licensee, converts legally into the status of a
4 trespasser. If we believe that Graham Douglas told Eden
5 Smith to leave, then we know that Eden Smith was a
6 trespasser at the time he was shot. Now, he may not have
7 entered that house forcefully, but we know that he would
8 have occupied the legal status of a trespasser at the time
9 he was shot.

10 Now, I would respectfully submit there is nothing in
11 the record which disputes the testimony that prior to the
12 shooting Eden was told to leave. Now, we have seen the
13 photographs of the injuries to Graham. All of the crime
14 scene folks say one of four people did it. Either Graham
15 did it to himself, or Eden did it, or Graham's Daddy did it,
16 or Graham's Mamma did it. There is no indication that the
17 Mamma had anything to do with it. That Daddy adamantly
18 denies that he did it. Graham says he didn't do it to
19 himself. And that leaves only person who could have done
20 these injuries, and that would be Eden Smith.

21 Now, if we are judging the case on a preponderance of
22 the evidence standard, is it credible that someone would
23 engage in this sort of blunt force trauma to an owner of
24 property or occupier of property, and the owner and occupier
25 ask the person doing the beating to leave. I respectfully

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1 submit from a preponderance of the evidence standpoint it is
2 entirely likely that Eden Smith inflicted these injuries on
3 Graham Douglas, and that sometime during the beating Eden
4 was probably told to leave. I respectfully submit there is
5 nothing in the record to contradict that, and the record is
6 absolute that Graham did tell him to leave before anything
7 else happened. So, we know as a undisputed fact or at least
8 an overwhelming fact, that Eden Smith was a trespasser at
9 the time he was shot. We know that Eden Smith was engaging
10 in illegal activity at the time he was shot, because
11 trespassing is an illegal act.

12 Now, we basically have a situation where the question
13 becomes again, did Graham have a rational belief that he
14 might get hurt pretty bad. One of the things that we know
15 from human experience is that the past is a pretty good
16 predictor of the future. What people have done in the past
17 is a fairly good indicator of what they are likely to do.
18 We know that in the ten minutes, fifteen minutes, five
19 minutes before Eden was shot he had blackened Graham's eye,
20 had basically buckled his knees, had grabbed him, bruising
21 both shoulders, cut his leg, thrown his head back against a
22 refrigerator, bitten him, and then was laughing at him as
23 Graham was crawling off to his bedroom.

24 Now, as Graham is in his bedroom, we believe this
25 testimony to be undisputed, he is again --- I believe the

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1 words were, get the fuck out of my house. In very emphatic
2 terms sitting on a bed saying leave. The response from Mr.
3 Eden Smith at that time, undisputed, is laughter and no
4 leaving. The Solicitor basically says, well, you could have
5 left, you could have walked out the door. The only way out
6 would have either been through a window which was painted
7 shut, or across the path of Eden Smith.

8 Now, at that point in time I respectfully submit that
9 if those things are true, if what Graham said is true, that
10 Eden is the one that did these things, he had a very good
11 reason to believe that he might do some more.

12 Now, we basically would come to the conclusion that
13 this young man had every reason in the world to be scared to
14 death. Every reason to be scared to death. Then we
15 basically look at the physical evidence in the case. If we
16 take a look at the evidence, there I no indication that the
17 body was moved from where it fell. Not one person has told
18 us that. Not one person has hypothesized that. The body
19 basically fell where it was shot. If we look at the
20 photographs the body is right outside of Graham's bedroom
21 door. This tiny kitchen adjoins this tiny bedroom where
22 this man was cowering on the bed with a man taunting,
23 laughing, and having just abused him as the photographs
24 show. They say a picture is worth a thousand words. I
25 can't envision more demonstrative evidence of the strength

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1 and violence of Eden Smith than those photographs showing.
2 Graham is on the bed and he reaches for what he has a right
3 to reach for, which is a weapon. If he comes at me again.
4 I am going to protect myself. Graham goes to the door and
5 does what he has every right to do in his own home. Leave.
6 And the law says in your own home you have a right to
7 threaten deadly force in order to make a trespasser leave.
8 What happens when Graham Douglas says leave? We know
9 according to the pathologist and the GSR expert, we know
10 that Eden Smith comes forward. And we know that his hand is
11 up. And we know that Eden Smith is within two feet of
12 Graham Douglas at the time that gun is fired. We know that.
13 It is undisputed. Their experts testified that it had to
14 have been within two feet. Now, how would it be possible
15 for this gentlemen to have been within two feet of Graham
16 Douglas? The only way possible if he is moving forward
17 towards that bedroom door. Bang. The gunshot residue is on
18 the hand, the stippling is on the chest. The facts cannot
19 be changed. The facts basically show without any
20 contradiction. Now, understanding that the facts that we
21 are talking about are not facts that were presented by any
22 of the defense witnesses. These are the State's witnesses
23 who told you that Eden Smith was coming forward, and was
24 within two feet of Graham Douglas at the time he was shot.
25 What should he have done? What should he have done? The

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1 Solicitor suggest well, maybe he could crawl out of a
2 window, go out the door. The law says you don't have to do
3 that. Should he have just sat back and taken some more
4 beating? Should he have waited to see if he was going to be
5 killed or disfigured? Was he in reasonable fear? The law
6 also basically says that one does not require detached
7 reflection in the face of an uplifted knife. We have a
8 situation where you have an emergency. Where the man has
9 been knocked silly. Where was about half drunk. He had his
10 head knocked, and he had the visible signs of a concussion.
11 He is hurting. He is reeling, he has been hit in the head,
12 hit in the eye, both arms have been bitten, and he is
13 standing in a door in his own home, in his own home, and the
14 attacker comes within two feet --- coming towards him
15 because he is shot in the chest. And his hand has to be up,
16 has to be at least here to get the gunshot residue. What
17 could anybody have done in those circumstances? Would you
18 have shot him? That is what I would have done. I am not
19 taking any more of this in my own house. And I respectfully
20 submit that nobody should be required to take more in his
21 own home or anywhere else for that matter.

22 **THE COURT:** Counsel, let me ask you, given the hour,
23 if you would wrap up in the next couple of minutes, please.

24 **MR. MOORE:** Yes, sir.

25 **THE COURT:** Thank you.

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1 **MR. MOORE:** I have been known to be -- Your Honor, I
2 want to say this. There have been innuendo in this case
3 about homosexual activity, that there was some sort of
4 gayness, or running around naked, or shock your socks off.
5 I would respectfully submit there is nothing in the evidence
6 proving that. There is no DNA from Graham Douglas on those
7 shorts. There is no doubt, according to the pathologist,
8 that the shorts is what he was wearing when he was shot,
9 because of the evacuation of the kidneys. She said it is
10 going to be almost instantaneous. There is no doubt but
11 that those shorts is what he was wearing, and that he had
12 the shorts on when he was shot. We have had talks about
13 this pant, that shirt, those pants, all of that has been a
14 lot of fun and very interesting. But, the truth of the
15 matter is, if you are judging the case by the preponderance
16 of the evidence, those pants basically is what Eden was
17 wearing, and there is no indication that there way anything
18 funny going on in that house that day. I am here with these
19 nice people who probably hate me, and I don't blame them if
20 they do. And they have to sit here and listen to me say all
21 of this about their son, and that has got to be horrible.
22 And I hate this. I respectfully submit that there is also a
23 legitimate argument that this Section A does apply in regard
24 to this case. But, I don't think we need to go there.
25 Section C of the Code Section, in my humble opinion, applies

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1 in your home as well as your business, or a Wendy's
2 Restaurant.

3 I have talked too long, and I am known for that. I
4 thank Mr. Finney. I thank law enforcement. I thank the
5 Court for listening to me.

6 **THE COURT:** Thank you, Mr. Moore. And now, anything
7 for the State?

8 **MR. BROWN:** Your Honor, if it please the Court.

9 **THE COURT:** Yes, sir.

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10
11 **MR. BROWN:** Your Honor, I have prepared a Memorandum
12 of Law in opposition to Defense's Motion. I would ask if I
13 can hand a copy up to you as well as your clerk.

14 **THE COURT:** Please.

15 **MR. BROWN:** Your Honor, the State ask that you deny
16 the Motion by the Defense that he be granted immunity under
17 --- for four specific reasons.

18 The first reason of those is that Mr. Graham Douglas
19 does not apply for immunity underneath The Castle Doctrine
20 as defined by §16-11-440(a)(b)(d) and (e), on the grounds
21 that each one of those statutes requires that force be used
22 in the entry or in the attempted entry, or that force be
23 required of removing a person from the home or attempting to
24 remove a person from the home. Each of those statutes are
25 require very specifically for that to be applied. That is

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1 what this particular statute provides preponderance of the
2 evidence that great bodily injury or harm is intended or
3 being sought after by the victim, in giving the defendant
4 immunity.

5 In the particular case that we have at bar, that is not
6 what we are dealing with. We have a person who was a guest
7 in the home of Mr. Graham Douglas. We have a person who ---
8 there is testimony and it is clear that there no injury to
9 the door jam, no injury to the window, no disturbances
10 throughout the house that would indicate that there was
11 forced entry. And, Your Honor, for that reason we would ask
12 that we not be addressing underneath A of The Castle
13 Doctrine.

14 Now, as it pertains to that, more important and more
15 pertinent to the statute, or part of the statute part C of
16 §16-11-440. South Carolina has in that particular statute
17 in looking at §16-11-440 as a whole, is more of a self-
18 defense. Self-defense is ultimately under that Section
19 removes the duty to retreat in a particular Common Law Self-
20 defense Statute, but it does not specifically provide
21 immunity. What it requires is that the defendant show that
22 he acted as a reasonable person would have acted in
23 circumstances, and if he acted as a reasonable person, then
24 that circumstance he be provided immunity.

25 Now, with that said, that leaves a question of law ---

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1 or question of fact, my apologies, as to whether or not
2 Graham Douglas acted as a reasonable person. There are
3 facts in the record here in this Court this week that
4 Charles Eden Smith was five feet eleven, and a hundred and
5 fifty pounds. Graham Douglas in the alternative was six
6 feet two and a hundred and ninety pounds. There have been
7 claims throughout this entire hearing that Graham Douglas
8 had extensive knowledge of Charles Eden Smith's violent
9 past, as they continuously mischaracterized it.

10 In alternative he still continued to hang out with him,
11 and what is even more noteworthy is that if you examine the
12 criminal history of Charles Eden Smith at highest, as it
13 pertains to assault and battery, the highest charge he has
14 ever been convicted of is assault and battery --- simple
15 assault and battery, assault and battery third degree.

16 On top of that Your Honor, he expressed that he was
17 afraid of Charles Eden Smith, that he was still going to
18 drink alcoholic beverages with him, which he has always
19 indicated is his trigger point, and also still invited him
20 into his home the night of May 31, 2011.

21 Further, Your Honor, questions are easily raised as to
22 what Eden really did feel that he had a reasonable fear of
23 great bodily injury or harm. He has testified extensively
24 that he crawled in the bedroom, and tried to hide under his
25 bed for safety, yet he did not take a much more reasonable

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1 approach of shutting his door and locking it, which would
2 have provided him more safety.

3 Further, he passed directly by the exit to the house.
4 He chose not to take that and instead fell deeper into the
5 residence. Now, Your Honor, what is important about that
6 is, while we recognize that he has no duty to retreat in
7 this instance, when he uses the duty --- when he uses his
8 retreat as proof that he actually did fear his injury or
9 death, but then he does not take specific measures that
10 would have actually provided a retreat, and that provides
11 grounds when there is a question of fact that a jury would
12 need to answer.

13 Your Honor, he has shown his bruises and he has shown
14 those as the grounds where he was beaten and bruised, and
15 because of that he was in fear for his life. What I would
16 ask the Court to note and what has been clear on the record
17 is, there are no bodily injuries anywhere near any vital
18 organs. Where he does have bruises., at most, if he were
19 ever actually charged, he would be have been charged assault
20 and battery second, probably even assault and battery third.
21 Yes, it appears there was a fight, but what is also
22 noteworthy, and what we heard from testimony today by Dr.
23 Ross was that the victim had defensive wounds on his arm.
24 So, we do not know if this was a mutual combat situation, or
25 whether or not this is actually pure force by Graham

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1 Douglas. The only thing that we have to rely on in this
2 entire case is the testimony, a person has a vested interest
3 in an outcome in who quite frankly appeared very, very
4 unpersuasive on the stand.

5 Your Honor, as it goes further on that, all of those
6 raise pertinent questions of law as it pertains to a
7 reasonable person's standard. And because of that those
8 questions must be answered by a jury, so the Court does not
9 replace the role of them.

10 Your Honor, we would also argue that as it pertains to
11 immunity through the entire §16-11-440, immunity should not
12 be granted if there is any question of law, whether it is a
13 reasonable person's standard, or by anything else. If there
14 is a question of law, immunity should not be provided under
15 §16-11-440. South Carolina has long recognized restraint
16 should be provided after there is no material questions of
17 fact. Examples such as these are from *Pye v Estate of Fox*
18 where there was a directed verdict. When you deal with a
19 directed verdict there is a question of fact, there is a
20 imperial question of fact that remains on the record, in
21 that case you must allow the jury to answer that question.
22 In *Pye v Estate of Fox* which is a summary judgment issue,
23 you have the same question. When there are material
24 questions of fact, it must be answered by a jury and not by
25 a judge, and the extreme remedy of law is denied. There are

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1 numerous questions of fact, both in reasonable person
2 standard, as well as other questions of fact. Mr. Graham
3 Douglas has extensively outlined that what initially started
4 as being slammed up against the kitchen -- the kitchen
5 refrigerator and held against his will for some period of
6 time that was so strenuous that it caused him to black out.
7 With that said, Your Honor, we have shown pictures to the
8 Court, and it is a court exhibit that the refrigerator which
9 he was allegedly thrown against both in its original
10 position which Mr. Douglas admitted himself, and all the
11 jars, everything that was on top of the refrigerator is
12 neatly arranged and nothing fell off. It doesn't look
13 dented, it doesn't look like there is any conflict within
14 that kitchen other than the body of Charles Eden Smith on
15 the floor. What is also noteworthy, Your Honor, he speaks
16 continuously of the strength of Charles Eden Smith
17 possessed. But, at that same time when you look at that
18 refrigerator, that just does not show anything anywhere near
19 that. The facts that Mr. Graham Douglas has attempted to
20 put on the record is not supported by the facts found inside
21 the home of Graham Douglas. Mr. Douglas, of course, as
22 outlined prior --- outlined that he was trying to crawl away
23 from the victim, but he --- but he just --- that was all he
24 could do because he was so disabled. Yet, the second he
25 fired that weapon he was able to stand up, run outside the

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1 door, barge through his Father's house, make a telephone
2 call, run around frantic, run back to the house. He
3 exercises or claims that he was in such a normal state that
4 he could do nothing, he was disoriented, but suddenly he was
5 able to do absolutely everything.

6 Your Honor, it is also worth noting that his
7 credibility was incredibly postulant. Whenever he was asked
8 questions by the defense, he had a prepared answer. He was
9 able to answer outright, and knew exactly what happened, and
10 told us all about exactly what a great person he is. But,
11 whenever he was pressed on an issue by the State, whenever
12 he was asked about what actually happened, whenever he was
13 asked any questions that actually required him to actually
14 go outside of his comfort zone, suddenly he was just so
15 disoriented, he was so distraught, he was so sad about what
16 happened he just can't remember at all and blacks out. He
17 doesn't remember any statements, but he certainly remembers
18 the fight. He doesn't remember what anybody was wearing.
19 But, he certainly remembers that he was raising the gun, and
20 suddenly he blacked out and doesn't remember firing it. He
21 has conveniently decided what facts he gets to remembers and
22 what facts he doesn't. And he is now asking the Court to
23 use those facts which are murky at best to grant him
24 immunity. He outright stated to law enforcement and
25 multiple law enforcement officers have testified that he

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1 stated, I murdered my friend. I killed him and I will
2 always be a murderer. And while the defense has throughout
3 the entire case hinged their entire thing on the fact that
4 he then submits some self-defense claim, that self-defense
5 claim was that he came at me with a gun so I shot him first.
6 It is clear on the record, it is clear on the facts, it is
7 clear on the evidence, only one gun was in that house, and
8 even on the testimony of Graham Douglas, there was only one
9 gun used and it belonged to Graham Douglas. He lied to law
10 enforcement from the start of this.

11 Your Honor, there are of course defensive wounds on the
12 victim. There are numerous things that the jury can ask
13 questions about. They can wonder about that could raise
14 questions that could cause a conviction in this case. And
15 to grant anything other than the State would like to
16 continue in the prosecution, would be a miscarriage of
17 justice in this case.

18 Your Honor, I would also point out that that would not
19 go against State v Duncan. State v Duncan is very clear
20 that it does not have contested facts. In State v Duncan
21 there were four incidents to the case. The testimony which
22 is heavily relied on State v Duncan is the testimony of the
23 girlfriend of the victim. Even she provided that he forced
24 his way onto the porch and began forcing his way into the
25 home, and at that point the homeowner opened fire on the

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1 victim and killed him with a shot to the head. This is not
2 the same case. You are relying on the testimony of one
3 interested party who has a vested interest in the outcome,
4 and lacks credibility immensely from the standard.

5 Further, Your Honor, I will point out that in State v
6 Duncan is completely based on Subsection A, which requires
7 the force or forced entry, and that is not what we are
8 dealing with here, because he was an invited guest.

9 So, Your Honor, we would simply ask, and I will not
10 belabor these points for very long, because you have my
11 Memorandum of Law, and the points in my mind are clear.
12 But, we would ask that you not even reach this preponderance
13 of the evidence and decide the law on granting immunity,
14 because there are questions of facts, and when questions of
15 facts remain it is the obligation of this Court to allow
16 those questions to go to a jury, to be decided by a jury of
17 Graham Douglas's peers. This will not deny Graham Douglas
18 any rights. He will still have the right of counsel, a very
19 competent counsel who has shown himself to be such
20 throughout this entire hearing. He will still have the
21 right to a jury trial. He will still have Fifth Amendment
22 Rights. He will still have every right provided to the
23 defendant, but to deny his Motion will also provide the
24 State their right to actually prosecute a case, as is the
25 victim's rights to have their case prosecuted. And is the

THE STATE VERSUS GRAHAM FRANKLIN DOUGLAS

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1 State's right to make sure that this community is safe.

2 So, Your Honor, we respectfully ask that you deny this
3 motion. We respectfully request that you allow this case to
4 go to a jury, and that we be allowed to prosecute this case
5 to the fullest extent. Thank you.

6 **THE COURT:** All right. Thank you, Mr. Brown. Ladies
7 and gentlemen, this concludes the testimonial phase of this
8 case, as well as argument. The Court is going to take this
9 matter under advisement, because of the novelty of this
10 issue. And the fact that the Court would like to reflect on
11 the evidence, and on the arguments made by counsel. I
12 cannot tell you at this time what time a decision will be
13 made, or what specific date, or how long that process will
14 take. But the Court will be prompt as best as can be under
15 the gravity of what we have here.

16 In the mean time, Mr. Douglas, your bond and the
17 requirements of your bond remain in effect. Obviously,
18 these charges are still pending at this time, and remain
19 pending. And thus, there will be no alteration of the
20 status of the parties, particularly the bond status of the
21 defendant.

22 Anything further now before we close the record in this
23 matter from the State?

24 **MR. FINNEY:** For the State, Your Honor, we do want to
25 state to the Court that we appreciate the time and

THE STATE VERSUS GRAHAM FRANKLIN DOUGLAS

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1 consideration being given, and we have understood that this
2 is a serious matter, and we understand that the Court has
3 treated us in very high esteem, and we appreciate that very
4 much.

5 **THE COURT:** Thank you. Anything further from the
6 defense?

7 **MR. MOORE:** Thank you, Judge.

8 **THE COURT:** All right. Ladies and gentlemen, let
9 me end this matter where we began, which was that I
10 requested that each of you conduct yourself consistent
11 with the decorum of this Court. I am grateful for that.
12 There can be no pivotal issue than the loss of life, and
13 the damage to the lives that go forward. I am grateful
14 for the way you have conducted yourself here. I realize
15 that the people have, as this courtroom is divided into
16 two sections clearly from where the folks are sitting,
17 have two very distinct and divergent views of what has
18 happened here. But, regardless of what your view may be,
19 I am grateful for the way that you have conducted yourself,
20 the professionalism, and the civility. I would hope that
21 whatever comes out of the case, we all realize that our
22 lives go forward, and we all live in this small area, in
23 this small community, and in this judicial circuit so that
24 our lives will interact. And I wish you well as we
25 consider the future toward that end.

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1 This Court is now adjourned until such time as a
2 decision will be issued by the Court.

3 **-- END OF TRANSCRIPT --**

4 (Whereupon, this hearing was concluded at
5 5:17 p.m. on Wednesday, October 3, 2012.)

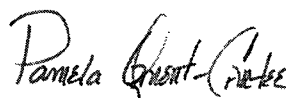
CERTIFICATE OF REPORTER

424

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Chesterfield County, South Carolina, on the 3rd day of October 2012.

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

December 20, 2012

Handwritten signature of Pamela Ozment-Cartee in cursive script.

Pamela Ozment-Cartee
Circuit Court Reporter

Respectfully submitted,

BY: 

S. Janie Moore
M. Brooks Biediger
Moore, Taylor & Thomas, P.A.
1700 Sunset Blvd.
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

M. W. Cockrell, III
Cockrell Law Firm, PC
Attorneys & Counselors at Law
Olde Towne Centre
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159 Main Street
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West Columbia, South Carolina

April 23, 2012

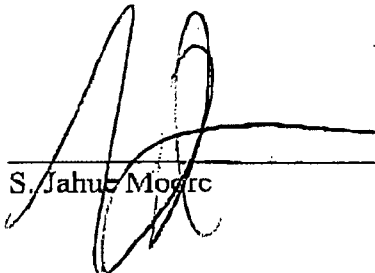
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me S. Jahue Moore who, on oath, says that he is the Attorney for the Defendant in this action and that he has this day effected service of the foregoing **NOTICE OF MOTION AND MOTION TO DISMISS** upon Ernest A. Finney, III, Esq., and William B. Rogers, Jr., Esq., by placing a copy of said **NOTICE OF MOTION AND MOTION TO DISMISS** in the United States mail, in an envelope with sufficient postage affixed thereto, addressed as follows:

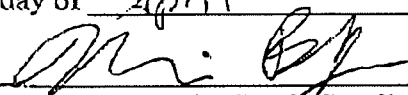
Honorable Ernest A. Finney, III
Clarendon County Solicitor's Office
141 N. Main Street
Sumter, SC 29150

Honorable William B. Rogers, Jr.
P.O. Box 616
Bennettsville, SC 29512



S. Jahue Moore

SWORN to before me this 23
day of April, 2012

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12/28/2016

FILED
CLERK OF COURT
12 APR 24 A 11:50:5
CHESTERFIELD COUNTY, SC
BOOK _____ PAGE _____



State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL
BAXLEY
JUDGE

531 EAST CAROLINA AVENUE
HARTSVILLE, SOUTH CAROLINA 29550
TELEPHONE (843) 383-4114
FAX (843) 383-4116
E MAIL: jbaxley@sccourts.org

For release on November 5, 2012

The Hon. Ernest A. Finney, III, Solicitor
Tyler B. Brown, Esq., Assistant Solicitor
Third Judicial Circuit Solicitor's Office
141 North Main Street
Sumter, SC 29150

S. Jahue Moore, Esq.
M. Brooks Biediger, Esq.
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1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171

M.W. Cockrell, III, Esq.
Cockrell Law Firm, PC
Olde Towne Centre
BARRISTER BUILDING
159 Main Street
Chesterfield, SC 29709

Re: State v. Graham F. Douglas, 2011-GS-13-0627; 2011-GS-13-0628
Prosecution for Murder

Gentlemen:

The Defendant's Motion to Dismiss pursuant to the Protection of Persons and Property Act (the "Act") in the above listed cases has been under advisement. Please accept this letter as notice of the Court's decision.

Having fully considered the pleadings, controlling law, memoranda submitted by the parties, arguments of counsel, and all the evidence presented, the Court finds that Defendant Graham Douglas is entitled to immunity from criminal prosecution pursuant to the Act, codified as S. C. Code Ann. § 16-11-410, and accordingly, Defendant's motion to dismiss is granted. More specifically, the Court finds that the defense has proven, by a preponderance of the evidence, that Defendant Graham Douglas falls within the scope of the "Stand Your Ground" provision contained within the Act, and is entitled to immunity from criminal prosecution thereunder. See S.C. Code Ann. § 16-11-440(C) (Supp. 2010); see also *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (stating that in determining immunity under the Act the proper standard of proof is a preponderance of the evidence). Given the testimony elicited at

2012 NOV 5 PM 10:00
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the *Duncan* hearing, this Court finds based on the evidence in the record that it was reasonable for Defendant Douglas to believe that deadly force was "necessary to prevent death or great bodily injury to himself." § 16-11-440(C). The Stand Your Ground protection is accorded to any individual not engaged in an unlawful activity who is attacked in a place where he/she has a right to be, and provides that there is no duty for such individual to retreat from the attack, and further permits the use of deadly force if he/she reasonably believes such force is necessary to prevent death or great bodily injury to himself/herself. *See id.* On the issue of whether Defendant Douglas was engaged in an unlawful activity at the time of this incident, the Court finds that he was not. While there is reliable evidence in the record that Defendant Douglas was under the influence of alcohol when this event occurred, there is no specific evidence of a blood alcohol or breath alcohol level for him, nor is this Court aware of any law that prohibits the use of alcohol by adults in their own residence. Thus, this Court finds Defendant Douglas is entitled to the immunities intended by the Act.

Please be aware that this Court has not afforded relief to Defendant Douglas under the "Castle Doctrine" portion of the Act, § 16-11-440(A). Although Defendant Douglas was in his own residence when this incident occurred, there is no evidence that victim Eden Smith at the time of his death had unlawfully or forcefully entered the Douglas residence, or was in the process of attempting to forcibly remove Defendant Douglas from the residence, one of which is required under the Castle Doctrine. *See id.* Attorney Moore's argument on behalf of Defendant Douglas that Mr. Smith's entry into the residence automatically became unlawful when the altercation erupted or when allegedly asked to leave is denied as unsupported by the facts in the record or prevailing case law. To the contrary, the evidence shows Mr. Smith was an invitee into the Douglas residence.

The dismissal of this criminal prosecution against Defendant Douglas is based on the following findings of fact from the record:

- 1) the greater physical strength and superior physical condition of Mr. Smith as compared to that of Defendant Douglas;
- 2) the gross intoxication of Mr. Smith at the time of the incident, with a blood alcohol level of .216 (.240 when calculated from ocular fluid), which according to toxicologist Shannon Sorrells of SLED would result in aggression, violence, emotional instability, and mood swings;
- 3) the multiple substantial injuries suffered by Defendant Douglas in the fight, including a bruised right eye, severe bruising on both arms, a cut on the right knee sufficient to draw blood, a bite mark to the leg, and a blow to the head;
- 4) a history of assaultive behaviors by Mr. Smith against various individuals including police officers, resulting in several previous criminal charges and convictions;
- 5) at least one prior incident in which Mr. Smith had committed an assault and battery against Defendant Douglas; not the subject of a criminal conviction, which was not disputed by members of Mr. Smith's family who were allegedly present when such occurred;
- 6) a lack of prior criminal charges for assaultive behavior by Defendant Douglas, with no evidence of a history of or propensity for interpersonal violence;

- 7) the close quarters in which the physical altercation occurred, leaving little room for escape or evasion; and
- 8) the forensic evidence at the scene, including blood spatter, gunshot residue and stippling, and the location of the body of Mr. Smith, while open to other interpretations, is consistent with the version of events testified to by Defendant Douglas that Mr. Smith was the aggressor and was imminently advancing upon Defendant Douglas at the time of the shooting.

In reaching this decision, the Court is fully aware that only two individuals were present when the fight that led to the death of Mr. Smith occurred, and only Defendant Douglas has survived to tell his version of events. Thus, the Court has discounted the portions of the testimony of Defendant Douglas that are either self-serving or subjective, and attempted instead to rely upon objective evidence and the testimony of other witnesses.

The Court is further acutely aware that the Protection of Persons and Property Act takes the unprecedented step of removing the longstanding fact-finding role from a jury in cases such as these, and places this responsibility upon the Court. Moreover, the burden of proof is shifted to the Defendant, and reduced to a preponderance of the evidence. This is a relatively new concept in South Carolina jurisprudence and a matter of first impression within this circuit. In reaching this decision, the Court reiterates that this decision is by a preponderance of the evidence, and readily recognizes that there is direct and circumstantial evidence in this record that mitigates in favor of Victim Eden Smith, raises questions about the relationship between Mr. Smith and Defendant Douglas, as well as raises questions about the events of the evening in question. These factors have challenged the Court to the best of its ability as finder of fact to weigh the evidence fairly and impartially and reach a result consistent with the greater weight of the evidence and the mandates of the Act. The profound implications of this decision make it a difficult one; however, after weighing all the evidence, this Court finds that Defendant Douglas is entitled to the protections of the Act, and that the defense has proven by a preponderance of the evidence that Defendant Douglas falls within the scope of the Act. Consequently, this Court must grant Defendant Douglas immunity from any criminal prosecution arising from the death of Eden Smith.

The Court is being called upon to speak for the community in this instance, and thus it should be emphasized that this decision is a legal one, and is not intended to exonerate Defendant Douglas of any and all moral responsibility for what has happened. The events of May 31, 2011 are tragic. In granting the Defendant's Motion to Dismiss, the Court in no way condones the actions of Defendant Douglas on that day. In fact, the irresponsible conduct and misjudgment of Defendant Douglas have contributed to an event that resulted in the death of a friend, ravaged two families, and divided a close knit community. It is the hope of this Court, in the aftermath of this decision, that Defendant Douglas will strive to the utmost of his ability to atone for the damage he has caused to friends, family, and community.

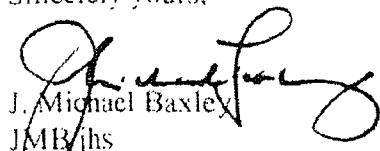
Because this decision is directly appealable, rather than having judgment rendered by this letter, Attorneys Cockrell and Moore are requested to prepare a proposed formal Order within thirty (30) days of the date of this letter detailing the decision stated herein, containing appropriate facts in evidence and supporting legal citations, and forward the same to opposing

counsel. Solicitor Finney is not asked to agree or consent to this proposed Order, but is requested to review it for mistake of fact or misstatement of the State's position. Thereafter, Attorney Moore is asked to forward the proposed Order electronically to this office in Word format for signature, which will then be reviewed, finalized, signed, and returned to Attorney Cockrell for filing and formal service on the parties.

Defendant Douglas is hereby immediately released from house arrest and all other restrictive terms and conditions of his bond. Moreover, the State is directed to mark the indictment as "Dismissed by Judicial Order" and return to Defendant Douglas any personal property of his or his family that is currently in possession of the State relating to these charges.

Thank you to both sides of this case for your civility and professionalism in presenting this difficult and highly contested matter to the Court.

Sincerely yours,



J. Michael Baxley
JMB/jhs

cc. The Honorable Faye L. Sellers (for filing)



State of South Carolina
Solicitor of the Third Judicial Circuit

Ernest A. Finney, III
Solicitor

Sumter County Courthouse
141 North Main Street
Sumter, South Carolina 29150

Phone (803) 436-2185
Fax (803) 436-2236

November 14, 2012

VIA US MAIL AND FACSIMILE
The Honorable J. Michael Baxley
531 East Carolina Avenue
Hartsville, SC 29550

RE: STATE V. GRAHAM DOUGLAS
Ind. No.: 2011-GS-13-627; 2011-GS-13-628

2012 NOV 19 PM 8 58
FACEL SENDER
CLEAN REPORT
CHESTERFIELD COUNTY, SC

Dear Judge Baxley:

We hope this letter finds you well. We are in receipt of your letter which was received on November 5, 2012, regarding your decision to provide immunity to Graham Douglas in the killing of Charles Eden Smith. Respectfully, we ask this court to reconsider the decision to provide immunity, and to allow this case to move forward for a jury trial for the reasons outlined below:

- 1.) The Court states that one of its reasons for providing immunity is the greater physical strength and superior physical condition of the victim over the defendant. We ask the Court to reconsider this position on the grounds that that it is not supported by the record. The record is clear that at the time of Charles Eden Smith's death, he was 5'11", and weighed 150. On that same night, the Defendant was booked into the Chesterfield County Detention Center, where he was noted as being 6'2" and 190 pounds. The only testimony provided to this court as to Charles Eden Smith having any physical advantage whatsoever over the Defendant was the testimony provided by the Defendant in which he claimed that the victim could bench press 500 pounds. It would be an error for this court to provide immunity while relying solely on the self serving testimony provided by the defendant to bolster his case while ignoring the clear facts on the record. For this reason, we respectfully request this Court to reconsider its position to provide immunity based on superior strength and physical condition.
- 2.) The Court next states that the gross intoxication of Charles Eden Smith is a reason for immunity to be provided. The State objects to this on the grounds that it ignores the fact

State v. Graham Douglas

reliable testimony shows that the Defendant was also highly intoxicated on the night of the incident, and therefore was prone to the same behavioral tendencies testified to by SLED lab technician Shannon Sorrells. Further, it is important to note that while Ms. Sorrells did provide that alcohol can lead to the tendencies of aggression, violence, emotional instability, and mood swings, she also was clear in stating that this is not how every individual acts, but instead, is only possible behavioral tendencies.

- 3.) The Court next finds that the "substantial injuries" suffered by the defendant is grounds for immunity to be provided. Respectfully, the State contends that "substantial injuries" is not the standard in which immunity should be provided, but instead, fear of death or **great bodily injury** (see §16-11-440(c), SC Code of Laws). Great bodily injury is "bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ." §16-11-430(2), SC Code of Laws. None of the injuries listed by the defendant are injuries that are, or would reasonably cause fear of Great Bodily Injury as defined. It is also important to note that the most substantial injury listed by the Court, that being the blow to the head, is unsubstantiated by anything other than the defendant's testimony. He provided that he became dizzy following his being slammed against the refrigerator and subsequently dropped. This is not substantiated by any medical records that he received any head trauma, and to be sure, when booked at the Chesterfield County Detention Center, a questionnaire was provided where it asked if he needed medical attention. His answer was in the negative. It is also worth noting that the Defendant was intoxicated at the time of this incident, which would be a strong explanation as to the Defendant feeling dizzy and/or disoriented. Further, the means by which these injuries were sustained are unsubstantiated by the crime scene, given the condition of the refrigerator in which he was "slammed into," and the lack of signs of struggle in the kitchen.
- 4.) This Court further found that Charles Eden Smith had a history of assaultive behaviors, and this was a reason for which immunity should be provided. The testimony by various Law Enforcement Officers was admitted over State's objections, and served no purpose in the hearing other than to taint the view of this Court as to the character of Charles Eden Smith. The standard was not – and should not be – what Law Enforcement is aware of as far as the assaultive behaviors of the victim, but instead what the defendant is aware of. This court erred by allowing the testimony of Law Enforcement to provide the substantial outline of the victims prior assaultive behaviors, and the defendant should not be provided immunity based on this error. Further, even assuming the defendant was fully aware of all of Charles Eden Smith's prior behavior, it should not be ignored that the defendant still spent time with Smith, invited him into his home, and provided him alcohol.

State v. Graham Douglas

- 5.) The Court also relies on the testimony of the defendant that he had been attacked in the past by Charles Eden Smith, and that this is uncontested by the Smith family who was allegedly present at the time of the attack. The State believes that this court should consider three things as to this attack. First, this alleged "attack" resulted in no injuries to the Defendant for which any medical records were provided to corroborate his story. Secondly, even taking Douglas at his word, what is clear is that he did not have to take any action to defend himself, which appears to cut against the Defendant's testimony that he was left no option but to use deadly force in defending himself in the present incident. Finally, to establish immunity, the defendant must establish by a preponderance of the evidence that he acted in self defense. For this Court to find that we did not contest this contention inherently shifts the burden from the defendant to the state, and therefore, the State respectfully disagrees with the Courts contention and ask that this Court reconsider its position on this matter.
- 6.) The Court found that the Defendant lacked prior charges/convictions for assaultive behavior on his criminal history. This point is uncontested by the State.
- 7.) The Court next finds that the close quarters of the residence left little room for escape or evasion. Respectfully, the State believes the Court ignores the facts that the defendant not only passed by the back door of the house to go into the bedroom and get the gun, but also, once inside the bedroom, the defendant did not take the obvious option of simply closing the bedroom door. Going out the back door would have taken the defendant outside of the residence, therefore providing an escape, and at bare minimum, shutting the door would have provided a means for evasion. Because the defendant did not take either of these obvious options, he equally should not get either of these benefits in the consideration for immunity.
- 8.) This Court also finds that forensic evidence supported the testimony of the defendant, and therefore supports his argument for immunity. The State objects to this on the grounds that while some evidence falls in line with the testimony of the defendant, other portions of evidence clearly do not. The defendant contends he was thrown against the refrigerator with inhuman strength, but the vases remain on top of the refrigerator unmoved, and the refrigerator looks undisturbed. There are no other signs of struggle in the kitchen. The defendant is noted in his first plea of self defense to Law Enforcement that the victim came at him with a gun, and the victim was found with a gun next to his hand, but it was soon clear that the gun next to the victim's hand was the murder weapon, and the only pistol at the scene of the murder. All of these points, along with all of the points raised in the above seven paragraphs raise substantial questions of fact that should only be answered by the jury, and certainly do not reach the standard required to be

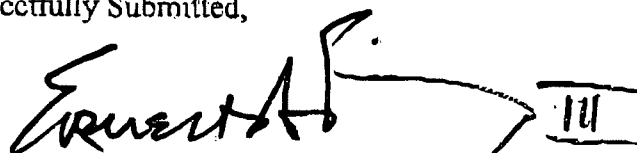
State v. Graham Douglas

reached by this court. For these reasons, as well as the reasons enumerated in the State's Motion to Deny Immunity, the State believes Immunity should clearly be denied, and asks this Court to find similarly.

- 9.) Finally, the most significant and compelling reason to allow this case to proceed to the jury for a final determination of the facts lies in the evidence not contemplated by the Court's proposed order, which is the clothing found at the residence of the Defendant. The SLED lab verified that the pants believed to belong to Charles Eden Smith on the bed in the back room had both men's blood on the waist band and leg. Additionally, the blue khaki pants worn by the Defendant earlier in the day were also found to have blood from both men on the pants leg. No credible testimony was received by the Court to explain why either man was wearing different clothing when law enforcement arrived, or how and why each man had changed from the blood covered clothing described above. With the low burden of proof established by the statute, the Defendant must establish a reasonable explanation for the actions that led each man to leave blood evidence on different items in different areas of the residence. The Defendant has failed to reach this burden in this matter, among many others enumerated above, and for these reasons, this Court should deny immunity, and allow this matter to proceed to a jury.

For these above stated reasons, as well as the reasons outlined in the State's closing arguments and memorandum in opposition of immunity, we respectfully request that this court re-consider its request for defense counsel to draft an opinion providing immunity, and instead ask this court to deny immunity and allow this case to be heard by a jury.

Respectfully Submitted,



Solicitor Ernest A. Finney, III
Assistant Solicitor Tyler Bryant Brown
Third Judicial Circuit of South Carolina

CC: The Honorable Faye L. Sellers (FOR FILING) (VIA US MAIL AND FACSIMILE)
S. Jahue Moore (VIA FACSIMILE)
M. Brooks Biediger (VIA FACSIMILE)
M.W. Cockrell, III (VIA FACSIMILE)

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

State of South Carolina,

vs.

Graham Franklin Douglas,

Defendant.

RECEIVED
IN THE COURT OF GENERAL SESSIONS
SC Court of Appeals
2011-GS-13-627
2011-GS-13-628
ORDER GRANTING IMMUNITY
AND DISMISSING CRIMINAL
CHARGES
2012 JUN 9 PM 12:13
CLERK OF COURT
CHESTERFIELD COUNTY, SC

The Defendant Graham Franklin Douglas is charged with the murder of Charles Eden Smith and possession of a weapon during the commission of a violent crime, these charges arising out a shooting incident at the home of the Defendant on May 31, 2011. This matter is before the Court on the Defendant's Motion to Dismiss pursuant to the Protection of Persons and Property Act (the "Act"), S.C. Code Ann. § 16-11-410, *et seq.* For the reasons set forth herein, the Defendant's motion is granted and the criminal charges against the Defendant are dismissed.

The motion was tried before this Court on October 2-3, 2012, in Chesterfield, South Carolina. Due to the recusal of the Fourth Circuit Solicitor because of a prior working relationship with the Defendant, the State was represented by Third Circuit Solicitor Ernest A. Finney, III and his Assistant Solicitor Tyler B. Brown. The Defendant was represented by attorneys S. Jahue Moore, M. Brooks Biediger, and M. W. Cockrell, III.

I. STATEMENT OF DECISION

The Protection of Persons and Property Act, according to the statement of purpose contained within the Act, was promulgated to permit "law-abiding citizens to protect themselves from intruders and attackers without fear of prosecutionfor acting in defense of themselves." S.C. Code Ann. § 16-11-420(B). The Act grants criminal and civil immunity for the use of force, including deadly force, to repel such an attack.

A True Copy, Attest
Steph S. Latham
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

The Defendant claimed protection in this case under two specific subsections of the Act, subsections 440(A) and 440(C). Under subsection (A), commonly known as the "castle doctrine," a reasonable fear of imminent death or great bodily injury is presumed on behalf of an individual who uses deadly force against another who unlawfully and forcibly enters a dwelling, or removes or attempts to remove that individual from the dwelling. Subsection (C), on the other hand, the "stand your ground provision," provides that an individual, who is not engaged in illegal activity, has no duty to retreat if he is attacked in any place where he has a right to be, and further, that he may use deadly force "if he reasonably believes it is necessary to prevent death or great bodily injury to himself." To be immune from prosecution, the Defendant must prove that his actions fall within the scope of the Act. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). In passing on a pre-trial immunity motion, the Court sits as trier of fact, and hears the case non-jury as an action at law, but the burden of proof is upon Defendant by a preponderance of the evidence. *Duncan*, 392 S.C. at 411, 709 S.E.2d at 665.

JMB
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In making this ruling, for the reasons stated herein, this Court specifically finds and concludes that the Defendant is **not** entitled to the "castle doctrine" protections of S.C. Code § 16-11-440(A) because there is no evidence of unlawful entry, but is entitled to the "stand your ground" protections of S.C. Code § 16-11-440(C), even though the incident in question occurred within the Defendant's residence.

Stated succinctly, this Court finds, pursuant to S.C. Code § 16-11-440(C), the Defendant has met the burden of proof to show that he was in reasonable fear of death or great bodily harm at the time he shot and killed Eden Smith. This "stand your ground" protection is afforded to the Defendant because he was not engaged in an unlawful activity and was attacked in a place where he had a right to be. There is no duty of such individual to retreat from attack, and the law

allows the use of deadly force if the person attacked reasonably believes such force is necessary to prevent death or great bodily injury. This Court finds the Defendant did believe deadly force was necessary in order to prevent death or great bodily injury, and that such belief was reasonable under the circumstances, and that he acted lawfully to protect himself. Under these findings, the Defendant is immune from prosecution pursuant to the Act.

Further, although the Court is aware that this dispositive decision will be disputed, the Court finds that this conclusion furthers the ends of justice in this difficult case for all concerned. In consideration of notions of judicial economy, this Court perceives, on this set of facts, that the State is highly unlikely to be able to meet the beyond a reasonable doubt burden of proof standard required to unanimously convince a trial judge and jury to render a conviction for murder, manslaughter, or any other criminal charge against Defendant arising from this unfortunate incident.


II. THE COURT'S RESPONSIBILITY AS FACT FINDER

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The Protection of Persons and Property Act removes the longstanding fact-finding role from a jury in cases such as these, and places this responsibility upon the Court. The exercise of this responsibility in this case has given the Court even greater respect for the role of juries in our justice system and the difficult decisions required of citizens who come forward to serve in the pivotal role of juror.

In deciding the facts of this case, the Court reiterates that this decision is by a preponderance of the evidence, and readily recognizes that from the same set of facts, the State has argued both direct and circumstantial evidence that mitigate in favor of victim Eden Smith. Specifically, the State has raised questions and issues concerning: the nature of the relationship between the two men, and by implication, the origin of the argument that led to the incident; to

what degree the participants were clothed at the time of the shooting; whether certain evidence was moved prior to the arrival of police; the ability of the Defendant to have exited the scene as opposed to shooting the victim; the difficult to ascertain impact of the substantial intoxication of both parties into the course of events that evening; and, other perceived inconsistencies in the evidence before the Court. These factors have challenged the Court to the best of its ability as finder of fact to weigh the evidence fairly and impartially and reach a result consistent with the greater weight of the evidence and the mandates of the Act. In determining the facts of this case, the Court is fully aware that only two individuals were present when the fight that led to the death of Eden Smith occurred, and only Defendant Douglas has survived to tell his version of events. Thus, the Court has discounted the portions of the testimony of Defendant Douglas that are either self-serving or wholly subjective, and attempted instead to rely upon objective evidence from the scene and the testimony of other witnesses.

The profound implications of this decision make it a difficult one; however, after weighing all the evidence, this Court finds that Defendant Douglas is entitled to the protections of the Act, and that the defense has proven by a preponderance of the evidence that Defendant Douglas falls within the scope of the Act. The following facts are established from the testimony and evidence before the Court, by a preponderance of that evidence. Where evidence is taken solely from the Defendant and no other source is available, that evidence is noted as "according to the Defendant." As will be discussed later in this Order, while the Court below provides the Defendant's version of what happened between the two men once inside Defendant's residence, this narrative is not the deciding factor in reaching the Court's decision, and the Court looks to evidence at the scene to objectively assess such testimony. This is particularly true as to those

portions of Defendant's testimony that portray Eden Smith as the sole cause of the shooting incident.

III. STATEMENT OF THE FACTS

On the morning of May 31, 2011, Charles Eden Smith (Smith) and Graham Franklin Douglas (Defendant) went to Green River Country Club near Chesterfield to play golf. Both men had known each other for several years. Defendant had been in an on-again, off-again romantic relationship with Smith's younger sister for approximately fifteen years, and both families knew each other relatively well in the small Chesterfield community. A copious amount of alcohol was consumed by both men while they played golf that morning and into the early afternoon of the hot day.¹ According to Defendant, a medium-sized bottle of vodka was shared between the two while on the golf course, and on the way home from the golf course, another similar-sized bottle of vodka was purchased for consumption.

gmb
5

After playing golf, the two men returned to the Defendant's residence. Defendant poured the second bottle of vodka into a Brita filtered pitcher and placed it in the refrigerator, a method of vodka preparation that helps to speed inebriation. The two continued to drink vodka throughout the remainder of the afternoon while reclining in lawnchairs in the backyard. At approximately 5:00 p.m., Defendant's father, Leon Douglas, returned after work to his home, immediately adjacent to Defendant's home, less than one hundred (100) feet away. According to Defendant, when his father came home, Smith and Defendant moved inside Defendant's residence so that his father would not see the two drinking alcohol. The foregoing facts are relatively undisputed.

¹ Mr. Smith had a blood alcohol level of .216 at the time of the incident (.240 when calculated from ocular fluid).

According to Defendant, the following series of events then occurred. At some point during the early evening, Smith had to use the restroom, which is located in Defendant's bedroom.² Several minutes passed before Smith emerged from the bathroom. As Smith walked from the bedroom back into the kitchen, he was holding a bottle of the anti-anxiety medication Clonazepam, stating "look what I found," and refused to give it back. Defendant attempted to grab the bottle from Smith, who then began to switch the pill bottle between his right and left hands, taunting Defendant. The event escalated when Smith walked over to the kitchen table, placed the pill bottle in the center of the table, and continued to snatch it away when Defendant would lunge for the bottle. Agitated, Defendant yelled, "G** d****, give me my medicine!" Hearing this, Smith "snapped" and responded with force, grabbing Defendant by his biceps and pinning him. Defendant testified that the degree of force and strength employed by Smith in that instant caused Defendant's knees to buckle, and he fell to the floor, striking his head. Smith then attacked Defendant on the floor, kneeling over him, punching him in the eye, and biting him on the left leg. Defendant ordered Smith to leave the house, but Smith continued the assault. Defendant crawled into his bedroom, immediately adjacent to the room in which the fight was occurring, retrieved his .38 caliber pistol from a dresser drawer and placed it beside him as he sat momentarily recuperating on the bed. After a moment, Defendant walked to the threshold separating the bedroom from the kitchen and again instructed Smith to leave. Given the close quarters of the house, Defendant was just a few feet from Smith, who was then standing in the kitchen area. Smith advanced rapidly and aggressively towards Defendant, who raised the pistol and fired generally at Smith when Smith was about two feet from Defendant, striking Smith in

² Defendant's residence is very small. It is an old sharecropper's dwelling. By observation during a visit to the scene, the ceilings are less than eight feet high. Defendant's bedroom is immediately adjacent to the kitchen. The entranceway between the kitchen and the bedroom has a door; however, the bathroom located within the bedroom does not have a door.

the chest. Defendant then ran out of his house, across the yard, and into his parents' home where he called 911. EMS arrived shortly and by that time Smith had stopped breathing. Defendant was arrested and taken into custody.

IV. DISCUSSION OF THE FACTS

We will never know exactly what happened within the close confines of Defendant's residence on that tragic day. In an attempt to impartially determine whether Defendant is entitled to the protections of the Act, the Court relies upon the following nine specific objective issues and areas of analysis, some of which go beyond the immediate facts of the incident.

1. The superior physical condition of Smith.

The evidence reveals that Defendant was larger than Smith. Defendant's booking report notes that he was six feet two inches tall, weighed 190 pounds, and was thirty-two years of age. Smith's autopsy revealed he was five feet eleven inches tall, weighed an estimated 155 pounds, and was twenty-seven years of age. Photos of the two reveal, however, that Defendant was in poor physical condition and out of shape, while Smith was well-muscled and in a much superior physical condition. Smith's aunt Sandra Sue Smith, with whom Smith lived, testified that Smith routinely worked out at the local YMCA for strength conditioning. Defendant testified that he was aware that Smith worked out regularly and could bench press substantial weight. Defendant showed no evidence of any physical conditioning. The strength of Smith is evident from the photographs of massive bruises on the upper arms of Defendant, which this Court finds were caused when Smith grabbed the Defendant by both arms. Based upon the testimony and evidence, this Court finds that while Defendant was the larger of the two men, Smith was substantially stronger and in optimal physical condition, while Defendant was just the opposite.

2. Gross intoxication of Smith.

The evidence reveals that at the time of his death, Smith had a blood alcohol level of .216. When measured from ocular fluid, that level was determined to be .240, three times the legal limit. According to the testimony of toxicologist Shanna B. Sorrells of SLED, such a level of intoxication would most probably lead to aggressive and violent behavior, emotional instability, and mood swings. This behavioral evidence bears directly upon the issue of the Defendant's claimed belief of being in imminent fear of serious bodily harm requiring the use of deadly force for his protection.

In making the above findings, the Court is aware that Defendant was also under the influence of alcohol at the time of this incident, as he had been drinking with Smith all day. Multiple sources reveal that Defendant was intoxicated, including his own testimony; unfortunately, law enforcement did not obtain a specific blood alcohol level for the Defendant, either by consent or by force, even though Defendant was in police custody. Based on the lack of direct evidence of the blood alcohol level for Defendant, the Court declines to attribute to Defendant the likelihood of violent and aggressive behavior resulting therefrom during the shooting incident, as there is no evidence of such behavior after police arrived on scene and during the lengthy time Defendant was in custody. To the contrary, Defendant was generally cooperative, passive, and remorseful throughout the aftermath of the incident.

3. Multiple injuries sustained by Defendant.

The evidence is clear that prior to the shooting, Defendant sustained multiple bodily injuries including a bruised right eye, severe bruising on both arms, a swollen thumb, a cut on the right knee sufficient to draw blood, a blow to the head, and a bite mark to the leg. As there were only two people in the room, and these multiple wounds clearly were not self-inflicted, this

Court finds these wounds were either directly inflicted by Smith or caused by Smith's actions. At autopsy, Smith was found to have less than a dozen very small, circular contusions on the backs of his hands and forearms, characterized by the pathologist as "potential defensive wounds." On cross examination, the pathologist could not rule out these being offensive wounds. Smith had no substantial injury other than the single fatal bullet wound to the chest. Comparing the injuries of the two men, this Court finds from the evidence that the Defendant fared much worse in the altercation prior to the fatal shot, and because Smith had no incapacitating wounds prior to that shot, the Defendant's claimed belief that serious additional injury was about to be inflicted upon him if he did not act to protect himself was reasonable, and is supported by the evidence in this case.

4. History of assaultive behaviors by Smith.

Myrtle Beach police officer William J. Stair testified during Defendant's case in chief, and recounted an incident in Horry County where Smith had been arrested, was being transferred between jails cells at the Detention Center, and began to fight with officers during the cell transfer. According to Stair, it took four male police officers to subdue Smith, and he attempted to bite one of the officers on the leg during the melee. Smith later pled guilty to assault on a police officer as a result of this incident. Additionally, Sgt. Roy Drake of the Cheraw police department testified to an incident where he arrested Smith for biting a female victim on the shoulder, and a taser had to be used at that time to subdue Smith. At the jail following that incident, two police officers were required to force Smith into a cell. According to Sandra Sue Smith, at the time of his death Smith was awaiting sentencing on a rape charge. Smith also had previous convictions for armed robbery and burglary. The Court finds that this history of assaultive and confrontive behavior, even against law enforcement officers, supports the

contention of Defendant that Smith assaulted him and was the aggressor during the incident that led to the shooting. The State objected to the introduction of these prior incidents on the basis of relevance, but these objections were overruled by the Court.

5. Prior assault by Smith against Defendant.

The Defendant testified to a prior assault committed upon him by Smith in the summer of 2006 that occurred at Smith's home, was witnessed by others, and was forcibly stopped by members of Smith's family. This testimony was not disputed by those witnesses, who were present in the courtroom, but were not called to controvert this testimony during the State's case. According to the Defendant, he was visiting at Smith's parents' home, standing in the kitchen, when Defendant uttered the expletive "G** d****," upon which Smith "snapped" and became violent, slamming Defendant against the pantry door. Smith was pulled off of Defendant by Smith's mother and sister. The Court finds this uncontradicted evidence goes to the reasonable belief within the Defendant at the time of the shooting that he was in imminent danger of further serious bodily injury if he did not act to protect himself.

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6. No prior criminal charges nor history of violence by Defendant.

The record in this case reveals that the Defendant had never been arrested prior to this incident, and there is no evidence of any past violent behavior of any kind on his part. With no history of violence, there is nothing in the record that would lead the Court to believe Defendant would have been prone to violence absent reasonable provocation. The evidence reveals that at the time of the incident, Defendant fired a single shot from a gun loaded with two bullets, supporting Defendant's contention that he used only as much force as was necessary to protect himself.

7. Close quarters of the altercation.

The Court had the opportunity to visit and inspect the location where the shooting took place. The house is very small. The kitchen in which the altercation occurred can only be described as tiny, measuring eleven feet by ten feet, with a low ceiling height. When one takes into account built-in cabinets and appliances, the floor space within the room is further reduced. Pathologist Janice E. Ross testified that the gun was within two feet of Smith when fired. Based upon the close quarters involved and the location of the bedroom doorway from which Defendant fired the pistol, there was no reasonable way for Defendant to have retreated at that moment. While Defendant was not required to retreat under South Carolina law, the lack of ability to retreat at the moment of the shooting is relevant to the claimed belief of Defendant that he was in imminent danger of serious bodily injury.

8. Forensic evidence at the scene.

JLB
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The Court has considered the forensic evidence at the scene, and finds that such evidence is consistent with the Defendant's version of the facts. There was gunshot residue and stippling on the Smith's body, indicating he was shot at close range. The entrance wound reveals Smith would have been facing the Defendant at the time the shot was fired, and the angle of the bullet's path within the body indicates Smith was inclined toward Defendant when shot. Blood spatter on the cabinets five to seven feet away from Smith's body, and lack of smear or drag marks on the floor, indicate Smith's body was not moved or re-positioned after he fell. While the forensic evidence may be the subject of dispute and open to other interpretations, the Court finds it is consistent with the version of events testified to by Defendant.

9. Defendant was in his own residence.

There is no dispute that this incident wholly occurred within the dwelling of the

Defendant, where the Defendant had an absolute right to be. The Court finds the Defendant is entitled to a degree of control over the presence and activities of others within such residence, may demand of others to leave at any time, and has the responsibility to maintain order within the household. Moreover, Defendant is entitled to an appropriate expectation of security within his own residence. Conversely, a visitor to the home is expected to be mindful of these prerogatives of the owner, to behave accordingly, and to remain peaceful and orderly therein.

V. DISCUSSION OF EVIDENCE MITIGATING AGAINST DEFENDANT

As stated above, the prosecution raised several factual issues in favor of Smith during the course of the hearing, and the Court has fully considered these issues in reaching its decision. The following is not intended to be an exhaustive review of the State's arguments, but is offered to highlight the more convincing of their positions. The Court will not attempt to refute the State's arguments in this narrative, as they raise valid issues, but herein reiterates that after considering the totality of the evidence in the case, by a preponderance of that evidence, the Court finds for Defendant.

JLB
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1. The location of the weapon appears suspicious.

When police officers arrived on scene, they found the body of Smith sprawled on the kitchen floor, with a pistol immediately at his right hand, at such an angle as to appear the pistol had been released from the hand. This was unusual to SLED agent James Lee Johnson, because if Smith had been holding the gun, his fall would have propelled it far from the right hand. If Defendant was holding the gun, there would be no reason for the gun to be so close to Smith's right hand. The State's explanation for the pistol's location is that it was placed there by Defendant after the shooting in a poorly-reasoned effort to create the appearance that Smith had possession of the gun.

2. Inconsistent statements by the Defendant.

At trial, Chesterfield County Deputy Sheriff Dana Wallace testified that Defendant stated shortly after the shooting, "He came at me with a gun and I shot him." This is directly inconsistent with Defendant's testimony at trial. Moreover, the evidence is clear that there was only one gun involved during the altercation, and it was in the possession of the Defendant. The State argues that this undermines the credibility of Defendant, is consistent with Defendant attempting to physically place the gun in Smith's hand at the scene, and strongly inculcates Defendant as to the shooting.

3. Defendant could have exited the dwelling prior to retrieving a weapon.

The Defendant testified that after he had fallen to the floor and been beaten, he crawled into his bedroom and obtained his pistol from the bedside table. The layout of the small residence is such that he could just as easily have crawled out the back door and escaped the premises, avoiding the fatal shooting.

4. Clothing evidence at the scene is unexplained.

When police arrived at the scene, the body of Smith was clad only with a pair of black socks and cargo shorts, with no underwear. The shorts were at an odd angle, only partially pulled up on one side, leading the prosecution to ask the Defendant on cross-examination if he had put the shorts on Smith after the shooting, which was denied. The Defendant's shirt was improperly buttoned and jeans unzipped, contended by the State to be evidence of being hastily thrown on. Defendant emphatically denied a sexual relationship with Smith, and no direct evidence was put forth by the State of such a relationship, in spite of the innuendo of its questions to Defendant. Other clothing found at the scene created a confusing tangle of evidence. Pants belonging to Smith found on the bed in the back room had both men's blood on

them. Blue pants worn by Defendant earlier in the day, also found in the back room, had blood from both men on the leg. Testimony did not satisfactorily explain the fact that both men were wearing different clothes from when they played golf, nor the blood of both men being on both sets of pants found in the bedroom.

VI. ADDITIONAL FINDINGS NECESSARY TO THIS DECISION

The question of whether the Defendant was engaged in an unlawful activity at the time of the incident, and thus not entitled to a "stand your ground" immunity, has been raised. On this point, the Court finds that Defendant was under the influence of alcohol when the fatal shot was fired, which Defendant freely admits, but the Court is unaware of any law prohibiting the use of alcohol by an adult while in his own home. The Court finds Defendant was not engaged in an unlawful activity at the time of the shooting.

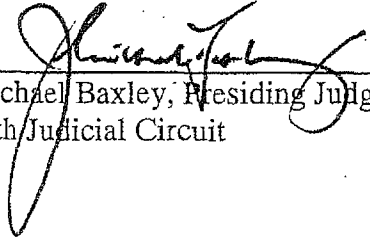
The Court finds that Defendant's testimony as to the facts of the shooting and the events that led to the shooting is credible, as it is generally consistent with forensic evidence at the scene and other evidence in the case. After a review of all the evidence, the Court specifically finds, by a preponderance of the evidence, the Defendant was acting in self-defense at the moment of the shooting. In reaching this decision, the Court has considered the testimony as a whole, the circumstantial and direct evidence, as well as the voluminous exhibits placed into the record during the trial. On this point, the Court further finds that, at the moment of the shooting, Smith was volatile, violent, aggressive, and imminently advancing upon Defendant with the intent to commit further bodily injury upon Defendant. As a result, the Court specifically finds that Defendant's claim of fear of further serious bodily injury at the hands of Smith at the moment he shot Smith was reasonable under the circumstances.

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The Court is being called upon to speak for the community in this instance, and would be remiss in not emphasizing that this decision is a legal one, and is not intended to exonerate Defendant Douglas of any and all moral responsibility for what has happened. The events of May 31, 2011 are tragic. In granting the Defendant's Motion to Dismiss, the Court in no way condones the actions of Defendant Douglas on that day. In fact, the irresponsible conduct and misjudgment of Defendant Douglas earlier in the day have contributed to a series of events that resulted in the death of a friend, ravaged two families, and divided a close knit community. Nevertheless, according to the plain and unambiguous language of the Act, the Court finds the Defendant entitled to the protections of the Act.

IT IS ORDERED, ADJUDGED, AND DECREED that the Defendant Graham Douglas is entitled to immunity from prosecution in this case pursuant to S.C. Code § 16-11-440(C). The charges against Graham Douglas are hereby dismissed. The Clerk of this Court shall mark the indictment "Dismissed by Judicial Order." Graham Douglas is hereby released from house arrest and any and all other conditions of his bond. After the exhaustion of any appeals arising from this Order, the State shall return to Graham Douglas any of his confiscated personal property or any property belonging to his family now in possession of the State.

IT IS SO ORDERED.



J. Michael Baxley, Presiding Judge
Fourth Judicial Circuit

Hartsville, South Carolina

December 31, 2012

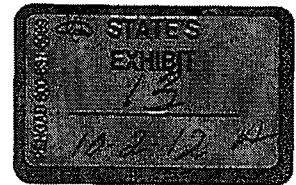
Chesterfield Co Sheriffs Office
Medical Questionnaire

Booking Information

Name	DOUGLAS, GRAHAM FRANKLIN				Height	Weight	Sex	Race	DOB	SSN	State ID #
Date Booked	Status	Booking ID	ID Number		06'02"	190	M	W	█/1979	█	
6/1/2011	In Custody	10098153	11425								

Medical Questionnaire Information

- 2. Does the inmate have obvious pain, bleeding, or other symptoms requiring emergency service? No
- 3. Does the inmate appear to be under the influence of drugs or alcohol? No
- 4. Does the inmate appear to have withdrawal symptoms? No
- 5. Are you presently taking medication for heart disease? No
- 6. Are you presently taking medication for asthma? No
- 7. Does the inmate appear confused or depressed? No
- 8. Are you presently taking medication for seizures? No
- 9. Do you have any Body-Head Lice or Scabies? No
- 10. Are you presently taking medication for diabetes? No
- 11. Do you have any food or medication allergies? No
- 12. Are you presently taking medication for blood pressure? No
- 13. Have you ever been treated for a psychiatric disorder? No
- 14. Are you currently taking any medication? No
- 15. Do you have a special diet prescribed by a physician? No
- 16. Do you have a history of a venereal, communicable, or other contagious disease? No
- 17. Have you been hospitalized or seen a physician recently for any illness? No
- 18. Have you fainted, had seizures, or had a recent head injury? No
- 19. Do you have a history of tuberculosis? No
- 20. Do you have a history of hepatitis? No
- 21. Do you have a painful dental condition? No
- 22. If female, are you pregnant? No
- 23. If female, have you recently delivered a child? No
- 24. Do you have any other medical problems? No
- 25. A medical copay is in affect at this facility for all Local, State and Federal Inmates. Yes



[Handwritten Signature]
(Inmate's Initials)

Chesterfield Co Sheriffs Office
Medical Questionnaire

Completed by: INEZ CASSIDY Date/Time: 6/1/2011 2:18:16 AM
Reviewed by: *[Signature]* Date/Time: 6/1/11
Inmate's Signature: *[Signature]* Date/Time: 6/1/11

Chesterfield Co Sheriffs Office Mental Health Screening Form

Booking Information

Name	Date Booked	Status	Booking ID	ID Number	Height	Weight	Sex	Race	DOB	SSN	State ID #
DOUGLAS, GRAHAM FRANKLIN	6/1/2011	In Custody	10038153	11425	06'02"	190	M	W	█/1979	█	█

Suicide Risk Information

- 1. Does the inmate's behavior suggest the risk of suicide? No
- 2. Does the arresting officer believe that the inmate may be a suicide risk? No
- 3. Does the inmate appear mentally confused? No
- 4. Does the inmate appear to be under the influence of drugs or alcohol? No
- 5. Does the inmate seem unusually embarrassed or ashamed? No

Completed by: INEZ CASSIDY Date/Time: 6/1/2011 2:18:47 AM

Reviewed by: *[Signature]* Date/Time: 6/1/11

Inmate's Signature: *[Signature]* Date/Time: _____

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

James Johnson
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC. 29210

DNA ANALYSIS
March 22, 2012
SLED LAB: L11-06062
Your Case No: FA11382
Incident Date: 5/31/2011
[V] Charles Smith
[S] Graham Douglas

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

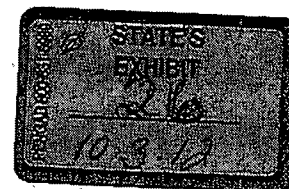
SEROLOGY ANALYSIS

Items Submitted:

7.1 Blood standard from Charles Smith
11 Buccal swab from Graham Douglas
8.1 Cutting from shorts
26.5 Swab from pants taken from front bedroom belonging to victim Charles Smith

Results of Examinations:

7.1 See DNA analysis.
11 See DNA analysis.
8.1 Semen indicated. See DNA analysis.
26.5 See DNA analysis.



SLED LAB No. L11-06062
March 22, 2012

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DNA ANALYSIS

ITEMS ANALYZED:

- 7.1 Blood standard from Charles Smith
11 Buccal swab from Graham Douglas
- 8.1 Cutting from shorts
26.5 Swab from pants taken from front bedroom belonging to victim Charles Smith

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from the non-sperm fraction of item 8.1 is a mixture of at least two individuals. The partial DNA profile of the major contributor to this mixture matches the DNA profile of Charles Smith. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this item is approximately 1 in 450 trillion. The partial DNA profile of the minor contributor to this mixture is from an unidentified individual and is not suitable for entry into the Combined DNA Index System (CODIS). Graham Douglas is excluded as a possible contributor to this mixture.

The partial DNA profile developed from the sperm fraction of item 8.1 also matches the DNA profile of Charles Smith.

The partial DNA profile developed from item 26.5 is insufficient for reliable interpretation.



SLED LAB No. L11-06062
March 22, 2012

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Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Paul F. Meeh
Forensic Scientist



SLED LAB No. L11-06062
March 22, 2012

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Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	DSS818	FGA	Amelogenin
7.1 Charles Smith	14	28,29	10,11	10	15,17	5,9	9,12	11,12	17,25	14	15,19	10,11	12,19	10,11	21	XY
11 Graham Douglas	13,14	30,31	10	10	14,15	8,9	12,13	11	17,19	13,14	16,18	8,11	13,14	12,14	21,22	XY
8.1F Shorts	12,14 15	28,29 30	9,10 11	10,(11) 12	Inc.	5,7 9	(8),9 12	11,12	17,23 (24),25	13,14	14,15 (16),(17) 18,19	8,10 11	12,16 19	10,11 12	21	XY
8.1M Shorts	-	(29)	-	10	-	(5)	-	-	(17)	(14)	(15),(19)	-	(19)	-	-	-
26.5 Pants	14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

() = alleles between 75 and 149 rfu

- = no results

Bold = major contributor

Inc = Inconclusive



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

<p style="text-align: center;">4890</p> <p style="text-align: center;">STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHESTERFIELD</p>	<p style="text-align: right;">232</p> <p style="text-align: center;">PROBATE COURT</p>
<p>ESTATE OF SHIRLEY G. GULLEDGE PROBATE ROLL NUMBER 2003-ES-13-293</p>	<p style="text-align: center;">DEED OF DISTRIBUTION</p>
<p>WHEREAS, the above-named decedent died on the 26th day of September 2003 owning the within-described property in the State and County above written, and,</p>	
<p>WHEREAS, the estate of the decedent is being administered by the undersigned duly appointed personal representative in the Probate Court for Chesterfield County as file number 2003-ES-13-293 and</p>	
<p>WHEREAS, an instrument in recordable form evidencing the title which vested in the Grantee(s) herein at the death of the decedent is required by the laws of this State, said Grantee(s) being devisee(s) or heir(s)-at-law according to the probate records of this County,</p>	
<p>NOW THEREFORE, in accordance with the Laws of this State, the undersigned Personal Representative has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto</p>	
<p>KAY G. DOUGLAS, her heirs and assigns forever, the following described property, to wit:</p>	
<p><u>LOT NO. 1:</u> All that certain lot of land containing 4.5 acres, more or less, located approximately two miles Southwest of the Town of Ruby, in Chesterfield County, South Carolina, being bounded generally, now or formerly, as follows: East by lands of Kay G. Douglas; South by South Carolina Highway 265; and West by Josie Gullede and Karen Rogers.</p>	
<p>TMS: 108-47</p>	
<p><u>LOT NO. 2:</u> All that certain piece, parcel or tract of land containing four (4) acres, more or less, with improvements thereon, situate, lying and being on the Southwestern side of South Carolina State Highway No. S-13-60 (██████████ Road), approximately four miles almost North of the Town of Chesterfield, in Chesterfield County, South Carolina, being bounded generally, now or formerly, as follows: On the Northeast by said South Carolina State Highway No. S-13-60 (██████████ Road), lands of Marilyn T. Smith and lands of Leon and Kay G. Douglas; on the East by lands of Della T. Adams; on the South by Della T. Adams and branch, center of the run of said branch being the boundary line between the lands herein mentioned and the lands of John L. Sellers, Jr. and lands of Leon and Kay G. Douglas.</p>	
<p>TMS: 168-28</p>	
<div style="text-align: right; border: 2px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>DEFENDANT'S EXHIBIT 40 10-2-12 A</p> </div>	

TOGETHER with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said KAY G. DOUGLAS, her

heirs and assigns forever.

Witness my Hand and Seal this 29th day of September 19 2004

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Stacy A. Walsh

H. D. Stancil

Kay G. Douglas (Seal)
KAY G. DOUGLAS

PERSONAL REPRESENTATIVE(S) OF THE ESTATE
OF SHIRLEY G. GULLEDGE

234

STATE OF SOUTH CAROLINA
CHESTERFIELD COUNTY

PERSONALLY appeared before me
and made oath that he saw
STEPHEN C. WALLACE
KAY G. DOUGLAS

as duly appointed Personal

Representative(s) of the Estate of SHIRLEY G. GULLEDGE

sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with HEATHER D. STANCIU witnessed the execution thereof.

Steph Wallace

SWORN to before me this 29th

day of September, 2004

Heather D. Stanciu

NOTARY PUBLIC FOR SOUTH CAROLINA (L.S.)

My Commission Expires: 12/07/04

108-47
168-28
12-70-04

FILED
CLERK OF COURT
09 SEP 30 10 31 AM
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

ESTATE OF SHIRLEY G. GULLEDGE

KAY G. DOUGLAS

Personal Representative(s)

TO

KAY G. DOUGLAS

CHESTERFIELD, SC 29709

Clerk of Court, Chesterfield County
REVENUE FEE COLLECTED

STATE \$ Exempt
COUNTY \$ Estate
DATE: 9-30-04

DEED OF DISTRIBUTION

Filed for record at 3:14 P. M. o'clock on
the 30th day of September, 2004 and
recorded in Deed Book 144 at page 233-234

Joey J. Sellers
CLERK OF COURT/REGISTER OF MESNE CONVEYANCE

Recorded this 13th day of Dec, 2004
in Book 12 of Deeds, at page 94

Johnny J. Jenkins
COUNTY AUDITOR

Registered as Parcel Number
this day of , 2004 .

COUNTY ASSESSOR

STEPHEN C. WALLACE

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Coroner Kip Kiser
 Chesterfield County Coroner's Office
 P O Box 192
 Chesterfield, SC 29709

TOXICOLOGY DEPARTMENT

August 05, 2011
 SLED No: L11-06062
 Your Case No: FA11382
 Incident Date: 05/31/2011

[V] Charles Smith

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
 South Carolina Law Enforcement Division

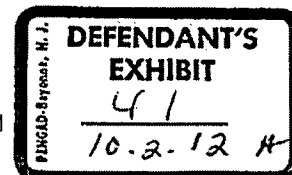
PARTIAL REPORT

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology) - Iliac Vein Blood labeled "CHARLES SMITH FA11-382"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.216	% w/v	0.01
Methanol	Negative	% w/v	0.01
Acetone	Negative	% w/v	0.01
Isopropanol	Negative	% w/v	0.01



SLED No :L11-06062

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Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Amphetamine	Negative	mg/L	0.15
Benzodiazepines	Negative	mg/L	0.05
Methamphetamine	Negative	mg/L	0.15
Oxycodone	Negative	mg/L	0.10
Cannabinoids	Negative	mg/L	0.03

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Cocaine Metabolite	Negative	mg/L	0.20
Opiates	Negative	mg/L	.0.10

Item: 2 **Sample Type: Urine - labeled "CHARLES SMITH FA11-382"****No Analysis Performed****Item: 3** **Sample Type: Ocular fluid - labeled "CHARLES SMITH FA11-382"****Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)**

Analyte	Result	Units	Threshold
Ethanol	0.240	% w/v	0.01
Methanol	Negative	% w/v	0.01
Acetone	Negative	% w/v	0.01
Isopropanol	Negative	% w/v	0.01

Item: 4 **Sample Type: Bile - labeled "CHARLES SMITH FA11-382"****No Analysis Performed****Item: 5** **Sample Type: Gastric - labeled "CHARLES SMITH FA11-382"****No Analysis Performed**

SLED No :L11-06062

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8/5/11



Shana B. Sorrells

Forensic Toxicologist

CC: Dr. Janice E. Ross - Newberry Pathology
James Johnson - South Carolina Law Enforcement Division

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department, (803) 896-7385.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Coroner Kip Kiser
Chesterfield County Coroner's Office
P O Box 192
Chesterfield, SC 29709

TOXICOLOGY DEPARTMENT
August 03, 2011
SLED No: L11-06062
Your Case No: FA11382
Incident Date: 05/31/2011

[V] Charles Smith
[S] Graham Franklin Douglas

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Mark A. Keel, Chief
South Carolina Law Enforcement Division

PARTIAL REPORT

ITEMS OF EVIDENCE

Item: 12 Sample Type: Urine - labeled "Graham F. Douglas"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

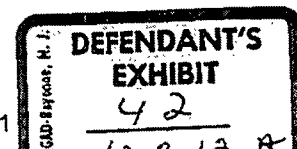
Analyte	Result	Units	Threshold
Ethanol	Negative	% w/v	0.01

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Amphetamine/Methamphetamine	Negative	mg/L	1.00
Benzodiazepines	Negative	mg/L	0.20
Cannabinoids	Negative	mg/L	0.10
Cocaine Metabolite	Negative	mg/L	0.30
Opiates	Negative	mg/L	0.10

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

A comprehensive drug screen utilizing gas chromatography/mass spectrometry was performed on this sample. No drugs or poisons of concern were found.



SLED No :L11-06062

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8/3/11



Shana B. Sorrells
Forensic Toxicologist

CC: Dr. Janice E. Ross - Newberry Pathology
James Johnson - South Carolina Law Enforcement Division



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

James Johnson
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

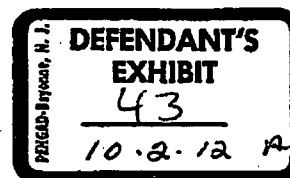
DNA ANALYSIS
December 20, 2011
SLED LAB: L11-06062
Your Case No: 33110055
Incident Date: 5/31/2011
[V] Charles Smith
[S] Graham Douglas

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

<u>Items Submitted:</u>	<u>Results of Examinations:</u>
7.1 Blood standard from Charles Smith	7.1 See DNA analysis.
11 Buccal swab from Graham Douglas	11 See DNA analysis.
19 Swab from kitchen floor	19 No analysis performed.
20 Swab from underneath kitchen	20 No analysis performed.
21 Swab from top of kitchen counter	21 No analysis performed.
22 Swab from step at entrance of back door	22 No analysis performed.
23.1 Cutting from pants belonging to Graham Douglas	23.1 Blood indicated. See DNA analysis.



SLED LAB No. L11-06062
December 20, 2011

Page 2 of 5

Items Submitted:

Results of Examinations:

23.2	Cutting from pants belonging to Graham Douglas	23.2	Blood indicated. See DNA analysis.
25.1	Cutting from pants belonging to Graham Douglas	25.1	Blood indicated. See DNA analysis.
25.2	Cutting from pants belonging to Graham Douglas	25.2	No analysis performed.
26.1	Cutting from pants belonging to Charles Smith	26.1	Blood indicated. See DNA analysis.
26.2	Cutting from pants belonging to Charles Smith	26.2	No analysis performed.
26.3	Cutting from pants belonging to Charles Smith	26.3	No analysis performed.
26.4	Cutting from pants belonging to Charles Smith	26.4	No analysis performed.
27.1	Cutting from shirt belonging to Graham Douglas	27.1	Blood indicated. See DNA analysis.
28.1	Cutting from right shoe belonging to Graham Douglas	28.1	Blood indicated. See DNA analysis.
28.2	Cutting from left shoe belonging to Graham Douglas	28.2	No analysis performed.



DNA ANALYSIS

ITEMS ANALYZED:

- 7.1 Blood standard from Charles Smith
- 11 Buccal swab from Graham Douglas

- 23.1 Cutting from pants belonging to Graham Douglas
- 23.2 Cutting from pants belonging to Graham Douglas
- 25.1 Cutting from pants belonging to Graham Douglas
- 26.1 Cutting from pants belonging to Charles Smith
- 27.1 Cutting from shirt belonging to Graham Douglas
- 28.1 Cutting from right shoe belonging to Graham Douglas

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 23.2 matches the DNA profile of Charles Smith. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 1.1 quintillion.

The DNA profile developed from item 27.1 also matches the DNA profile of Charles Smith.

The DNA profile developed from items 23.1, 25.1, and 26.1 matches the DNA profile of Graham Douglas. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 3.9 quadrillion.

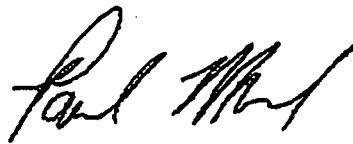
No DNA profile was developed from item 28.1.



SLED LAB No. L11-06062
December 20, 2011

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Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Paul F. Meeh
Forensic Scientist



Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelo- genio
7.1 Charles Smith	14	28,29	10,11	10	15,17	5,9	9,12	11,12	17,25	14	15,19	10,11	12,19	10,11	21	XY
11 Graham Douglas	13,14	30,31	10	10	14,15	8,9	12,13	11	17,19	13,14	16,18	8,11	13,14	12,14	21,22	XY
23.1 Pants	13,14	30,31	10	10	14,15	8,9	12,13	11	17,19	13,14	16,18	8,11	13,14	12,14	21,22	XY
23.2 Pants	14	28,29	10,11	10	15,17	5,9	9,12	11,12	17,25	14	15,19	10,11	12,19	10,11	21	XY
25.1 Pants	13,14	30,31	10	10	14,15	8,9	12,13	11	17,19	13,14	16,18	8,11	13,14	12,14	21,22	XY
26.1 Pants	13,14	30,31	10	10	14,15	8,9	12,13	11	17,19	13,14	16,18	8,11	13,14	12,14	21,22	XY
27.1 Shirt	14	28,29	10,11	10	15,17	5,9	9,12	11,12	17,25	14	15,19	10,11	12,19	10,11	21	XY
28.1 Shoe	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

- = no results

SLED PEE DEE REGION

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

S/A James Johnson
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

TRACE EVIDENCE
August 02, 2011
SLED LAB: L11-06062
Your Case No: 112250
Incident Date: 5/31/2011
[V] Charles Smith
[S] Graham Douglas

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 29 One GSR kit from Graham Franklin Douglas

Item: 29.1 Right palm

RESULTS:

No gunshot residue was found.

Item: 29.2 Right back

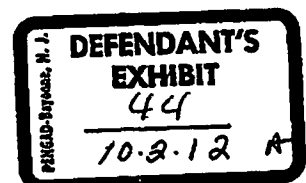
RESULTS:

The quantities of metals found did not indicate the presence of gunshot residue.

Item: 29.3 Left palm

RESULTS:

No gunshot residue was found.



SLED LAB No. L11-06062
August 02, 2011

Page 2 of 2

Item: 29.4 Left back

RESULTS:

The quantities of metals found did not indicate the presence of gunshot residue.

Item: 30 One GSR kit from Charles Eden Smith

Item: 30.1 Right palm

RESULTS:

The quantities of metals found did not indicate the presence of gunshot residue.

Item: 30.2 Right back

RESULTS:

The quantities of metals found did not indicate the presence of gunshot residue.

Item: 30.3 Left palm

RESULTS:

Gunshot residue was found.

Item: 30.4 Left back

RESULTS:

The quantities of metals found did not indicate the presence of gunshot residue.

Ila N. Simmons

Ila N. Simmons
Forensic Scientist

cc: Newberry Pathology, Chesterfield County Coroner's Office



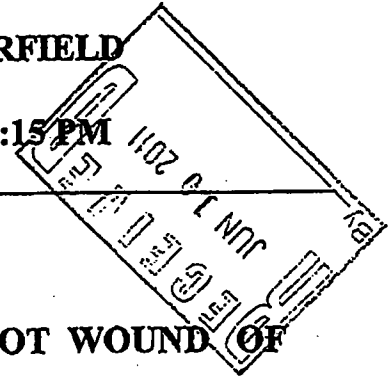
NEWBERRY PATHOLOGY ASSOCIATES, P.A.
185 Executive Drive, P. O. Box 839
Newberry, S. C. 29108
Phone: (803) 276-0201
1-888-446-9898
Fax: (803) 276-0208

NECROPSY REPORT: FA11-382
NAME: CHARLES SMITH
TYPE OF AUTOPSY: Complete

AGE: 27 RACE: WHITE SEX: MALE SSN: D.O.B. [REDACTED]

PROSECTOR(S): JANICE E. ROSS, M.D. COUNTY: CHESTERFIELD

DIED on 5/31/2011 at 7:44 PM AUTOPSIED on 6/1/2011 at 8:15 PM



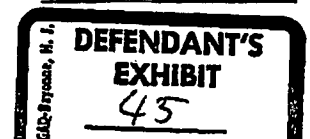
FINAL NECROPSY DIAGNOSIS:

FATAL, INTERMEDIATE RANGE, PENETRATING GUNSHOT WOUND OF THE CHEST WHICH LACERATED THE HEART CAUSING A LEFT HEMOTHORAX OF 1300 CC OF BLOOD AND BLOOD CLOT, A RIGHT HEMOTHORAX OF 1000 CC OF BLOOD AND BLOOD CLOT AND A HEMOPERICARDIUM OF 400 CC OF BLOOD AND BLOOD CLOT IT FURTHER GRAZED THE DOME OF THE LIVER

MANNER OF DEATH: HOMICIDE

PROBABLE CAUSE AND MECHANISM OF DEATH	INTERVAL
<u>EXSANGUINATION</u>	<u>MINUTES</u>
DUE TO: <u>LACERATION OF THE HEART</u>	<u>MINUTES</u>
DUE TO: <u>GUNSHOT WOUND OF THE CHEST</u>	<u>MINUTES</u>

Date Mailed Out: 6-8-11



Charles Smith

Report by: J.E. Ross, M.D.

CASE HISTORY

This 27-year old white male was the victim of a gunshot wound which occurred on 05/30/2011 at approximately 6:38 PM. Apparently he and another person were in an argument. There was a .38 caliber gun at the scene with two bullets, one of which was spent.

The body was brought to this prosector for autopsy.

EXTERNAL EXAMINATION: The body is received clothed in a pair of tan zipped and buttoned pants and a pair of black ankle-length socks. He is wearing a red cloth bracelet on his right wrist. He measures 71 inches in height and weighs an estimated 150 pounds. His hair is wavy and brown measuring up to 10 inches in length. The eyes are blue. No conjunctival petechiae are present. The teeth are natural and in fair repair.

Examination of the neck is unremarkable.

Examination of the chest shows an entrance gunshot wound in the left chest which will be further described.

Examination of the abdomen is unremarkable.

Examination of the upper extremities shows few small somewhat circular contusions in the right upper arm anteriorly. Over the posterior left forearm are multiple contusions which are circular to oval and measuring no more than $\frac{3}{4}$ inch in greatest dimension and without pattern. Over the posterior right wrist and dorsal aspect of the right hand are similar contusions. The palmar aspects of the hands are covered with finger-print ink.

Examination of the lower extremities shows a circular scar over the right upper lateral thigh. There is a somewhat circular contusion of the left knee without pattern.

Examination of the back is unremarkable. The genitalia are those of an adult male.

GUNSHOT WOUND: There is an entrance gunshot wound in the left chest 15 inches below the top of the head and 3.5 inches to the left of midline. It is round and measures .25 inches in diameter. There is stippling around this entrance wound measuring 9 x 10 inches in greatest dimensions. The bullet continues backward, downward and to the right. It is found beneath the skin of the right lateral back. It is photographed and sealed for evidence. The bullet perforated the heart, lacerated the diaphragm and lacerated the dome of the right lobe of the liver. It caused a left hemothorax of 1300 cc and a right hemothorax of 1000 cc.

Charles Smith

Report by: J.E. Ross, M.D.

DISSECTION: The usual Y-shaped incision is made. The panniculus of the chest and abdomen shows no contusion. The abdominal cavity contains no blood. The left chest cavity contains 1300 cc of blood and blood clot, the right chest cavity contains 1000 cc of blood and blood clot and the pericardial sac contains 400 cc of blood. The structures of the anterior neck maintain symmetry. The hyoid bone is intact. The trachea and larynx are patent. The strap muscles are without contusion.

DESCRIPTION OF INTERNAL ORGANS

THYROID: The thyroid gland weighs 28 grams. It maintains symmetry of its reddish-brown firm parenchyma.

HEART: The heart weighs 305 grams. The coronary arteries are patent. The myocardium is reddish-brown and firm interrupted by laceration in the anterior right ventricle and posterior upper right ventricle. The valves are grossly unremarkable.

LUNGS: The right lung weighs 320 grams. The left lung weighs 270 grams. The arterial trees are patent. The tracheobronchial trees contain a slight amount of frothy fluid. The parenchyma is purplish-red and firm.

LIVER: The liver weighs 1645 grams. Its capsule is lacerated by the bullet as described. Sections show purplish-gray parenchyma.

GALLBLADDER AND DUCTS: Unremarkable.

SPLEEN: The spleen weighs 172 grams. Its capsule is smooth and glistening. Sections show purplish-red parenchyma.

PANCREAS: The pancreas weighs 120 grams. It maintains its usual yellowish-tan nodular parenchyma.

ADRENALS: Unremarkable.

KIDNEYS: The right kidney weighs 148 grams. The left kidney weighs 135 grams. Their capsules strip with ease to show smooth cortical surfaces. Sections show the usual cortical medullary ratios bilaterally. The ureters, urinary bladder and prostate gland are without significant pathology. The bladder contains 280 cc of clear yellow urine.

GI TRACT: Unremarkable. The stomach contains 400 cc of watery tan liquid.

FA11-382

Page 4 of 4

Charles Smith

Report by: J.E. Ross, M.D.

DESCRIPTION OF INTERNAL ORGANS, Continued:

MUSCULOSKELETAL SYSTEM: Without significant pathology other than the gunshot wound as described.

CENTRAL NERVOUS SYSTEM: The scalp is reflected and the calvarium is removed. The brain is removed in the usual manner and maintains symmetry of the cerebrum, cerebellum, pons and medulla. The brain weighs 1435 grams. Sections show the gray and white matter in the usual anatomic design. The blood vessels at the base of the brain appear patent.

CASE SUMMARY

This autopsy was done upon the request of and after due authorization by the County Coroner in the Newberry County Memorial Hospital Morgue on _____ at approximately _____

Autopsy findings included a fatal, intermediate, penetrating gunshot wound of the chest which lacerated the heart causing a left hemothorax of 1300 cc of blood and blood clot, a right hemothorax of 1000 cc of blood and blood clot, and a hemopericardium of 400 cc of blood and blood clot. It further grazed the dome of the liver.

Sections of all organs demonstrate the before mentioned findings. Specimens are drawn for toxicological analysis. If a positive analysis is submitted to this prosector, an amended opinion may be necessary.

It is the opinion of this prosector after review of the history and autopsy findings on this victim that the cause of death is exsanguination, due to laceration of the heart, due to gunshot wound of the chest. The manner of death is homicide.

Janice E. Ross, M.D.
Forensic Pathologist

6-7-11

Date Signed

JER:ajg
06/01/2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 10, 2014.



ALPHONSO SIMON, JR.
Assistant Attorney General

South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

ATTORNEY FOR APPELLANT