

9

22388

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2012-GS-07-105

RECEIVED
FEB 16 2016
SC Court of Appeals

The State.....Respondent,
v.
Robert Jared Prather.....Appellant.

RECORD ON APPEAL
VOLUME II OF III

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29221
(803)734-6305

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072
(803)785-8352

Counsel for Respondent

ELIZABETH FRANKLIN-BEST
SC Bar No. 72555
Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue
Suite 200
Columbia, SC 29201
(803)765-1044

Counsel for Appellant

INDEX

Trial Transcript, November 26-28, 2012.	1
Prather's Testimony From First Trial.	871
Motion and Memorandum in Support of New Trial (Including Search Warrant Affidavit).	941
Order Denying Motion for New Trial.	971
Motion to Require Joshua Phillips Undergo Psychiatric Examination.	995
Joshua Phillips Guilty Plea Transcript.	1004
State's Exhibit 1- Miranda Rights Warning.	1040
State's Exhibit 2- Photograph.	1041
State's Exhibit 3- Photograph.	1042
State's Exhibit 4- Photograph.	1043
State's Exhibit 5- Photograph.	1044
State's Exhibit 20- Photographs.	1045
State's Exhibit 21- Photograph.	1046
State's Exhibit 22- Photograph.	1047
State's Exhibit 23- Photograph.	1048
State's Exhibit 24- Photograph.	1049
State's Exhibit 25- Photograph.	1050

1 him there. If there was somebody else there, then we could
2 identify, then that semen would belong to that other person.

3 Q And you're not able on the rectal swab from Mr.
4 Phillips, your analysis did not find semen; is that correct?

5 A No. It was semen indicated. And the DNA profile was
6 not unlike the DNA profile of Joshua Phillips.

7 Q 9.2, that would have been the oral swab of Gerald
8 Stewart; correct?

9 A That is correct.

10 Q Again, the presumptive test showed semen indicated?

11 A That is correct.

12 Q But you're not able to testify today -- your opinion is
13 that you cannot come here today -- your results -- you did
14 not find semen; is that correct?

15 A That is correct. Semen could not be confirmed. The
16 DNA profile developed from 9.2 matched the DNA profile of
17 Gerald Stewart.

18 Q Is it possible to have false positives when you doing a
19 presumptive test?

20 A It is possible.

21 Q So you did not find semen on the oral swab?

22 A That I could not identify semen on the oral swab; that
23 is correct.

24 Q The only DNA you found on the oral swab was Gerald
25 Stewart?

1 A Right.

2 Q You did not find Joshua Phillips?

3 A That is correct.

4 Q Finally, 9.3, penile swab from the autopsy of Mr.
5 Stewart; is that correct?

6 A That's correct.

7 Q Here you do have semen identified?

8 A Yes.

9 Q So you were able to say, and I believe the only
10 contributor is Gerald Stewart?

11 A That is correct. Because it's expected to find semen
12 in a penile swab from that person.

13 Q So you expect to find Mr. Stewart's own semen in a
14 penile swab taken from him.

15 A That is correct.

16 Q Thank you, ma'am.

17 THE COURT: Anything further?

18 MR. FLOYD: Nothing further, Your Honor.

19 THE COURT: Thank you. You may step down, ma'am.

20 MR. HUBBARD: The State calls Brian Setree

21 (WHEREUPON, Brian Setree was sworn
22 to tell the truth.)

23 THE CLERK: Have a seat, please, sir. Once you're
24 seated, state your full name, spelling your last.

25 MR. SETREE: Paul Brian S-E-T-R-E-E.

BRIAN SETREE -DIRECT EXAMINATION

BY MR. HUBBARD:

Q Mr. Setree, where do you work?

A I m a retired narcotics agent from Lexington County Sheriff's Department.

Q And what is your current job or are you just retired?

A No, sir. I own a private investigation company here in Lexington.

Q Mr. Setree, did you ever know a fellow by the name of Gerald Stewart?

A Yes, sir, I did.

Q How long did you know him?

A I met him in the late '90s until he passed away.

Q In the late '90s when you met him, where were you working at the time?

A I was a narcotics agent for the West Columbia Police Department.

Q How long were you in law enforcement?

A Twenty-one years.

Q Mr. Stewart, what did you know him by?

A Radar.

Q Now, how did you come about -- well, in what capacity did you and Radar first meet?

A He was a confidential informant for me and the West Columbia Police Department.

1 Q Did he continue in that capacity in various forms when
2 you were with Lexington?

3 A Yes, sir.

4 Q How often were you and Gerald Stewart in contact with
5 one another?

6 A I'd say five to six to seven days a week on some weeks.
7 He called all the time.

8 Q How long did that relationship and these phone calls go
9 on?

10 A Up until right before he passed away.

11 Q So you knew him pretty well?

12 A Yes, sir. Very well.

13 Q Did you know where he lived?

14 A Yes, sir.

15 Q Was that in the West Columbia area?

16 A Yes, sir.

17 Q Did you ever go inside his house?

18 A Yes, sir, several times.

19 Q When Gerald Stewart would take you to his house, what
20 would he do?

21 A Give you a tour of everything that meant something to
22 him.

23 Q What tour did he give you?

24 A He liked to show his father's Coca-Cola memorabilia,
25 his Clemson -- he was a big Clemson fan, probably the

1 biggest I've ever met. And he was real proud, like I said,
2 of his father's Coca-Cola collection. His father had
3 retired from Coca-Cola and had a lot of memorabilia. And
4 he'd just, you know, he just loved to take you around and
5 show you all of those things, time after time.

6 Q Did he also have stuff concerning boxing?

7 A Oh, yeah. He loved Joe Frazier. He was a big boxing
8 fan. In fact, he ---

9 MR. FLOYD: Your Honor, I object to the relevance
10 of this line of questioning.

11 THE COURT: All right. Mr. Hubbard?

12 MR. HUBBARD: Think items cherished, items
13 missing.

14 THE COURT: I overrule the objection.

15 BY MR. HUBBARD:

16 Q Specifically as to boxing, you mentioned what name?

17 A Joe Frazier.

18 Q Now, was Gerald Stewart a boxer?

19 A No, sir. Well, he said he did some Golden Gloves stuff
20 when he was a teenager, but I, you can just take his word
21 for that. But, no, sir, not at the time I knew him. No,
22 sir.

23 Q All the years you knew him you never knew him in that
24 type of capacity?

25 A He didn't have any violence in him at all.

- 1 Q Let me show you some things. This box, which is
2 State's Exhibit 36, have you ever seen this box?
- 3 A Yes, sir.
- 4 Q Where did you see this box?
- 5 A In Mr. Stewart's residence.
- 6 Q Is this part of that Coca-Cola collection?
- 7 A Yes, sir.
- 8 Q Looking at State's Exhibit 32, do you see that same box
9 in the floorboard of a car?
- 10 A Yes, sir. It appears to be the same.
- 11 Q Would the Gerald Stewart you knew over all those years
12 ever part with that box of Coca-Cola stuff?
- 13 A Not a chance., Not a chance, no, sir.
- 14 Q Now, knowing Gerald for all those years, you mentioned
15 he was a CI?
- 16 A Yes, sir.
- 17 Q Did you also know that he had a problem with drinking?
- 18 A Yes, sir, a big problem.
- 19 Q Now, during the time he worked for you or assisted you,
20 was he ever drunk?
- 21 A No, sir. If I showed up to work him a particular day
22 and he was intoxicated, we just didn't work that day. And
23 I'd tell him to call me back when he was sober.
- 24 Q Did you have occasions to see him intoxicated?
- 25 A Yes, sir.

1 Q Often?

2 A He drank pretty much every day.

3 Q Did you ever know Gerald Stewart to drink so much that
4 he passed out?

5 A No, sir. I don't think that was possible for him.

6 Q Knowing Gerald Stewart when he was impaired and
7 intoxicated, did you ever know him to be aggressive?

8 A No, sir, just very loud and maybe a little obnoxious in
9 -- what's the word for it? Boast. You know, he liked to
10 brag a lot. Liked to brag about, you know, calling Joe
11 Frazier. And he actually could get Joe Frazier on the
12 telephone from time to time, stuff like that. But, no, no
13 violence.

14 Q Loud and attention seeking?

15 A Very much so. Wanted to be the center of attention
16 where ever he was at.

17 Q Did you know him to ever have a job?

18 A Yes, sir.

19 Q Did he kind of bounce around from jobs?

20 A Well, the job that I knew that he had the longest was
21 at Zesto's. But he went through a period where he joined AA
22 and he sobered up for a while. And while he was sober, I
23 mean, he kept that job. And he was pretty proud of himself.
24 And then somewhere along the line he fell off the wagon, so
25 to speak. And when he was drinking like that he couldn't

1 work.

2 Q Knowing the Gerald you knew, did you know about his
3 spending habits?

4 A Yeah. He'd spend every last dime he had on a stranger.

5 Q The last day you saw him, you remember when that was?

6 A It had to be within a week or so of his death. I
7 bought him a pack of crackers, a diet Coke, and a pack of
8 cigarettes and dropped them off at his house.

9 Q That was the last time you saw him?

10 A Yes, sir. The last time I talked to him.

11 Q Thank you Mr. Setree.

12 A Yes, sir.

13 BRIAN SETREE - CROSS-EXAMINATION

14 BY MR. FLOYD:

15 Q Mr. Setree, he became an informant because he got
16 arrested and charged with drugs; isn't that right?

17 A That's correct, yes, sir.

18 Q In fact, in 1999, that's when he became an informant?

19 A That sounds correct.

20 Q And at that time, isn't it true, he got arrested for
21 possession with intent to distribute cocaine?

22 A Yes, sir.

23 Q And possession to distribute with intent to distribute
24 cocaine within proximity of a school; isn't that correct?

25 A Yes, sir. That is correct.

1 Q And as a result of working with you, those two charges
2 dismissed, did they not?

3 A Yes, sir. That's accurate.

4 Q Okay. But he didn't stop then, did he?

5 A As an informant or as --

6 Q Or as of dealing in drugs?

7 A Oh, I never caught him dealing drugs again.

8 Q Wasn't he arrested in the year 2000 for manufacturing
9 or distribution of ICE, crank, crack cocaine?

10 A I don't remember that. I'd have to look at the
11 criminal history you're looking at.

12 Q (Passes documents to witness.)

13 A It appears so, sir.

14 Q And those were also dismissed; isn't that right?

15 A Yes, sir. It appears that that they're nolle prossed,
16 yes, sir.

17 Q Now, he knew you were police; is that correct?

18 A Yes, sir.

19 Q So you don't know how he acted when he wasn't in your
20 presence, police presence?

21 A That's fair to say, yes, sir.

22 Q And did you know he was homosexual?

23 A I found out during his, I guess his twelve-step
24 program. He told me he was. But like I told him, that had
25 no relevance to our relationship so I didn't pry into that a

1 whole lot.

2 Q So he worked for West Columbia from 1999 until his
3 death?

4 A Well, he worked -- he continued to work for me as a CI,
5 a paid CI, for years. Even when I moved on to Lexington
6 County.

7 Q When did you leave West Columbia?

8 A I want to say January of 2000, maybe, somewhere in that
9 time frame.

10 Q So the people in West Columbia knew he was your
11 informant or the police in West Columbia knew he was your
12 informant?

13 A Not many. I mean, you keep that quiet. I keep those
14 files separate and we have, you know, we don't share that
15 information. It was just a need to know basis.

16 Q Did anybody, any of the police in West Columbia know
17 that he was an informant?

18 A I'm sure they did. I'm sure he probably told them.

19 MR. FLOYD: Thank you. No further questions.

20 THE COURT: Any Redirect.

21 BRIAN SETREE - REDIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q Mr. Setree, that arrest, was that -- where did you
24 arrest him?

25 A When I arrested him was in an apartment off of Meeting

1 Street.

2 Q That was his apartment at the time?

3 A Yes, sir.

4 Q Is that a half a mile from the school?

5 A It had to be or a park. There's no question, West
6 Columbia's not a half a mile from a public park because in
7 every city council district, there's a park that's named
8 after a council member or former a council member.

9 Q Those early days with Gerald Stewart, what did you know
10 him to use cocaine for?

11 A So he could stay up drinking.

12 Q Thank you.

13 THE COURT: Anything else?

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: Thank you, sir.

16 MR. SETREE: Thank you, Your Honor.

17 MR. HUBBARD: May we approach?

18 THE COURT: All right. We'll take a break.

19 (Off the record bench conference with counsel and the
20 Court.)

21 THE COURT: All right. Ladies and gentlemen,
22 We'll take a break now. Please go to the jury room. Please
23 do not discuss the case.

24 (Jury out at 11:33 a.m.)

25 THE COURT: All right. We'll take a break.

1 (Court in recess for short break.)

2 (Court in session after short
3 break.)

4 THE COURT: All right. Let's see if we can rustle
5 them out of there. They should be ready.

6 (Jury in at 11:55 a.m.)

7 THE COURT: All right. The jury's back.
8 Your next witness, please?

9 MR. HUBBARD: Judge, the State calls Ronald Rabon.

10 THE COURT: Yes, sir. Come forward.

11 (WHEREUPON, Ronald Rabon was sworn
12 to tell the truth.)

13 THE CLERK: Have a seat. Once you're seated,
14 speak up loud and clear stating your full name, spelling
15 your last on the record, please?

16 MR. RABON: Ronald Mitchell Rabon, R-A-B-O-N.

17 RONALD RABON - DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Mr. Rabon, where do you work?

20 A Griffin, Watford & Tepper, Florence, South Carolina.

21 Q And what do you do at this place?

22 A I'm a dental lab technician.

23 Q How long have you been in that line of work?

24 A For twenty-one years.

25 Q Back in April of 2005, where were you working?

1 A Columbia Denture Center on Broad River Road.

2 Q Now, at some point did you have an occasion to meet
3 Gerald Stewart?

4 A Yeah. In an alcohol rehab center.

5 Q Is that here in Columbia?

6 A Yes, sir, LRADAC.

7 Q What time of the year was it in 2005?

8 A Roughly around April.

9 Q That was the first time you've ever met him?

10 A Yes, sir.

11 Q Now, when you were LRADAC, this was for detox or for
12 treatment?

13 A Yeah. And alcohol and drug treatment, yeah.

14 Q What kind of drugs did you have an issue with?

15 A Cocaine and alcohol.

16 Q Okay. And Mr. Stewart was there in the same capacity
17 needing help?

18 A For alcohol, yes, sir.

19 Q When you were there, how did you meet him?

20 A They called group meetings where everybody gets around
21 and tells their name and what you did before and discuss
22 your problems. And that's how we met.

23 Q And how long were you there?

24 A Roughly four days.

25 Q And who got out first, your or Mr. Stewart?

1 A Mr. Stewart.

2 Q Before you left, what, if anything, did he offer you?

3 A He offered me a room for a hundred dollars a week
4 because I was staying like InTown Suites, you know, real
5 high. And I had a concussion to my head where I bust a
6 window out. So he said, you know, if you need somewhere to
7 stay, give me a call.

8 Q Now, the concussion and all and the busting the window
9 out, is that one reason why you were in rehab?

10 A Yes, sir.

11 Q So he offered you a place to stay. Now, let me ask you
12 this. Did anybody else offer Ronald Rabon a place to stay
13 when he was getting out of rehab?

14 A No, sir.

15 Q The only person that offered you that place was --

16 A Gerald Stewart.

17 Q When you got out, did you take him up on that offer?

18 A Yes, sir.

19 Q And at his house, what was the arrangement there?

20 A Just go get him the hundred dollars and he showed me
21 which room was mine. And, you know, get your stuff and move
22 on in.

23 Q Now, you knew Gerald had an alcohol problem; right?

24 A Yes, sir.

25 Q Was there any indication when y'all were at LRADAC, or

1 even when you first moved in, that he was a homosexual?

2 A No, sir. He was actually flirting with a girl in the
3 place.

4 Q. He was flirting with a girl in what place?

5 A In the rehab.

6 Q So when you moved in with him, you had no idea about
7 that part of his life?

8 A No, sir.

9 Q That was a private part?

10 A As far as I knew it, yes, sir. He didn't seem that way
11 to me.

12 Q Never made any overtures to you?

13 A No, sir.

14 Q Now, do you know about when you moved in?

15 A It was on, it was on a Friday, I would say.

16 Q If I show you a map of April of -- a map -- a calendar
17 of April 2005, can you roughly tell us about when you moved
18 in?

19 A Yes, sir. Yes, sir. I'd say on the 16th, which was a
20 Friday. Well, the 15th.

21 Q The 15th?

22 A 15th.

23 Q Okay. So you moved in roughly one week before his
24 death?

25 A Yes, sir.

1 Q So that's a Friday. That Saturday, what, if anything,
2 did y'all do?

3 A It's been that long ago, I can't particularly say. I
4 know we went out Friday and drank. I really couldn't recall
5 what happened Saturday, now.

6 Q So Friday, you're back out of rehab and y'all are
7 already back to drinking?

8 A Yes, sir.

9 Q Fair to say you had a serious problem yourself?

10 A Yes, sir, I did.

11 Q What, if anything, did you find in his house when
12 Gerald's not there?

13 A I was looking for music and he had a whole cabinet, you
14 know, with stuff in it. And he told me I could, you know,
15 go through that and pick out whatever -- I don't know what
16 he had to do but he went somewhere. Anyway, I found a, or
17 what I considered to be a male sex tape, like, you know, for
18 men.

19 Q When Gerald got home, did you ask him about it?

20 A Yeah, I did.

21 Q Did he tell you at that time he was a homosexual?

22 A No, he did not. He didn't say.

23 Q What was his response?

24 A His response was he had a friend -- was starring in it
25 basically.

1 Q That Sunday, the very next day, the 17th, what did you
2 and Gerald do?

3 A He invited some people over, had somebody bring beer
4 and alcohol from a bootlegger. And we watched the race,
5 which he knew a lot about. So we enjoyed that.

6 Q Is that one of your interests too?

7 A Yeah.

8 Q Did he have something at his house that was interesting
9 about, dealing with NASCAR?

10 A Yeah. He had a picture with him and Rusty Wallace
11 together.

12 Q Did he point that out to you or did you find it?

13 A No, he talked to me about it and showed me.

14 Q During that time, anything indicating to you that Mr.
15 Stewart was a homosexual?

16 A No, sir.

17 Q That was still private?

18 A Yes, sir.

19 Q That evening, Sunday night, what, if anything,
20 happened?

21 A From drinking, I woke up wanting something to drink and
22 a cigarette. And I left my cigarettes in the living room.
23 I went in the living room and him and some guy was watching
24 that tape. And that's when I discovered, you know.

25 Q Did you end up confronting him about it?

1 A Yeah.

2 Q And did you let him know whether you were straight or
3 gay at that time?

4 A Yes, I did. I told him I'd take my money and, you
5 know, I'd move out.

6 Q What was his response?

7 A That he did not have the money at this time and, you
8 know, that I didn't have anything to worry about, you know.

9 Q Did he respect your inclinations and he ended up just
10 saying fine with your inclinations?

11 A Me and him kind of -- I wasn't his type anyways, so --

12 Q Okay. Well, let me ask you this. At any time, the
13 whole time you were with him at his house, did he ever
14 disrespect the fact that you weren't?

15 A No. He never bothered me or --

16 Q Tuesday, the 19th. This is the week, going into the
17 week after you moved in. What, if anything, do you recall
18 Gerald saying he was waiting on?

19 A He told me he was waiting on a check that he was due.

20 Q Now, did you know him to have a job at that time?

21 A No, sir, he didn't.

22 Q Did you have a job at that time?

23 A Yes, sir.

24 Q Is this the same job you were talking about over in
25 Columbia?

1 A Yes, sir.

2 Q So even though you had your alcohol issues, you were
3 going to work everyday?

4 A Yes, sir.

5 Q About what time would you get up and about what time
6 would you come home?

7 A I would get up and leave -- I had to be at work at 8:00
8 and on most days get off around 5:00.

9 Q How were you getting to work?

10 A I had a -- I paid this girlfriend that would come by
11 and get me. We worked at the same place.

12 Q After that Tuesday, was there a period of time when
13 Gerald wasn't home?

14 A Yes, sir. I want to say it was Wednesday he was gone.
15 And when I got there, he wasn't there.

16 Q This Tuesday when he was looking for a check, do you
17 remember any indication whether the money came in?

18 A Yes, sir. He was calling, trying to get a cab, to cash
19 the check, get beer and liquor.

20 Q Okay. And then Wednesday did you see him?

21 A Wednesday night probably, roughly 11:30, 12:00 night.

22 Q Tell me about that. Where were you?

23 A I had watched TV and kind of drifted off. And him and
24 the Defendant came in.

25 Q The Defendant. Who are we talking about?

1 A The man with Mr. Floyd.

2 Q All right. This fellow sitting at the table without
3 the jacket on?

4 A Yes, sir.

5 MR. HUBBARD: Your Honor, I ask that the record
6 reflect he has pointed out the Defendant Robert Prather,
7 Robert Jared Prather.

8 THE COURT: It does.

9 BY MR. HUBBARD:

10 Q What time of day is this?

11 A This is probably, like I say, 12:00, 12:30 at night,
12 somewhere along in there.

13 Q Somewhere around Wednesday and Thursday nights?

14 A Yes, sir.

15 Q What did they come in for and how long did they stay?

16 A I think they just came in to get the liquor, and I
17 don't know -- and the beer and leave, basically.

18 Q They came in and left?

19 A The Defendant spoke to me and I don't know what I said
20 to him or what, but anyway, they got what they, you know,
21 the beer and the liquor and shortly left.

22 Q The next day, the 21st, which is a Thursday, did you
23 get up and go to work that day?

24 A Yes, sir, I did.

25 Q About what time did you get home?

1 A Around 5:30.

2 Q When you got home, was Gerald Stewart home?

3 A Yes, sir, he was.

4 Q Anybody else there?

5 A Yes, sir. The Defendant had another friend of the
6 Defendant's.

7 Q So again, we're talking about the man seated in this
8 courtroom?

9 A Yes, sir.

10 Q And there's another fellow?

11 A Yes, sir.

12 Q Let me ask you this. Were you ever introduced to them
13 and told what their names were?

14 A Yes, sir, I was. When I got to the door, I believed
15 his name was Jerry and the other guy's name was Ray.

16 Q So it was Jerry and Ray?

17 A Yes, sir.

18 Q Is that how you referred to them?

19 A Yes, sir. I mean, I didn't know them so, yeah.

20 Q When you get home, where does Gerald Stewart go?

21 A He'd actually called a cab, which pulled up in the
22 yard, as the Defendant, Mr. Stewart [sic], and Ray left.
23 The cab came and I had to tell him they're already gone.
24 And they went to a liquor store and a beer store.

25 Q So Jerry, Ray, and Gerald Stewart went to the liquor

1 store?

2 A Yes, sir.

3 Q I want to show you a photograph, State's Exhibit 18.

4 Can you identify that individual?

5 A That's Ray.

6 Q This is Ray?

7 A Yes, sir.

8 Q So Ray, Jared, and Gerald Stewart go to the liquor
9 store?

10 A Correct.

11 Q Now, did Gerald have a car?

12 A No, sir, he didn't.

13 Q Who did he ride with?

14 A He rode with the Defendant.

15 Q Now, did the victim, Gerald Stewart, refer to Mr.
16 Prather as anything else?

17 A He called him the golden jew.

18 Q Was that in his presence or just to you aside?

19 A That, I think, that's just basically -- I never heard
20 him actually look at him and call him that, no. Basically,
21 to me.

22 Q All right. Now, when you first met this Jerry, seated
23 in the courtroom, and Ray, and you met them as you pulled
24 up, how were they acting?

25 A Well, they were all wired to out me. I mean, you know,

1 I didn't know whether they were there to jump on me or what
2 they were there to do.

3 Q So they were kind of wired up. Did anybody attack you?

4 A No, sir.

5 Q Okay. They just were -- that's another way to say kind
6 of hyped-up?

7 A Yes, sir.

8 Q Now, when Gerald Stewart gets back with the Defendant,
9 Mr. Prather, and Ray, where did they go?

10 A Then they go to the table and play Texas Hold 'Em.

11 It's a card game.

12 Q That's in the house?

13 A Yes, sir.

14 Q Was that in the kitchen area?

15 A Yes, sir.

16 Q What did you do?

17 A I'd already been on the phone with my cousin and
18 talking with different people, about, you know, I didn't
19 whether they were there for me or what they were there for,
20 you know, about what I needed to do. And my cousin just
21 stated to me, you know, try to stay in your room or
22 whatever. And at this time, Gerald comes back and gets me
23 and ask me, you know, why don't I come join, you know, the
24 little gathering at the table. So I got a beer and did.

25 Q Let me ask you this. When you say, initially said you

1 thought they might be there to jump on you, you weren't sure
2 what they were up to, why did you have this concern in the
3 back of your mind?

4 A Just from what me and him discussed Sunday night. And
5 then the way they looked, you know. I didn't know whether
6 he had talked to them about me and, you know, they had come
7 to rough me up or whatever. I didn't know.

8 Q Who set you at ease?

9 A Gerald did.

10 Q And did he seem sincere in that?

11 A Yeah. He said, you know, man, there's no need for you
12 to be back here. You might as well come out here and join
13 the game.

14 Q So he invited you?

15 A Right.

16 Q Now, was Gerald doing anything towards you or anybody
17 doing anything towards you at that time --

18 A No, sir.

19 Q -- making you feel uncomfortable?

20 A No, sir.

21 Q At some point you decide I'm not playing cards anymore?

22 A No, I'm not the best at that game.

23 Q And what did you do?

24 A I went in the living room and continued drinking beer.

25 Q Who, if anybody, approached you at that time?

1 A The Defendant approached me and asked me was I gay and
2 I told him, no. And he said, well, then I have a surprise
3 for you, but maybe not now. And then he said, well, then
4 again, maybe I do.

5 Q And that was Mr. Prather?

6 A Yes, sir.

7 Q Jared?

8 A Yeah.

9 Q What did you do after that?

10 A I don't particularly remember. I think I may have
11 gotten up from there and went back to my room and made
12 another telephone call to the girl I worked with.

13 Q Okay. You were just getting away from the situation?

14 A Yes, sir.

15 Q Now, when were you planning on getting out of there?

16 When was your next paycheck?

17 A That next, that coming Friday.

18 Q So that would have been the 22nd?

19 A Yes, sir.

20 Q So no matter what, you're moving out then?

21 A Yes, sir.

22 Q Okay. But, again, was Gerald Stewart doing anything to
23 make you uncomfortable?

24 A No, sir.

25 Q You're going back to your room because of why?

1 A Because the Defendant and just the situation, just, you
2 know.

3 Q You weren't just weren't comfortable around him?

4 A Right.

5 Q Now, some time after you went back to your room, do you
6 remember there being some kind of altercation?

7 A Yeah. I was coming back to the kitchen where the beer
8 was, I was going to get another beer. So I went back to --
9 as I was coming back to the kitchen, and that other guy,
10 Ray, they were coming all from outside or either around the
11 kitchen table one, I don't know exactly where they were
12 coming from, but he hauled off and hit Mr. Stewart about
13 twice and busted his lip. And Mr. Stewart stumbled into the
14 living room, in which where he fell face first into the -- I
15 guess it was the La-Z-Boy. Mr. Ray attempts to start
16 punching him in the ribs.

17 Q You say attempts, does he ever do it?

18 A He never started to do it because I said, you know, you
19 already got him down. And at this point the Defendant,
20 Jerry there, did speak up and tell him, you know, stop.
21 Don't hit him again. Go get something and clean him up
22 before I jump on you. So --

23 Q So, let me get this straight. Ray hits Gerald Stewart,
24 Gerald Stewart falls, Ray stands over Gerald Stewart, is
25 going to hit him again and you step in and say something?

- 1 A I say something, yeah.
- 2 Q And then Jerry says something too?
- 3 A Yes, sir.
- 4 Q Who's he talking to?
- 5 A He's talking to Ray.
- 6 Q And what does he tell Ray?
- 7 A He tells him, stop hitting him and clean him up because
- 8 you don't want me to jump on you.
- 9 Q Did Ray listen to Jerry?
- 10 A Yeah, he did.
- 11 Q What happens after that?
- 12 A The Defendant and Ray go outside, talk amongst one
- 13 another, and I approach Gerald about what he needed to do,
- 14 and that, you know, he needed to remove these people or, you
- 15 know. And he basically stated, I think everything's going
- 16 to be okay. How does my lip look? His lip was busted. So
- 17 he let them stay.
- 18 Q What did you do?
- 19 A I end up making another telephone call and then come
- 20 out and strike up a conversation with the Defendant.
- 21 Q Okay. Now did you do this? With all of this going on
- 22 -- all right. You made a phone call. Was that another
- 23 phone call about moving out?
- 24 A Or what I need to do, yeah.
- 25 Q Okay. The conversation you strike up with Jerry, the

1 Defendant, why did you strike up a conversation with him?

2 A Well, I always learned from my father if you're going
3 to get into something and somebody and get into it, either
4 you can try to work your circumstances out with the badest
5 one. And I assumed at this point, he was the one that was,
6 you know -- in other words, Mr. Ray wasn't too much. He was
7 the one I needed to try to befriend or find out what's, you
8 know, what's going on. The best way to do that was to try
9 to make conversation with him.

10 Q Let me ask you this. You had just seen Ray hit Gerald
11 Stewart. But based on everything you saw and heard, you
12 figured Jerry, the Defendant, was the one you needed to be
13 concerned with?

14 A Yes.

15 Q In this conversation, did y'all talk for a bit?

16 A Just briefly, about two to three minutes in the living
17 room and I, somehow or another we got onto a thing about
18 speed and he asked me if I liked speed. I told him, yeah, I
19 like cocaine. And we all, me him and Ray jumped in the car
20 went to a supplier and he got about twenty to thirty dollars
21 worth of cocaine.

22 Q All right. So you had this conversation and it turns
23 to drugs. You're just out of rehab?

24 A Yeah.

25 Q Your condition at that time is?

- 1 A Rocky.
- 2 Q And so you jump on it?
- 3 A Yes, sir.
- 4 Q And you go and get in the car with Ray and Jerry?
- 5 A Yes, sir.
- 6 Q Where is Gerald Stewart when y'all are going to get
7 this cocaine?
- 8 A He's in the living room, sitting on the couch.
- 9 Q Does he go to get cocaine?
- 10 A No, sir.
- 11 Q You say y'all had thirty dollars?
- 12 A That's all I had, yeah. Twenty to thirty dollars.
- 13 Q So this was your money?
- 14 A Yes, sir.
- 15 Q Where did y'all go?
- 16 A I couldn't really tell you. It's a set of apartments
17 not far down the road. I mean, I don't know how far. It's
18 not very far.
- 19 Q Well, let me ask you this, who was driving?
- 20 A The Defendant.
- 21 Q Let me show you State's Exhibit 3. There's a vehicle
22 in that picture.
- 23 A Yeah, that car.
- 24 Q That's the car?
- 25 A Yes, sir.

1 Q And so Jared was driving this blue car?

2 A Yes, sir.

3 Q And you go to an apartment complex?

4 A Yes, sir. And the friend of Ray actually lived there.
5 And his family members were trying to get stuff outside.

6 Q Okay. And what else happened?

7 A The Defendant, Jerry, at that point just left him with
8 his family members and we went around the back of the
9 apartment complex and bought the twenty, thirty dollars
10 worth of the Coke. And me and the Defendant done -- it was
11 enough, probably a line a piece. We done the line in the
12 car, went back around and got Mr. Ray and his little box,
13 and proceeded back to Mr. Stewart's house.

14 Q This box, what was in it?

15 A Basically whatever -- I guess what little bit of stuff
16 he owned.

17 Q So on this cocaine run, y'all just buy enough to use
18 right then and there?

19 A That's about all twenty -- you're lucky to even find to
20 twenty thirty dollars worth of cocaine.

21 Q That's pretty cheap stuff, isn't it?

22 A Yes, sir.

23 Q And were do y'all do that line of cocaine?

24 A In the parking lot in that car.

25 Q And that's you and Jerry?

1 A Yes, sir.

2 Q Does Ray use any drugs?

3 A No, sir.

4 Q Now, when y'all leave that apartment complex, where do
5 y'all go?

6 A We go back to Mr. Stewart's.

7 Q Is Gerald Stewart still there?

8 A Yes, sir.

9 Q At some point, where do you go about this time?

10 A I, you know, stood there, and me and the Defendant had
11 basically tote his friend, Ray, back in. I don't know
12 whether he was faking passed out or actually passed out in
13 the back seat. So we kind of had to help him back in the
14 house, which we placed him on the couch. And from there, I
15 went and got a beer and went back to my room.

16 Q What, if anything is Jerry doing?

17 A He shortly leaves, right after we get there.

18 Q At some point, do you hear him return?

19 A No, sir, not at that point in time, no. I mean, later
20 on, yes, he returned.

21 Q Well, let me ask you this. When he leaves who's in
22 that house?

23 A It's me, Mr. Stewart and Ray.

24 Q You go to your room?

25 A Yes, sir.

1 Q Now, at some point do you come out of your room?

2 A Yes, sir. If you know the layout of the house, the
3 bathroom's, you know, right close to the living room ---

4 Q Yes, sir.

5 A --- and it comes back. Yes, sir, and at that point I
6 seen, what seemed to be Mr. Stewart, you know, kind of over
7 Mr -- Ray, and ---

8 Q What room are they in?

9 A They're in the living room.

10 Q Okay. What was your impression?

11 A I mean, I don't know how long he knew him or what they
12 had going on. I just figured that wasn't, you know,
13 something I wanted to get involved in. I went back to the
14 room.

15 Q So it appeared of a sexual nature?

16 A Yes, sir.

17 Q Now, do you know how long this has been since you had
18 initially gone back to your room after y'all got back from
19 doing the cocaine?

20 A It was probably -- however long it would take somebody
21 to, you know, drink a beer or two -- well, one at a time,
22 but to drink a beer and had to go to the bathroom. So
23 maybe, maybe fifteen, twenty minutes.

24 Q Okay. Jared's still not there?

25 A No, sir.

1 Q Now, you get up again at some point and leave your
2 room?

3 A Yes, sir. Once you start drinking beer, you normally
4 have to keep going to the bathroom.

5 Q I don't doubt that. So you have to go to the bathroom
6 again?

7 A Yes, sir.

8 Q You get up, go down the hall, that little hallway to
9 the bathroom. What, if anything, do you see?

10 A Mr. Stewart and Ray are in his bedroom at this time.

11 Q Whose bedroom?

12 A Mr. Stewart's.

13 Q How is Gerald Stewart dressed at that time?

14 A From what I could tell, he wasn't.

15 Q And could you tell what, if anything, Ray was wearing?

16 A If he had on anything, it wasn't much.

17 Q And they're in the bed?

18 A Yes, sir.

19 Q And when you say in the bedroom, are they just standing
20 in there or where are they?

21 A Seemed to be to me in the bed, like on the bed.

22 Q Now where do you go?

23 A I went back to my room.

24 Q Now, this is Thursday right?

25 A Yes, sir.

1 Q Late Thursday?

2 A It was getting late, yes.

3 Q Maybe even early Friday morning. Somewhere around
4 there?

5 A Somewhere roughly, yeah.

6 Q At some point does Jared, the Defendant, show back up?

7 A Yes, sir. I hear him hollering for Ray.

8 Q Is he inside the house?

9 A I think he may have opened the door and just hollered
10 his name.

11 Q Okay. But you were in your bedroom, you don't know?

12 A No, I don't know whether he stepped in or not.

13 Q Okay. But was it fair to say the voice you were
14 hearing wasn't coming out from outside?

15 A No, sir. You could hear the door open.

16 Q And you've seen this chart?

17 A Yes, sir.

18 Q When you're at that front door, can you see that
19 hallway pretty good?

20 A Well, I mean, you can't really see down it. I mean,
21 you'd have to come to the, you know, to the hallway.

22 Q If you stepped in here you could, couldn't you?

23 A Yes, sir. Yes, sir.

24 Q What, if anything, do you hear going on at this point?

25 A You could hear -- Gerald was a pretty good sized

1 fellow. So you could hear his feet hit the floor. And he
2 goes into the restroom. You could hear the door close. And
3 you smelled cologne, you know, like in the air. And they
4 leave.

5 Q Gerald Stewart and who leaves?

6 A The Defendant.

7 Q There's no big fight in the house at that time?

8 A No, sir.

9 Q What do you do?

10 A I just kind of get up and check and see, you know, if
11 they gone or what's going on. I didn't know if everybody
12 left. I didn't what, you know. And when I walked down the
13 hall, you could still see Ray laying in Stewart's bed.

14 Q You don't hear anything about, hey, what's going on
15 here or anything like that?

16 A No, sir.

17 Q No altercation?

18 A No, sir.

19 Q Nothing from Jerry about screaming at his friend to
20 wake up?

21 A No, sir. I didn't hear anything.

22 Q You didn't hear him say, hey, where is my friend, Ray?

23 A No, no.

24 Q So the people going out at this point is Jared, the
25 Defendant, and Gerald Stewart?

1 A Yes, sir.

2 Q What did you do after that?

3 A Well, I had to soon get up and go to work. So, I mean,
4 you know, I think everything's calmed down, cool. Whatever
5 was going on seemed to be, you know, there's peace. So I
6 got me some sleep some time or other. So I proceeded to lay
7 down, close my door and tried to go to sleep.

8 Q Let me ask you this, how are you when it comes to
9 sleeping?

10 A Well, I'm over half deaf in one ear, so when I do go to
11 sleep, if I lay on the other ear, I'm gone.

12 Q Is that what you did that night?

13 A Yes, sir.

14 Q What do you remember next?

15 A Waking up with about four cops standing over me, with
16 guns drawn and me getting up out of the bed, is the next
17 thing happened to me.

18 Q Were you hiding in that bed?

19 A No, sir. I was asleep.

20 Q What did they do with you?

21 A They got me up, put me in handcuffs and proceeded to,
22 at the time, think that I had killed Mr. Stewart.

23 Q They put you where, once you were handcuffed?

24 A They put me in the back of a police car and took me to
25 a holding place in West Columbia to -- basically in an

1 interrogation room.

2 Q Did they interview you?

3 A Yes, sir.

4 Q You end up getting released?

5 A Yes, sir.

6 Q Did you move out of that place after that?

7 A Yes, sir.

8 Q Did you find out that Gerald Stewart was dead?

9 A I found out that morning he was dead, yes, sir.

10 Q In fact, let me ask you this. When they're moving you
11 out of that house, do you see Mr. Stewart?

12 A Yes, sir.

13 Q Did you see his feet?

14 A I just seen basically crouched over the couch, face
15 buried in the couch, basically.

16 Q Okay. You didn't hear any altercation?

17 A No, sir.

18 Q The relationship between Ray and Jared, who seemed to
19 be the one in charge?

20 A The Defendant, Mr. Jerry.

21 Q What day were you planning on moving out regardless?

22 A That Friday when I got my paycheck, I was leaving.

23 Q And that's the same Friday that those police officers
24 were coming into that bedroom with a gun drawn?

25 A Yes, sir.

1 Q Let me ask you one last question. At any time when you
2 were there did Gerald Stewart do anything that made you feel
3 uncomfortable or think something in any way sexual towards
4 you?

5 A No, sir. Once we had the conversation Sunday, he
6 actually brought a friend over named Jody to kind of be like
7 mediator, you know, just set everything straight. And I say
8 as far as sitting in this courtroom today if he was here, if
9 he wasn't drinking you wouldn't think that Mr. Stewart was
10 gay.

11 Q But did he treat you nicely?

12 A He treated me with respect and he understood where I
13 stood on that issue.

14 Q Thank you, Mr. Rabon. Please answer any questions the
15 Defense has.

16 RONALD RABON - CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q Now, Mr. Rabon ---

19 A Yes, sir.

20 Q --- you gave a statement that morning, did you not?

21 A (No response).

22 Q You gave a statement to the police that morning?

23 A Yes, sir, I did.

24 Q You never said anything in that statement about this
25 Golden Jew porno tape, did you?

1 A That was the tape we were just discussing, yes, sir.

2 Q You never said anything about it, did you?

3 A No, I might not have been questioned about that.

4 Q Well, you gave a sworn statement in this case also,
5 didn't you, back in 2009?

6 A Yes, sir.

7 Q You didn't say anything about it then either, did you?

8 A May not have been asked about it.

9 Q You were asked about everything about that night;
10 weren't you?

11 A I mean, you're talking eight years ago. I don't know -
12 - what's the tape got to do with the issue?

13 Q Well, I guess I just ---

14 A A tape out of all that --

15 Q --- it goes to your credibility, Mr. Rabon?

16 A And the tape, I guess.

17 Q Yeah. That's one thing.

18 A Yeah.

19 Q That's one thing. You've never said anything about
20 that before, have you?

21 A Yeah, there's some issue about again about the tape.
22 Yeah, there's something.

23 Q Oh, there is? Where?

24 A I mean, I haven't seen any of this in eight years. Bo,
25 I'm not here to play games with you, now, over a tape.

1 Q Have you ever said it before, Mr. Rabon?

2 A I think I have talked about it before.

3 Q And can you tell us where?

4 A I think it was down in the interrogation room.

5 Q All right. You've got your statement there, don't you?

6 A I've got something here, yeah.

7 Q Well, you show us where you say about a Golden Jew
8 tape?

9 A Well, you look it up.

10 Q Did you say it Mr. Rabon?

11 A What we was talking about, the whole thing, Bo, eight
12 years ago, I really couldn't tell you exactly.

13 Q Mr. Rabon, you're making that up aren't you?

14 A No, I'm not.

15 Q You didn't say it before, did you?

16 A I don't know whether I did or not, but I didn't bring
17 about the tape.

18 Q Well, look at the statement and show me where you said
19 it before, if you said it before?

20 A (No response.)

21 Q If you said it before. And another thing, Mr. Rabon,
22 didn't you say in your statement that this man, Gerald [sic]
23 Prather broke up a fight between Joshua Phillips and Mr.
24 Stewart?

25 A If I hadn't said anything, he'd have let it go on.

1 Q You didn't say that in your statement, did you?

2 A Yes, I did.

3 Q Well, let's look at your statement. You got it there?

4 A Yeah. I got the statement, here.

5 Q Okay.

6 A You tell me where it's at, what you looking for.

7 Q I'm looking on page -- let's see here, page four of
8 your written statement.

9 MR. HUBBARD: It's the written statement you want?
10 Is that what you want?

11 MR. FLOYD: Yeah. Page four of the written
12 statement.

13 A I don't see exactly what you talking about. Why don't
14 you just bring me that little piece of paper you've got
15 there.

16 BY MR. FLOYD:

17 Q I'll be glad to, Mr. Rabon. Bottom. Okay. Here you
18 go. This statement right here. Page four of that
19 statement? At the very bottom. Weren't you asked, what did
20 you see when Radar and the other guy came back inside? You
21 see that right at the bottom.

22 A Yeah. It says he broke it up. Basically, I said
23 something about it and he told him to stop. And I don't
24 know how that varies from one thing to the other there, Bo.

25 Q Well, that's not what it says, is it?

- 1 A It says he broke it up.
- 2 Q It says the other guy hit Radar in the mouth and left
- 3 eye. Radar fell down in the chair. Jerry broke it up.
- 4 A That's when he told him to stop.
- 5 Q That's what it says there?
- 6 A Basically told him to stop.
- 7 Q Now, were you drinking that day also?
- 8 A Yes.
- 9 Q And how much -- what were you drinking?
- 10 A Beer.
- 11 Q And how many beers did you have?
- 12 A Probably seven or eight.
- 13 Q Now, you left with Jerry, the Defendant, and Mr. ---
- 14 A Mr. Ray.
- 15 Q --- Phillips; is that correct?
- 16 A Yes, sir.
- 17 Q Got in the car with them; is that correct?
- 18 A Yeah.
- 19 Q So obviously you weren't afraid of them?
- 20 A No.
- 21 Q Now, when -- you said Mr. Prather, the Defendant, left
- 22 for a while. How long was he gone?
- 23 A You know, I don't know.
- 24 Q But at some point, you heard him come back in?
- 25 A Yes, sir.

1 Q You heard the door open?

2 A Right.

3 Q Now, you were upset, weren't you, when you discovered
4 that Mr. Stewart was homosexual?

5 A Well, again, I -- didn't know that he was.

6 Q But you saw him there with somebody? And it got you --
7 and you had words with him about it, didn't you?

8 A Briefly, yes.

9 Q In fact, you were going to leave; is that correct?

10 A Yes, sir. If he'd had my money, I would have left.

11 Q You didn't like that?

12 A No, I mean --

13 Q Now, at some point in the evening, you saw Mr. Stewart
14 in the bed with Mr. Phillips; is that correct?

15 A Right.

16 Q Mr. Stewart was unclothed and naked; is that correct?

17 A Pretty much, yeah.

18 Q And do you recall whether or not Mr. Phillips had any
19 clothing on?

20 A If he had on anything, he didn't have much. I didn't
21 stand there and, you know, play a movie about it.

22 Q And you never did see Mr. Prather strike Mr. Stewart at
23 all, did you?

24 A No.

25 Q In fact, didn't Mr. Prather help Mr. Stewart clean up

1 from his lip?

2 A No, he told Ray to clean him up.

3 Q Did you see him come in the back door?

4 A No. Like I say, I had a job at this time. I had to go
5 to sleep sometime.

6 Q I'm talking about when he went outside. Are you aware
7 of an altercation outside?

8 A No, sir, I'm not.

9 Q You just saw them when they came inside and Mr.
10 Phillips struck Mr. Stewart twice?

11 A Yes, sir.

12 Q In the face?

13 A Yes.

14 Q Causing bleeding?

15 A Yes.

16 Q And specifically you remember the cut lip?

17 A Yeah.

18 Q And was he complaining about in his ribs, also?

19 A I don't recall.

20 Q But you're saying you heard the door open, so that's
21 how you knew Mr. Prather was back?

22 A I heard his voice telling Gerald to come on.

23 Q But you heard the door open first?

24 A Yeah.

25 Q Thank you.

1 MR. FLOYD: I have no further questions.

2 MR. HUBBARD: A couple follow-ups.

3 RONALD RABON - REDIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q This sworn statement in 2009, looking on page 132, you
6 did mention something about a tape; didn't you?

7 A Yeah. I thought I did.

8 Q All right. In this sworn statement, looking on page
9 142, when you talk about breaking up the fight, you did talk
10 about Mr. Prather telling the other guy what to do; right?

11 A Yes, sir.

12 Q In fact, your answer is -- line 12, the other guy did
13 exactly what he told him; is that correct?

14 A Correct.

15 Q All right. Thank you.

16 THE COURT: Anything else?

17 MR. FLOYD: Just a moment, Your Honor.

18 RONALD RABON - RECROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q And on part of 132 just ask about them. That's where
21 you said, is it not, him and a male friend were watching a
22 tape and I came to see what was going on. Is that what you
23 were just talking about page 132?

24 A Discussing a tape. The tape. The only tape. I mean,
25 what -- I mean -- you asked me if I discussed a tape or if

1 I'd sworn anything about a tape. There's your tape.

2 Q No, that's a different tape, isn't it?

3 A No, it's the same tape.

4 Q Didn't you testify earlier that when you first saw a
5 tape --

6 A It's the same tape.

7 Q When you first saw a tape, you asked Mr. Stewart about
8 it and he said, no, it wasn't him. He wasn't gay. That was
9 a friend of his named the Golden Jew on the tape. You were
10 just testifying about it.

11 A And it's the same, the same tape. It ain't but one
12 tape.

13 Q That's not what you state in here, is it?

14 A I'm not reading it. But it's all the same tape. The
15 only tape --

16 Q Well, look at page 132?

17 A I tell you what, you starting to piss me off. Him and
18 a male friend were watching a tape. I came to see what they
19 were doing. So --

20 Q Mr. Rabon, that's not anything like you testified to
21 about the tape about the Golden Jew; is it?

22 A All this is wrapped up about a tape.

23 Q No, it's about your credibility, Mr. Rabon. That's why
24 I'm asking the question.

25 A It ain't been but one tape mentioned the whole time.

1 That's one tape.

2 MR. FLOYD: No further questions.

3 THE COURT: Thank you, sir. You may step down.

4 Next witness.

5 MR. HUBBARD: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (Off the record bench conference with counsel and the
8 Court.)

9 THE COURT: Ladies and gentlemen, we're going to
10 break now. Hopefully, no more than about forty-five minutes
11 or so. I understand that the lunch is expected to be here
12 around 1:30. So if you all want to leave and come back at
13 -- I'm sorry -- around 1:15. If you want to leave and come
14 back around 1:15 you can, if you want to stay in the juror
15 room, you can. Just remember that I don't want you to mill
16 around anyplace where any of the participants might be. So
17 that's up to you. I'm not trying to hold them in the jury
18 room. They can leave if you want to, come back around 1:15.

19 THE BAILIFF: We don't need to go with them?

20 THE COURT: No, they'll be fine. I just need you
21 back in the jury room by 1:15.

22 (Jury out at 12:52 p.m.)

23 THE COURT: I guess what we can do is just have
24 the -- if y'all are going to leave or wait until the jury
25 leaves, and then the ---

1 MR. FLOYD: What time do you want us back, Judge.

2 THE COURT: At 1:30.

3 (Court in recess for lunch at 12:52
4 p.m.)

5 (Court in session after lunch at
6 1:44 p.m.)

7 THE COURT: Thank you. Be seated. Are we ready
8 for the jury?

9 MR. HUBBARD: The State's ready.

10 THE COURT: Bring them on.

11 (Jury in at 1:44 p.m.)

12 THE COURT: Madam Forelady, how's our jury doing?

13 MADAM FORELADY: They're doing fine.

14 THE COURT: The jury's doing fine?

15 MADAM FORELADY: Yes, sir.

16 THE COURT: Good. Okay.

17 Next witness.

18 MR. HUBBARD: The State calls Mike

19 (WHEREUPON, Michael Stalnaker was
20 sworn to tell the truth.)

21 THE CLERK: Have a seat, please sir. Once you're
22 seated, state your full name, spelling your last.

23 MR. STALNAKER: My name is Michael Stalnaker, S-T-
24 A-L-N-A-K-E-R

25 MICHAEL STALNAKER - DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q Mr. Stalnaker, what do you do for a living?

3 A I'm co-owner of a bar down in the Vista called Uncle
4 Louie's.

5 Q In addition, do you have another job as well?

6 A Currently, I do real estate appraisal in Chapin.

7 Q Uncle Louie's, what kind of an establishment is that?

8 A It's just a small little neighborhood pub that we
9 opened back in 2000.

10 Q You said you were a co-owner?

11 A Yes, sir.

12 Q And who do you own that, who do you own the bar, the
13 pub with?

14 A Another gentleman named Bill Wright, another gentleman
15 named Jim (inaudible).

16 Q In addition to owning it, do you work there too?

17 A I do, yes, sir.

18 Q When you work, what do you do?

19 A I kind of do everything, usually. We're a small place
20 so I primarily bartend.

21 Q When you say small, what's the occupancy rating on it?

22 A Eight-six.

23 Q Size-wise, how does it compare to the courtroom here?

24 A It's about seventeen hundred square feet, it's about
25 the size of a small three-bedroom house, I guess.

1 Q Do you know or did you know Gerald Stewart, also known
2 as Radar?

3 A I didn't really know him. I knew of him. I knew him
4 well enough to know who he was, but I didn't really -- I
5 would not consider him a friend or anything like that.

6 Q How many times do you think you have been around him?

7 A I would say anywhere from maybe five to ten times.

8 Q Was that -- where did you see him?

9 A I always saw him at Uncle Louie's.

10 Q When you saw him at Uncle Louie's -- was he a drinker?

11 A Yes, sir, he was.

12 Q Tell me a little bit about that? I mean, how would you
13 describe the drinking habits and his behavior?

14 A Well, usually, I would say that we weren't his first
15 stop. So usually when I saw Mr. Stewart, he'd been drinking
16 other places. So when I saw him, he was usually somewhat in
17 my opinion.

18 Q On the night of April 21st, which was a Thursday, of
19 2005, going into the 22nd, which was a Friday, were you
20 working that night?

21 A Yes, sir, I was.

22 Q What time did you start working that day, you remember?

23 A Usually -- we have a set schedule, so usually we go in
24 every day at 3:00.

25 Q Let me show you State's Exhibit No. 8 and ask if you

1 recognize that as a map of the Lexington/Richland Area?

2 A Yes, sir.

3 Q Do you see where Uncle Louie's is on that map, over in
4 the Vista area?

5 A Yes, sir.

6 Q There's a red dot there. Does that accurately reflect
7 the location of your bar is?

8 A It appears to, yes, sir.

9 MR. GRAHAM: And, Your Honor, there's a sticker
10 that states Uncle Louie's.

11 BY MR. GRAHAM:

12 Q And what is the address?

13 A 125 Park Street.

14 Q Columbia, 209201?

15 A Yes, sir.

16 MR. GRAHAM: Your Honor, the State would just add
17 this to the exhibit for identification?

18 THE COURT: Any objection to that, Mr. Floyd? Mr.
19 Floyd, any objection to that?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: All right.

22 (State's Exhibit No. 51, sticker,
23 was marked for ID.)

24 BY MR. GRAHAM:

25 Q So it's across the river and over in the Vista; is that

1 right?

2 A Yes, sir.

3 Q Do you remember, did you know him as Mr. Stewart, as
4 Gerald or Radar?

5 A Up until the point where he passed away, I just knew
6 him as Radar.

7 Q Did you see Radar either on the 21st or 22nd of 2005?

8 A Yes, sir, I did.

9 Q Do you remember what time it was?

10 A It was later on in the evening. I was getting ready to
11 do my closing duties, I guess it was approximately 1:00 or a
12 little after.

13 Q And did he come with somebody or by himself?

14 A He was with another individual.

15 Q Had you ever met that other individual before?

16 A Not that I can recall, no, sir.

17 Q Do you see that individual in the courtroom today?

18 A Yes, sir.

19 Q And can you point him out for me, please?

20 A He's the gentleman sitting over there, to my left.

21 Q At the table, the one without the jacket?

22 A Yes, sir.

23 MR. GRAHAM: And, Your Honor, let the record
24 reflect that he's identified Mr. Prather.

25 THE COURT: It does.

1 BY MR. GRAHAM:

2 Q Describe -- how many -- was the bar busy?

3 A No, sir.

4 Q At this time?

5 A No, sir, it was not.

6 Q What time do you normally close?

7 A 2:00 a.m.

8 Q And you think this was around what time?

9 A It was a little after 1:00, 1:15.

10 Q How was Radar and the Defendant acting when you first
11 encountered them?

12 A Radar appeared to be intoxicated. And with the other
13 individual, he seemed fine to me.

14 Q Did you have any -- did anything -- did you notice
15 anything about him that made you think that he'd been
16 drinking previously?

17 A No, sir.

18 Q And you said that Radar was intoxicated. Describe what
19 you mean. How was he acting?

20 A Just his mannerisms. Just from the handful of times
21 that I had met Radar before, his speech, I guess, was a
22 little slurred and that sort of thing. So he wasn't talking
23 like someone who was sober.

24 Q What was his demeanor? How was he acting? Was he
25 happy? Was he sad? Was he mad?

1 A He seemed fine to me. I'd never seen Radar upset
2 before, in the handful of times that I met him. So he
3 seemed perfectly okay, just a happy-go-lucky kind of guy.

4 Q Well, what, if anything -- what happened when they came
5 in?

6 A From what I can recall, they came in and I think they
7 ordered a couple of beers. And I think Radar ordered a
8 couple of shots. And the friend declined the drinks.

9 Q So who ordered the drinks?

10 A Radar did.

11 Q So he came in and ordered a couple of beers?

12 A Yes, sir.

13 Q Did he drink both of those beers?

14 A To be honest with you, I can't remember. I assume he
15 did. You know, I would want to say yes, but I can't recall
16 to be honest with you.

17 Q You stated that the Defendant, Mr. Prather declined
18 them?

19 A He did. That much I do remember it.

20 Q So Mr. Prather, the Defendant, wasn't drinking at all?

21 A Not that I can recall, no, sir.

22 Q How long was Mr. Stewart there? And do you remember
23 how much he had to drink at your establishment?

24 A I remember that their tab was -- and it's from the
25 statement that I had written -- their tab was twenty-three,

1 twenty-three dollars and some change. And around the time
2 that I had given last call and was closing, Radar told me
3 that he was going to walk across the street to the Capital
4 Club and say hello to some of the guys that was over there
5 and he would be back.

6 Q The Capital Club, what kind of an establishment was
7 that?

8 A It was a gay bar.

9 Q Did the Defendant go with him or did the Defendant stay
10 in your establishment or what was he doing?

11 A He stayed at Uncle Louie's.

12 Q Did the Defendant give you any indication that he knew
13 that Radar had left?

14 A Not that I can recall, no, sir.

15 Q What time is it approximately now? Again, you said you
16 were getting ready to close, final call. What time is it?

17 A From what I can remember, I told the Defendant that it
18 was 2:00, and that we were getting ready to close up. And
19 from what I remember, he asked me where Radar was and I told
20 him that he had gone across the street to say hello to some
21 of the guys over at the Capital.

22 Q When you say he, you're talking about, Mr. Prather?

23 A Yes, sir. Yes, sir.

24 Q He asked you where Radar was?

25 A Yes, sir.

1 Q And you told him that Radar was across the street at
2 the Capital Club?

3 A Yes, sir. And I told him that we were getting ready to
4 close and they had a tab that was twenty-three dollars and
5 seventy-five cent, I think.

6 Q And what did Mr. Prather say when you told him there
7 was approximately a twenty-three dollar tab that needed to
8 be paid?

9 A He told me that he didn't have any money. And he
10 appeared more aggravated. I told him at that point -- and
11 he told me he was going to kick his ass. I told him, it's
12 not really a big deal. Radar's done that before. I'm sure
13 we'll see him again. And it can be taken care of that time.
14 I wasn't really worried about it.

15 Q You weren't worried about it because Radar had been
16 there and you knew he was going to come back?

17 A Right. And at that point, too -- and I remember this
18 vividly because my partner and I had bought another business
19 and we were closing on it the next day. So at that moment,
20 I really wasn't concerned that Radar didn't have twenty-
21 three dollars and seventy-five cent. I had a busy day on
22 Friday with this closing on this other restaurant that we
23 had purchased. So I knew I would see him again. And, you
24 know, I just wanted to close up and get home and get a few
25 hours sleep and be ready for the next day.

1 Q After Mr. Prather, the Defendant, told you that he was
2 going to kick his ass. You told him not to worry about it.
3 Did you all stay in the bar or did he go outside?

4 A I think we walked outside. In fact, if I remember
5 correctly, I may have told him we could go find him, that he
6 was just across the street at the Capital Club. And when we
7 walked outside, he was sitting in the car. Radar was
8 sitting in the car.

9 Q Was he in the driver's or the passenger's side?

10 A He was in the passenger side.

11 Q Let me show you State's Numbers 29 and 30 and ask if
12 you recognize the vehicle in those photos?

13 A Yes, sir, I do.

14 Q Does that look like the vehicle that Radar was in?

15 A A blue Toyota Camry, yes, sir.

16 Q Where was that parked in relation to your house?

17 A I think it was right outside the front door.

18 Q And Radar was in the passenger's seat?

19 A He was.

20 Q Did you have an opportunity to talk with him?

21 A I did. He had the window rolled down and I went over
22 and told him that he had a tab. And he told me he didn't
23 have any money. I said, don't worry about. Just pay us
24 tomorrow. It's no big deal. Just get home safe.

25 Q As far as his intoxication levels from when he came in

1 to when he left, when you saw him the car, what can you say
2 about that?

3 A He seemed -- he still appeared to be intoxicated. And
4 the few times that I saw him, he was always like that. So I
5 don't really have anything to judge it against because I
6 really never saw him, other than times that he had been
7 drinking.

8 Q If you would have had the ability, if he was going to
9 drive, and you would have had the ability to stop him as a
10 bar owner?

11 A Yeah. Yeah. I wouldn't let him drive, no.

12 Q So you're talking with Radar. What's Mr. Prather, the
13 Defendant, doing?

14 A If I remember, he got in the -- after I finished
15 talking with Radar, he got in the car and drove off.

16 Q Did he say anything more to you?

17 A I can't remember.

18 Q Did he say anything to Radar in your presence?

19 A If he did, I don't remember what he said.

20 Q Do you remember if Radar had any visible injuries on
21 him, in your time that you saw him?

22 A Being that it happened so long ago, you know, I can't
23 say that I do.

24 Q If it would have been something major, black eyes,
25 things like that, would you have remember?

1 A I want to say I would have. If it had looked -- if he
2 had that he had just recently been into a fight, I would, I
3 would want to say, yes, I could remember it. But because of
4 the time frame and the history, I just -- I can't recall it.
5 So I don't want to sit here and say, yes. I don't know or I
6 can't recall it. I don't know.

7 Q Well, how was it that the police knew to come talk to
8 you?

9 A The following day when my partner and I were closing on
10 this place in Irmo, when we got there, he asked me had I
11 heard -- he was talking about Radar. And I asked him, you
12 know, what happened to Radar. I just saw him last night.
13 And he said that Radar had died, that something had happened
14 to him. And I said, well, I just saw Radar, you know, ten
15 hours ago.

16 Q So based on that, you called the police?

17 A Well, we -- yeah. Somebody -- one of the -- he called
18 -- I think Bill called Buck who owns another bar in West
19 Columbia that Radar used to frequent. And then they called
20 the city. And then the City of West Columbia called me and
21 I went down at about 6:00 that following night and I gave
22 them a statement.

23 Q And you gave a statement to the police that day, that
24 night?

25 A Yes, sir.

1 Q That would have been Friday night about 6:00?

2 A Yeah. I saw him at 2:00 a.m. Thursday night/Friday
3 morning and gave my statement around 6:00 Friday night.

4 Q In the statement that you gave to the police, did you
5 describe any injuries? Did you tell the police that Radar
6 had the injuries?

7 A I don't think I did. I don't know.

8 Q Let me show you two pages of a document. Do you
9 recognize that as being your statement?

10 A That is my statement, yes, sir.

11 Q Does that refresh your memory about what you told the
12 police?

13 A A little bit, yes, sir.

14 Q Do you remember whether you told the police anything
15 about Radar having anything, any serious injuries to his
16 face?

17 A Can I see it one more time? Sorry.

18 Q (Hands document to witness)

19 A (Reviews document)

20 Q Do you remember if you told anything to the police, Mr.
21 Stalnaker?

22 A From this statement it doesn't -- I didn't.

23 Q Thank you. Please answer any questions Mr. Floyd has.

24 THE COURT: Mr. Floyd.

25 MR. FLOYD: Thank you, Your Honor.

MICHAEL STALNAKER - CROSS-EXAMINATION

BY MR. FLOYD:

Q Good afternoon, Mr. Stalnaker.

A How are you, sir?

Q Uncle Louie's, that's a bar, is it not?

A Yes, sir, it is.

Q Is the lighting in the bar as bright as, say, in this room?

A No, sir, it's not.

Q Would you call it kind of a dark atmosphere?

A I would call it a typical setting, yes, sir.

Q Visibility not quite as good inside of a pub as it is in a bright room?

A I would agree with that statement, yes.

Q Now, when -- you say Mr. Prather said something about I'm going to kick his ass or something like that. Do you take that seriously?

A Oftentimes we hear people say that. And to be honest with you, I take it with a grain of salt. Whether he meant it or not. As long as they didn't do inside of there, you know, I -- I take it with a grain of salt, yes, sir.

Q But in any event, when you went outside and found him seated in the car, he didn't say anything mean to him or threatening to him at all, did he?

A If he did, because of the time frame, I don't, I don't

1 remember.

2 Q Well, you didn't say anything about it that next day,
3 did you? There wasn't a thing about that in your statement?

4 A No, sir, I did not.

5 Q And you told him it was no big deal; is that correct?

6 A Yes, sir.

7 Q Thank you.

8 MR. FLOYD: No further questions.

9 MR. GRAHAM: Nothing else, Your Honor.

10 THE COURT: Thank you, sir.

11 MR. HUBBARD: The State calls Donna Sharpe.

12 (WHEREUPON, Donna Sharpe was sworn
13 to tell the truth.)

14 THE CLERK: Have a seat right up there, please,
15 ma'am. Speak up loud and clear, stating your full name,
16 spelling your last.

17 MS. SHARPE: My name is Donna Sharpe, S-H-A-R-P-E.

18 DONNA SHARPE - DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q Ms. Sharpe, where do you work?

21 A I work at Lexington Medical center.

22 Q How long have you worked there?

23 A I started there in '03. I had a little break for a
24 couple of years and then I've been back for four months.

25 Q April of 2005, you're still working there?

1 A That's correct.

2 Q What do you do or what did you do in the hospital back
3 in 2005?

4 A I'm a registered nurse. I also worked as registered
5 nurse back in '05, also.

6 Q Do you recall working in the ER the early morning hours
7 of April 22, 2005?

8 A I do.

9 Q What shift is that that you were working?

10 A We call that a PM shift.

11 Q What were the hours?

12 A 7:00 p to 7:00 a.

13 Q Anything unusual happen that shift?

14 A Yeah. That was the night that I had two gentlemen come
15 in requesting a rape kit.

16 Q Do you recall the names of these two gentlemen?

17 A Not from recollection, but from my notes, looking back,
18 I remember their names, yes.

19 Q What were their names?

20 A Jerry Prather and Joshua Phillips.

21 Q Now, which one was saying he needed the rape kit or
22 which person was in need of a rape kit?

23 A Joshua Phillips was in need of a rape kit.

24 Q So the Jerry Prather, he was just with this person?

25 A That's correct.

1 Q Do you see either one of those individuals in the
2 courtroom today?

3 A Mr. Prather, to my left.

4 Q At the Defense table?

5 A Yes, sir.

6 MR. HUBBARD: Your Honor, I'd ask that the record
7 reflect she's pointed out the Defendant.

8 THE COURT: It does.

9 BY MR. HUBBARD:

10 Q Now, from your understanding, who brought Mr. Phillips
11 in, this Joshua Phillips.

12 A Mr. Prather brought Mr. Phillips in.

13 Q And what specifically -- you've mentioned a rape kit.
14 But do you remember specifically what was said?

15 A I've got some charts notes, if I can refer to those.
16 Let me look right here first because it's -- I wrote it on
17 my triage notes. Yeah, he just says -- I don't have the
18 exact wording, but he just had requested a rape kit because
19 he thought his friend had been assaulted.

20 Q Okay. Let me ask you, the person requesting the kit
21 was it Mr. Prather or Mr. Phillips?

22 A Mr. Prather requested the kit for Mr. Phillips. And
23 then I had asked Mr. Phillips was that correct, did he need
24 one. And he agreed.

25 Q Did he audibly respond to you?

1 A I don't recall -- he was very mentally inactive with
2 me, stared at the floor. Very little conversation. I
3 remember getting an acknowledgment from him, but I don't
4 remember if that was a nod or a yes or the exact way he
5 verbalized, but after I'd asked him to agree, he said yes.

6 Q So Mr. Phillips wasn't doing the talking, Mr. Prather
7 was?

8 A That's correct.

9 Q Did either of these two individuals relate anything
10 about the sexual assault?

11 A Yes.

12 Q Which one related the story to you?

13 A Mr. Prather.

14 Q What did he say?

15 A He said that he and Mr. Phillips had been at someone's
16 house, and they had been drinking. And he had left the
17 friend there at the house and when he came back, this old
18 man, he called him, answered the door naked and had
19 proceeded to -- he told me that -- you want the entire
20 thing, from start to finish?

21 Q If you don't mind. And let me ask you this. When he
22 got back to the house, did he just walk in the house or do
23 you recall?

24 A He just said that the old man answered the door naked,
25 butt naked.

1 Q Okay. So he was met at the door by this naked man?

2 A Yeah.

3 Q Old man?

4 A Old man.

5 Q What was the rest of the story?

6 A He said that the old man was butt, and that the old man
7 asked him something about if he'd had sex with Mr. Phillips
8 before. He related that he -- he was offended by this. He
9 had been friends with Mr. Phillips for, I think he said,
10 years or a long time. And that he was offended by this.
11 The old man had made some remarks about like oral sex and
12 that it offended Mr. Prather.

13 Q Okay. And then what happened?

14 A During this time, I'm still documenting and making my
15 chart, you know, the details, kind of, you know, filling out
16 my paperwork. And he mentions about that he had left Mr.
17 Phillips on the couch with a pillow under his head and that
18 when he came back, after the naked man answered the door and
19 all of that, that he found Mr. Phillips in the bed with
20 nothing but his boxers on.

21 Q Okay. Let me just see if I've got the sequence. He
22 leaves his friend, Mr. Phillips, on a couch with a pillow
23 under his head?

24 A That's correct.

25 Q He doesn't explain what he's doing when he leaves, does

1 he?

2 A I think he said going to get something or do something.
3 There are not any more details than that, yeah.

4 Q When he comes back, he's met at the front door by this
5 naked old man?

6 A (Nods head affirmatively)

7 Q He goes in the house and he finds his friend, Mr.
8 Phillips, not on the couch but in a bedroom?

9 A That's correct.

10 Q And what did he say, if anything, about what this
11 friend was wearing?

12 A He said he was in nothing but his boxer shorts. And
13 Mr. Phillips, from my notes, acknowledged that he was in
14 boxer shorts. That that's all he remembered, was waking up
15 with his boxer shorts on.

16 Q So that's all he related about the story is just waking
17 up with boxers on?

18 A Yeah. At some point I would have like looked for
19 agreement from Mr. Phillips. And in my notes I put that he
20 had agreed that he was awoke with boxer shorts on.

21 Q But the one doing the talking is Mr. Prather?

22 A That's correct.

23 Q What did Mr. Prather say after he found his friends in
24 boxers?

25 A He was upset and he said that he told Mr. Phillips to

1 get dressed. And that it took him -- from my notes, an hour
2 and a half to find his clothes, because they were scattered
3 all over the house.

4 Q From your conversation with Mr. Prather, who's looking
5 for these clothes?

6 A I assume they both were.

7 Q Okay. From the way he ---

8 A From the way he related it to me, it seemed like they
9 were both looking for clothes. Or even maybe it seemed more
10 like Prather was. I'm not sure how -- Mr. Phillips was at
11 this point, because he had talked about him being drunk. So
12 I'd still kind of pictured him...

13 Q Okay. Now, did Mr. Prather appear drunk when he was --
14 or intoxicated or smell of alcohol when he was talking to
15 you that morning?

16 A Not to my recollection.

17 Q If he had, would you have noted it?

18 A I would have noted it about -- you're talking about Mr.
19 Phillips, right?

20 Q No, Mr. Prather?

21 A Mr. Phillips, I would have noted on the chart had he
22 been intoxicated. Mr. Prather, I may or may not have
23 because he wasn't the patient.

24 Q Okay.

25 A Sometimes, if it's really obvious, I'll make a note.

1 But it's not as often that I'll do that about someone not
2 the patient. But I don't have a recollection of him being
3 --

4 Q Okay.

5 A He clearly communicated with me.

6 Q All right. So Mr. Prather and maybe even Mr. Phillips,
7 they take an hour, hour and a half trying to find clothes to
8 leave the house?

9 A Uh-huh (affirmative).

10 Q What, if anything, did Mr. Prather say to you at that
11 point?

12 A While he's telling me about finding the clothes, he
13 makes a remark about beating the -- Mr. -- let me think.
14 It's the --

15 Q Mr. Stewart?

16 A Stewart. Mr. Stewart.

17 Q Now, he didn't refer to him by name?

18 A I never knew his name, no. Uh-huh (negative).

19 Q But the old man?

20 A The old man. He referred to beating the old man up.

21 Q Okay. And did he say anything that struck you as
22 unusual?

23 A Yes. Let me look at my notes to see if they are on
24 here. He said they beat him up and they said something
25 about -- they admitted to beating up the victim. They said

1 he's probably still laying there.

2 Q Did he ask if he could do anything?

3 A After he said that, when he said he was still laying
4 there. I remember thinking, oh, they must have really, you
5 know, beat him up bad if he's still laying in the spot where
6 you get beat up. And so that was a little off to me. But
7 then a few minutes later he wanted to, asked me could he
8 wash his hands. There's sink right behind me in triage,
9 that have kind of my back to. I'm usually at a desk like
10 this, you know, talking to him with him sitting right here
11 to my right. And there's a sink behind me. And he asked if
12 he could wash his hands. So I said, sure, go ahead. He was
13 behind me washing his hands.

14 Q What, if anything did he say or do while he was washing
15 his hands?

16 A While he was washing his hands, he said, I don't like
17 -- I don't like getting blood on my hands or I hate getting
18 blood on my hands. And he kind of chuckled. It was a funny
19 little laugh and I remember thinking that was kind of odd.

20 Q And this was Mr. Prather, not Mr. Phillips?

21 A Mr. Prather. Mr. Phillips was still sitting in the
22 chair.

23 Q What did you do at that time?

24 A I didn't -- I felt kind of blank.

25 Q Do you remember getting in touch with anyone else?

1 A I didn't do it right then, but after he did that and
2 then made the remarks about the beating him up, I'd finished
3 my triage shortly thereafter and I'd sent them to
4 registration to get registered. While he was in
5 registration to get registered, I called my supervisor.

6 Q Who was that?

7 A Ann Leaphart.

8 Q And what did you relay to her.

9 A And I told her the basics of what had been said, and
10 said that I was afraid that maybe somebody at this place
11 where they had been could be hurt from the story that he had
12 told me. And she said, see if you can get the address. And
13 so I proceeded them to go back out to where I had put them
14 in the registration kind of area and asked him did he know
15 the address. And he said he didn't not. Then he asked Mr.
16 Phillips if he knew the address and he said that he did not.
17 And then Mr. Prather proceeded to ask Mr. Phillips, do you
18 still have his wallet?

19 Q Do you still have his wallet?

20 A Do you still have his wallet? Do you have the man's
21 wallet, that kind of statement.

22 Q Okay. And did they have the wallet?

23 A Yes. Mr. Phillips pulled the wallet out, handed it Mr.
24 Prather. Mr. Prather proceeded to pull out an
25 identification card from the wallet and hand it to me. And

1 I said is this the man? He said, yes, this was the man.

2 And I asked him was that the address? And they agreed that
3 it was the address.

4 Q I'm going to show you a wallet that's marked as State's
5 Exhibit No. 9. Does this wallet look familiar to you and
6 the contents?

7 A Yes. The wallet itself is general wallet. I couldn't
8 tell you if that's the exact, this part. But the -- I
9 remember immediately noticing the family picture in the
10 front with the hat.

11 Q Okay. The elderly couple are right in the front of the
12 wallet?

13 A Yes.

14 Q Okay.

15 A And then the identification card that he had handed me
16 was familiar, yes.

17 Q The State ID card?

18 A That's correct.

19 Q So he handed you those?

20 A There were a bunch of, you know, cards. Grocery store
21 cards, discount in there with them.

22 Q So you got that address off the State ID card?

23 A That's correct.

24 Q Then what did you do?

25 A I called my supervisor back and told her the address

1 and took her the wallet.

2 Q What, if anything, did Mr. Prather say about that
3 wallet?

4 A Once he had shown me the wallet, I said something to
5 him along the lines of why don't you let me keep that so it
6 won't look like you were trying to keep his wallet or
7 something.

8 Q Why would you ask him that or why did you say that?

9 A Because I wanted to make sure that I got the wallet
10 until I could identify whatever was going on. And so I just
11 said that to him so I could get the wallet.

12 Q Okay. What was his response?

13 A Then he said, no, that's -- he's already gave it to me.
14 He said, no, it wasn't like it was a robbery or anything.
15 It's nothing like that. He said I thought it would --
16 something like -- come to this or this might come up.

17 Q Okay. It might come to this or this might come up?

18 A Yeah. In one of my notes. I think he said -- hang on
19 a second. It was one I had written. I'm trying to find. I
20 was thinking there's something I remembered -- I thought he
21 said something about identifying him.

22 Q Okay.

23 A But I can't find that.

24 Q That's all right.

25 A Okay.

1 Q That's fine. Let me ask you this then. When he's
2 talking to you, and I don't know if you've got your
3 statement up there and if you remember, do you recall him
4 talking about the condition he left the old man in? Could
5 you look at maybe page two of your statement?

6 A I remember him saying something --

7 Q What did he say?

8 A He said -- let me see if I can find my exact wording.

9 Q Look down towards the bottom?

10 A He said, yes, I beat him but he's alive though, maybe
11 barely though.

12 Q Those are his words to you?

13 A Yes. I quoted that.

14 Q And when you quoted that, that meant that's what he
15 said?

16 A That means those are the exact words that I recall him
17 saying.

18 Q Does he say anything about what might happen to him?

19 A That was when I was asking him for the wallet. And he
20 said, I'll probably go to jail for this, won't I? And I
21 said, for beating him up -- you know, question mark. And he
22 said, yes, I beat him. But he's alive though, maybe barely
23 though.

24 Q Now, this statement you've referred to, what day did
25 you write that?

1 A This one was written on the 22nd.

2 Q Okay. And you say this one. This is -- the statement
3 you're referring to, is that one you did for law
4 enforcement?

5 A That's correct. They came out to me that -- I don't
6 remember what time. I didn't write the time on there. But
7 he called me and came to my house and I gave a statement, a
8 written statement to law enforcement there.

9 Q Okay. Let me ask you this. After he makes these
10 statements, what happens?

11 A When I'm gone to give the wallet to Ms. Leaphart and
12 came back, they're not in the room that I'd put them.
13 They'd finished registration apparently at that point, and
14 I'd had them in a little, like a private little, it's a
15 smaller room to give people some privacy when certain things
16 have gone on, waiting to go back to be treated. When I came
17 back, neither one of them were in the room. So I became
18 concerned that they had just left. And I realized then that
19 maybe something's happened and these people have left. So I
20 go out to the front and see if I can find them. And I asked
21 the front desk and they said, they've gone out to smoke. So
22 I walk out to the front of the building and I find Mr.
23 Phillips sitting on a bench at the front, smoking a
24 cigarette.

25 Q All right. Did you see Mr. Prather?

1 A No, Mr. Prather wasn't there. And I stood there with
2 Mr. Phillips for a few minutes talking to him and asking him
3 where Mr. Prather was.

4 Q All right.

5 A And he had told me that he had gone to smoke a
6 cigarette. That he said, he told me was going to smoke a
7 cigarette. So I waited a few minutes and after a few
8 minutes he did not come back and I didn't see him in the
9 parking lot smoking. So I asked him then to -- I think I
10 asked him to help me look for his car.

11 Q Okay. Did you find his car?

12 A No. And I asked him what his car looked like. And he
13 didn't know what his car looked like. So I asked him, I
14 said, well, I thought, you know, like you guys were friends,
15 you know. He said he didn't remember the car, except that
16 it was an old car. And it had a slide seatbelt. So I
17 walked around the parking lot looking for an old car, with a
18 kind of -- you know, looking in the windows, seeing if I
19 could see a slide seatbelt, in the windows. Because it's a
20 small parking lot in front of the building. It's maybe two
21 dozen cars out there maybe. So I didn't see any cars like
22 that. And it was late so it wasn't many cars parked out
23 there so it was easy to look at them. And I didn't see any
24 with a slide -- and he kind of wandered around with me, Mr.
25 Phillips did. And we didn't see one. And so then I

1 proceeded to ask Mr. Phillips what his friend's -- I think
2 that's the first time I asked him his friend's name and he
3 said Jerry. And he said --

4 Q Did he know the last name?

5 A Well, I asked him. I said, do you -- what's his last
6 name so I can get him paged in the hospital to make sure
7 he's not in the hospital so we can get you into a room. And
8 he said he didn't know his last name. And I said, I thought
9 you guys were friends. And he said, we went to school
10 together.

11 Q All right. So earlier Mr. Prather had said they'd been
12 friends --

13 A Uh-huh (affirmative).

14 Q -- for a long time or something like that?

15 A He said something -- he was offended when the old man
16 answered the door and asking him about having sex and he
17 said he was offended by that because we've been friends for
18 years. For the old man to insinuate he's having sex with
19 his old friend offended him.

20 Q But Joshua Phillips says he can't even remember his
21 last name?

22 A He doesn't know his last name and he said they went to
23 school together.

24 Q He didn't remember what they were driving?

25 A Right.

1 Q I want to show you a photograph, State's Exhibit No. 4.
2 Does this look like the parking lot out in front of the
3 emergency room?

4 A That's correct.

5 Q That blue car, does that look familiar?

6 A I don't recall ever seeing the car.

7 Q Okay. And that's a fairly small parking lot right out
8 there outside the emergency room; is that correct?

9 A It's maybe -- I'd say twenty-four to thirty-six spots,
10 total. But at that time of night they're not full because
11 there's not many people there.

12 Q So if there was a car there, it should have been fairly
13 easy to find?

14 A I would have thought so, yes, sir.

15 Q At some point later, does Mr. Prather show back up?

16 A He does. In my note I think I wrote ten to thirty
17 minutes because I just really didn't watch the time at that
18 point, but when he does show back up, I send a tech to take
19 him back to the conference room with Mr. Phillips.

20 Q Now, Ms. Sharpe, let me ask you something. We've
21 talked about a written statement you made for law
22 enforcement?

23 A Uh-huh (affirmative).

24 Q Did you make another note of what transpired?

25 A I made a note for myself right after, right after I'd

1 gotten everybody situated in their rooms and all that, you
2 know, everything that had gone, I'd got the wallet, handed
3 it over to Ms. Leaphart and all that. Because of the events
4 being so significant it seemed to me at the time, I typed
5 myself up an immediate note of what transpired so I wouldn't
6 forget any of the details.

7 Q And that note, that was that morning?

8 A Yes. I'd say within, within an hour after it happened.

9 Q There's some handwriting on the corner up there. Is
10 that April 22, '05?

11 A That's correct. That's my writing.

12 Q What's the time?

13 A 4:50 a.m. It says approximately 4:50 a.m.

14 Q So this is before law enforcement's involved?

15 A I believe so.

16 Q You're already writing something up because this is
17 such an unusual incident?

18 A Yes. This seemed significant to me with the details I
19 didn't want to forget.

20 Q Was it significant because you had a male there saying
21 I've been raped or is it the things that you were hearing
22 from Mr. Prather?

23 A Oh, no. It was the things I was hearing from Mr.
24 Prather. I've had male -- that's not significant that it
25 would be a male rape victim. The statements were

1 significant.

2 Q You remember about what time they showed up at the ER?

3 A The triage chart will tell that? 4:28. That would
4 have been the time they signed in up front to be seen.

5 Q Okay. So 4:28, they sign in. And at 4:50, you're
6 already typing up a note for yourself?

7 A That's correct.

8 Q In all your years of nursing, have you ever done this
9 before, typed up a note?

10 A No.

11 Q This incident was just -- the things you were hearing
12 from Mr. Prather were just that --

13 A Yeah. They seemed to be.

14 Q Thank you. Please answer any questions the Defense
15 has.

16 DONNA SHARPE - CROSS EXAMINATION

17 BY MR. FLOYD:

18 Q Ms. Sharpe?

19 A Hi.

20 Q There's no question that Joshua Phillips had the
21 wallet; is that correct?

22 A That's correct.

23 Q It was in Joshua Phillips' pocket, not in Jared
24 Prather's pocket?

25 A That's correct.

1 Q And after the wallet was produced for the ID, you had
2 no problems with you keeping the wallet, did that?

3 A Say that again?

4 Q They had no problem with you keeping the wallet, did
5 they?

6 A That's correct.

7 Q Like they said, it wasn't like a robbery or anything
8 like that?

9 A That's what he said.

10 Q Now, do you recall giving a statement in connection
11 with this matter back in 2009?

12 A The written statement you're talking about for law
13 enforcement?

14 Q Let me ask if you recognize this?

15 A This is from another trial?

16 Q On page -- I want to ask you -- where you were asked
17 what happened once you went outside?

18 MR. HUBBARD: I'd ask what page he's referring to,
19 just so I can follow.

20 MS. SHARPE: 38.

21 MR. FLOYD: 38.

22 MR. HUBBARD: Thank you.

23 A Right here, you said?

24 BY MR. FLOYD:

25 Q Where you talking with him the parking lot, you're say

1 I though ---

2 A I said I though you two were friends. Yeah. I don't
3 recall that exact statement. I looked at this, what do you
4 call this the ---

5 Q This is a sworn statement?

6 A Yeah. And there were some other ---

7 Q Well, what I'm asking, you don't say anything at that
8 time about going out in the parking lot and looking for his
9 car, do you?

10 A I don't think I was asked that.

11 Q Well, basically you said you had that conversation with
12 him and then you went back inside.

13 A Yeah. I don't recall having that exact statement. I
14 had laryngitis at that case and I was whispering, so I'm not
15 sure. But I think it's on both my statements that I wrote
16 to law enforcement and the one to myself, that we were in
17 the parking lot.

18 Q Well, you have your statement you typed up, up there?

19 A Yes, I do.

20 Q Will you show me where it says you were in the parking
21 lot?

22 A I'll have to read through it. This statement -- is
23 asking -- it only goes up through the period of where I gave
24 the wallet to Ann. I didn't type further past that about
25 what happened. So it ends at the bottom where I gave the

1 wallet to Ann Leaphart.

2 Q Do you have your statement to the police up there also?

3 A Uh-huh (affirmative). Yes.

4 Q Would you review it and tell me whether or not you said
5 anything in that statement about --

6 A The parking lot?

7 Q --- looking for his car in the parking lot?

8 A Yes. I said, Joshua remained very quite, staring at
9 the ground at the ground while smoking. Jerry didn't return
10 after a few minutes.

11 THE COURT: Not so fast.

12 MS. SHARPE: Oh, I'm sorry.

13 THE COURT: She's trying to keep up with you.

14 A Jerry didn't return. After a few minutes, I asked him
15 to help me find his car in the parking lot so we could put
16 them both in a room to talk to the social worker. He walked
17 around and could not find Jerry's car. He could not
18 describe the car, except that it was kind of old and the
19 belts slide. I asked for his friend's name and he said,
20 Jerry. I asked for his last name so I could page him. And
21 he said he didn't know it.

22 BY MR. FLOYD:

23 Q That says he walked around the parking lot, doesn't it?

24 A He.

25 Q Not we?

1 A He. He walked with me.

2 Q But it doesn't say that, doesn't it?

3 A Well, I may have not worded it perfectly, but he walked
4 with me.

5 Q Thank you.

6 MR. FLOYD: No further questions.

7 MR. HUBBARD: One quick follow-up.

8 THE COURT: Yes, sir.

9 DONNA SHARPE - REDIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q Picking up from you left off reading --

12 A Uh-huh (affirmative).

13 Q What you said -- so I could page him. And he said he
14 didn't know it?

15 A Uh-huh (affirmative). When I said, I thought you knew
16 each other for years. He said, we went to school together.

17 Q Okay. And if you'd read on?

18 A I placed him in the conference room. After
19 approximately ten to thirty minutes or so, Jerry came back
20 through the front door. I directed the tech to take him to
21 the conference room. And she reported to me that he said he
22 had to go call his mom to let her know where he was.

23 Q And that was referring to Prather?

24 A Prather.

25 Q Thank you.

1 A You're welcome.

2 MR. HUBBARD: Nothing further.

3 THE COURT: Anything else?

4 MR. FLOYD: Nothing further, Your Honor.

5 THE COURT: Thank you, ma'am. You may step down.

6 MR. GRAHAM: The State calls Matt Edwards.

7 (WHEREUPON, Matt Edwards. was sworn
8 to tell the truth.)

9 THE CLERK: Have a seat, please, sir. Once you're
10 seated, state your full name spelling your last on the
11 record, please.

12 MR. EDWARDS: My name is Matt Edwards, E-D-W-A-R-
13 D-S.

14 MATT EDWARDS - DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q Mr. Edwards, where are you employed, sir?

17 A I work for the West Columbia Police Department.

18 Q And what rank are you over there?

19 A I'm a major and assistant chief.

20 Q And what is your job responsibilities as a major and
21 assistant chief?

22 A I run the day-to-day operations of the police
23 department.

24 Q Back in April 22nd of 2005, what -- were you working in
25 West Columbia then?

1 A I was. I was a criminal investigator at the time.

2 Q How long have you been in law enforcement?

3 A How long now? About thirteen years.

4 Q On April 22nd in '05, you said you were an
5 investigator. What do you mean? What is an investigator?

6 A Our department's set up -- obviously, we have a patrol
7 division, would be the uniform guys that you normally see.
8 We have special operations type units, and then we have an
9 investigative unit. At the time, I think it was a fifteen-
10 man unit. That would include major crime scene, white
11 collar crime and narcotics, that kind of stuff.

12 Q Did you have an opportunity to meet Mr. Prather.

13 A I did.

14 Q And we're talking about the Defendant, the one sitting
15 here without a jacket next to Mr. Floyd?

16 A Correct.

17 Q What time did you first encounter him?

18 A I'm going to refer back to my notes, but on the morning
19 of the 27th [sic], I met with him at 10:50 in the morning.

20 Q On the morning of the 22nd?

21 A Right.

22 Q Of April 2005?

23 A April 2005, yes, sir.

24 Q At about 10:50, is that what you said?

25 A Yes, sir.

1 Q Where were you when you met him?

2 A We were at the police department. It's 200 North
3 Twelfth Street in West Columbia.

4 Q Mr. Prather was under arrest at that time?

5 A He was under arrest and he was in an interview room
6 within our squad room.

7 Q Did he have handcuffs on?

8 A He did not.

9 Q How big is the interview room?

10 A It's probably four feet by six feet. It's a small
11 room. It has a -- as you enter into the room, it has a door
12 with a window on it, no blinds. Mr. Prather was seated
13 right next to the door. And in the middle of the room is a
14 desk. And then I came in and sat down on the far side of
15 the desk.

16 Q How were you dressed?

17 A At the time -- this was early in the morning and I
18 would have been dressed in a -- not a suit, like the
19 tactical gear, maybe a polo shirt, is what we normally wear.
20 But I was wearing tactical gear, a polo shirt. I had taken
21 my gun off so that was it. And I had a badge on my shirt
22 and a badge on my belt.

23 Q Did you have any weapons with you?

24 A No, sir.

25 Q When you go into the interview room, what's your first

1 contact with him, what do you say?

2 A I introduce myself and just explain, you know, why I'm
3 there. Just like it's basically to start to build a rapport
4 with him.

5 Q Tell me about your conversation with him when you
6 started to build a rapport with him?

7 A I'm going to refer back to my notes a little bit since
8 it's been a while, but --

9 Q Did you ask him if he knew Gerald Stewart?

10 A I did ask him if he knew Gerald Stewart.

11 Q And what did he tell you?

12 A Yeah, he had met him, I think he said about five months
13 ago.

14 Q Did Mr. Prather seem to be under the influence of
15 alcohol or drugs at the time?

16 A No, he seemed sober. I mean, he seemed calm.

17 Q Did you ask him who was over at Mr. Stewart's house?

18 A I did. I asked him who had been there that night. It
19 was kind of the way I started the conversation. And he said
20 that he was and his friend, Josh was.

21 Q Did he say how he met Mr. Stewart?

22 A Yeah, he did. He said about five months ago or five
23 months before that, they had met each other at Calloway's
24 playing pool. That's a bar on Number 1 in West Columbia.

25 Q Did he tell you whether he'd been over to Mr. Stewart's

1 house prior?

2 A Yeah. He said he'd been there several times during
3 that five-month period.

4 Q Did you ask him whether he knew whether Radar, Mr.
5 Stewart, was a homosexual?

6 A I did. During the course of that initial conversation,
7 I asked him if he knew if Mr. Stewart was a homosexual.

8 Q Did you ask him how old he was?

9 A I did.

10 Q And how old did he tell you he was?

11 A He stated that he was twenty-two.

12 Q Did he appear to understand what was going on?

13 A He did. He seemed very lucid. He was, again, very
14 relaxed at the time. He was, in my opinion, sober. But,
15 yeah, he knew what was going on.

16 Q Was it at this time that you went ahead and informed of
17 what his rights were?

18 A I did. I told him before, you know, I wanted to hear
19 his side of the story, but before I did, I had to advise him
20 of his Miranda Rights.

21 Q Let me show you what's been marked as State's Exhibit
22 No. 1 for identification and ask if you recognize that?

23 A I do.

24 Q Is that a form that you used to advise Mr. Prather of
25 his Miranda Rights?

1 A This is. This is our standard Miranda Rights Warning
2 Form that we give to give to all, you know, anybody that we
3 want to interrogate.

4 Q Do you recognize any of the handwriting on there?

5 A I do. My handwriting and Mr. Prather's handwriting is
6 on there.

7 Q And that's the same form that you used on the morning
8 of the 22nd when you advised Mr. Prather of his rights?

9 A Yes, sir, this is the form.

10 MR. GRAHAM: Your Honor, the State would move this
11 into evidence at this time.

12 THE COURT: What says the Defense?

13 MR. FLOYD: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (State's Exhibit No. 1, Miranda
16 Rights, was marked and entered.)

17 BY MR. GRAHAM:

18 Q Major, going through State's Exhibit No. 1, starting in
19 the upper right-hand corner, there's blank lines for date,
20 time and the case number. There's some handwriting there.
21 Whose handwriting is that?

22 A That's my handwriting. Of course, it reflects April
23 22nd, 2005. And the time and the case number specific to
24 this case.

25 Q Okay. Moving down the page, what's next?

1 A There's a section that is meant to identify who's, you
2 know, who we're talking to or who it is. So it's just gives
3 all the identifiers for Mr. Prather.

4 Q And the handwriting that fills in the blanks with that,
5 whose handwriting is that?

6 A That's Mr. Prather's handwriting.

7 Q So you asked him to write it, and that's what he wrote?

8 A I did.

9 Q And what does that say?

10 A I'll read it verbatim. It says, I, Jared Prather, live
11 at 3205 Woodson Circle, West Columbia, South Carolina,
12 29170. My phone number is 803-791-7122. My date of birth
13 is 9/22/82. And my Social Security Number is 247-71-0579.

14 I have finished the -- and it's got a blank. It says
15 thirteen grade in school. And I can, circled can. It has a
16 thing that says I can or/cannot read. And he circled I can.
17 And he's initialed above the circle where he said I can.

18 Q So how -- in speaking with him and from this form, what
19 was your understanding of what his education was?

20 A He appeared to be educated and intelligent.

21 Q He said thirteen, he went to thirteen grades in school?

22 A That would mean, typically, your freshman year in
23 college is what it appeared he had completed.

24 Q And he indicated that he could read?

25 A He did, yes, sir.

1 Q And what was his date of birth?

2 A His date of birth is 9/22/82.

3 Q 9/22/82?

4 A Right.

5 Q So how old was he on April of '05?

6 A About 22.

7 Q Did he appear to be under the influence of alcohol or
8 drugs?

9 A Not at all.

10 Q Understand what he was doing?

11 A He did.

12 Q The next thing you did was advise him of his
13 constitutional rights. Is that correct?

14 A That's correct.

15 Q How did you do that?

16 A Again, as it's written on the form, and I'll read it
17 verbatim. The next section -- and this is a form that we
18 give to everybody that we interrogate and we do, you know,
19 do it the same way every time. But it reads, the
20 Constitution requires that you be informed that -- and then
21 there's -- your rights listed out one through six, as we've
22 got them written. And I'll read them point by point. The
23 first one is labeled one. It says, you have the right to
24 remain silent. Each one of these rights has a blank listed
25 out beside it where the Defendant is supposed to initial

1 they understand it. The number one reflects, you have the
2 right to remain silent. And has his initials stating that
3 he understood. Number two reads, anything you can and will
4 be used in court as evidence against you. And he initialed
5 that he understood that. Number three says, you are
6 entitled to talk to a lawyer now and him present now or
7 anytime during questioning. He initialed that he understood
8 that. Number four says that if you cannot afford a lawyer,
9 one will be appointed for you without cost. He initialed
10 that he understood that. The fifth one says, do you
11 understand these rights? And that's in bold writing. And
12 then there's a yes/no there. He circled yes. He initialed
13 them both where he circled. And then he initialed the blank
14 out beside the number five. And then number six says, if
15 you decide to answer questions now without a lawyer present,
16 you'll still have the right to stop answering questions at
17 any time. You also have the right to stop answering
18 questions at any time until you talk to lawyer. And then
19 again, that's his initials at the top side.

20 Q So did he read those to himself? Did he read the out
21 loud, did you read them out loud, how were these?

22 A He read them to himself. The way I always do it, I
23 present the form in front of the person. I have them read
24 them read them aloud and ask them if they understand it.
25 They signify yes, that they understand it. And then to, you

1 know, ensure that, they initial out beside it. So he read
2 each one of those aloud and, again, signified that he
3 understood them.

4 Q So he read them out loud. You heard him read out loud?

5 A That's correct.

6 Q And you asked him if he understood it?

7 A That's correct.

8 Q He said he did?

9 A Yes.

10 Q And then he initialed by it to show that he'd read it
11 and understood it?

12 A Yes.

13 Q And then there's a question number five, do you
14 understand these rights in bold or all caps. And there's a
15 circle with initials by that around the word yes. Who did
16 that?

17 A He did. And then he initialed to indicate that he had
18 made that mark.

19 Q And then finally, below that he signed it. Where it
20 says signature of suspect saying that he -- those are his
21 rights and he still wants to talk to you?

22 A Yes.

23 Q Down below that, the final section on the page. What
24 is that?

25 A That's the last section again to make sure they

1 understand what their rights are, what's being presented to
2 them. It reads, and it's underlined Waiver of Miranda
3 Rights. It says, I am willing to make a statement and
4 answer questions. I understand and know what I am doing.
5 No promises or threats have been made to me and no pressure
6 or coercion of any kind has been used against me. And then
7 below that is a signature line for -- it says signature of
8 suspect, which he signed. And it says, date, which he
9 indicated was 4/22 of '05. And then out to the left of that
10 is -- there are two witness signatures, but only one is
11 signed and that's my signature.

12 Q Was there anybody else with you in the interview room?

13 A No, sir, there was not.

14 Q Do you all videotape or audiotape interviews?

15 A We do not.

16 Q Did he appear to understand what he was doing?

17 A He did, yes, sir.

18 Q Did he appear to know what his rights were?

19 A He did.

20 Q Did he give you any indication or anything about his
21 behavior or words that made you indicate that he didn't know
22 what he was doing?

23 A No, he didn't.

24 Q Did you make any promises to him?

25 A No, I did not.

1 Q Did you make any threats to him?

2 A No, I did not.

3 Q Did he talk to you of his own freewill?

4 A He did.

5 Q After you had administered the rights and he signed it
6 and waived the rights, that's when you said that you wanted
7 to start to hear his story? Is that what you said earlier?

8 A Well, I told him beforehand I wanted to hear his side
9 of the story, but I had to give him his rights beforehand.
10 So, again, we read Miranda Rights and then we started
11 talking after that.

12 Q I think that you asked him -- did you ask him how long
13 he had known Josh?

14 A I did. That's the first thing I'd asked him. And he
15 stated he'd known him four or five years. They'd gone to
16 Brooklyn-Cayce High School together. And he indicated that
17 he had graduated in 2000.

18 Q Did you ask him what had happened the previous day and
19 night?

20 A Yeah. I asked him to recap the events of the prior
21 evening. And I'm going to refer back to my notes a little
22 bit.

23 Q Did he tell you what time that he arrived at Mr.
24 Stewart's house?

25 A Yeah. He stated he arrived, said around 10:30, 11:00

1 a.m., that he and Josh went over to Mr. Stewart's house.

2 Q Did he tell you what they were doing during the day?

3 A He said they were playing cards and drinking all day.

4 And he said everything was cool during the day.

5 Q Did he tell you anything about there being any fights
6 between Mr. Stewart and anybody at that time, during the
7 day?

8 A He didn't mention, you know, at that time that there
9 had been any altercations or any fights with Mr. Stewart,
10 no, sir.

11 Q What did he tell you happened in the afternoon? Did he
12 indicate to you that he left at some time?

13 A He did. Said that he and Josh went to Josh's brother's
14 house.

15 Q And did he tell you what happened when he and Josh were
16 over at Josh's brother's house?

17 A He did. Stated that he and his brother got into an
18 argument and that it wasn't pleasant. And then basically
19 Josh grabbed all of his clothes or all of his belongings and
20 said that he was going to move out.

21 Q Where did Mr. Prather or did Mr. Prather tell you where
22 he and Josh went after they left Josh's brother's apartment?

23 A Yes, sir, they went to the RaceTrac, which is just
24 right down the street on Prospect Road to get cigarettes,
25 and they went back to Mr. Stewart's house.

1 Q What did he tell you happened after they got back to
2 Mr. Prather's -- I mean, excuse me -- Mr. Stewart's house?

3 A That Gerald and Josh got very drunk on whiskey from
4 what he stated. And that Josh fell asleep on the couch in
5 the den around midnight.

6 Q So he said that Mr. Stewart and his friend who he's
7 known for years, who he went to school with, got drunk on
8 whiskey and that Josh fell asleep on the couch on the den?

9 A That's correct.

10 Q And what time was that?

11 A He stated that was around midnight.

12 Q And what did he tell you happened next?

13 A He stated that sometime after that -- he, alone, took
14 the box of clothes back to Josh's apartment, which would
15 have been Josh's brother's apartment. And he stayed there
16 talking to Josh's brother for a while.

17 Q Did he tell you anything about going to Uncle Louie's
18 with Gerald Stewart?

19 A Yeah. I mean, that's not what we talked about next but
20 he did indicate that -- he kind of backtracked a little bit.
21 He --

22 Q Well, tell me in the order he told you?

23 A Okay. He mentioned that Gerald, you know, had told him
24 just come back when he was coming back from Josh's
25 apartment, that he would leave the door unlocked. Then he

1 kind of backtracked and said that before he'd left by
2 hisself, that he and Gerald had gone to Uncle Louie's, which
3 is the bar in Columbia. And then later on is when he took
4 the box back. And that he thought that was around 2:00 or
5 3:00 a.m.

6 Q So let me interrupt you just for a second. You asked
7 him to tell you what happened in the order that it happened?

8 A Right.

9 Q And he indicated to you that Josh had passed out drunk
10 and that he had left?

11 A Right.

12 Q He, being Mr. Prather, left to go to Josh's brothers?

13 A Right. To take Josh's clothes back, the ones that
14 they'd already got, back to the apartment.

15 Q And that Mr. Stewart said to come back in?

16 A Right. The door would be unlocked. He said, just come
17 back in when you get back.

18 Q And then next, though, did you ask him if he'd gone
19 anywhere else or did he catch himself?

20 A No, he kind of caught himself and backtracked. And he
21 said, but before that, that he and Gerald had gone to Uncle
22 Louie's.

23 Q Well, did he change his mind then of when he went over
24 to Josh's brother's house?

25 A He was basically saying that, to begin with, that that

1 was around midnight when he left Josh passed out on the bed
2 -- no, I'm sorry -- on the couch. And that he thought that
3 it was around 2:00 or 3:00 in the morning when he'd gone
4 over to Josh's brother. So, yeah, I mean, that was
5 obviously a three-hour difference.

6 Q So when he first told you, he said that he went to
7 Josh's brother's house?

8 A Some time after that he'd gone to Josh's brother's
9 house.

10 Q Left Josh asleep or passed out on the couch?

11 A Right. Then he backtracked and said he went to Uncle
12 Louie's and then went to Josh's house.

13 Q And changed the time from midnight to 2:00 or 3:00?

14 A 2:00 -- between 2:00 and 3:00, right.

15 Q What did he tell you happened when he came back to
16 Gerald Stewart's house on Decree Avenue?

17 A He said he walked straight in the door. He walked in
18 and he said that Gerald came out of the bedroom door. Mr.
19 Stewart came out of the bedroom door and he was completely
20 naked. And --

21 Q Okay. Well, let me stop you for a second. Did he
22 knock on the door? Did he --

23 A No. He said he just went straight on in.

24 Q He went on in?

25 A Right.

1 Q Where did he say that he met Gerald Stewart?

2 A At the door, coming in the door.

3 Q In the door, entry to the house or the door to --

4 A Yeah. The entry door to the house, yes.

5 Q Where did he say that Gerald, Mr. Stewart, was coming
6 from?

7 A He came out of the bedroom door as he was coming in.

8 Q And how did he describe the state of Mr. Stewart's
9 dress?

10 A He said that he was completely naked.

11 Q And what did he relate to you that Gerald Stewart said
12 to him?

13 A He made a quote of a sexual nature. And I'll quote it.

14 Q You wrote down exactly what he told you?

15 A I did.

16 Q Using his words then, what did he say?

17 A He said, did you know that Josh likes to get his dick
18 sucked.

19 Q And what did he tell you, being Mr. Prather, tell you
20 that he did after he said -- that Mr. Stewart made that
21 comment?

22 A He said that he pushed Gerald aside and wanted to go
23 get Josh out of the bed.

24 Q And how did he describe how Josh was laying in bed?

25 A That he was just in his boxers. His boxer shorts, his

1 underwear, not wearing anything else.

2 Q Did he tell you whether he had difficulties in waking
3 Josh Phillips up?

4 A He did. He said he tried to get him awake. Tried to
5 get him awake and that didn't work. So he grabbed him by
6 the hair and pulled him out of the bed.

7 Q And what did he tell you happened next?

8 A They started to leave and that Mr. Stewart had grabbed
9 him by the arm. And kind of as he was passing, was the way
10 he described it to me, he pushed, pushed Mr. Stewart and Mr.
11 Stewart fell over a stool that was in the way. And he said
12 he punched him in the face a couple of times with his fist as
13 he was falling. Is what he told me.

14 Q Did he tell you whether he struck -- you said three
15 times is what he told you?

16 A I've got it indicated as a couple of times. I don't
17 remember him saying specifically, but --

18 Q Did he tell you whether he struck Mr. Stewart because
19 Josh Phillips had been raped or did he tell you he did it
20 because Gerald Stewart laid hands on him?

21 A He didn't say. He said that because of the grabbing as
22 he was passing by, he pushed him. And then, again, somehow
23 or another as he was falling, punched him in the face a
24 couple of times. So I guess that would be because of the,
25 he was grabbing him.

1 Q So he stated that he pushed Gerald, Gerald fell over a
2 footrest, and that as Gerald was falling, he hit him in the
3 face a couple of times?

4 A Correct.

5 Q And what did he tell you happened after that?

6 A He said that he and Josh immediately got in his car and
7 they left..

8 Q Did he tell you whether he and Josh stayed around the
9 house or they left right then?

10 A No. He said they left immediately. And got in the car
11 and left and, you know, I asked them if they went straight
12 to the hospital from there. And he told me, yeah.

13 Q And so you asked him, did you leave Radar's house, Mr.
14 Stewart's house and go straight to the hospital? And his
15 response was what?

16 A He said, yes.

17 Q Did he later change that response?

18 A He did. He backtracked and said he stopped -- they'd
19 stopped at Calloway's to play pool for a while and then they
20 went to the hospital.

21 Q What is Calloway's?

22 A Calloway's is the same bar that we were just talking
23 about. It's a private club in West Columbia where you can
24 play pool or drink or whatever. It's a bar.

25 Q And he said that he stopped to -- what did he tell you

1 that they did there?

2 A They stopped to play pool for a while before they went
3 to the hospital.

4 Q Looking at State's No. 8, do you recognize this as the
5 road layout -- Well, I guess this side of the river is going
6 to be West Columbia, right?

7 A That's correct.

8 Q And where is Calloway's bar roughly on this map?

9 A Calloway's bar is on Number 1. I'm going to reach away
10 from the microphone, but Number 1. 378 and Number 1 meet
11 right here. Calloway's is right down here, before you get
12 to I-26.

13 Q So its past Leaphart Road?

14 A Yes, sir. At the Plaza right past Leaphart.

15 Q And before 26?

16 A Right.

17 Q So right over in here?

18 A Right.

19 Q And he told you that he and Mr. Phillips did what?

20 A That they stopped there to play pool, and then they
21 went to the hospital.

22 Q Did you ask him anything about his clothes?

23 A I did. I noticed that he was wearing a white tee
24 shirt. To me it looked very, very clean at the time. And I
25 told him -- I asked him if he had changed clothes during the

1 evening.

2 Q And what did he say? Well, why did you ask that
3 question?

4 A I had been to the crime scene and it was a violent
5 scene. And I said it struck me as very odd that he was
6 wearing a, what looked like to me, a spotless white tee
7 shirt. And I made an assumption that he had changed. And
8 my goal was to get the clothes that he was wearing during
9 the assault. And so my line of questioning was geared
10 toward that, you know, where did you change? Where's the
11 clothes you were wearing? Why did you change, that kind of
12 thing.

13 Q And when you asked him whether he had changed clothes,
14 what did he say?

15 A He said he had not. That was the shirt he had been
16 wearing all night.

17 Q Once he said that, did you begin to confront him?

18 A I did. That just didn't make sense to me. Again, I
19 said that this was a bloody crime scene and that he,
20 himself, had described being there. And assaulting Mr.
21 Stewart. It made no sense to me. I would expect to see
22 blood on the tee shirt, but I didn't. I challenged him
23 about that. And told him that he was lying.

24 Q Once you challenged him and -- did you call him a liar?

25 A Yes. I said, you're lying.

1 Q Did you threaten him at that point?

2 A No, I didn't threaten him.

3 Q Once you called him a liar, what was his response?

4 A It was an odd response, in my opinion. I've conducted
5 a lot of interrogations and I guess I've really got that
6 kind of response. But I challenged him on the fact that he
7 was telling the truth. And he kind of physically responded
8 to it. And I was across the desk from him, but he started
9 kind of curling up in a ball, started crying and hiding his
10 face. And he said he didn't want to talk anymore.

11 Q And the interview ended at that point?

12 A That's right.

13 Q Thank you.

14 THE COURT: Mr. Floyd.

15 MR. FLOYD: Thank you.

16 MATT EDWARDS - CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q Major Edwards, there's no question that his clothing
19 was clean, wasn't it?

20 A That's right. It appeared to be.

21 Q In fact, you couldn't understand how he could not have
22 any blood on him because you couldn't see any blood, could
23 you?

24 A That's right.

25 Q And the crime scene itself was blood, was it not?

1 A Yes, sir.

2 Q Now, on question too is that he told you that Gerald
3 Stewart grabbed him by the arm; is that not correct?

4 A Yes, sir.

5 Q Now, that was after he had discovered his friend passed
6 out in his boxer shorts in Mr. Stewart's bed?

7 A That's right.

8 Q Now, you asked him earlier, and before you began the,
9 before you advised him of his rights, whether he knew Mr.
10 Stewart was homosexual; is that correct?

11 A Yes, sir.

12 Q What did he tell you at that time?

13 A No. He said he did not know he was homosexual.

14 Q And did he tell you some things that happened that
15 night, which would have made him suspicious?

16 A He did. I've got it notated. He said that he -- he
17 didn't tell me what happened, but he said there was a series
18 of events that happened that night that made him think that
19 he was.

20 Q You also asked Mr. Prather if he was homosexual, did
21 you not?

22 A Yes, sir, I did.

23 Q And what was his response?

24 A He was not. He got offended by it.

25 Q You also asked him whether or not Josh was homosexual;

1 is that correct?

2 A That's correct.

3 Q What was his response to that?

4 A No. He said he was not homosexual either.

5 Q And so basically he told you what happened and he got
6 to the point there where he comes back to the house and Mr.
7 Stewart opens the door. Did he say whether or not Mr.
8 Stewart was clothed at that time?

9 A Well, that's not the way it happened. But, you know,
10 he said when he got back to the house -- is that what you're
11 talking about, when he said he came back from Josh's
12 brother's house?

13 Q Right? Uh-huh (affirmative)?

14 A Yeah. He said that Mr. Stewart was completely naked.

15 Q And that's when he went past him to check on his friend
16 Josh; is that correct?

17 A Yes, sir.

18 Q And that's when Mr. Stewart grabbed him by the arm; is
19 that correct?

20 A No. When they were coming back out is when that
21 happened. He just kind of elbowed his way from what he was
22 relating to me. He kind of pushed his way past Gerald to
23 begin with, and went into the bedroom and yanked Josh out by
24 his hair, out of the bed. And Mr. Stewart grabbed him when
25 they were leaving, coming back.

- 1 Q Because he was trying to keep them from leaving?
- 2 A He grabbed him by the arm yes, sir, as he was passing
- 3 by.
- 4 Q And so he pushed Mr. Stewart; is that correct?
- 5 A Yes, sir.
- 6 Q Mr. Stewart fell over a foot rest? And that he hit Mr..
- 7 Stewart a couple of times with his fist?
- 8 A That's what he said, yes, sir.
- 9 Q And that he then left the house; is that correct?
- 10 A That's correct.
- 11 Q Now, like you say, the crime scene itself was very --
- 12 did you call it a bloody crime scene?
- 13 A I did.
- 14 Q Yet Mr. Prather didn't have any visible blood on him,
- 15 did he?
- 16 A He did not.
- 17 Q Didn't have it on his shirt?
- 18 A Not that I could see.
- 19 Q Didn't have it on his pants?
- 20 A Not that I could see.
- 21 Q Didn't have it on his shoes?
- 22 A Not that I could see.
- 23 Q And you were looking, were you not?
- 24 A Yes, sir.
- 25 Q In fact, did y'all take some pictures of him?

1 A I'm sure that we did.

2 Q You don't have the pictures y'all took of him?

3 A I don't recall taking any pictures and I don't have
4 them.

5 Q Well, did you notice any marks on him?

6 A No. I did notice that he was rubbing his ribs and he
7 said his hands hurt, but I didn't see any kind of markings.
8 As a matter of fact when he said that, you know, as soon as
9 we got done talking, I sent him to the hospital and had his
10 ribs checked out.

11 Q Because he was complaining about his ribs hurting;
12 correct?

13 A That's correct.

14 Q And that's why you sent him to the hospital. Was that
15 Lexington Emergency Room, Lexington Medical Center Emergency
16 Room?

17 A Yes, sir.

18 Q And he was sent there before he was taken; is that
19 correct?

20 A Yes, sir.

21 Q But you didn't see any cuts or abrasions on him or
22 anything, did you?

23 A No, sir.

24 Q No evidence of him being in a fight was visible to you?

25 A No, visible evidence. No, sir.

1 Q Thank you.

2 A Yes, sir.

3 MR. FLOYD: No further questions.

4 MATT EDWARDS - REDIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q Major, just for clarification. After your interview
7 with Mr. Prather, Mr. Prather was taken to the hospital?

8 A That's right.

9 Q From the hospital, he was taken to the Detention
10 Center. Would that have been by Officers Mizner and
11 Vinkemulder?

12 A Mizner and Vinkemulder, yes, sir.

13 Q Thank you, Matt.

14 A Yes, sir.

15 THE COURT: Anything else?

16 MR. FLOYD: Nothing further, Your Honor.

17 THE COURT: Thank you, sir.

18 MR. EDWARDS: Thank you, sir.

19 MR. HUBBARD: Your Honor, at this time, the State
20 rests.

21 THE COURT: All right. Ladies and Gentlemen, the
22 State has rested. And we have some matters that we must
23 deal with outside your presence. I see Mr. Brown is here on
24 another matter. Is the Solicitor around on that case, Mr.
25 Brown?

(Off record discussion)

THE COURT: All right. So ladies and gentlemen, we're going to take -- I'm going to give you all a break. It's 3:10, 3:30 until 3:45. 3:50. 3:50. Please be back in the jury room at 3:50.

THE BAILIFF: Are they going to be allowed to go out?

THE COURT: Yeah. You can go wherever you like.

THE BAILIFF: Okay.

THE COURT: Be back in the jury room at 3:50. Please do not discuss the case.

(Jury out at 3:08 p.m.)

MR. HUBBARD: Your Honor, are we --

THE COURT: Yeah. I'm trying to figure out. The State has rested. I'm sure you have some motions.

MR. FLOYD: Yes, sir.

THE COURT: And we're going to take a break here. Deal with a plea and then come back for that. In the meantime, we're going to be at ease for a couple of minutes. But you all take a break, at least a half an hour.

MR. FLOYD: At least a half hour, Judge?

THE COURT: Yes, sir.

(Court in recess for a short break.)

(Court in session after short

1 break.)

2 THE COURT: All right. The State is rested.

3 Mr. Floyd?

4 MR. FLOYD: Your Honor, at this time, the Defense
5 would move for a directed verdict acquittal. In making this
6 motion, I also renew all the motions I have made throughout
7 the trial, to include, Your Honor's denial of our motion for
8 a speedy trial. Your Honor's denial of our motion to
9 suppress the results of the search of the Defendant's
10 automobile. Your Honor's denial of our motion to exclude a
11 portion of the co-defendant, Mr. Phillips' statement,
12 spelling the word rapist. And Your Honor's denial of our
13 motion to exclude character evidence presented by ---

14 THE COURT: All of this is part of your motion for
15 directed verdict?

16 MR. FLOYD: Yes, sir, I'm just renewing all of
17 them to make sure they're not excluded.

18 THE COURT: Is that necessary. You have to renew
19 every objection? An objection is an objection.

20 MR. FLOYD: Well, I agree, Your Honor. I just
21 don't want it to be argued that I waived it. And, also, our
22 motion to exclude the seizure of the clothing of the
23 Defendant for a defective chain of custody. As to the
24 evidence itself, Your Honor, we would move for a directed
25 verdict acquittal because the evidence, even taken in the

1 light most favorable to the State, fails to establish the
2 offense of murder. In connection with this motion, I point
3 out to the Court the portions of the medical examiner's
4 testimony and argue to the Court that it fails to establish
5 that a murder was committed. Through the testimony of the
6 coroner or the medical examiner candidly admitted that the
7 Defendant's -- I mean the victim's enlarged heart was such a
8 serious condition that he could have dropped dead at any
9 time. Furthermore, the evidence was clear that none of the
10 injuries allegedly inflicted by the Defendant were fatal,
11 either singly or combined. Furthermore, the Defendant had a
12 blood alcohol or an ocular alcohol reading at the time of
13 death of a .342. And Laurie Shacker from SLED, the
14 toxicologist admitted that, according to the literature, .35
15 can stop ones breathing, can be fatal. Also, the medical
16 examiner, Dr. Ross, also admitted that she knew of people
17 who had, at least one person who had fatally possibly
18 poisoned by an alcohol reading of .34. It was the same as
19 the ocular reading of the victim in this case. Furthermore,
20 Your Honor, there's no evidence to show malice either
21 expressed or implied. There's no weapon. No talk of any
22 weapon used, dangerous weapon. The evidence is that the
23 Defendant was having a good time with the decedent, together
24 with another gentleman by the name of Mr. Phillips. That he
25 comes back into the apartment, that actually earlier this

1 Mr. Phillips had had a fight with the decedent, that the
2 Defendant actually broke up. The Defendant leaves the
3 apartment, comes back, finds the decedent naked and he made
4 some suggestive comments to him about homosexual activity,
5 comes at him, according to his statement. He defends
6 himself with some blows and rescues his friend from this
7 situation. The friend's passed out in his boxer shorts in
8 the decedent's bed.

9 So the evidence even taken in the light most favorable
10 to the State just fails to establish any type of malice or
11 ill will toward the decedent.

12 So it's our position that it just fails to establish
13 number one, the probable cause of the murder, that it was
14 murder. And number two, that if it was an intentional
15 killing that it was done with malice. Furthermore, Your
16 Honor, there is no evidence whatsoever to establish the
17 offense of burglary, which I think is one of the other
18 charges in the case because there is no evidence that there
19 was any -- and they were in the house at the invitation of
20 the decedent. So there's just no evidence at all that there
21 was any unlawful entry into the house or any entry into the
22 house with intent to commit any kind of crime.

23 Furthermore, Your Honor, we would argue that there's no
24 evidence to establish armed robbery. There is no evidence
25 at all, even if you take the evidence in the light most

1 favorable to the State. There was a Coca-Cola commemorative
2 box in the floorboard of the passenger's side of the
3 Defendant's vehicle. And there were coins in the pocket of
4 the co-defendant. The passenger seat, of course, was where
5 the co-defendant was seated. And the coins, of course, were
6 in the co-defendant's pocket. And the wallet was in the co-
7 defendant's pocket. So there's definitely -- no there's no
8 evidence at all establishing any connection between any
9 allegedly stolen items to the Defendant, nor any evidence to
10 establish that the items were taken as a result of any kind
11 of armed robbery. So for all these reasons we would move
12 that all three charges be dismissed.

13 THE COURT: Well, I deny the motion as to murder.
14 I think it's a jury issue. I'll hear from the State as to
15 the other two.

16 MR. GRAHAM: Your Honor, looking at the light most
17 favorable to the State, as to the burglary, Mr. Stalnaker
18 testified that the Defendant stated that he was going to
19 kick Mr. Stewart's ass, I believe was the quote that he used
20 or beat him up. I'm not exactly sure what he testified to.
21 He stated that he had ill will and expressed an intent to
22 hurt him. Other statements show that he is -- is a fact
23 hurt him.

24 THE COURT: I've denied the motion as to murder.
25 I'm hearing this as to other offenses.

1 MR. GRAHAM: As to the burglary, my argument on
2 that would be that he went into the house with the intent to
3 not only steal but to injure Mr. Stewart. There would be
4 two components need, that he was going in to injure -- the
5 jury could find that he went into the house with a
6 preconceived notion and based on that statement of Mr.
7 Stalnaker, I would also state that items were stolen from
8 the house. When he developed that intent, I would say
9 there's no evidence in there. There was testimony, however,
10 though, that -- it is confusing, but there was some
11 testimony that Mr. Prather stated he met him at the door and
12 pushed his way into the house, which would show that he was
13 going into the house with an intent to do something wrong,
14 such as strike ---

15 THE COURT: Well, let's take the armed robbery
16 first as opposed to burglary.

17 MR. GRAHAM: The armed robbery, Your Honor, there
18 was a knife found in his car. There was stolen merchandise.
19 There was Coca-Cola memorabilia found in his car. There was
20 a wallet that testimony had that was in Mr. Phillips
21 possession, but that Mr. Prather knew existed and knew that
22 it had been taken from the house, and ended up handing it
23 Donna Sharpe. So he was aware, admitting by his own words
24 that he knew the wallet was taken. By its proximity in the
25 floorboard of his car, there's circumstantial evidence that

1 he was involved with the stealing of that or aware of the
2 stealing of it. There were injuries to the back showing
3 that a sharp-bladed instrument, some kind of sharp
4 instrument had done the carving on the back. So a bladed
5 instrument being a deadly weapon was obviously used. And
6 the items stolen were stolen while that was occurring,
7 either right before or right after. So a deadly weapon was
8 employed. Additionally, under the circumstances, Your
9 Honor, a deadly weapon can be a fist. And the jury could
10 construe that no weapon was used, that his hands were a
11 deadly weapon, or some other object was used as a deadly
12 weapon. The State's contention is that -- and you're
13 allowing the murder charge. Malice -- I mean, he was
14 killed. Malice was used. The doctor gave her reasons to
15 the cause and there was a chain of cause. But the answer
16 that was used, because of the stress of the beatings. Those
17 could be considered to be a deadly weapon.

18 THE COURT: The burglary charge.

19 MR. GRAHAM: The burglary charge, Your Honor. The
20 only evidence in the record as far as the intent that he
21 went into the house, goes to the statement that he made to
22 Mr. -- I don't believe there's any information in the record
23 indicating that there was an intent to steal. I do,
24 however, believe that there is evidence in there with Mr.
25 Stalnaker saying that he was going to do physical injury to

1 -- he was going to do physical injury to Mr. Stewart in the
2 house. And if I could beg the Court's indulgence.

3 I guess this counterbalancing what Mr. Stalnaker's
4 saying to -- of several people testified -- we have the
5 officers testimony. You have Donna Sharpe, the nurse. She
6 testified that he made comments, other than -- Mr. Prather
7 made comments -- Mr. Prather is attributed to making
8 comments about how -- about Mr. Stewart. And said I'm going
9 to beat the shit out of him, I believe he said that he did
10 beat the shit out of him. I believe those words were words
11 or words similar to that were attributed to Mr. Jared
12 Prather.

13 THE COURT: All right.

14 MR. GRAHAM: Time-wise, Your Honor, we know that
15 Mr. Stalnaker -- excuse me. That when he was at the bar and
16 left -- you know, in the light most favorable to the State
17 -- at 2:00 when he left, he didn't have those injuries?

18 THE COURT: All right. In order prove burglary,
19 the State must prove the Defendant entered the dwelling
20 without consent and if a person enters a building or
21 dwelling in using deception, artifice, trick, or
22 misrepresentations, to get to consent, this is an entry
23 without consent. Next, the State must prove beyond a
24 reasonable doubt that the Defendant intended to commit a
25 crime, either a felony or a misdemeanor at the time of

1 entry. I think taking the evidence in the light most
2 favorable to the State, there is no burglary in this case.
3 They were together. Testimony in no way establishing any
4 type of unlawful entry, entry without any consent. I'm
5 granting the -- or any deception, trickery or anything else
6 that would establish the necessary element for the burglary.
7 I'm granting the motion as to the burglary charge. With
8 regard to the armed robbery charge, I think given the fact
9 of the carvings of the body, which had to have been done
10 with a weapon of some sort. I don't know in this instance
11 whether a fist constitute a deadly weapon or not. I haven't
12 really researched that sufficiently to talk that much on
13 that. But we have the knife carvings into the body. And a
14 knife being found in close proximity or underneath the items
15 that were taken from the residence. I'm denying the motion
16 for directed verdict on the armed robbery. All right.

17 Are you ready to go with your Defense?

18 MR. FLOYD: We're ready, Your Honor.

19 THE COURT: All right. Let's bring the jury.

20 (Off record discussion)

21 THE COURT: You're not leading off with the
22 Defendant, are you?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Okay.

25 MR. FLOYD: I've got a core witness I'm going to

1 go with first.

2 THE COURT: All right. Do y'all want me to
3 instruct the jury on that, the charges?

4 MR. GRAHAM: Court's discretion.

5 (Jury in at 4:55 p.m.)

6 THE COURT: All right. Ladies and gentlemen,
7 Thank you. Estimating time is impossible. Thank you.
8 We're ready to -- it is the Defense's turn. You've heard
9 the State's case. The case is proceeding at this point with
10 two charges, the charges being murder and armed robbery.

11 You may proceed.

12 MR. FLOYD: Thank you. Your Honor, we call Dr.
13 Thomas Richard Hall.

14 THE COURT: Dr. Hall.

15 (WHEREUPON, Thomas Richard Hall was
16 sworn to tell the truth.)

17 THE CLERK: Have a seat, Doctor. Once you're
18 seated, please speak up loud and clear stating your full
19 name on the record, spelling your last.

20 DR. HALL: My name is Thomas Richard Hall, H-A-L-L.

21 THOMAS RICHARD HALL - DIRECT EXAMINATION

22 BY MR. FLOYD:

23 Q And Dr. Hall, where do you work?

24 A I work at Lexington Medical Center, Emergency Room.

25 Q And what is your position there?

1 A I'm a staff physician in the emergency department.

2 Q And where were you educated?

3 A College was at the University of South Carolina. The
4 medical college was at the Medical University of South
5 Carolina in Charleston. And my training was at Richland
6 Memorial Hospital in Columbia, South Carolina.

7 THE COURT: I think you need to talk a little
8 louder for us, Doctor.

9 BY MR. FLOYD:

10 Q How long have you been an emergency room physician?

11 A Since 1986.

12 Q And how long have you been at Lexington Medical Center?

13 A Since 1992.

14 Q And have you ever given testimony in court?

15 A Yes, sir.

16 Q Have you been accepted as an expert in court in the
17 past?

18 A Yes.

19 MR. FLOYD: Your Honor, we would offer Dr. Hall as
20 an expert in the area of emergency medicine.

21 MR. GRAHAM: I'm sorry. I didn't hear?

22 THE COURT: That was in emergency medicine.

23 MR. GRAHAM: No objection, Your Honor.

24 THE COURT: All right. He is so qualified.

25 BY MR. FLOYD:

1 Q And Dr. Hall, were you working at Lexington Medical
2 Center back on April 22nd of 2005?

3 A Yes, sir, according to the record.

4 Q And would it assist you if I furnish you a record?

5 A Yes, please.

6 Q (Hands document to witness)

7 A Thank you.

8 Q Dr. Hall, on that day, did you have the occasion to see
9 the Defendant in this case, Mr. Robert Jared Prather?

10 A Yes, sir.

11 Q And can you tell us about what time you saw him?

12 A The portion of the medical record that I have doesn't
13 list the time that he presented. The dictation that I have
14 was timed at 2:17 p.m. So it would have been in close
15 proximity to that.

16 Q And what was the occasion of your seeing him, the
17 reason for your seeing him?

18 A He presented to the emergency room with a complaint of
19 chest pain. He was escorted by some police officers, I
20 believe two, who brought him for evaluation of that chest
21 pain. And they also asked me to see if there was any
22 evidence of any hand injuries that he may have sustained in
23 punching someone.

24 Q And did you examine his chest area?

25 A Yes, sir.

1 Q And can you tell us what you discovered in your
2 examination of the chest area?

3 A Yes. His chest was tender along the lower one-third of
4 the sternum, which is the breast bone. And it was tender
5 along the right costal margin, which is the area of
6 cartilage that holds the end of the ribs together that
7 attaches to the breast bone.

8 THE COURT: Doctor, I missed it. Whose records
9 are you testifying to this on now?

10 DR. HALL: Robert J. Prather.

11 THE COURT: All right. Thank you, sir.

12 BY MR. FLOYD:

13 Q So it was tenderness along the lower -- was it third or
14 half of the breast bone?

15 A Lower third.

16 Q And then tenderness along the lower rib area?

17 A Correct.

18 Q Now, at the police requests did you also do a close
19 examination of Mr. Prather's hands?

20 A Yes, sir.

21 Q And were you able to observe any type of injury,
22 abrasions, laceration, contusion, to the hand?

23 A No, sir, I did not.

24 Q Did you see anything on his hand?

25 A I did not see any evidence of injury on his hand.

1 Q Thank you, Dr. Hall. Answer any questions the State
2 may have for you.

3 THOMAS RICHARD HALL - CROSS-EXAMINATION

4 BY MR. GRAHAM:

5 Q Dr. Hall, what -- did you see any signs of injury or
6 trauma at all?

7 A Yes, sir. He had some scrapes or abrasions on his
8 right forearm. That's described as being the extensor
9 aspect, which is this side of the forearm, And the extensor
10 aspect of his upper arm, just above the elbow. So it would
11 be about here and here.

12 Q He denied that there was any trauma or injury to them;
13 is that correct?

14 A Could you clarify that? What type of ---

15 Q I don't know. I'm using your report.

16 A He'd complained of chest pain, but he did not describe
17 to me how he may have suffered an injury.

18 Q Well, what does trauma mean in medical terms? As an
19 emergency room doctor, what does trauma mean?

20 A Trauma would mean an injury.

21 Q Okay. Under the history of present illness, the end of
22 the second sentence. Didn't you dictate he denies any
23 trauma?

24 A Yes.

25 Q So he denied any injury; correct?

1 A Correct.

2 Q But yet he complained of tenderness along the chest
3 wall?

4 A Yes, sir.

5 Q But you didn't see any signs of injury of the chest
6 wall?

7 A Correct. Well, I found that he had tenderness. I did
8 not see any discoloration of the skin or swelling.
9 Tenderness would be a sign of possible injury.

10 Q So you felt with your hands on his chest wall and he
11 complained of tenderness in certain areas?

12 A Yes.

13 Q In those areas, you didn't see any sign of redness,
14 swelling, bruising, or injury?

15 A Correct.

16 Q Are you an expert in injuries? Is that your field of
17 study or is it in the treatment of acute injuries?

18 A More so evaluation and treatment.

19 Q When you looked at his hands, you didn't see anything
20 that needed treatment?

21 A Correct.

22 Q You didn't see any signs of bruising or swelling?

23 A Correct.

24 Q Would you agree with me that -- and what time did you
25 say this was that you saw him?

1 A I think this was between noon and 2:00 p.m.

2 Q Would you agree with me that he could have used his
3 fists to hit somebody ten, twelve hours before you saw him,
4 and they wouldn't -- conceivably not left a mark on his
5 hands?

6 A There are -- we see people in fights that come to the
7 emergency room that don't have any evidence of injury to
8 their hands.

9 Q But yet they present themselves as striking people in a
10 fight?

11 A Yes.

12 Q Thank you, Doctor.

13 MR. FLOYD: Just a couple, please?

14 THE COURT: Yes, sir.

15 THOMAS RICHARD HALL - REDIRECT EXAMINATION

16 BY MR. FLOYD:

17 Q Dr. Hall, where were these scrapes and abrasions on the
18 forearm?

19 A The extensor aspect, again, which is this part. And
20 this part above the elbow.

21 Q Okay. And would that be consistent with somebody
22 grabbing you by the arm?

23 A The extensor aspect of the arm injuries that we -- with
24 respect to fighting, we usually see as the protection,
25 raising the arm to deflect a blow. But that is usually more

1 of a bruise, which would be a swollen discolored area.
2 Whereas, a scrape, we would expect more from a friction
3 injury. But it could happen from that. It could also
4 happen from a fall or a bumping. That's a part of the body
5 that often encounters injury.

6 Q And did you say there were scrapes and abrasions?

7 A An abrasion is a medical term for a skin scrape.

8 Q Got you. Okay. And that was the right arm?

9 A Yes.

10 Q And, doctor, did you -- these notes that you're
11 referring to, are those notes that are made in the ordinary
12 course of the business at the hospital?

13 A Yes, sir.

14 MR. FLOYD: Your Honor, I'd like to offer this
15 into evidence as a Defendant's Exhibit.

16 THE COURT: What says the State?

17 MR. GRAHAM: No objection, Your Honor.

18 THE COURT: Without objection, admitted.

19 (Defendant's Exhibit No 3, hospital
20 doctor's notes, was marked and entered.)

21 MR. FLOYD: Thank you, Your Honor. I have no
22 further questions of Dr. Hall.

23 THE COURT: Yes, sir.

24 MR. GRAHAM: Thank you, Your Honor.

25 THOMAS RICHARD HALL - RECROSS-EXAMINATION

1 BY MR. GRAHAM:

2 Q Doctor, regarding the superficial abrasions on the
3 right arm from the extensor aspect or the forearm, show me
4 again where that is, please?

5 A The extensor aspect is this part of the arm, as the arm
6 goes this way. So it's along this part of the forearm.

7 Q And your testimony is that the abrasion was consistent
8 with friction or rubbing on something?

9 A Yes. Something brushing against it, more in the
10 direction that would be parallel to the skin, instead of ---

11 Q More of this way as opposed to that way?

12 A Correct.

13 Q So is it fair to say that you wouldn't characterize it
14 as a defensive wound where something was hitting the arm.
15 There was no sign of a bruise; correct?

16 A I think that it would -- there was no sign of a bruise.
17 But it would be -- it would be a result of an injury but not
18 -- but at an angle. So it would depend on what position his
19 arm was in.

20 Q But there's no evidence that's arm would was a
21 defensive wound. It could have happened if he fell and
22 rubbed on carpet?

23 A Correct.

24 Q Thank you, Doctor.

25 THE COURT: Thank you, sir. You may step down.

1 Next witness.

2 MR. FLOYD: Thank you, Your Honor. Your Honor, we
3 have a ---

4 (Mr. Floyd confers with Solicitor)

5 MR. FLOYD: Your Honor, we have a matter we
6 probably need to take up with Your Honor now.

7 THE COURT: All right. Ladies and gentlemen,
8 please step to the jury room for just a short while
9 hopefully.

10 (Jury out at 3:08 p.m.)

11 THE COURT: Your Honor, the matter that we need to
12 address at this point, and we had kind of a misunderstanding
13 with, there is a statement that was given by a gentleman by
14 the name of Ralph Jody Webb Becknell, given on April the
15 22nd of 2005. Mr. Becknell is dead. So there is no way to,
16 of course, to have here to testify. We requested that the
17 State allow us to put his statement into evidence. And, of
18 course, they do not consent to it. It's our position that
19 we'd like to offer this statement into evidence. And we
20 believe that it's -- we would argue that is admissible under
21 Rule 803 as it would be a present sense impression of the
22 existing medical, emotional and physical condition of the
23 person that made the Statement. Basically, what it's about,
24 Your Honor, is that Mr. Stewart had a telephone conversation
25 this evening, the evening of this incident with Mr.

1 Becknell. And I think you'll recall, and to quote Mr.
2 Rabon, Mr. Becknell was his very good friend of Mr.
3 Stewart's. And it's a one-page statement. And all it is
4 telling him about the phone call that was made about Mr.
5 Stewart to Mr. Becknell shortly after the tussle in the yard
6 and then in the house between Mr. Stewart and Joshua
7 Phillips.

8 THE COURT: You want to introduce a statement from
9 one dead person to another?

10 MR. FLOYD: Yes, sir. Your Honor, let me have it
11 marked so we will have it.

12 (Defendant's Exhibit No. 4, Mr.
13 Becknell's statement, was marked for ID.)

14 MR. FLOYD: And, Your Honor, I pass this up so
15 Your Honor can see it.

16 THE COURT: What says the State?

17 MR. GRAHAM: Your Honor, I don't believe that
18 there's any provision under the rules of evidence that allow
19 for its admissibility. It's hearsay. Mr. Becknell is dead.
20 He died before the first trial. So I believe Mr. Floyd, if
21 he wanted to call him was unable to call him at that time.
22 That's my understanding, at least. It doesn't qualify as
23 former testimony. It's a written statement, not a
24 deposition or made under oath. There's no evidence that he
25 wrote that believing that he had -- under a belief of

1 impending death. I don't see how its admissible.

2 MR. FLOYD: Of course, Your Honor, it does contain
3 both an excited utterance and present sense impression of
4 Gerald Stewart.

5 THE COURT: Well, under Rule 803 must the
6 declarant be available? It says the following are not
7 excluded by the hearsay rule, even though the declarant is
8 available as a witness. So must the declarant be available
9 or no? Well, of course, the declarant that you're talking
10 about is Mr. Stewart in this case, right?

11 MR. FLOYD: Well, actually, both of them are
12 unavailable.

13 THE COURT: Well, I know they're both dead.

14 MR. FLOYD: Under 803, I think that's availability
15 of declarant immaterial. So I think it would -- come in as
16 a present sense impression or excited utterance. And it
17 comes in under excited utterance and it comes in on its own
18 whether the declarant is available or not.

19 THE COURT: And the significance of what you're
20 trying to get, and it appears that this is testimony that
21 we've heard basically. That there was a fight in the yard
22 and he had suffered an injury. And you're trying to get in
23 the fact that he said that they'd apologized to each other
24 and that everything was fine between them. Is that what
25 you're trying to get in or what's the significance of this

1 statement?

2 MR. FLOYD: Well, that would be -- also, Your
3 Honor, I think it's significant because he talks about the,
4 how his ribs were hurting. And, of course, there was some
5 testimony from the medical examiner that he had fractured
6 ribs.

7 THE COURT: Oh, I see.

8 MR. FLOYD: It could have happened at that time,
9 rather than at a later time.

10 THE COURT: Mr. Graham?

11 MR. GRAHAM: Your Honor, present sense impression
12 in 803(1) say a statement describing or explaining an event
13 or condition made while or immediately after the declarant
14 was perceiving an event or condition or immediately
15 thereafter. The incident that Mr. Becknell described in his
16 statement he says happened on the 21st between 9:15 and
17 10:00 p.m. And the statement's not taken until the next
18 day. It would have had to have been after the police began
19 their investigation, which would have been after 5:30 a.m.
20 in the morning, at the earliest. I mean, I doubt that it
21 was that early. So you're talking -- I don't know how many
22 hours that is. At least seven or eight hours at a minimum,
23 probably much more than that. He didn't make this statement
24 -- this applies to, I believe, somebody standing on the
25 street corner and seeing a car wreck and making a comment

1 about what happened. I mean, that's what presence sense
2 impression is. I don't think it qualifies as a preceding
3 event or immediately thereafter. 803(2), excited utterance,
4 I think was the other theory that Mr. Floyd was stating, I
5 don't think there's anything in the statement itself that
6 talks about being a startling event or there being any
7 stress or excitement caused by the event. I don't see that
8 it's admissible.

9 MR. FLOYD: No, of course, when Mr. Becknell makes
10 the statement it is kind of irrelevant. Those statements
11 that we're trying to get in, are those of the decedent, Mr.
12 Stewart. And they were made between 9:15 and 10:00 p.m. on
13 the night of all this was going on. And shortly after the
14 incident involving a struggle, some kind of struggle between
15 the decedent and Joshua Phillips.

16 THE COURT: All right. As part of the record, I'm
17 excluding the statement. It's not admissible under the
18 section argued by counsel. There's no way to cross-examine
19 this witness who's dead. And in my finding, the declarant
20 and the person he was talking to is dead. That would turn a
21 trial on its head if we can just include such as this and
22 put in the trial. So I'm excluding it. It is marked for
23 the record.

24 MR. FLOYD: Thank you, Your Honor. Just give us
25 one moment.

1 THE COURT: Who do you have next, Mr. Floyd?

2 MR. FLOYD: Your Honor, by agreement with the
3 Solicitor's office, we want to put in the testimony of Mr.
4 Barry Everette who is not here, but he was here for the last
5 trial and was cross-examined.

6 THE COURT: Something you're going to read to the
7 jury.

8 MR. FLOYD: It's also something to have someone
9 sit up there in his place.

10 THE COURT: All right. That's what you're ready
11 to do now?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: Y'all are ready for the jury?

14 MR. FLOYD: Yes, Your Honor.

15 MR. HUBBARD: One question, that I -- I'm sorry.

16 (Solicitor confers with Mr. Floyd)

17 MR. HUBBARD: Your Honor, what we're agreeing to
18 do, there's a witness that Mr. Floyd can't find that
19 testified back in 2009. He was subject to cross-examination
20 by our office. Even though he's not dead and he can't find,
21 we're in agreement to let him read that testimony into the
22 record as it was given in 2009.

23 THE COURT: All right. How many pages is that?
24 And just based on your witness list, then you have Ms. Pam
25 Frazier?

1 MR. FLOYD: Your Honor, the only other witness
2 will be the Defendant.

3 THE COURT: All right.

4 MR. FLOYD: Pam Frazier's going to sit up there
5 and read this.

6 THE COURT: All right. And for ---

7 MR. FLOYD: It's ---

8 THE COURT: Since it looks kind of thin, do you
9 want me to examine Mr. Robert Prather at this time regarding
10 his right to testify and not testify?

11 MR. FLOYD: Whenever it's convenient for you,
12 Judge.

13 THE COURT: Well, we can do that now since the
14 jury's out.

15 MR. FLOYD: Yeah. It's only about nine pages.

16 THE COURT: All right. Mr. Prather, if you'll
17 come stand right in front of me right here.

18 MR. PRATHER: (Complies)

19 THE COURT: All right. If you would swear him,
20 please?

21 (WHEREUPON, Robert Jared Prather
22 was sworn to tell the truth.)

23 THE COURT: All right. Mr. Prather, we are in you
24 Defense in this case, and we are at or soon will be at the
25 stage of the trial where you will have the right to take the

1 stand and testify. And at this time, I'm going to explain
2 to you certain of your rights. If you do not understand
3 anything that I say, please let me know and I'll be happy to
4 explain it in more detail. Do you understand?

5 MR. PRATHER: Yes, sir.

6 THE COURT: Now, you have the right to claim the
7 protections given to you by the Fifth Amendment to the
8 Constitution of the United States. The Fifth Amendment
9 states, in part, that no person shall be compelled in any
10 criminal case to be a witness against himself. This means
11 that you cannot be required to testify in this case. You
12 do, however, have the right to testify on your own behalf if
13 you would like to, but no one can make you testify. This is
14 a personal right and no one can waive this right except you.

15 Now, if you decide to testify, you would be subject to
16 the same rules that govern other witnesses. And you may be
17 examined and cross-examined on any relevant issue in this
18 case. In addition, if you have any convictions involving
19 dishonesty or false statement or for crimes punishable by
20 more than one year imprisonment, and I determine that the
21 probative value of admitting this evidence outweighs its
22 prejudicial effect to you, the Solicitor then will be able
23 to introduce your record to attack your credibility.

24 Now, if you decide to testify, this decision on your
25 part must be freely, voluntarily, and intelligently made,

1 with full knowledge of the protections given to you by the
2 Fifth Amendment and the consequences of your decision to
3 testify.

4 Now, if you decide not to testify, I will instruct the
5 jurors that they cannot give the fact that you did not
6 testify any consideration whatsoever. And that there is to
7 be absolutely no prejudice to you because you did not
8 testify. Now, it's left entirely up to you whether or not
9 you testify. You certainly may talk to Mr. Floyd, your
10 family, friends, or anyone else that you might want to talk
11 to, but the final decision will be left entirely up to you.
12 Do you understand what I've explained to you?

13 MR. PRATHER: Yes, Your Honor.

14 THE COURT: Do you have any questions about what
15 I've explained to you?

16 MR. PRATHER: No, sir.

17 THE COURT: You've talked with Mr. Floyd about
18 whether or not you should testify?

19 MR. PRATHER: Yes, sir.

20 THE COURT: Have you made up your mind as to
21 whether or not you're going to testify?

22 MR. PRATHER: Yes, sir.

23 THE COURT: All right. And you plan to testify?

24 MR. PRATHER: Yes, sir.

25 THE COURT: All right. Now, we're going to take

1 this other testimony and if you decide you need to talk to
2 Mr. Floyd anymore about it, you feel free to do so prior to
3 actually doing so.

4 MR. PRATHER: Thank you, sir.

5 THE COURT: Thank you.

6 All right. Let's bring the jury.

7 (Jury in at 3:40 p.m.)

8 THE COURT: Madam Forelady, you still doing all
9 right?

10 MADAM FORELADY: Hanging in there.

11 THE COURT: Hanging in there. We're all doing the
12 same. Very good.

13 Ready for the next witness, Mr. Floyd?

14 MR. FLOYD: Yes, Your Honor. This is by agreement
15 with the Solicitor's office. We're going to be putting in
16 the testimony of a gentleman by the name of Barry Everette,
17 who we could not locate. His sworn statement was taken at
18 an earlier time. And so we're just going to publish that at
19 this time.

20 THE COURT: Yes, sir.

21 All right. Ma'am if you'll come and sit right in the
22 chair here.

23 (Answers of Barry Everette's
24 testimony ready by Pam Frazier.)

25 BARRY EVERETTE - DIRECT EXAMINATION

1 READ BY MR. FLOYD:

2 Q Mr. Everette, where do you live?

3 A Right now I live at Lake Water Apartments.

4 Q Where did you live back in April of 2005?

5 A At 1731 Decree Avenue.

6 Q And did you know someone who lived close by named
7 Gerald Stewart?

8 A I didn't know him personally?

9 Q Where was his house in relation to yours?

10 A Right next door.

11 Q Now, do you recall if you were in fact home on April
12 21st of 2005?

13 A Yes, I was.

14 Q Did something happen at his house that brought your
15 attention to it?

16 A Yes.

17 Q Can you tell us about what time of day or night it was?

18 A It was dark out. I think around 9:30, 10:00.

19 Q Where were you at that time?

20 A I was leaving my house to go to a friend's house.

21 Q What was it that caught your attention?

22 A I heard loud screams coming from next door.

23 Q So what did you do at that time?

24 A I went back inside. I couldn't see what was going on
25 from where my truck was parked. So I went back inside to

1 look through some windows.

2 Q What did you see at that time?

3 A I seen my neighbor laying on the ground. Another
4 gentleman kind of standing over him. And then another
5 gentleman standing in the back door of the house.

6 Q And then what did you do next?

7 A I observed the -- my neighbor try to get up a few times
8 and fall back over. The one guy who was standing over him
9 seemed to have an aggressive nature. And then at that
10 point, I left the window to go use the telephone.

11 Q Now, one young boy he was involved with in some way in
12 an aggressive manner. And you saw another young boy at the
13 door. Do you see the other person assist Mr. Stewart?

14 A I'm sorry. I didn't understand you.

15 Q Did you see the other gentleman assist Mr. Stewart at
16 any time?

17 A Mr. Stewart being the neighbor?

18 Q Yes?

19 A Not the first time I went to the window. The second
20 time I did.

21 Q What did you see then?

22 A I seen the gentleman that was standing next to the back
23 door help him in the house.

24 Q That's the one that wasn't being aggressive?

25 A Correct.

1 Q Now, did you know any of the people who were involved?

2 A No, I did not.

3 Q So you could not identify anyone?

4 A I cannot.

5 Q You just know Mr. Gerald Stewart as your neighbor?

6 A Yes.

7 Q And there were two others, two young boys?

8 A Correct.

9 Q Thank you, Mr. Everette.

10 MR. FLOYD: That's all I have.

11 BARRY EVERETTE - CROSS-EXAMINATION

12 READ BY MR. GRAHAM:

13 Q How are you doing Mr. Everette?

14 A Fine.

15 Q You don't know whether this one was the aggressor or
16 not, do you?

17 A No, I don't.

18 Q You gave a statement to the police?

19 A Yes, sir.

20 Q I just want to ask you a few things. You were -- this
21 was on a Thursday, right? Was this on April 21st?

22 A Yes, sir.

23 Q Was this the day before you found out that Gerald
24 Stewart, your neighbor was dead?

25 A Correct.

1 Q If I were to tell you that that was a Thursday, would
2 you believe me?

3 A I know it was a weekday.

4 Q Okay. And what were you doing that night?

5 A I was leaving my house, going to a friend's house.

6 Q Okay. And you heard some commotion next door, is that
7 what ---

8 A Correct.

9 Q When you looked out, what did you see exactly?

10 A I seen my neighbor laying on the ground and another
11 gentleman kind of standing over him.

12 Q Okay.

13 A And then, like I said before, another gentleman was
14 close to the back door, was kind of observing what was going
15 on.

16 Q All right. And did you form an opinion as to what
17 condition your neighbor was in?

18 A I did.

19 Q What condition was that?

20 A He seemed intoxicated.

21 Q How intoxicated?

22 A Pretty intoxicated to where he couldn't stand up.

23 Q I think in your statement you said that he was very
24 drunk?

25 A That's correct.

1 Q Okay. And I think you said that he tried several times
2 to stand up but he couldn't stand up?

3 A Correct.

4 Q Real drunk, correct?

5 A Correct.

6 Q And one of the other two guys was standing around him;
7 correct?

8 A Correct.

9 Q And then that guy ends up going into the house;
10 correct?

11 A Correct.

12 Q Then the other guy comes over and helps him get up and
13 they go back in the house; correct?

14 A When I walked back to the window after using the
15 telephone, the other gentleman was helping him in the house.
16 He had his arm around him and was helping him in the house.

17 Q Okay. And at that point, you thought everything had
18 calmed down; correct?

19 A Correct.

20 Q And you didn't call the police?

21 A No, I did not.

22 Q So you really didn't think it was that big a deal, did
23 you?

24 A Not after seeing him helping him back in the house, no.

25 Q You knew your neighbor a little bit; right?

1 A I had said hello to him a few times but I didn't really
2 know him.

3 Q You would say you were acquaintances but not friends;
4 is that right?

5 A I'd call him a next door neighbor. Other than that,
6 other than just saying, hi, going out to get mail, I didn't
7 really carry on too many conversations with him.

8 Q Right. You knew who he was. He knew who you were?

9 A Correct.

10 Q Okay. But you all did not go out and socialize, go to
11 dinner, have a drink, anything like that?

12 A No.

13 Q Okay. You knew him well enough to know that he had a
14 problem with alcohol?

15 A Yes.

16 Q You had seen him drinking before; correct?

17 A Correct.

18 Q All right. And so him being drunk in his house was not
19 something that caused you any alarm?

20 A No, it wasn't.

21 Q And you didn't call the police as a result of what you
22 had seen?

23 A No, I didn't.

24 Q Now, where were they?

25 A In the back yard.

1 Q In the back yard?

2 A Yes. There was like a little concrete deck as you left
3 the back door.

4 Q Uh-huh (affirmative).

5 A And Gerald was kind of laying off that concrete slab.
6 I could show you if you had a picture.

7 Q Yes, sir. I do. I'm just going to flip through. And
8 you stop me when you can and when you think it's -- I
9 believe these are all of the outside.

10 A There.

11 Q Are you talking about the carport slab or pad?

12 A No, it would be in this general area. This is the
13 driveway, I think.

14 Q It is.

15 A And the back path would be off of that.

16 Q Okay. And I need you to do this. Turn around and do
17 that again.

18 A This is ---

19 Q This is the driveway area?

20 A Yes.

21 Q And the path you were talking about would be back here?

22 A It comes around here and goes to the back of the house.
23 There is a door back there.

24 Q And you were talking about this area?

25 A Correct.

1 Q Were you on the carport side of the house or the other?

2 A The other side of the house.

3 Q Okay.

4 A My house would be on this side of his house.

5 Q Okay. And just for the record we were referring to
6 State's Exhibit 6. And now we're referring to State's
7 Exhibit 4, which is the dead-on view of the house. The
8 carport is on this end; correct?

9 A Correct.

10 Q And your house was on this side?

11 A Correct.

12 Q And they were out behind, sort of behind where the
13 chimney is?

14 A It would be probably directly behind this area here, to
15 the left of the carport.

16 Q Directly behind this area here?

17 A Correct.

18 Q And this area here, is in the back yard; is that
19 correct?

20 A Correct.

21 Q The grassy area back there?

22 A I believe there was a concrete pad back there, but the
23 rest of it was grass, yes.

24 Q Okay. Did you ever actually see any blows that were
25 exchanged?

1 A No, I did not.

2 Q So you don't actually have any dead how the neighbor
3 ended up on the ground?

4 A I do not.

5 Q Could he have fallen down?

6 A Could have.

7 Q From what you saw?

8 A He was down on the ground and there was screaming.
9 There was someone screaming, screaming.

10 Q Okay. What time of the day or night was this, Mr.
11 Everette?

12 A It had just gotten dark, probably 9:30, 10:00,
13 something like that.

14 Q All right. And this was April 21st; correct?

15 A Correct.

16 Q And it had just gotten dark you say?

17 A Yes.

18 Q Okay. Thank you, Mr. Everette.

19 MR. FLOYD: No further, questions.

20 THE COURT: All right. Thank you. Your next
21 witness, please?

22 MR. FLOYD: Your Honor, may we approach?

23 THE COURT: Yes, sir.

24 (Off the record bench conference with counsel and the
25 Court.)

1 THE COURT: All right. Ladies and gentlemen, we
2 are going to break for the day. We would like to have you
3 back 9:00 a.m., tomorrow morning at 9:00 a.m. Thank you
4 very much. Good evening. Please do not discuss the case.

5 (Jury out at 4:07 p.m.)

6 THE COURT: All right. We'll take our seats here
7 at 9:00 a.m. tomorrow morning. So we'll see y'all then.

8 (Court in recess November 28, 2012
9 at 4:07 p.m.)

10 (Court in session November 29, 2012
11 at 9:02 a.m.)

12 THE COURT: Yes, sir.

13 MR. FLOYD: your Honor, I just have one Motion in
14 Limine to prevent the State from asking the Defendant about
15 his military service. He was discharged from military
16 service for cocaine use.

17 THE COURT: All right.

18 Anything from the State?

19 MR. HUBBARD: Your Honor, I would say that's fair
20 game, particularly if drug use is involved, but I'd leave it
21 to the discretion of Your Honor. In that last case Mr.
22 Floyd brought up military service. So it's whatever Your
23 Honor --

24 THE COURT: Well, what is the relevant or not
25 relevant is based on the testimony in the record? If they

1 -- obviously the person, bad acts or not, admitted to prove
2 or disprove the facts in issue in this case, but it all
3 depends on the testimony. I can't give an advisory ruling
4 on it now.

5 MR. HUBBARD: And, Your Honor, I'll be very
6 careful. Just so Mr. Floyd knows, if his clients opens the
7 door and obviously I know I'm taking a chance if I step
8 there. I don't want to mess up, particularly after
9 everything we've been through. So I'm not going to be a
10 bull in a china shop, so to speak.

11 Just so Mr. Floyd knows if his client -- I know
12 you can't give an advisory ruling, I'm just letting Mr.
13 Floyd know that if his client doesn't go there and if the
14 door is not open I won't go there.

15 THE COURT: All right. Bring the jury in.

16 (Jury in at 9:08 a.m.)

17 THE COURT: Good morning, Madam Forelady and
18 members of the jury. Your next witness, please.

19 MR. FLOYD: Your Honor, Defense calls Robert Jared
20 Prather.

21 (Whereupon, Robert Jared Prather
22 was sworn to tell the truth.)

23 THE CLERK: Have a seat, please, sir. Once you're
24 seated state your full name, spelling your last on the
25 record.

1 MR. PRATHER: Robert Jared Prather, P-r-a-t-h-e-r.

2 ROBERT JARED PRATHER - DIRECT EXAMINATION

3 BY MR. FLOYD:

4 Q And what name do you go by?

5 A Jared.

6 Q Jared, where do you currently reside?

7 A In Batesburg, South Carolina.

8 Q And what do you currently do?

9 A I'm a full-time student at Midlands Technical College.

10 Q How old are you now?

11 A I'm thirty.

12 Q And how old were you back in April 2005?

13 A Twenty-two.

14 Q And back then were you working or going to school or
15 what were you doing?

16 A I was unemployed.

17 Q Are you married or single?

18 A Single.

19 Q Who are these people over here with you?

20 A In the front is my mother. To the left of her is my
21 girlfriend. Behind them is my grandfather and grandmother.

22 Q Now, Jared, do you recall the events that happened back
23 on April 22, 21 of 2005?

24 A Yes, sir.

25 Q Now, did you know Gerald Stewart?

1 A Vaguely.

2 Q And where did you first meet Gerald Stewart?

3 A I met Gerald Stewart at Calloways. I was introduced to
4 him by Josh Phillips.

5 Q And when was that in connection with, in relation to
6 April 22?

7 A About a month before.

8 Q And did anything develop during that meeting that
9 caused you to see him again?

10 A Yes.

11 Q Could you tell the jury what that was?

12 A I had gotten a fine in Richland County, and the night
13 that I first met him, we were shooting pool. I was with a
14 group of friends and Josh was shooting pool with Gerald
15 Stewart and we were talking and I mentioned that I had a
16 fine in Richland County and Gerald said that he knew a Judge
17 in Richland County that could reduce the fine for me.

18 Q And did you follow-up on that with him?

19 A I didn't really. About a week later I was with some
20 friends again shooting pool and Gerald Stewart showed up and
21 he said he was looking for Josh to give this note to him
22 about me meeting the judge. It had his phone number and
23 stuff on it.

24 Q And was that the note that was in your wallet?

25 A Yes, sir.

1 Q And did you have conversations with him at that time or
2 what happened then?

3 A I called him roughly maybe about two weeks later about
4 it, and we agreed to meet and go see the judge one Saturday
5 morning.

6 Q And did you do that?

7 A We did.

8 Q And how was that accomplished?

9 A Excuse me?

10 Q How did you go about doing that?

11 A I picked him up in front of his home and we went and
12 saw the judge and I dropped him back off in front of his
13 home.

14 Q Did you go into his home at that time?

15 A No, sir.

16 Q What happened on April 21?

17 A On April 21, that night I was shooting pool with a
18 group of friends -- Oh, the 20 or the 21?

19 Q The night before this happened.

20 A The night before this happened; okay.

21 Q That would be the 20, I guess?

22 A The 20. I was shooting pool at Calloways with a group
23 of friends. Joshua Phillips was there with his new
24 girlfriend. She left and he joined my group of friends.
25 Eventually my group of friends left and me and Josh stayed

1 shooting pool. He asked me if I could give him a ride to
2 his brother's apartment and I said, yes. And he said well,
3 I think my brother's having a get-together and some friends
4 over anyway. If you want to hang out, that's cool. And so
5 I took him to his brother's apartment and hung out with them
6 all night.

7 Q And where was his brother's apartment?

8 A At woodbine Apartments off Platt Springs Road.

9 Q And is that in the general vicinity of where Gerald
10 Stewart's place is?

11 A It's probably about five or six blocks away, maybe.

12 Q And did you stay all night there at his brother's
13 apartment?

14 A Yes, sir.

15 Q Now what happened the next morning?

16 A The next morning we woke up around 11:00 or so, and we
17 didn't have anything to do. We just sat around talking and
18 hanging out for a little bit. He said, well, you want to
19 find something to do? I said, that's fine. He said, well I
20 think I know somewhere we can go and play cards and I think,
21 you know, they might be having a cook-out of something. I
22 was like, all right. So he called somebody and I was like
23 where are we going? He was like, well, you know that guy
24 with the judge. I said, well, okay. And so we went over
25 there.

1 Q How did y'all get there?

2 A In my car.

3 Q And what kind of car did you have?

4 A A 1987 Toyota Camry.

5 Q What time did y'all arrive at Mr. Stewart's home?

6 A Probably around 1:00 or so.

7 Q What happened when you got there?

8 A We knocked on the door, he let us in. We pretty much
9 just hung out and started drinking.

10 Q What were y'all drinking?

11 A I was drinking Bud Light, beer, and they started
12 drinking whiskey.

13 Q Did you have to go get the beer and the whiskey?

14 A No, sir.

15 Q So after y'all were there for a while, what happened
16 then?

17 A Well, they ran out of whiskey so we went to the store
18 and got some more whiskey for them.

19 Q Who drove?

20 A I drove. We all went.

21 Q All three of you went?

22 A Yes, sir.

23 Q Were the three of you the only ones that went?

24 A Yes, sir.

25 Q Were the three of you the only ones in the house at

1 that time?

2 A Yes, sir.

3 Q Now, what happened throughout the day, what were y'all
4 doing?

5 A Throughout the day just hanging around doing nothing,
6 talking, joking. You know, laughing. We were having a good
7 time. Just drinking.

8 Q Did anyone else eventually arrive at the house?

9 A Yes, the roommate.

10 Q Is that Ron Rabon?

11 A Yes, sir.

12 Q What time did he arrive at the house?

13 A Five -- I'd say around 6:00.

14 Q Did anything happen then?

15 A No.

16 Q Did he join in the gathering at that time?

17 A Yes, sir. I think he came in, went to his room and
18 changed, I guess, out of work clothes and came in there and
19 started drinking with us.

20 Q Were y'all playing cards also?

21 A We were playing cards at that time.

22 Q Now, did Mr. Rabon -- did y'all leave the house again?

23 A Yes. To get more whiskey.

24 Q When was the next time you left?

25 A When? Probably about 8:00 or so.

1 Q This would be 8:00 o'clock at night?

2 A Yes.

3 Q Where did you go then?

4 A We went back to try to get more whiskey, but we ended
5 up getting like a 12 pack of beer.

6 Q And did you come back and continue the party?

7 A Yes, sir.

8 Q At this point in time was there any kind of ill
9 feelings going on between anybody?

10 A Not that I'm aware of.

11 Q Okay. What happened after y'all got back?

12 A Well, we went back to playing cards and Gerald said,
13 hey, if you ever want to make some extra money I've got this
14 building in the back yard that's got furniture and all kinds
15 of stuff. Like he was using it for storage. He was like,
16 y'all can come on one weekend and clean it out and I'll pay
17 you. And he was like, you know what, I'll just show it to
18 you now. And so they got up, we all got up. I went to the
19 fridge and got another beer and Josh and Gerald waled
20 outside.

21 Q What happened when you walked outside?

22 A When I walked outside Gerald and Josh were on the
23 ground rolling around and Josh was screaming at him and
24 hitting him in his face and chest and stomach and where
25 ever.

1 Q What did you do then?

2 A I was kind of surprised, because I had no idea what was
3 going on, but I broke it up and Josh got off of him, and I
4 stood between them so that neither could do anything and
5 Gerald was still on the ground.

6 Q Did you help him get up?

7 A I did.

8 Q And once you helped him get up what happened then?

9 A He was kind of wobbly. I don't know if that was from
10 all the whiskey or the fight that just happened, but I
11 helped him back into the house.

12 Q And did you have physical contact with him at that
13 time?

14 A I did.

15 Q And how were you helping him get back?

16 A I had him like by the shoulder.

17 Q And what happened when you got him back in the house?

18 A When we got back in the house we went in the living
19 room and he sat down on the chair and Josh was kind of at
20 the edge of the kitchen. He had come in behind me. And
21 Gerald was dabbing at his mouth with his hand. He said
22 something and Josh jumped across the room and hit him in his
23 mouth again. And he slid off the chair onto the floor.

24 Q What did you do at that point?

25 A At that point I was just like, whoa, whoa, whoa. I was

1 like you've got to get out of here. Just go into the
2 kitchen or something, you know. And I helped Gerald back on
3 the chair and I went to the bathroom and got him some tissue
4 for his mouth.

5 Q Then what happened?

6 A Then I talked with Josh about what's going on, you
7 know. He was upset and he was crying. He was really upset
8 just over silly something. I don't know. I've seen fights
9 before and nobody is really crying like that. He never told
10 me. He wouldn't tell me what was going on.

11 Q And did thing calm down after that?

12 A They did. Gerald and Josh talked and, you know, they
13 patted each other on the back and stuff. Seemed like they
14 patched -- worked it out or patched it up.

15 Q What time was it by now?

16 A By now it was about around 10:00 or so. Maybe a little
17 after 10:00 or something.

18 Q So what happened after that?

19 A After that, Ron Rabon, the roommate, came up, he
20 started talking with us and he asked us if we knew where to
21 get some cocaine at.

22 Q And did y'all know where to do that at?

23 A And Josh said yeah a guy sells it behind his brother's
24 apartment.

25 Q And so what happened then?

1 A So I figured this would be a good reason to just leave
2 and get Josh out of there anyway. So we went to Josh's
3 brother's apartment with the roommate to get cocaine and
4 drop Josh off.

5 Q And how much cocaine was purchased?

6 A Like \$20.

7 Q And what happened to it?

8 A Me and Ron Rabon did it.

9 Q Where did y'all do it?

10 A In my car.

11 Q And from there what happened?

12 A From there Josh and his brother got into some big
13 argument because I guess Josh was all riled up. His brother
14 was trying to talk to him. I don't know, they were just
15 really mad at each other. He told him, you know, he shoved
16 this box at him of stuff and he was like, well, take your
17 stuff. Josh threw the stuff in my car and we went back to
18 Gerald's.

19 Q Now, what time would it have been now?

20 A Now would have been -- leaving there would probably
21 have been about 11:15 or so.

22 Q When you got back to Gerald's house what happened then?

23 A When we got back to Gerald's house we just went in. I
24 think the roommate went to his room. We -- Gerald put in a
25 movie, Tombstone, a Wyatt Earp movie and we sat there on the

1 couch watching the movie. Josh was nodding off. So I
2 scooted over kind of like and handed him a pillow and he
3 passed out on the couch.

4 Q What did you and Gerald then do?

5 A We just finished watching the movie.

6 Q When the movie was over about what time would you say
7 it was then?

8 A Probably about 12:30 or so. Could have been later.

9 Q What happened then?

10 A Then Gerald started talking about he wanted to go out
11 and do something. I kind of was like, I don't have any money
12 to spend to go out and Josh is here asleep on the couch, but
13 he convinced me. So I said, well, first let me take this --
14 Josh's stuff back to his brother. If we're going to leave
15 and be driving around I don't want -- and we've been
16 drinking, I don't want this guy's stuff in my car. So I
17 left and went back to Joshua's brother's apartment.

18 Q How long were you gone then?

19 A I was gone maybe 45 minutes to almost an hour.

20 Q When you got back did you go in the house?

21 A No, I didn't.

22 Q What did you do when you got back?

23 A I pulled up and I honked the horn.

24 Q And what happened then?

25 A And nobody came out.

1 Q So what did you do then?

2 A I, honked the horn again and eventually Gerald came out
3 and got in the car and we drove off.

4 Q And where did you go?

5 A First we went to Sego to State Street. So we went to
6 State Street and he said to just pull up along this -- the
7 parking along the road in front of like that café that
8 Mangia Mangia or whatever. We got out and said I want to see
9 if somebody's here. He got out and walked down the sidewalk
10 and went in somewhere.

11 Q How long was he gone?

12 A Maybe 10 minutes, maybe.

13 Q Did you get out at that time?

14 A No, sir.

15 Q And what -- when he returned to the vehicle what did
16 you do then?

17 A He said, well, I know somewhere we can go and so he
18 just basically gave me turn left, step-by-step directions
19 and we headed up to Uncle Louie's.

20 Q And did you go inside Uncle Louie's?

21 A Yes, sir.

22 Q What did you do once you got inside?

23 A We walked up to the bar and sat down. He ordered some
24 beers and you know we sat there drinking the beers. Then he
25 ordered four shot, two shots of vodka. I know he ordered

1 multiple rounds of vodka and not so many beers. I told him
2 I don't drink vodka. He was like, go ahead and drink it. I
3 was like, no, I don't drink vodka. So he drank all the
4 vodka.

5 Q Did he eventually leave that bar?

6 A He did. I went to the bathroom. I came back and he
7 was gone. I asked the bartender where'd the guy who I was
8 here with go? He was like, oh, he went across street to use
9 the ATM. And he's like he'll be back and I was like, Okay.
10 So I just sat there finishing my beer.

11 Q Then what happened?

12 A And then the bartender was like where's your buddy at,
13 is he coming back. I was like, I don't know. So he kind of
14 -- was standing there but not really at the door, and we
15 looked out the door and he was sitting in my car.

16 Q Now, did you have some conversation with the bartender
17 about the tab?

18 A I did. He said well, your friend has a tab. I said,
19 well, I don't have any money on me and I told him that. And
20 he's like -- and he's giving me this look like well somebody
21 needs to pay.

22 Q Did you say anything to him?

23 A I was just remarking, I was like, somebody should kick
24 his ass for that.

25 Q Did you mean you were going to go out and kick his ass?

1 A No. No.

2 Q Did it mean that you were made enough about it that you
3 were going to beat him up?

4 A No, because I mean, he was like, no, don't even worry
5 about it. He does it all the time. So I wasn't worried
6 about that.

7 Q So what happened after that?

8 A Well, we -- it took us a while to get back to his
9 house. On the drive back he was like, hey, you think you
10 can get me some cocaine from that guy that you got Ron some
11 cocaine from. And I said, well, I don't really know the
12 guy. I've been introduced to him, you know, and talked to
13 him maybe twice. I don't know him like that. He was like,
14 well, can you see. I was like, yeah, I can see. He was
15 like, okay. So when we got to his house he got out and I
16 drove off to go talk to the guy.

17 Q Now, were you able to get any more cocaine?

18 A No.

19 Q How long were you gone for that?

20 A I was gone probably about 30 minutes maybe.

21 Q Now, were you watching you watch through all this?

22 A No. Not at all.

23 Q What happened when you got back to Stewart's house?

24 A When I got back to his house I went into the front. He
25 had told me don't knock, just come on back in when you come

1 back. So I went in and I was like, hello, you know,
2 announcing myself and letting him know that I was there. I
3 didn't get any answer. And I went through the kitchen and
4 came through the living room. I was like, hello, hey. He
5 came out the bedroom completely naked with an erection and
6 clothes in his hand.

7 Q What did you do then?

8 A I just kind of stood there. Like, everything went in
9 slow motion.

10 Q What happened?

11 A He was looking at me and he started asking me if I knew
12 Josh liked his dick sucked. And asking me if I'd ever
13 fucked Josh, and he was putting his clothes on, and then he
14 -- I was like what the fuck is going on. And he walked
15 towards me. I was like where is Josh. He told me, don't
16 worry about Josh. Josh is taken care of. And I was like,
17 this isn't right, something's not right about this. And I
18 was like, I think I'm going to take Josh home. He said,
19 you're not going any fucking where.

20 Q What happened then?

21 A I went to move and he grabbed my arm like this, and he
22 had me kind of like on one foot.

23 Q And was it your right arm that he grabbed?

24 A My left arm.

25 Q What happened then?

1 A I told him if he didn't let me go I was going to go get
2 the police, and I was taking Josh and we were going to go
3 get the police.

4 Q And what happened then?

5 A He told me that I wasn't going to do a god-damned
6 thing. I was going to sit down and I was going to shut the
7 fuck up.

8 Q And what happened then?

9 A And I hit him.

10 Q Where did you hit him?

11 A I hit him, I guess, around here. (Indicating.)

12 Q What did you hit him with?

13 A My hand.

14 Q And what happened after you hit him?

15 A He came towards me and he still had my arm and he was
16 like, holding tighter. And I hit him again.

17 Q And where did you hit him this time?

18 A I just in here. (Indicating.)

19 Q In the face/head area?

20 A Yes, sir.

21 Q Was that with your fist again?

22 A Yes, sir.

23 Q What happened after that?

24 A After that he started to fall back and he was pulling
25 me along with him, like downward and kind of backwards, and

1 I hit him again.

2 Q And what happened; was that again with your fist?

3 A Yes, sir.

4 Q And what happened then?

5 A At that point he let go and fell down and I kind of
6 fell the opposite way trying to pull away. I guess I went
7 that way and bounced off something and hit the floor.

8 Q And what about Gerald Stewart at that time?

9 A He was like -- I'm really not sure. I guess he was
10 down on the floor.

11 Q What did you do then?

12 A I jumped up and went to the bedroom door.

13 Q And what happened when you got there?

14 A I opened the door. Josh was in his bed in his boxers.

15 Q What happened then?

16 A I screamed at him to get up and he just didn't move.
17 He was laying there kind of like just posed there. I
18 started shaking him to wake up and he just wasn't even
19 moving. A couple of times I slapped him in his face and I
20 was shaking him, and a couple of times he looked at me and
21 his eyes rolled back in his head. And he passed back out.
22 Finally I grabbed him by his hair and just yanked him up and
23 his eyes opened up and he just had this expression on his
24 face like he didn't know where he was. Then he looked down
25 and saw that he was in his boxers and he looked at me like

1 what's going on. I was like, I don't know, I think this guy
2 just did something to you. And he was just like, you know,
3 I really don't know what was going through his head. We
4 looked -- there was something on the bed that caught both
5 our eyes and we looked over and there was a dildo on the bed
6 by Josh's feet.

7 Q So what did you do then?

8 A And then he looked at me and he was like what the fuck
9 is going on. And I was like I don't know. We need to get
10 the hell out of here. We've got to find your clothes and
11 get out of here.

12 Q And so what happened next?

13 A We looked around the floor for his clothes real fast
14 and his -- we found his jeans on the foot of the bed, his
15 shirt wasn't in there. We basically -- we left the bedroom
16 and when we were almost to the living room Gerald was
17 getting up off the -- using the couch to get up, and Josh
18 just blew by me and hit him.

19 Q And where did he hit him?

20 A I guess it would be like the back of the head or
21 something.

22 Q Now, what did you do then?

23 A I was slow to react, I guess. I was just like, what the
24 hell. Josh was screaming and upset and kicking him and all
25 that. I tried to grab him and I don't know if he meant to or

1 not but he kind of like just shoved me off and I grabbed him
2 again and pushed him toward the kitchen. When we went
3 through the kitchen his shirt was on the counter and he
4 grabbed his shirt.

5 Q Okay. Now, I want to back up. When you first, when
6 you came in the house at that time and Gerald Stewart came
7 at you and told you you weren't going anywhere, that type of
8 thing. Did he ever strike you?

9 A He looked like he might. I have no idea what he was
10 about to do. He had this look on his face that was -- that
11 he was going to do whatever the hell he wanted to do.

12 Q And what parts of your body did he grab hold of?

13 A He grabbed my arms and had me kind of up in the air. I
14 mean, he's much bigger than me. I probably had like one foot
15 on the ground at the time.

16 Q And any other parts of your body did he ever touch or
17 grab hold of?

18 A No.

19 Q How big were you at that time?

20 A About five-eight, 135 pounds.

21 Q And were you in fear?

22 A Sir?

23 Q Were you in fear of him at that time?

24 A I was terrified. I didn't know what the hell was going
25 on or what was happening.

1 Q Were you afraid you might suffer some injury?

2 A I was afraid I wasn't going to leave there.

3 Q All right. Let's go back to -- you get Josh off of Mr.
4 Stewart; what happens next; you grab his shirt, what happens
5 next?

6 A I grab his shirt and we ran to the front door and Josh
7 is like I need to find my shoes. I was like, to hell with
8 your shoes. You can get more shoes and we both started out
9 the front door. Then he stopped and was like, I'm going to
10 find my shoes and he went back in.

11 Q What did you do?

12 A I went to my car.

13 Q And how long were you outside in your car before Josh
14 came out?

15 A Anywhere from -- I don't know. Time just, it was like
16 it didn't exist at that moment. It could have been anywhere
17 from eight minutes to 10 minutes. I don't know.

18 Q So do you know what went on the house with Josh and Ron
19 Rabon (sic) there and you not in there?

20 A No, sir.

21 Q When you left the house was Gerald Stewart alive?

22 A Yes, sir.

23 Q When you left the house had anybody carved any letters
24 on Gerald Stewart's back?

25 A No, sir.

1 Q Did you ever do that?

2 A No, sir.

3 Q What happened when he came out, when Josh came out?

4 A When he came out I wouldn't say he was running, but he
5 was walking really, really fast to the car. He had
6 something in his hands.

7 Q Do you know what it was he had in his hands?

8 A No, sir, it was dark.

9 Q Once he got in the car what did y'all do then?

10 A Then we drove off.

11 Q Where did you go then?

12 A I was telling him we need to go to the hospital, we
13 need to go to the police. And he was like, all right. And
14 -- but he was like, can we stop by, please can we stop by so
15 I can get some shoes at my brother's apartment.

16 Q And did you stop by there?

17 A We did.

18 Q Did you go inside with him?

19 A No.

20 Q He went inside?

21 A Yes.

22 Q How long was he gone?

23 A He may have been gone, I don't know, maybe 10 minutes.

24 Q You don't know what he did inside there?

25 A No, sir.

1 Q Did he come back out?

2 A Yes, he did.

3 Q When he came back out what happened?

4 A He got back in the car and we pulled out Platt Springs
5 Road and we took Platt Springs all the way to Dreher and to
6 Number One.

7 Q When you got there what did you do?

8 A Well, he was freaking out the entire time. I guess the
9 word would be erratic. And crying and just -- I don't know
10 what was going through his head. I don't know what I would
11 be thinking if I woke up in some guy's bed and I was naked,
12 but he was just moving really fast, mumbling, rambling, you
13 know, like, what the fuck happened and all this stuff. And
14 then at one point when we pulled onto Number One it was like
15 he was going to jump from the car, and I pulled over in a
16 Chinese food parking lot and I was like, you've got to calm
17 down, okay, you've got to calm down. He was like, fuck
18 this, fuck all of this. And jumped out of the car and ran
19 across the plaza and ran into Calloways bar.

20 Q What did you do then?

21 A I I jumped out. I mean, he bolted and he was about half-
22 way across the parking lot. I jumped out and I was like,
23 where are you going. We've got to go. We don't have time
24 for this. I followed him. I got into the bar and
25 eventually I found him and he was standing there with a pool

1 stick like he was going to shoot pool.

2 Q What did you do then?

3 A I took the stick from him. I was like, I don't know
4 what the hell you're doing, but we've got to go. We can't
5 stay here. We've got to go get help.

6 Q What happened then?

7 A We went back -- I got him out of there. We went back
8 to the car and I drove him to the hospital.

9 Q And when you got there -- what hospital did you drive
10 to?

11 A Lexington Medical Center.

12 Q And what's the route you took from the parking lot?

13 A We went up I-26 and got off at the exit.

14 Q Now, what happened when you got to the hospital?

15 A When we got to the hospital we went in, we signed in.

16 I told them that I think a guy just raped this guy, my
17 friend here. And they went into action.

18 Q Did you have conversation with Donna Sharpe?

19 A I did. She asked me what happened. I told her that I
20 had left him alone at this guy's house asleep and when I got
21 back the man was naked and an altercation occurred.

22 Q And did you tell her that you hit him?

23 A I did.

24 Q Now, did you eventually have contact with the police?

25 A I did.

1 Q And where was that?

2 A That was -- they had put Josh in the conference room or
3 some room that had a bunch of chairs in it. He was kind of
4 curled up in a ball. And when they told me -- I was
5 separated from him, of course. They were doing whatever
6 they were doing. They said you can go sit in there in that
7 room that we put your friend in if you want to go sit with
8 him and see how he's doing. When I walked in there I
9 believe it was Officer Suber was sitting there with his note
10 pad out.

11 Q And did you have conversation with him?

12 A I did. He asked me what happened and he asked me if I
13 was the guy that brought in the other guy and I said yes.

14 Q And did you tell him what happened?

15 A I did. I told him that I left him at his guy's house
16 passed out drunk and when I came back the man was naked and
17 a lot of perverse things that were said and that there was
18 an altercation and that he grabbed me and attacked me and
19 that I hit him.

20 Q And were you eventually taken to the West Columbia
21 Police Department?

22 A Correct. Yes, sir.

23 Q Did you have conversation there with Matt Edwards?

24 A Briefly.

25 Q Did you, again, tell him what happened?

1 A I tried to tell him what happened. He kept walking in
2 and out of the room constantly. He sent a uniform officer
3 in there with me and then he would leave the room again and
4 then come back and ask some more questions. And he was
5 telling me write it down, write it down. It was hard enough
6 just trying to talk to him.

7 Q Now, did he comment about the fact that he couldn't see
8 any blood on your clothes?

9 A He did.

10 Q So he didn't believe that those were the clothes you
11 were wearing?

12 A Right.

13 Q Where those the clothes you were wearing?

14 A Yes, they were.

15 Q Now, did they take some pictures of the you there at
16 the West Columbia Police Department?

17 A They did. They took pictures of some scratches and
18 wounds, if you will, of my arms.

19 Q And were you having any pains anywhere else?

20 A My chest hurt and my ribs hurt.

21 Q Did they take you to the hospital?

22 A They did.

23 Q After you were taken to the hospital to be examined
24 where did they take you?

25 A They took me to jail.

1 Q And how long did you end up in jail?

2 A For a year and two weeks.

3 Q Why so long?

4 MR. HUBBARD: Your Honor, objection. Relevance.

5 THE COURT: Relevance.

6 MR. FLOYD: Me?

7 THE COURT: Yes.

8 MR. FLOYD: May we approach?

9 THE COURT: Yes.

10 (Off the record bench conference with counsel and the
11 Court.)

12 THE COURT: Objection sustained.

13 BY MR. FLOYD:

14 Q Jared, I want you to look at the jury.

15 A (Witness complies.)

16 Q Did you kill Gerald Stewart?

17 A No, I did not.

18 Q Did you carve any letters on Gerald Stewart's behind?

19 A No.

20 Q Did you ever intend for Gerald Stewart to die?

21 A No.

22 Q Did you have any -- did you ever strike Gerald Stewart
23 before he first grabbed you?

24 A No.

25 Q Was Gerald Stewart alive when you left?

1 A Yes, he was.

2 Q And are you sure of those things?

3 A Positive.

4 Q Thank you. Answer any questions that the Solicitor may
5 have for you.

6 MR. HUBBARD: Beg the Court's indulgence.

7 THE COURT: Let's stand for a moment, ladies and
8 gentlemen.

9 All right.

10 MR. HUBBARD: Thank you, Your Honor.

11 ROBERT JARED PRATHER - CROSS EXAMINATION

12 BY MR. HUBBARD:

13 Q Mr. Prather, you've come into this courtroom today and
14 you've taken an oath to tell the truth and nothing but the
15 truth so help you God; right?

16 A Yes, sir.

17 Q So you're telling this jury everything you've told
18 them, everything, is the truth?

19 A Yes, sir.

20 Q You agree with me that if this jury finds you're lying
21 they could find you're lying about everything?

22 A Yes, sir.

23 Q So if you're wavering on the truth, you have a reason
24 to be lying; do you agree with me?

25 A Yes, sir.

1 Q So let's walk through, knowing that you're telling the
2 truth. Now, you say Gerald Stewart, you only knew him
3 vaguely?

4 A Yes, sir.

5 Q And I believe you said you met him about a month before
6 this?

7 A Yes, sir.

8 Q Do you recall telling Detective Edwards you'd met him
9 five months before?

10 A I do not.

11 Q Is that I don't recall, I don't remember or it didn't
12 happen or I don't remember?

13 A That's not my statement. That's Detective Edwards
14 statement.

15 Q So you deny it?

16 A Yes, sir.

17 Q You didn't say it?

18 A No, sir.

19 Q And you knew this man only vaguely?

20 A Yes, sir.

21 Q Joshua Phillips, how long did you know Joshua Phillips?

22 A Me and Josh went to high school together. We didn't
23 run in the same crowds. I met him one or two years later
24 through a friend of mine who was good friends with a girl he
25 was dating.

1 Q So how would you describe your relationship with Joshua
2 Phillips?

3 A I mean, I knew him. I wouldn't call him my best
4 friend, but I knew him.

5 Q Do you remember in 2009 under oath saying he was like,
6 more like an acquaintance of an acquaintance?

7 A I'll still agree to that.

8 Q Okay. He wasn't a close friend?

9 A No.

10 Q So did you recall telling Donna Sharpe, the nurse, that
11 y'all had been friends for years?

12 A Well, at the moment, sir, we'd known each other for
13 years.

14 Q You would agree with me there's a big difference
15 between somebody you consider a friend for years and an
16 acquaintance of an acquaintance; you'd agree with me?

17 A Well, at the time, sir, it was just answering her
18 questions.

19 Q My question, again, is you would agree with me there is
20 a big difference between characterizing somebody as a close
21 friend over a period of years and an acquaintance of an
22 acquaintance?

23 A Okay.

24 Q I don't want okay. You would agree with that?

25 A Yes. I'd agree.

1 Q And your description is an acquaintance of an
2 acquaintance?

3 Q Do you recall telling Donna Sharpe at the hospital
4 y'all had been close friends for many years?

5 A No. I don't recall saying that. It was almost eight
6 years ago.

7 Q Is it a question of I don't recall or it didn't happen?

8 A I don't recall.

9 Q When y'all went to Gerald Stewart's house and you met
10 Ronald Rabon, do you recall going by the name of Jerry?

11 A No.

12 Q Do you recall Joshua Phillips going by the name of Ray?

13 A No.

14 Q You would agree with me if y'all did that sounds pretty
15 suspicious?

16 A I have absolutely no idea where he got Ray from.

17 Q Let me ask you this, though, from somebody that doesn't
18 know anything about this case that would sound pretty
19 suspicious, if it's true, wouldn't it?

20 A Yeah, I guess.

21 Q So if that's true it's pretty suspicious; correct?

22 A It could be.

23 Q But you deny that it's true?

24 A My name is Jared.

25 Q I know your name, sir.

- 1 A Many people confuse me when I introduce myself as
2 Jerry. So --
- 3 Q But Joshua and Ray is a little bit harder to mix up?
- 4 A Well, I agree there. I don't know where he got that.
- 5 Q You told this jury this is the first time you'd ever
6 been in Gerald Stewart's house; is that correct?
- 7 A Yes, sir.
- 8 Q So do you deny the night before coming in that house
9 late at night to do a beer run on the refrigerator?
- 10 A I was not with Gerald Stewart the night before.
- 11 Q So the answer would be I deny that?
- 12 A I deny that.
- 13 Q That didn't happen?
- 14 A No, it didn't.
- 15 Q Now, when you were in Gerald's house you and Joshua and
16 maybe even with Mr. Rabon, do you remember Gerald Stewart
17 making phone calls?
- 18 A Yes, he did.
- 19 Q What was that about?
- 20 A I really have no idea. He made a lot of random phone
21 calls to random people. I believe one or a couple were to
22 Joe Fraser's Gym. I don't know what all that was about.
- 23 Q Do you think he was trying to impress you?
- 24 A Could have been.
- 25 Q What do you think, why would he be doing that?

1 A I don't know.

2 Q Now, I just want to understand. You're over at a man's
3 house, he's 20-plus years older than you; correct?

4 A Yes.

5 Q You vaguely know this man; correct?

6 A Correct.

7 Q You go over there with an acquaintance of an
8 acquaintance; right?

9 A Right.

10 Q And this acquaintance of an acquaintance you'd been
11 with all night before?

12 A Right.

13 Q And you two, people who aren't real close, decide to
14 spend the day together and go over to a man's house that you
15 vaguely know; correct?

16 A Right.

17 Q A man, as I mentioned, is 20-plus years older; correct?

18 A Yes.

19 Q A man who doesn't have a job; correct?

20 A I didn't know if he had a job or not, honestly.

21 Q This was middle of the day. He wasn't working was he?

22 A Some people don't work during the middle of the day.

23 Q This man wasn't working during the middle of that day,
24 right?

25 A Right.

1 Q Would you say you'd agree with me that it was pretty
2 apparent right off the bat this man's a drinker?

3 A I would say.

4 Q He's an alcoholic?

5 A Yes, sir.

6 Q Kind of pathetic?

7 A (No response.)

8 Q Big man in a big empty house except for a new roommate
9 and he drinks. That's pretty pathetic, don't you think?

10 A I wasn't judging him.

11 Q All right. Very good. So you're over there, this
12 man's house, with an acquaintance of an acquaintance. Y'all
13 were doing what, drinking?

14 A Playing --

15 Q Playing cards?

16 A Joking, playing cards.

17 Q And at some point y'all go outside or there's mention
18 of a shed outside, and you told this jury something to the
19 effect that Gerald and Josh go outside and what are you
20 doing?

21 A I stopped at the fridge and grabbed a beer.

22 Q How long did that take you?

23 A I don't know, maybe a minute or two.

24 Q A minute or two?

25 A Yeah. They went straight out the door. I followed

1 behind them. When I got out there they were already on the
2 ground.

3 Q Let's be a little more realistic with time. You're
4 already in the kitchen because that's where the back door is
5 right?

6 A Right.

7 Q So does it take you a minute, if you really think,
8 literally to walk to the refrigerator pick up a beer, walk
9 all the way back. Aren't we talking more like seconds?

10 A We could be. I don't know, sir.

11 Q I'm asking you --

12 A When I walked out there they were on the ground
13 fighting.

14 Q Okay. It's not a trick question, but if you're in that
15 room, it's not a long walk; right?

16 A No.

17 Q And in that short period of time, that short period of
18 time you hear a ruckus outside?

19 A I didn't hear a ruckus outside.

20 Q You see it?

21 A I walked out to follow them to the shed.

22 Q And I believe you said Joshua was pretty upset?

23 A Yes.

24 Q And he was crying?

25 A Yes.

1 Q How old was Joshua?

2 A Twenty-three.

3 Q At that time. So this twenty-three year old guy is
4 crying; that's what you saw?

5 A Yes.

6 Q And you have no idea what was said or done out there in
7 that little bit of time it took you to get a beer?

8 A I have no idea. I asked him when everything had calmed
9 down, after the living room incident and all that and I
10 never received an answer.

11 Q Well, you're the one with the car; right?

12 A Right.

13 Q Well, why not leave right then?

14 A I agree.

15 Q Why didn't you?

16 A After everything had stopped. I agree.

17 Q Well, I'm not asking about today. It's easy to agree
18 seven and a half years later. That day, you're with a guy
19 you don't really know that well, at a man's house you know
20 even less, weird stuff's happening, the young guy's crying,
21 the big guy is falling down drunk; it's still daylight. Why
22 not leave?

23 A I don't know.

24 Q Josh would have found his way back home, what is it,
25 five blocks away?

1 A Yes, sir.

2 Q You didn't know anything about a fight with his brother
3 at this time; right?

4 A Right.

5 Q It's just weird; you'd agree?

6 A I would agree that it was stupid.

7 Q It's just strange; don't you agree?

8 A No.

9 Q That's not strange?

10 A I've seen worse at parties, but I agree that it was
11 stupid to stay.

12 Q They come inside and you're the one that helps break
13 things up and help Gerald in; right?

14 A I did. Yes, sir.

15 Q You're the one that gets the tissue and dabs his mouth
16 and --

17 A I handed him a tissue.

18 Q Do you deny ordering Joshua to go get tissues?

19 A Yes, because I didn't say anything about tissues. I
20 went and got him some tissues out of the bathroom.

21 Q When Joshua hit him again inside do you deny that you
22 told Joshua if you hit him again I'm going to come after
23 you?

24 A Yes. I do deny that.

25 Q Did you say something to that effect, though?

- 1 A I don't recall saying anything like that.
- 2 Q Did you say anything to him about if you hit him again
- 3 he's going to be dealing with you in some form?
- 4 A No. I told him you need to get out of this room and
- 5 stop and he went into the kitchen.
- 6 Q So he listened to you?
- 7 A He did,
- 8 Q Josh was bigger than you, wasn't he?
- 9 A Excuse me?
- 10 Q Josh was bigger than you, wasn't he?
- 11 A I would say Josh was slightly bigger than me at the
- 12 time.
- 13 Q About my height?
- 14 A I'm not sure how tall Josh was.
- 15 Q Closer to my weight?
- 16 A He's taller than me.
- 17 Q But he did what you said; right?
- 18 A Right.
- 19 Q Once again with the second altercation why did you
- 20 stay?
- 21 A I don't know.
- 22 Q All right. You go to Billy's house, that's Joshua's
- 23 brother, right?
- 24 A Yes, sir.
- 25 Q The apartment?

1 A Yes, sir.

2 Q The purpose in this is to go get drugs?

3 A Yes, and I was going to drop Josh off.

4 Q You were going to drop him off at that time but you
5 were going to get drugs with Mr. Rabon; right?

6 A For Mr. Rabon.

7 Q Had you ever met Ronald Rabon before that day?

8 A No.

9 Q So now you're in a car. You're driving your car with a
10 guy you've never met before and Joshua who's kind of an
11 emotional wreck, but you don't really know him either.

12 That's who's in your car?

13 A Yes.

14 Q And the purpose is you're going to drop Joshua off, but
15 you and the guy you've never before are going to get some
16 cocaine; correct?

17 A Yes, sir.

18 Q And then your plan was to go back to Gerald's; correct?

19 A Right.

20 Q And if your plan had held true, you'd have been at a
21 house with a man you vaguely knew, and a guy that you'd just
22 met and done some drugs with, and they're both much older
23 than you; right?

24 A I didn't say I was going to stay at Gerald's, but I was
25 going to take the roommate back.

1 Q Well, when Joshua got kicked out of his house or his
2 apartment, you still could have dropped Ronald Rabon off;
3 couldn't you?

4 A I assume I could.

5 Q And I think you mentioned Joshua had a girlfriend, so
6 you could have taken him to her house; right?

7 A I didn't know her.

8 Q He knows her and that's the point, right?

9 A Right.

10 Q He could say she lives on whatever avenue, just like
11 Gerald Stewart told you where to go for the bar; right?

12 A Right.

13 Q But you didn't do that. You all went back to Gerald
14 Stewart's house; right?

15 A Yes.

16 Q And this was getting pretty late at this point. How
17 late was that?

18 A This was probably about, around 11:30 or so.

19 Q And it's on a weeknight. You've been there since 1:00,
20 1:30?

21 A Yes.

22 Q Was that just not enough time to play cards, drink and
23 hangout? You had to stay?

24 A Sir, I think we were all just thinking, you know, have
25 a good time, and you know, we were drunk.

1 Q You'd agree with me. This isn't like a good time.

2 This is like a weird time; right?

3 A If you -- I mean, in the perspective you're putting it,
4 but not at the time.

5 Q Well, don't you usually have a good time with people
6 you know? That's when you're comfortable; right?

7 A Right.

8 Q So apparently you're either very comfortable or
9 something weird's going on; don't you agree?

10 A I was rather comfortable. I saw no signs of anything
11 crazy or -- I mean, other than the altercation between him
12 and Josh. That was -- but I didn't see that coming either.

13 Q When y'all get back, Ronald Rabon goes to bed; correct?

14 A Right.

15 Q Do you see him anymore?

16 A No.

17 Q You don't hear anything in his room after that, do you?

18 A No.

19 Q He's done?

20 A Yeah.

21 Q Joshua was on the sofa and you put a pillow under his
22 head?

23 A I hand him a pillow.

24 Q And then you and Gerald, y'all watch movies?

25 A Right.

1 Q You say you saw Tombstone; huh?

2 A Yeah.

3 Q And y'all watched that entire movie?

4 A (Nods head affirmatively)

5 Q So how long is that movie? Almost two hours, an hour

6 and a half?

7 A An hour and a half maybe, I guess.

8 Q What time is it when that movie ends?

9 A It was around, I don't know, 12:30 or so.

10 Q Wouldn't it be almost a little later than that?

11 A It could have been.

12 Q Do you remember saying on another occasion it might

13 have been as late as 1:15?

14 A It might have been.

15 Q Okay. I'm not trying to pin you down specifically to a

16 time. I know ---

17 A It may have been.

18 Q Okay. At this point, the movie's over. You've been

19 there for twelve hours, on and off --

20 A Give or take.

21 Q -- and now your testimony is Gerald Stewart wants to go

22 out to a bar?

23 A Yes, sir.

24 Q Do you deny that it was actually your idea to go out to

25 the bar?

1 A I didn't want to go to a bar. I didn't have any money.

2 Q Okay. But did you tell Gerald that you didn't want to
3 go?

4 A I did. I said, I don't have any money so, I can't buy
5 my own drinks so there's no point in really going.

6 Q Do you also remember telling him or saying in your
7 sworn statement back in 2009, I didn't want to leave Josh?

8 A Right. I didn't, you know -- you know, he's asleep on
9 the couch, you know, so ---

10 Q He's a big boy?

11 A Right. But he came with me, you know.

12 Q He's five blocks away.

13 A Okay.

14 Q All right. Now, your testimony today is you told
15 Gerald Stewart, fine, I'll go out to a bar with you, but
16 I've got an errand to run first; is that right?

17 A Right.

18 Q And it was something about taking clothes back to his
19 brother's house, Billy's house?

20 A Right. It was a box of stuff.

21 Q And then you get back to Gerald Stewart's and y'all go
22 out?

23 A Yes.

24 Q. And you said it took about an hour or so?

25 A I mean, it could have took forty minutes or so, sir. I

1 wasn't looking at my watch. But I had a conversation with
2 Billy, his brother. And he was, you know, basically he
3 apologized to me for being mad at me earlier because he was,
4 like it's not your fault that he was acting that way. And I
5 gave him the box of stuff back. And then I talked to, you
6 know, some friends of his that were at the party the night
7 before. And one of them bummed a cigarette and --

8 Q Do you remember on a prior occasion saying it took just
9 about fifteen minutes, round trip to drop that stuff off?

10 A Drop it off.

11 Q So it's a matter of I don't recall versus that didn't
12 happen?

13 A I don't recall.

14 Q Okay. I'm just trying to characterize it the right
15 way, okay?

16 A I don't recall it.

17 Q I got you. You come back to Gerald Stewart's after you
18 drop Josh's clothes off. Now, you didn't take Josh back,
19 though, did you?

20 A No.

21 Q I mean, can I ask you -- if you're able to get Gerald
22 Stewart, a big man into a house who's wobbling around,
23 you're young and strong enough to get Joshua Phillips into
24 your car and take him back to Billy's?

25 A Are you talking about carrying him?

1 Q I'm talking about helping him, just like you did Gerald
2 Stewart?

3 A Well, I was convinced Josh would be fine, so --

4 Q But earlier you said, I didn't want to leave Josh?

5 A Right. And I said that to Gerald Stewart. And he
6 said, he'll be fine. Nobody's going to mess with him.

7 Q You trusted Gerald Stewart?

8 A I did.

9 Q He didn't do anything to prove himself untrustworthy,
10 did he?

11 A No.

12 Q Gerald Stewart was a nice man, wasn't he?

13 A I didn't know him well enough to judge him like that,
14 but from what I saw, I mean, he was, he was okay.

15 Q He's opened his doors to strangers and initially, y'all
16 were drinking his beer; right?

17 A Right.

18 Q You didn't have any money?

19 A Right.

20 Q Those beer runs, that was his dime; right?

21 A Right. But that wasn't for beer, that was for himself,
22 for whiskey. We probably got about five half gallons of
23 whiskey that day.

24 Q Safe to say he enjoyed having two young guys over at
25 his house?

1 A Yes, I guess it is safe to say.

2 Q And you could tell that when you were in his house,
3 that he enjoyed having you and Joshua Phillips at his house;
4 correct?

5 A He may have enjoyed anyone's company at that time, just
6 to have a room full of people. I don't know. I don't know
7 him well enough to say that he enjoyed particularly having
8 our company in his house.

9 Q I'm asking how it struck you? Now how ---

10 A How it struck you. It was a couple of guys playing
11 cards and drinking beer and talking and joking.

12 Q You say you go to Uncle Louie's; right?

13 A Yes.

14 Q After you drop these clothes off you come back and you
15 go to Uncle Louie's, you drink or Gerald Drinks. He stiff
16 you on the tab. You bring him back, you drop him off;
17 right?

18 A Right.

19 Q But now on the way back -- let's talk about the bar a
20 minute. At Uncle Louie's, you get there. You said you've
21 already told him you don't have any money; right?

22 A Uh-huh (affirmative).

23 Q He's ordering rounds and he's drinking them; right?

24 A Yes.

25 Q At best you're sipping on a beer, at best?

1 A Yes.

2 Q Can I ask you, why are you going out with a fellow if
3 you're not drinking too?

4 A I was drinking?

5 Q You're sipping on a beer.

6 A I don't drink Vodka.

7 Q He bought beer too, though; right?

8 A He bought beer. I have no problem with beer.

9 Q And Gerald Stewart, if you'd said, Gerald, I want a
10 Michelob Light or a Bud Light, Gerald would have bought it?

11 A I'm not like that, which is why I didn't want to go out
12 on somebody else's tab.

13 Q Well, you sat there while he ordered more than one
14 round; right?

15 A I probably had two beers, sir.

16 Q When he wanders on out at some point, when you're in
17 the bathroom, and you're wondering where he is. And the
18 manager's like, somebody's got to pay this tab, you admit --
19 and I know how you characterize it, but you did say not
20 someone should kick his ass, but I could kick his ass;
21 right?

22 A Well, I'm not quite sure how I said it when I said it
23 to him, but, yes, it was along those lines.

24 Q If you're not sure, I can show you some prior sworn
25 statement of yours. It wasn't somebody should kick his ass.

1 It's I could kick his ass; right?

2 A Okay.

3 Q It's not okay. Is that true? This is about truth,
4 right?

5 A Right.

6 Q Which one's true?

7 A I don't recall. I remember saying somebody should kick
8 his ass.

9 Q Page 41, in a statement you gave in 2009. Is this you
10 talking when you said, oh, I could kick his ass.

11 A I may have said that?

12 Q You may have?

13 A Okay.

14 Q I need an answer. Did you say that?

15 A Then I said that.

16 Q Okay. So that is true?

17 A (No response.)

18 Q I just want to make sure that everyone knows what
19 actually happened and I'm not putting words in your mouth;
20 right?

21 A (No response.)

22 Q So that's what actually was said?

23 A Yes, sir.

24 Q Now, you get stiffed at the bar and you're driving back
25 with Gerald Stewart and he ask you something about getting

1 cocaine?

2 A Yes, sir.

3 Q Now, earlier in the night he didn't ride with you
4 fellows to go get cocaine when he had a chance; right?

5 A No.

6 Q But this man who clearly had no money wants you to go
7 get cocaine, even though you don't have money?

8 A Right. He asked me if I could get it from the guy, if
9 I knew him well enough? And I told him I don't really know
10 him like that, but he seemed like a nice enough guy. And me
11 and the guy that sells it got along. He asked me if I could
12 go get it from him and he'd pay me the money later to give
13 to the guy.

14 Q So this is well after 2:00, you'd agree? Probably
15 around 2:00 to 3:00 in the morning?

16 A Yeah. I'd say that. Yes, sir.

17 Q So you're going to make a drug run in the middle of the
18 night for a man who stiffed you in a bar, a man you vaguely
19 know, and you've got no money. That's what you're telling
20 this jury?

21 A Well, sir, I believe most drug runs take place at
22 night.

23 Q I don't know.

24 A But we had already spent all day together. So I said,
25 okay, I'll go see.

1 Q But you go over to this drug dealer's house and is he
2 up selling drugs?

3 A No. He came to the door as I was walking away. And I
4 talked for him for a minute. And he was like, well, that's
5 cool, but it's getting late. Talk to me tomorrow.

6 Q So this drug dealer wasn't going to give you cocaine on
7 the hope that you'd come back maybe tomorrow and pay him?

8 A Correct.

9 Q He said, you got to come back tomorrow, but he's going
10 to want money?

11 A Right.

12 Q Now, do you remember telling Matt Edwards, then
13 detective now major, that you went to Uncle Louie's, then
14 you took the clothes back to Billy's, and coming back from
15 Billy's house, that's when you walked in the door and saw
16 the nude scene?

17 A Do I remember saying that?

18 Q Yeah?

19 A No.

20 Q I mean, you would agree that's different than what
21 you're saying today; correct?

22 A I would agree that what he says is wrong.

23 Q Today you're saying you took the clothes back, and you
24 came you picked up Mr. Stewart, you took him to Uncle
25 Louie's, and then you made a drug run and that's when you

1 walked in and there was the nude scene; right? That's your
2 statement today?

3 A That's how it happened.

4 Q And you deny that you told that detective you went to
5 Uncle Louie's first and then you took the clothes back at
6 around 3:00 in the morning, and that's when you walked in
7 and there's Jared. You're denying that?

8 A I deny that.

9 Q You'd agree those are very different stories?

10 A I would.

11 Q And you would agree you never told that detective
12 anything about the drug run for Gerald Stewart?

13 A That I never told him anything about it?

14 Q About that drug run for Gerald Stewart, yes?

15 A I would agree that I never told him anything about that
16 drug run.

17 Q So when you were talking to him, you were telling him
18 the truth; right?

19 A I didn't even have a chance to really get his
20 attention. He was too busy walking in and out. And he
21 didn't want to hear anything that I had to say, is what it
22 seemed like to me. He just wanted me to write something
23 down and sign it.

24 Q So this detective, who's somebody who's just been
25 killed; doesn't want to talk to you?

1 A I seemed to be the lesser of the important events going
2 on around him.

3 Q Okay. So that's your opinion of how he was behaving?

4 A Yes, sir.

5 Q His behavior was weird. Is that a fair
6 characterization?

7 A His behavior was he didn't care because I was already
8 in custody. I wasn't going anywhere.

9 Q He had you cuffed so he didn't need to get the truth?

10 A I wasn't cuffed while I was trying to talk to him. It
11 was when he came in and slung a Pepsi across the room and
12 told me he's got enough fucking evidence to take my fucking
13 life and I better start telling the mother fucking truth.

14 Q Okay.

15 A He said, that man is dead. And I looked at him and I
16 said, that man's not dead. And he said, well, you're under
17 arrest. And I said, well, I want a lawyer.

18 Q Very fine. You get to the house after making this drug
19 run with no money for a man you vaguely knew. And do you
20 meet him at the door? Is he naked at that point?

21 A No, sir. He had told me to just come on in. So I went
22 in and I announced myself a couple of times.

23 Q Well, let's just talk about when you first saw him
24 nude? When was the first time when you got back from making
25 the drug run to see Gerald Stewart nude?

1 A When he came out of his bedroom. I was standing in the
2 living room.

3 Q Okay. So you were inside the house?

4 A Yes, sir.

5 Q Do you remember telling Officer Suber that he met you
6 at the front door naked?

7 A No.

8 Q Do you remember telling Sergeant Kleckley that Gerald
9 Stewart met you nude at the front door?

10 A I honestly do not recall ever even seeing Sergeant
11 Kleckley.

12 Q So you're not denying that. You're just saying you
13 don't remember?

14 A To whom?

15 Q Huh? What?

16 A I spoke with Officer Suber. I don't -- I wouldn't have
17 said he met me at the front door because he didn't meet me
18 at the front door. But as for Sergeant Kleckley, I don't
19 recall ever even seeing him at the hospital.

20 Q You go inside. You see Gerald Stewart. Is he coming
21 out of his bedroom, according to your testimony?

22 A He's coming out of his bedroom and he shut the door
23 behind him.

24 Q So you couldn't see what was in there?

25 A No.

1 Q You mentioned that -- these were your words, I think,
2 that he had an erection?

3 A Yes.

4 Q Now, we've heard a lot about Gerald Stewart. He's late
5 middle-aged, middle-age, way overweight. He's been up.
6 We're past 3:00 now, aren't we; correct?

7 A Yes. Yes.

8 Q He's about as drunk as a man can be and still function;
9 right?

10 A Right.

11 Q The one object in his body that pumps blood is
12 defective; correct?

13 A Yes, sir.

14 Q His lungs are bad; right?

15 A I don't know about his lungs.

16 Q But this man in bad health who's been up all day
17 drinking, has an erection?

18 A Yes, sir.

19 Q And you say that this altercation that you had with
20 Gerald Stewart happened as you were going back to the
21 bedroom; is that correct?

22 A No, he walked toward me.

23 Q Here's my point. This altercation occurred before you
24 got to Joshua?

25 A Yes.

1 Q And you say -- what was it? He grabbed you by the left
2 arm and lifted it up?

3 A Yes, sir.

4 Q So you're kind of on your tippy toes?

5 A Yes, sir.

6 Q Are you left or right-handed?

7 A I'm right-handed.

8 Q So this struggle, is it around the elbow. Is that what
9 it was?

10 A It's around the elbow.

11 Q So he's got you up and you strike him?

12 A Yes, sir.

13 Q So is it, he's got you like this. He's taller. And
14 you're doing a punch like this or how are you striking him?

15 A I hit him.

16 Q Well ---

17 A I mean, I'm not coming from like, you know ---

18 Q Well, he's tall.

19 A --- I wasn't sideways.

20 Q Well, I tell you what. Why don't you step down.

21 MR. HUBBARD: If the Court will permit.

22 THE COURT: Sure.

23 Q And stand and show, because this man's much taller than
24 you, right? He's taller than me. I'm almost six three.

25 (Witness steps down)

1 Q All so he's got your arm. How high is that arm?

2 A Like that.

3 Q And let's turn this way? Like right here. Is this how
4 he has it like this?

5 A Yes.

6 Q And how are you punching him? And you're on your tippy
7 toes, though, because he's taller. So how are you punching.

8 A (Demonstrating)

9 Q Okay. So that's how this punch occurs. That's the
10 first punch?

11 A Yes, sir.

12 (Witness takes stand)

13 Q And it's that left arm?

14 A Yes, sir.

15 Q Do you remember when you went to the doctor later that
16 night or early morning, that the arm with the scratch on it,
17 the superficial abrasions, was your right arm?

18 A Yes, sir. I fell into something when he finally let
19 go. And it was on the right side.

20 Q You had no injuries on your left arm; right?

21 A Right.

22 Q You had no bruises like somebody was grabbing you on
23 your left arm; did you?

24 A I would say, no. And the doctors didn't find any.

25 Q They didn't; correct?

1 A Correct.

2 Q In fact, you denied any trauma whatsoever; correct?

3 A Except for the pain in my chest and my ribs.

4 Q You denied any trauma though?

5 A As in like extensive damage?

6 Q Yeah?

7 A Yes, sir.

8 Q And you've told this jury that you only hit this man
9 three times. It was that first punch. And then you said he
10 kept coming at you?

11 A This is the first, after the first time I hit him, he
12 came forward.

13 Q If I could ask you to step down one more time, let's do
14 the second punch.

15 (Witness steps down)

16 Q All right. Does he still have your left arm?

17 A He still has my elbow.

18 Q It's up like this? You're still on your tippy toes?

19 A (Nods head affirmatively)

20 Q And how's --

21 A And when I punched him, he came --

22 Q Could it be because he's drunk?

23 A It could be because he's trying to attack me and he's
24 already got me.

25 Q This man who you had to drive home, who was drunk as a

1 skunk is attacking your right now, falling towards you?

2 A Yes, sir.

3 Q Third punch. You said something about y'all both fall
4 backwards?

5 A Yes, after --

6 Q He still has your arm?

7 A After the second punch, he comes forward.

8 Q Okay. Yeah.

9 A I hit him, and he starts --

10 Q How close is he?

11 A He's like that close now, but he's coming -- he jerks
12 forward when I hit him, and he starts to go --

13 Q He falls back?

14 A You would go like, kind of at that angle. And he's got
15 me like that, but we fall apart because I jerk because all
16 of my body weight's going this way.

17 Q Okay.

18 (Witness takes stand)

19 Q And it's your testimony to this jury those were the
20 only blows you delivered on Gerald Stewart at that time?

21 A Yes, sir.

22 Q Those were the only blows you ever delivered on Gerald
23 Stewart?

24 A Yes, sir.

25 Q Do you deny telling Officer Suber I beat the shit out

1 of him and those were devastating blows?

2 A Officer Suber asked me what happened. I believe what
3 he said is exactly -- I told him there was an altercation,
4 that the man grabbed me and attacked me. And I had to get
5 him. And he asked me, well, did you hit him hard? And I
6 said, well, yes because he's a lot bigger than me.

7 Q So the answer to my question is, no. You never said I
8 beat the shit out of him and those were devastating blows?

9 A No.

10 Q You never said that?

11 A As far as the devastating blows?

12 Q Or beat the shit out him?

13 A I never said I beat the shit out of him to anyone. I
14 didn't beat the shit out of him. I did what I had to do to
15 get him off of me.

16 Q Do you deny telling Officer Kleckley I beat the shit
17 out of him and those were devastating blows?

18 A I deny ever speaking to Officer Kleckley. I don't ever
19 even recall seeing him at the hospital.

20 Q Okay. And would you deny that the altercation you
21 described to them is not when you're going back to the
22 bedroom to get Joshua. It's when you're leaving with
23 Joshua?

24 A When Josh jumped on him?

25 Q No. I'm talking about you. Do you deny telling both

1 of these officer or at least one of the, that the
2 altercation wasn't when you were trying to go back to the
3 bedroom to get Joshua, it's when you're leaving with Joshua?

4 A Well, sir, I believe a lot of what I've said has been
5 turned around and misconstrued. And so, yes, I deny it,
6 stating it that way.

7 Q It's being misstated and misconstrued by police
8 officers?

9 A Yes, sir.

10 Q When you go back to that bedroom, you say you find
11 Joshua on the bed in boxers; right?

12 A Yes.

13 Q And you say that's the first time you see a dildo?

14 A Yes.

15 Q You wake Joshua up. You tell him get his clothes. He
16 finds his jeans; right?

17 A Right.

18 Q Does he put them on?

19 A Yes.

20 Q Coming out of the bedroom, where's Gerald?

21 A Gerald's in the living room.

22 Q And that's when Josh jumps on Gerald and starts beating
23 him?

24 A Yes.

25 Q Would you agree with me that you did not tell a single

1 officer anything about Joshua Phillips beating Gerald
2 Stewart?

3 A I may have.

4 Q So you think you did?

5 A I may have.

6 Q Well, I've got to ask you something now. This is
7 probably the biggest day in your life way back when. This
8 should be etched in your memory; right?

9 A Right.

10 Q Did you -- dig in your memory. Did you tell any
11 officer Joshua Phillips beat up on Gerald Stewart?

12 A I may have, sir. I mean, there are parts that are
13 somewhat fuzzy. There are people that can't remember
14 certain things back then. I wouldn't be the only one.

15 Q I know, but you're one of only two charged with murder?

16 A I understand that. And --

17 Q All right.

18 A -- I very well may have said something to an officer.

19 Q When Josh is attacking Gerald Stewart, again, you have
20 him as screaming and upset. Is he crying?

21 A I'm not sure if he was crying at that moment. I know
22 he was pissed and very, very angry.

23 Q If it's safe to say if anybody at that point's beating
24 the shit out of Gerald Stewart, it's Josh Phillips?

25 A Yes.

1 Q And you may have told somebody that Joshua Phillips did
2 that?

3 A I may have.

4 Q But you can't say for sure?

5 A I can't say for sure.

6 Q You'd agree that however you characterize it, the only
7 thing you really remember telling officers though is that
8 you hit Gerald Stewart?

9 A I did hit Gerald Stewart.

10 Q Listen to my question, though. This is important. The
11 one thing you do remember though, is that you said, I hit
12 Gerald Stewart. You said that to the officers?

13 A Yes, sir.

14 Q And you'd agree you never told Donna Sharpe anything
15 about Joshua Phillips beating up on Gerald Stewart?

16 A She's not the person really, you know, I needed to
17 relay the information to. She asked me the basics of what
18 happened. I told her.

19 Q And you would agree you went into some detail about
20 what you did; right?

21 A Some.

22 Q And if you're at the hospital for what happened to
23 Joshua, you would agree it'd be important to say what Joshua
24 did too; right?

25 A To a nurse? I told her that I'd left him at a guy's

1 house. And then when I came back, you know, it was a really
2 kinky, perverted situation.

3 Q After you pulled Joshua off -- Do you pull him off of
4 Gerald Stewart or do you just leave him?

5 A I pulled him off once he shoved me away. I don't know
6 whether he knew -- like, I don't know. He was zoned out.
7 And so I don't if he even knew it was me or he did it just
8 reacting or reflexively or what not. But, yes, eventually,
9 I got him off of Gerald Stewart.

10 Q When you went out that front door to go to your car,
11 were you by yourself or was Joshua Phillips with you?

12 A We were both at the door. He took like a step out
13 maybe and he was like, I need to find my damn shoes. And he
14 ran back in. And I don't know if --

15 Q You didn't go in to get him and pull him back?

16 A I did not go back in there, no. I just wanted to get
17 the hell out of there.

18 Q Where did you go?

19 A I went to my car.

20 Q Did you crank it up?

21 A I sat there for a minute. I did crank it up.

22 Q Turn the lights on and back it up a little bit?

23 A Yes. When I backed it up, Josh was coming out of the
24 house.

25 Q So you had your beams on?

1 A Well, yeah. Into the carport.

2 Q Well, you had the headlights on so you could see him
3 coming out?

4 A Yeah. Yeah.

5 Q And you say you see something in his hands but you
6 can't tell what it is?

7 A It was just -- it was something in his hands.

8 Q And when he gets in your car and opens that door, the
9 little light pops on.

10 A No, not in my car.

11 Q Not in your car?

12 A No. It was busted. It was broke.

13 Q But you'd agree this 1987 Toyota Camry, they're not as
14 big as they are now; right?

15 A It's not in as good a shape as they are now either.

16 Q He's sitting about right where my hand is in relation
17 to you. That console's pretty small; isn't it?

18 A Yeah. That's -- okay.

19 Q And he's got items in his hands. He didn't have items
20 when he came to the house; right?

21 A I mean, for all I know it could have came out the box
22 of his brother's stuff that was in there. I didn't know
23 what it was though?

24 Q You know it wasn't the box because you've already told
25 this jury you took that back.

1 A Yeah. But for all I know he could have taken it in. I
2 don't know what he had in his hand. He came to the car with
3 it and it was dark.

4 Q Here's my point. When he's leaving, he no longer has
5 any property, other than the clothes on his body in that
6 house; right?

7 A Right.

8 Q When he comes out, he's bringing something with him;
9 right?

10 A Yes.

11 Q Gerald Stewart wasn't giving his property to you guys
12 that night, was he?

13 A I didn't know if it was Gerald's property. No, he
14 wasn't giving us property.

15 Q Y'all weren't playing poker and winning his coke
16 collection, were you?

17 A No. I didn't even know he had a Coke collection. He
18 never showed me anything.

19 Q When you come out and you sit in that car, there's only
20 two people in the house at that point, other than Mr.
21 Stewart. That's Ronald Rabon in that back bedroom who
22 you've never heard anymore from that night; right?

23 A Right.

24 Q And your acquaintance, Joshua Phillips; right?

25 A Yes, sir.

1 Q You sit in the car eight to ten minutes and then he
2 comes out and joins you; is that correct?

3 A Yes.

4 Q And that's when y'all take off?

5 A Yes, sir.

6 Q And you deny telling Donna Sharpe the nurse that y'all
7 were in there for an hour to an hour and a half just trying
8 to find clothes?

9 A I deny that.

10 Q Do you deny telling Detective Edwards that the two of
11 y'all left immediately. There was no running back in the
12 house?

13 A In what --

14 Q I'll rephrase it. Do you deny saying that when you and
15 Joshua Phillips got each other, you're coming out of that
16 bedroom, y'all left. You went outside, got in the car and
17 left?

18 A I may have.

19 Q That would be different than Joshua Phillips running
20 back in the house; right?

21 A Right.

22 Q And that's a pretty important point because your
23 testimony is when you left Gerald Stewart he was very much
24 alive; right?

25 A That's right.

1 Q Joshua Phillips is running in there and last you'd seen
2 him, what was he doing to Gerald Stewart?

3 A Hitting him and kicking him.

4 Q That's a pretty important point to leave out; right?

5 A (No response)

6 Q You'd agree with me?

7 A Yes, sir.

8 Q You'd also agree with me that, or not contest with me,
9 that Joshua Phillips even though he had his pants on, there
10 was no blood belonging to Gerald Stewart on Joshua Phillips
11 pants; right?

12 A Would I agree with you?

13 Q Yeah?

14 A I don't know. I've never seen his pants. I mean, I
15 know what SLED has said, so, yes.

16 Q Do you agree with SLED?

17 A I -- not a DNA, you know, forensic expert so --

18 Q You'd agree with me that the only clothes that had any
19 semblance of blood that belonged to Gerald Stewart were on
20 your body?

21 A That's what they said.

22 Q Well, you don't deny it's true?

23 A No. There were many incidences that day where Gerald
24 Stewart was bleeding and I was helping him and --

25 Q When you're wiping his mouth you got it on your sock?

1 A Well, I didn't wipe his mouth, but there was blood on
2 the floor.

3 Q Well, you'd agree with me --

4 A I never, I never had my shoes off in his house.

5 Q You'd agree with me in your entire direct testimony you
6 never talked about blood on the floor during the course of
7 the day?

8 A That's why I got -- because when he hit him the second
9 time in the living room, it was just even worse than it was
10 in the back yard.

11 Q So it was all over the floor then?

12 A I mean, he wasn't spurting out blood, but it was coming
13 out good after he hit him in the living room.

14 Q And where was he in the living room?

15 A He was sitting in the chair. And when he hit him, he
16 slid down to the floor. He had blood on his hands. He was
17 picking himself up off the floor.

18 Q So you'd agree with me if we go through these photos,
19 or if the jury goes through these photos, they'll see the
20 blood on the floor and the blood on that chair?

21 A How can you see blood on a floor from a photo? I mean,
22 I don't believe there's even a clean photo shot of the
23 chair.

24 Q You'd agree with me you can see blood on the sofa?

25 A I would.

1 Q You say to this jury today when you left Gerald Stewart
2 was fine. He was breathing?

3 A Yes.

4 Q You only struck three blows?

5 A I did. That was just enough to get him off of me.

6 Q That you last saw him with Joshua Phillips beating him
7 up; right?

8 A Yes.

9 Q Do you deny early in the morning before there's any
10 police officers around telling Nurse Donna Sharpe. He's
11 alive but barely, though?

12 A I deny that.

13 Q That didn't happen?

14 A No.

15 Q And it's your testimony that when Josh ran back in the
16 house, you didn't go to get him?

17 A No, I didn't go to get him.

18 Q Even though Josh had been in this altercation. You're
19 not going back in to save him?

20 A I'm not going back in there.

21 Q And you would agree with me too, when you got Joshua in
22 the car, you didn't go straight to the hospital?

23 A Right.

24 Q Now, do you remember telling detective Edwards your
25 first initial comment was, we went straight to the hospital?

1 A No, I don't recall saying that to him.

2 Q You don't recall it or it didn't happen?

3 A Well, considering I don't recall it, and I remember
4 mostly everything in this case, I would say it didn't
5 happen.

6 Q Do you recall saying at some point, a sworn statement,
7 saying about Joshua, he didn't want to go to the hospital
8 and that he was fine?

9 A Joshua was flipped out.

10 Q My question is, do you recall?

11 A He was saying all kinds of things.

12 Q All right. My question -- try not to talk at the same
13 time. But my question is about a statement that you made
14 about Joshua Phillips in a prior sworn statement in 2009
15 saying he didn't want to go to the hospital and that he was
16 fine. Do you remember saying that?

17 A I do.

18 Q So when y'all leave the house, Joshua Phillips didn't
19 want to go to the hospital; right?

20 A If I was a guy who woke up in another man's bed in my
21 underwear and didn't know how I got there, I really don't
22 know if I'd want to go to the hospital either and find out
23 the truth. So --

24 Q If you'd been raped, you'd probably go to the hospital
25 with a police officer, wouldn't you?

1 A Yeah. But my first thought would probably one of a man
2 and that would be something prideful like if I go to the
3 hospital, everybody's going to know about this.

4 Q Y'all are here on Decree Street. It's just a skip and
5 a holler. Right there's the police department; right?

6 A Right.

7 Q The hospital's up here off of 26. That's not your
8 first stop. Your first stop according to you is Woodbine
9 Apartments?

10 A Right. To get Joshua's shoes. He was begging me to
11 get him some shoes so that's least I could do for him.

12 Q You're the one driving the car, though. You're the one
13 that's rational; right?

14 A Okay.

15 Q You're the man at the wheel.

16 A Rational might be a overstatement, but --

17 Q You go to Woodbine Apartments and then your next stop
18 is Calloway's Bar?

19 A No, not the bar.

20 Q Where'd you go?

21 A We were pulling onto Number One by Blockbuster. And
22 Josh opens the door like he's about to just jump out. And
23 he's screaming, you know, what happened and all this stuff.
24 And he's flipped out. And he's just crying and kicking the
25 dashboard. And he goes like he's just going to jump out the

1 damn car. So I pulled over in the first parking lot I could
2 get into, which was in front of the Chinese place and
3 Calloway's just happened to be there.

4 Q Joshua didn't want to go to the hospital?

5 A I don't know what Josh wanted to do.

6 Q Well, he told you that. You testified to that in the
7 prior sworn statement; right?

8 A And then he changes his mind and says we need to go to
9 the hospital. And then he said other stuff, and then he
10 said this. And --

11 Q Okay. Well, now in your direct you didn't mention
12 that, that he kept changing his mind about whether he wanted
13 to go or not.

14 A He was rambling. And totally out of it.

15 Q All right. Do you recall or deny telling Detective
16 Edwards that y'all went to Calloway's Bar and shoot pool?

17 A I deny that that's what I said to him.

18 Q You'd agree with me, though, that --

19 A I would say that it's being turned around and something
20 that I didn't say it that. But now it's as if we went in
21 there and leisurely were just going to have some beers and
22 shoot some pool. I had no money, sir. And we were fleeing
23 what was a very dangerous situation. I didn't even have
24 four quarters to shoot any pool.

25 Q You'd agree with me that you never mentioned to going

1 to Woodbine apartments to any police officer?

2 A I don't know.

3 Q Well, when you talked to them it was the very day of
4 this incident, right?

5 A And a lot had happened, sir.

6 Q At Gerald Stewart's house you never picked up the phone
7 called 9-1-1 did you?

8 A Would you have stayed at his house to use his
9 telephone?

10 Q Sir, I'm not on the witness stand, you are?

11 A No, I did not try to use his phone or stick around to
12 call 9-1-1.

13 Q When y'all went to his brother Billy's house, a family
14 member, no one called 9-1-1, did you?

15 A Neither me or Josh had a phone. I don't know if Billy
16 was there anyway. I didn't even get out of the car.

17 Q That's my point. You didn't go in and ask?

18 A No, sir.

19 Q And then when you do wind up at Calloway's Bar, they've
20 got a phone, don't they?

21 A I'm sure they do.

22 Q You didn't call 9-1-1, did you?

23 A No.

24 Q You didn't ask anyone to call 9-1-1 did you?

25 A No.

1 Q Now, let's talk about this crime scene. It's your
2 testimony that you're not the one responsible for leaving
3 Gerald Stewart in this condition?

4 A No, I'm not.

5 Q That you didn't beat Gerald Stewart down onto that
6 sofa; correct?

7 A That's correct. I didn't.

8 Q You didn't beat him down pull his pants back and carve
9 rapist. Is that what you're saying?

10 A No, I think it's really fucking disgusting whoever did
11 it.

12 Q. You would agree looking at State's 39 whoever did this
13 had to actually pull his pants down because those cuts go
14 down way on down the buttocks; right?

15 A Okay.

16 Q You'd agree?

17 A I would agree.

18 Q Whoever did this actually spelled the word right;
19 didn't they?

20 A I guess they -- I don't know what it is.

21 Q R, you see that R?

22 A Yes, I see that R.

23 Q You see an A?

24 A Okay.

25 Q You see an I, a P, right here. See that?

- 1 A Yeah.
- 2 Q You see the I right here?
- 3 A Yeah.
- 4 Q Do you see the S?
- 5 A Is that an S?
- 6 Q I'm asking you. Do you see this S?
- 7 A Uh, yeah.
- 8 Q Do you see the T?
- 9 A Yes.
- 10 Q Okay. So you do see the word rapist?
- 11 A Yes, sir.
- 12 Q And you're saying you didn't do that?
- 13 A No, sir.
- 14 Q You didn't pull his pants down and carve on him?
- 15 A No.
- 16 Q And you didn't go into the bedroom and take this object
- 17 out of that bedroom, this sex object, and place it beside
- 18 Gerald Stewart's body, did you?
- 19 A The last time I saw it, it was at Josh's feet in that
- 20 room. And, no, because I'm not touching that thing.
- 21 Q You're not responsible for the cigarette burn on Gerald
- 22 Stewart's finger; is that your testimony?
- 23 A The cigarette burn?
- 24 Q The cigarette burn?
- 25 A No, I'm not responsible for the cigarette burn.

1 Q And you're also saying you're not the one who took this
2 blue blanket, this comforter and covered up that body. Is
3 that your testimony?

4 A Yes, sir. I don't recall seeing that blue blanket
5 anywhere in the house.

6 Q And you didn't take this blue pillow and put it over
7 his head?

8 A No.

9 Q And Joshua Phillips was alone in the house for eight to
10 ten minutes?

11 A Somewhere around there.

12 Q You would agree with me, wouldn't you, whoever did
13 this, whoever did this is cruel and cold-hearted. You would
14 agree with me?

15 A I would agree.

16 Q You would agree this is just a wicked, wicked horrible
17 act; right?

18 A Completely.

19 Q It's depraved; correct?

20 A Yes.

21 Q Have you ever heard this quote, monsters and ghosts are
22 real. They exists within us all and sometimes they win?

23 A Yes, I have.

24 Q Who said that?

25 A I'm not quite sure.

1 Q If I showed you your Facebook Page, a Stephen King
2 quote?

3 A (Nods affirmatively)

4 Q Whoever did this horrible deed to that man that day,
5 that monster came out of them, didn't it?

6 A Well, to put that in perspective, sir. I heard that on
7 a criminal minds episode, you know, how they do the quotes
8 at the end.

9 Q Whoever did this to Gerald Stewart, that monster in
10 them came out, didn't it?

11 A I would say it did.

12 Q That monster won, didn't it?

13 A Well, it appears to me they were very angry. I wasn't
14 angry, sir.

15 Q And Gerald Stewart, he lost that night, didn't he? He
16 died?

17 A Unfortunately, yes, sir.

18 Q Because whoever was carving this word rapist, this R,
19 this A, this P, this I, this S, this T, whoever carved that
20 was carving it while Gerald Stewart was dying. That's
21 wicked; isn't it? Isn't it?

22 A Yes.

23 Q And you would admit Gerald Stewart did not deserve
24 that?

25 A I would admit, yes, he did not deserve that. I don't

1 think anyone deserves that.

2 Q He didn't deserve to die; right?

3 A Well, no one deserves to die, sir, but I didn't kill
4 him. And I was put in a very, very horrifying situation.
5 It was terrible.

6 Q So you were put in this situation?

7 A I didn't know what I was walking back into.

8 Q And when Josh came outside, you admit eventually it's
9 found that he has money belonging to Gerald Stewart in his
10 pockets. You admit that?

11 A Throughout the investigation I saw pictures of it while
12 I was in jail.

13 Q You don't deny this Coca-Cola box ended up in your car?

14 A I saw pictures of that as well.

15 Q You don't deny the dead man's wallet, the old man, his
16 wallet, you knew Josh had it?

17 A Josh had told me on the way to the hospital, he had
18 some -- I said, do you know the address of the guy's name.
19 And he said no. He said, but I got his address or an ID or
20 something like that.

21 Q So the wallet was taken to help the situation?

22 A You'll have to ask Joshua Phillips that.

23 Q I'm asking you?

24 A I didn't take the wallet, sir. I didn't look for
25 anything for an address.

1 Q This Coke collection doesn't have an address?

2 A No.

3 Q The money didn't have an address?

4 A No.

5 Q And whoever took this stuff and did this horrible
6 despicable thing to Gerald Stewart, obviously had something
7 to cut with, didn't they?

8 A I would assume.

9 Q And you don't deny underneath this Coca-Cola box, there
10 was a knife?

11 A In the passenger's seat floorboard.

12 Q In your car?

13 A Yes. That could have been there. Josh could have put
14 that there. I was never in the passenger's seat of my own
15 car.

16 Q And you agree with me that when you found Joshua
17 Phillips in that bedroom, you took charge?

18 A There was no one else to take charge, sir.

19 Q You got him out of that house; right?

20 A Yes.

21 Q You got him in that car; right?

22 A Yes.

23 Q And eventually, you got him to the hospital?

24 A Yes, sir.

25 Q And then when you got to the hospital, it wasn't Josh

1 talking, it was you?

2 A Josh was out of it, sir. I mean, I would almost
3 describe him, you know, probably not clinically, but
4 catatonic comes to mind.

5 Q Catatonic at the hospital when you told Donna Sharpe, I
6 beat him up but he's alive. Maybe barely, though.

7 A I didn't tell Donna Sharpe that.

8 Q Catatonic when you say, I'll probably go to jail for
9 this to Donna Sharpe.

10 A I didn't say that to her.

11 Q You're telling this jury, Mr. Prather, these people,
12 you're telling them the truth?

13 A Yes, sir.

14 Q And you're telling them you're an innocent man?

15 A I made some mistakes that night. I should have left.

16 Q You're telling them you did not kill anybody?

17 A I didn't kill anyone.

18 Q You're telling them --

19 A And I never would have hit anyone if I had not been put
20 in that situation.

21 Q You're telling them you did not murder Gerald Stewart;
22 correct?

23 A Yes, I did not.

24 Q You're telling them you did not commit an armed
25 robbery; correct?

1 A That's correct. I didn't steal anything from that man.

2 Q And you're telling them that your hands are clean?

3 A Yes.

4 MR. HUBBARD: Thank you, Your Honor.

5 THE COURT: Any Redirect?

6 MR. FLOYD: Thank you.

7 ROBERT JARED PRATHER - REDIRECT EXAMINATION

8 BY MR. FLOYD:

9 Q Jared, did you have a knife?

10 A No, sir.

11 Q Did you have a knife in your car at all?

12 A No, sir.

13 Q And had you ever seen that knife until you got a look
14 at the evidence?

15 A No, sir. You showed me a picture of it about maybe
16 three months after I was in jail.

17 Q And the Coca-Cola box, had you ever seen that until you
18 saw the pictures of it?

19 A No, sir.

20 Q And you didn't have anything in your possession, in
21 your pockets belonging to Gerald Stewart, did you?

22 A No, sir.

23 Q Did you take anything out of Gerald Stewart's at all
24 that didn't belong to you?

25 A No.

1 Q Did you carve him?

2 A No.

3 Q Look at the jury. Did you carve him?

4 A No.

5 Q Did you murder him?

6 A No, I didn't.

7 Q Did you kill him?

8 A No.

9 Q Are you sure?

10 A Am I sure of it? I'm positive.

11 Q Thank you.

12 MR. FLOYD: No further questions.

13 MR. HUBBARD: Nothing.

14 THE COURT: Please step down.

15 Your next witness.

16 MR. FLOYD: Your Honor, the Defense rests.

17 THE COURT: All right. Ladies and gentlemen,
18 you've heard the Defense's case. We're going to take a
19 break now. Please go to the jury room. Please do not
20 discuss the case.

21 (Jury out at 11:02 a.m.)

22 THE COURT: All right. Will there be a reply?

23 MR. GRAHAM: Your Honor, we have a couple
24 potential reply witnesses that we'd like to meet with right
25 now.

1 THE COURT: All right. How much time do you need?

2 MR. GRAHAM: Twenty minutes maybe?

3 THE COURT: All right. We'll be in recess.

4 MR. GRAHAM: Thank you, Your Honor.

5 (Court in recess for a short break)

6 (Court in session after short

7 break)

8 (In Camera Hearing of Paul LaRosa)

9 THE COURT: Thank you.

10 Yes, sir.

11 MR. HUBBARD: Your Honor, the State has a witness
12 they want to call in reply. It is my understanding from
13 reading prior case law that Your Honor has to find a -- has
14 to hear the testimony and determine its reliability before
15 it can be submitted to the jury. The State intends to call
16 Paul LaRosa, who is a SLED agent who is an expert on crime
17 scene analysis, and that would include crime scene
18 interpretation and also artifacts and the crime scenes are
19 left describes the behavior and the motives of the people
20 who have committed a crime. He will not be presented to
21 develop a profile or to say that anybody is consistent with
22 that type of individual, just to explain the crime scene.
23 It's my understanding of State verses Gary White. I think
24 is the one that says Your Honor has to -- under 702 has to
25 find the reliability of the testimony. Similar evidence has

1 been offered in State v. Taft, which is 728 SE2d 468.

2 THE COURT: All right. Mr. Floyd.

3 MR. FLOYD: Well, Your Honor, it doesn't seem like
4 to me it's appropriate response to the testimony given by
5 the defendant. He didn't go in the house, the crime scene.
6 He didn't have the authority to go in there.

7 THE COURT: Yes, sir.

8 MR. HUBBARD: Your Honor, in response to Mr. Floyd
9 statement, it became relevant when Mr. Prather took the
10 stand and Mr. Prather, in statements earlier we introduced
11 in our case in chief that directly indicates, in his
12 testimony indicates, that he walked in on what was believed
13 to be a rape, and he states that he left the house and that
14 anything done after he left was done by Mr. Phillips. What
15 Mr. LaRosa will find from the crime scene, Your Honor, is
16 that the crime scene is more of a staged crime scene as
17 opposed to a crime scene and is consistent with an actual
18 rape victim exacting revenge on the rapist.

19 (End of In Camera Hearing of Paul LaRosa)

20 THE COURT: All right. Call your witness.

21 MR. HUBBARD: State calls Paul LaRosa.

22 Your Honor, if you'd like, I have a copy of State
23 verses Taft, if Your Honor would like that.

24 THE COURT: Yes, sir.

25 THE CLERK: Please raise your right hand, state

1 you full name and spell your last.

2 MR. LAROSA: Paul LaRosa, L-a-R-o-s-a.

3 (WHEREUPON, Paul LaRosa was sworn
4 to tell the truth.)

5 THE CLERK: Once again, once seated state your
6 full name and spell your last on the record, please.

7 MR. LAROSA: My name is Paul Charles LaRosa, III.
8 The last name is spelled L-a-R-o-s-a.

9 PAUL LAROSA - DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q Mr. LaRosa, where are you employed?

12 A I'm employed at the State Law Enforcement Division,
13 better known as SLED.

14 Q And how long have you worked at SLED?

15 A I've been employed as a special agent since 1994, 18
16 years.

17 Q In your 18 years at SLED -- I guess prior to SLED do
18 you have any formal education?

19 A Yes, sir. After graduating high school from Chapin
20 High School, I attended and graduated from the Citadel.

21 Q After Citadel is that when you began your law
22 enforcement career?

23 A Yes, sir. I was hired by SLED in the crime scene unit
24 in 1994 and was employed as a Special Agent in crime scene
25 until 2000.

1 Q In your tenure in working in latent prints and crime
2 scene from '94 to 2000, what did you do?

3 A Our duties were to analyze forensic evidence that was
4 brought to the lab ranging crimes from burglary up to
5 homicide, and we were also, at that time, the major response
6 unit for South Carolina to respond to jurisdictions on
7 violent crime, process, reconstruct, collect evidence and
8 then analyze that evidence.

9 Q After 2000, what did you do for SLED?

10 A From 2000 to 2005 I was a member of our blood hound
11 tracking team and swat team. From 2005 to 2010 I was a
12 general investigator in our Midlands Region in which we
13 investigated violent crime and more of what you would think
14 of what an agent would be; knocking on doors, arrests,
15 investigating, police involved shootings, homicides, rapes.
16 And then from 2010 to 2012, I've been currently assigned to
17 the behavioral science unit as a criminal profiler.

18 Q What is the behavioral science unit?

19 A Behavioral science was set up at SLED in the early '90s
20 as to mirror what the FBI's program had. They had had a lot
21 of success at Quantico, Virginia with analyzing violent
22 crime, reconstructing, and assisting law enforcement with
23 difficult and complex murder investigation to help -- help
24 by reviewing both on-scene crime scenes and crime scene
25 pictures to help determine the natural flow of the crime

1 scene, to analyze what happened, what type of individual may
2 have committed this crime and it has evolved into what it is
3 today is the weird, difficult crime scenes end up on our lap
4 to help analyze.

5 Q Okay, and how long have you been doing that now?

6 A Two and a-half years.

7 Q What kind of mentoring or formal education have you had
8 as far as behavioral science?

9 A As to --

10 Q As to your current position as a behavioral analyst.

11 A I was approached and asked to be transferred to
12 behavioral science unit because of my unique background in
13 crime scene where I've testified as a crime scene expert in
14 reconstruction. The program, Your Honor, was an understudy
15 program in which we mirror the FBI's criminal study program
16 for their criminal profilers. It's a -- for me it's a
17 two-year program in which I trained under court qualified
18 crime scene analyst and did the same work that they did. I
19 went through intensive training with our Department of
20 Mental Health. I've had medical training through this
21 program. I have studied underneath -- we had two at SLED
22 prior to me. I trained underneath them and looking at
23 behavior, looking at analysis and then I was fortunate
24 enough to be accepted into the FBI's program for a
25 two-month period where I lived right outside of Quantico in

1 a town called Stafford where their operational unit is, and
2 I was assigned cases up there as a -- to work along side the
3 FBI but these cases were throughout the United States and
4 given to me and I completed crime analysis and profile
5 written on the FBI letterhead and submitted to the agency as
6 I finished profiling.

7 Q When you saw that you wrote, I guess, basically your
8 opinion on the FBI letterhead; what does that mean?

9 A That means when I went up there the bureau, it was the
10 final phase of my training and they assumed that when I got
11 there that I was already at a level -- they were giving me
12 my check ride. So this being the final part of my
13 understudy program. When I got there I had a case load, an
14 active case load. I did the work, independent work, just
15 like the FBI profilers and then had that peer reviewed by
16 their supervisors and it was sent out as a finished product
17 with SLED's name and my name as a special agent attached to
18 an FBI letterhead that this work was done under their
19 guidance and their approval, the finished product met their
20 approval.

21 Q Describe what -- how many members are there at the
22 behavioral team at SLED?

23 A I am the third one. There's -- there are two active
24 profilers up there. I'm the third active profiler. We have
25 one who is retired of his retired but because of the

1 closeness of the community, the uniqueness of it that
2 retired agent is still actively involved and is still
3 considered part of our group whenever we consult on
4 difficult cases.

5 Q. Now, have you ever appeared in court to testify as to
6 crime scene analysis?

7 A This will be the first time as a crime scene analyst
8 through the behavioral science program, but I have testified
9 before in Federal Court, General Sessions Court in South
10 Carolina and in Georgia as an expert in crime scene, crime
11 scene reconstruction, crime scene assessment.

12 Q So today the difference to what you've testified to
13 before would be what?

14 A That I am bringing that knowledge I've gained over the
15 past two and a-half years to add crime scene analysis is the
16 study of not only forensics and crime scene reconstruction
17 and assessment, but the psychology and the behavior that is
18 seen at the scene, to bring that all together and give an
19 idea of how many offenders -- in this specific case how many
20 offenders would have been involved in the scene.

21 Q What specialized training or education or knowledge do
22 you have regarding crime scene behavioral interpretation
23 that makes you qualified to do that?

24 A Well, on top of the original crime scene work that I
25 was active in crime scene training underneath a qualified

1 examiner both at SLED and with the FBI's behavioral analysis
2 unit. I've also interned for 30 days with members of the
3 Department of Mental Health underneath the forensic
4 psychiatrist and psychologist there and I was treated as a
5 peer and did rounds with them at the psychiatric hospital
6 throughout the Columbia area and gave assessments on those
7 individuals.

8 Q. Are you a member of any professional organizations, do
9 you attend any conferences on the subject or do you review
10 publications?

11 A. We do stay active in research and in consultation with
12 our brothers with the Federal Bureau of Investigation, but
13 the community is small there is no figurehead that accrue
14 the title that would be -- that we would fall under that we
15 do constantly consult with the FBI and in fact as soon as
16 this trial is over we're going -- myself and my partner are
17 going up there for a meeting between the FBI and the Royal
18 Canadian Mounted Police where we will discuss new topics and
19 better ways to stay in communication.

20 Q. Assuming that you're qualified as an expert and allowed
21 to testified in front of the jury as an expert in crime
22 scene analysis have you had an opportunity to review the
23 photographs and the video of the crime scene that was taken?

24 A Yes, sir, I have.

25 Q And have you had an opportunity to review the reports

1 of the first responders regarding the condition of Mr.
2 Stewart's body when it was found?

3 A. Yes, sir, I have.

4 Q. And based of those things -- and you were also present
5 when Mr. Phillips testified -- excuse me, Mr. Prather
6 testified?

7 A That's right. Yes, sir.

8 Q And you heard Mr. Prather state that he walked in --
9 his testimony was -- and if I'm wrong correct me, but
10 basically that he walked in on his friend, who he left
11 passed out, he walked in and from statements the descendent
12 made and from the position he found his friend in he assumed
13 -- they both assumed, both Mr. Prather and Mr. Phillips were
14 under the impression that Mr. Phillips had been raped or
15 sexually assaulted?

16 A There appeared to be something that occurred that would
17 have been sexual in nature; yes, sir.

18 Q. And then he described an altercation between him and
19 Mr. Stewart and he also described the anger and upset of Mr.
20 Phillips?

21 A Yes, sir.

22 Q. And then you heard him testify that he went out of the
23 house and Mr. Phillips stayed in for approximately eight to
24 10 minutes and then Mr. Phillips came out?

25 A. Yes, sir.

1 Q. Based on your review of the -- well let me ask you a
2 question. In normal -- an individual who is raped --

3 A Yes.

4 Q -- who is in the position to seek revenge or extract
5 vengeance immediately on the rapist --

6 A Yes.

7 Q -- as an expert in the field of crime scene analysis,
8 do you have an understanding of what consistent behavior
9 would be as far as a rapist was deceased, of looking at a
10 crime scene in determining whether what you say is
11 consistent with that emotion?

12 A If I understand what you're asking correctly, is the --
13 by behavior I mean what was done to the victim at the time
14 of death or near death is stated from what I understand the
15 pathologist testified to --

16 Q Correct.

17 A -- is inconsistent with directed anger towards the
18 victim.

19 Q Well, let's talk about that. Why is it inconsistent?

20 A Because the victim of the -- I'm going to speak and
21 call victim a victim, but I'm trying to get this -- the
22 victim, Mr. Stewart at the time of his death was obviously
23 incapacitated to the point where he could have fought back
24 and that is both seen by the words rapist carved into his
25 back. Then the staging of the dildo next to him.

1 Q You used word staging.

2 A Yes.

3 Q What does staging mean?

4 A Staging is a term used in crime analysis profiling that
5 indicates that the individual responsible for the death of
6 the crime wants to alter the crime scene as to not show the
7 true reason behind the scene, and wants to alert first
8 responders that this is really what happened. It is -- it
9 is -- the individuals who have experience in crime scene
10 reconstruction can tell when something is staged because it
11 doesn't flow correctly. And in all of the cases that I have
12 looked at and the other individuals in my department because
13 we both discussed -- we've discussed this case, that the
14 staging of the words rapist and the dildo next to him
15 indicate that somebody -- the personality that was in that
16 crime scene at that time wanted the world to know and to
17 show how bad of a guy Mr. Stewart was. Whether right or
18 wrong they're staging it to give that impression, that he's
19 a horrible individual, and he's not just a rapist, he's such
20 a rapist that I've got to carve it into his back and then
21 place an item next to him that is so disgusting. I'm going
22 to put this dildo next to him to show all first responders,
23 law enforcement to direct them towards the fact that he is a
24 rapist. They are altering the crime scene.

25 Q You've reviewed this case with your counterparts at

1 SLED?

2 A. Yes, sir.

3 Q. And they are of the same opinion that you are?

4 A Yes, sir, they are.

5 Q How do you know -- why is it not your opinion that the
6 carving of the word rapist and the placement of the dildo is
7 the proper flow of a real rape?

8 A Because it is -- when we see directed anger that anger
9 is carried out in multiple forms and a beating and a
10 multiple stabbing, but at that point that the option of the
11 individual who was so angry at the scene is -- he's got all
12 these different options. He can beat him to death, he can
13 shoot him to death. He can do all these things, but he
14 decides to write the word rapist in this guy's back. His
15 intention was that whoever comes across this body I want
16 them to know that this individual is so horrible and so
17 grotesque that I want the world to know that he is a rapist.

18 Q Would your opinion have been different -- would you
19 agree with me that if your review of the pathology, the
20 autopsy report, you did review that; correct?

21 A Yes, sir.

22 Q Reviewed that and the your review of the photos of the
23 autopsy where you could see the word rapist in there, those
24 are described as superficial?

25 A Yes.

1 Q If it had been an actual rape -- well, does that mean
2 superficial more consistent with a staged scene or more
3 consistent with an actual rapist?

4 A If somebody has directed anger and is so upset they
5 have the time to carve the word rapist in him, I'm not
6 seeing where, in my experience and in my opinion and based
7 upon the opinions of the individuals in my office, that it
8 would have been deeper. It would have been -- you have a
9 knife and this guy has just raped you, you're going to
10 superficially carve the word rapist in there when you could
11 carve it a lot deeper, you could stab him multiple times,
12 direct your anger towards the instrument that would have
13 caused the rape which would have been, you know, a penis or
14 a mouth. That wasn't displayed in this scene. It was a
15 superficial cutting of the word rapist.

16 Q. I use the term undoing. What does that mean?

17 A Undoing is a symbolic message from an offender. They
18 may or not be happy with the way the crime took place and
19 they want to cover it up. We have talked to plenty of
20 suspects, read a lot of literature that undoing is a term
21 used and it is a symbolic way for an offender to kind of
22 erase what has happened to the victim.

23 Q. So you see evidence of staging. From your review of the
24 file do you see evidence of undoing?

25 A Yes, sir. Undoing can be as simple as throwing a

1 t-shirt over the victim's face or in this case something a
2 little bit more elaborate, which is covering the entire
3 victim up with a blanket.

4 Q. How many different ranges of emotion do you see in a
5 crime scene when you're talking about a carving in the back,
6 a dildo placed staging and then an undoing?

7 A. I see, in my opinion, two specific personalities which
8 would lead me to believe two offenders within that crime
9 scene.

10 Q. You're not here today, you've done no profile on Gerald
11 Stewart; isn't that correct?

12 A. That's correct.

13 Q. You've done no profile on Mr. Prather?

14 A. No, sir.

15 Q. You've done no profile on Mr. Phillips?

16 A. That is correct.

17 Q. You not here to say that Mr. Prather did anything, are
18 you?

19 A. That is correct. The only thing that I can say based
20 upon what limited amount of time that I've had to do this,
21 because I couldn't get a complete victimology, I couldn't
22 look at their past histories, their psychological files or
23 any of that. When I look at the crime scene I saw two
24 offenders because we have elaborate staging in which one
25 offender wants the world to know that this guy is a rapist.

1 Whether he is in his mind or not that is the perception that
2 this offender wants to give to the public that this guy is a
3 rapist I want the world to see, and, in fact, I want the
4 world to see so much that I'm going to put a dildo next to
5 him to show how disgusting he is. And in direct conflict
6 with that is another personality who is wanting to erase and
7 undo what has happened. That is from two different
8 personalities, which in my opinion is two different
9 offenders.

10 Q The behavioral unit as a whole, you interpret crime
11 scenes, but I think that earlier you talked about profiling.
12 What is profiling?

13 A Profiling is -- is an assessment that is given that we
14 can look at a crime scene or a series of crimes and help the
15 local agencies who have requested us to kind of help narrow
16 down their field of suspects, and it can be as simple as
17 you're looking for somebody who lives close by to an
18 elaborate profile depending on the behavior at the scene we
19 can get as specific as, you know, prior military history,
20 prior law enforcement, education. We can get elaborate with
21 it on that.

22 Q But today you're only here to help us interpret the
23 crime scene and the flow that you see in the pictures and
24 your understanding of what the first responders said and
25 what the autopsy found?

1 A Yes, sir. That there were -- from what I've viewed and
2 in consultation of other experts in the field that there are
3 two offenders within this crime scene. One who has staged
4 this to look like a rape. What I mean by staging is the
5 altering of the crime scene from the original form. They
6 have carved the word rapist into the victim's back. They
7 have placed the dildo next to him and they've put it in such
8 a way that it should be visible to the first responders.
9 They are altering it and then the other individual coming in
10 and covering up what has happened..

11 MR. HUBBARD: Your Honor, I believe that's all the
12 State has for this witness for this hearing.

13 THE COURT: Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor.

15 PAUL LAROSA - CROSS-EXAMINATION

16 BY MR. FLOYD:

17 Q Mr. LaRosa, so you've never been accepted as an expert
18 witness in crime scene analysis?

19 A That is correct.

20 Q And isn't it true that in order to have a complete
21 picture you need to have more information about the
22 suspected people involved?

23 A Not in what I was requested to analyze by the
24 Solicitor's office in this case. They asked me to look at
25 the crime scene, get an idea of how many possible offenders

1 could be in that scene, and based upon the crime scene
2 photos, the video, and the statements by first responders
3 that I was able to say, and I feel confident that there were
4 two offenders inside that scene, but as to who did the
5 carving, who placed the blanket over him, I don't have
6 enough information to make that determination

7 Q Are you aware of the mental health history of Joshua
8 Phillips?

9 A No, sir. I have not looked at any mental health
10 history from Mr. Prather, Mr. Phillips or Mr. Stewart.

11 Q Are you aware of any hallucinations, things like that?

12 A No, sir.

13 Q Do you know whether or not he has more than one
14 personality?

15 A No, sir. I'm unaware of that.

16 Q Do all rape victims react the same?

17 A No, sir, they do not.

18 Q Are all profiles accurate?

19 A To what I'm giving here today or profiles in general?

20 Q Profiles in general.

21 A Profiles in general are a tool to assist local law
22 enforcement in helping whittle down the number of suspects
23 that they have.

24 Q And they're not always accurate are they?

25 A I have never been a part of one that has been

1 inaccurate.

2 Q You're telling me that every profile you've ever done
3 has been right on?

4 A They haven't been 100 percent accurate but they've
5 never been inaccurate.

6 Q Not 100 percent accurate?

7 A That's correct. Yes, sir. Yes, sir, it is a tool.

8 Q Well, and you could always be accurate in some things,
9 you've got a 50 percent chance, right?

10 A Yes, sir. I think that is -- that is the common
11 misinterpretation of what we see on TV with Criminal Minds
12 and shows like that, Silence of the Lambs. That is not how
13 we affect a profile in State Law Enforcement Division and
14 that's not how I was trained with the FBI. Those profiles
15 that you're discussing were some of the very original ones
16 when the whole science itself was just beginning in its
17 infancy.

18 Q You mentioned a video. What video are you talking
19 about?

20 A It was the crime scene video.

21 Q So you have seen evidence that has not been presented
22 here in court?

23 A As part of the information that I've looked at it
24 mirrored the crime scene photographs.

25 Q What else have you looked at?

1 A I was given the documents from the court case, the
2 transcript from the first trial. From the first case. I
3 apologize.

4 Q Anything else?

5 A Just the testimony that I've been -- heard over the
6 past day and a-half, I guess, would be accurate.

7 Q Were you provided the statements given by Joshua
8 Phillips?

9 A That was -- I reviewed some of that, but did not use it
10 in my analysis.

11 Q How many statements of Joshua Phillips?

12 A I couldn't tell you. I read whatever was provided by
13 the solicitor's office.

14 Q Well that's what I'm trying to ask you. What
15 statements were you provided by Joshua Phillips?

16 A It was whatever was provided -- I don't have a number
17 or which statement.

18 Q Was it more than one?

19 A I -- I can't say 100 percent how many statements of Mr.
20 Phillips I read.

21 Q Was it more than one?

22 A I can't answer that, Your Honor, I'm not sure.

23 Q Well, you obviously did because it's more than eight or
24 nine. Did you know that?

25 A I've read the statements that were provided to me.

1 Q You just said it wasn't more than one from Joshua
2 Phillips. I'm telling you it was eight or nine from Joshua
3 Phillips. So you didn't see all the Joshua Phillips
4 statements did you?

5 A If I conveyed that, I apologize. The information that
6 I received from the solicitor's office is the information
7 that I received. It was sufficient enough for me to give
8 them an analysis of what they had requested, how many
9 offenders were in the scene, and that is what I provided to
10 them.

11 MR. FLOYD: I have no further questions, Your
12 Honor. I, of course, object to his testimony. First of
13 all, I don't think it's a proper reply, but secondly, he
14 does not possess enough scientific validity to be allowed to
15 be used. I don't think he's qualified as an expert in this
16 area and never has been accepted as one.

17 THE COURT: State?

18 MR. GRAHAM: Your Honor, I think the case I handed
19 in front of you will say that this is non-scientific. My
20 understanding is that Your Honor just has to determine if
21 the witness is qualified and that the information is
22 reliable. And once you do that, you determine it's relevant
23 then the jury gets to hear it. And Your Honor, I know that
24 some of the questions that Mr. Floyd was asking myself, I'd
25 like to point out to Your Honor that we are not talking

1 about criminal profiles here, he's talking about behavioral
2 scene at a crime scene. We're actually limiting the scope of
3 what Taft has, what they were getting into in Taft.

4 THE COURT: There are two issues before me. One is
5 whether or not this is proper reply testimony and the second
6 is whether or not it's testimony that should be admitted
7 pursuant to State v White and State v Taft. First with
8 regard to issue of reply testimony. The law of this state
9 is reply or rebuttal testimony is within the discretion of
10 the court, and sound discretion of the court is proper where
11 it is introduced in reply response to matters raised in the
12 -- raised by the defense. Based on the defendant's
13 testimony as to what occurred at the crime scene, where he
14 was at the crime scene, where the co-defendant, Mr.
15 Phillips, was at the scene, the crime scene. I find that
16 this is an appropriate area for reply testimony. The second
17 question, State v Taft and State v White. First is the
18 question of whether this witness is an expert witness. Mr.
19 Floyd said he's not an expert because he's not been
20 qualified as an expert. Certainly there is a first time for
21 everyone to be qualified as an expert. The test for whether
22 or not a person should be qualified as an expert is one who
23 by training, education and experiences has become expert to
24 such an extent that they can impart information to a jury
25 the jury will not otherwise necessarily understand or might

1 help explain some evidence to the jury. That witness can be
2 called upon and allowed to testify as an expert. Certainly
3 up to the jury to believe or not to believe any witness
4 including an expert witness. More specifically beyond
5 whether or not this witness, who obviously has testified as
6 to his specialized training up at Quantico and other places
7 in Virginia where the FBI training takes place, and based on
8 his years of experience he has sufficiently convinced the
9 court that he qualifies as an expert in the field of crime
10 scene analysis with regard to this specific area which he
11 wishes to testify and in this case crime scene assessment,
12 behavioral analysis and the requirement of the court to
13 conduct an In Camera hearing to make a determination of,
14 one, the relevance of the testimony and, two, the
15 reliability as far as whether the jury has to believe him,
16 the reliability as to the extent that it should be admitted
17 as testimony in this case.

18 I've evaluated the substance of the proposed testimony.
19 I find that it is relevant testimony to be presented in
20 response to defense in this case the witness proposes to
21 testify. When I interpreted three areas staging, directed
22 anger, staging and uncovering I actually have the concern as
23 to testimony being limited to the extent that it doesn't
24 invade the province of the jury, pointing a finger to say
25 who did what in this instance. But as it relates to the

1 appropriateness of the State being allowed to present
2 evidence regarding his theory. The co-defendant in this
3 case, who both participated in causing the death of Mr.
4 Stewart and considering the nature of the crimes scene as
5 found by law enforcement or what apparently was left before
6 law enforcement got there, I find that this testimony is
7 sufficiently relevant, probative, and reliable for the jury
8 to hear on the issues of staging, directed anger and
9 recovery. Certainly no identification can be made as to who
10 did what and no suggestion can be made to the jury as to
11 their conclusion as to who did what. That would invade the
12 province of the jury. As to the issues proposed by the
13 State, I find it to be sufficiently reliable to be admitted
14 in this case. As required by Rule 702 and by the mandates
15 of State v Taft, and it is -- will be allowed.

16 MR. FLOYD: Your Honor, I'd like to respond to
17 that briefly.

18 THE COURT: No, sir. You want to respond to the
19 Court's ruling?

20 MR. FLOYD: Just one point.

21 Your Honor, we take issue particularly with the ruling
22 as to directed anger because the problem we've got with that
23 is it does invade the jury's province because he's going to
24 testify that it was not -- the carving of rapist was not an
25 appropriate directed anger response. If he's allowed to say

1 that, then that means you're saying well, it must have been
2 Mr. Prather because he wasn't raped. And so I think that is
3 invading the province of the jury.

4 THE COURT: I understand your objection.

5 All right. Let's bring the jury in.

6 MR. HUBBARD: Can we bring the witness down.

7 THE COURT: Yes.

8 (End of In Camera Hearing)

9 (Jury in at 12:04 p.m.)

10 THE COURT: All right. Ladies and gentlemen
11 you've heard the defense's case. The State will offer
12 reply.

13 You may proceed.

14 MR. HUBBARD: Thank Your Honor.

15 State calls Paul LaRosa.

16 (WHEREUPON, Paul LaRosa was sworn
17 to tell the truth.)

18 CLERK OF COURT: Once you're seated, state your
19 full name, spelling your last.

20 MR. LAROSA: Paul Charles LaRosa, III. The last
21 name is spelled L-a-R-o-s-a.

22 PAUL LAROSA - DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q Mr. LaRosa, where are you employed?

25 A I'm employed with the State Law Enforcement Division,

1 better known as SLED.

2 Q How long have you been employed with SLED?

3 A I've been employed with SLED since September 1994, as
4 an agent for 18 years.

5 Q. Starting off in '94, what was your first job
6 assignment?

7 A I was assigned to the Crime Scene Unit from 1994 until
8 a little past 2000.

9 Q. Okay. Being assigned to the Crime Scene Unit, what did
10 you do?

11 A Our unit, at that time, was the major response unit for
12 South Carolina to respond to violent crime throughout the
13 State of South Carolina. South Carolina is a rural state
14 and a lot of our agents don't have the proper equipment and
15 training to handle a violent crime scene. So our job at
16 SLED at that time was to respond state-wide at the request
17 of those local sheriff's offices to assist in the
18 reconstruction, determination of what happened at crime
19 scene, the collection of forensic evidence, and then taking
20 that evidence back to our laboratory in Columbia and passing
21 it on to the different -- transferring the evidence to the
22 different units within our lab, whether it's toxicology, DNA
23 or serology and having those items processed for forensic
24 results.

25 Q. And part of your job, when you're working with the

1 Crime Scene Unit is determining what happened at the crime
2 scene?

3 A Yes, sir. That was -- when we responded that was the
4 bulk of what -- the assistant that we were providing the
5 local agencies, helping to determine basically the who,
6 what, when, where of what happened within a crime scene.

7 Q Have you ever testified before as an expert in crime
8 scene yourself as you're discussing there?

9 A Yes, sir. I've testified numerous times, dozens of
10 time both in General Sessions Court in South Carolina,
11 Federal Court and in the State of Georgia as an expert in
12 crime scene reconstruction, crime scene assessment, evidence
13 processing and so on.

14 Q How many years at SLED did you have working in crime
15 scene?

16 A I've worked in our Crime Scene Unit for approximately
17 seven years.

18 Q After your time in crime scene what else -- what was
19 your next step in your career go?

20 A The next step in my career was to our blood hound
21 tracking team and our swat team, and I did that from
22 approximately 2000 to 2005.

23 Q After 2005, how did your career progress?

24 A My career progressed to the investigative unit within
25 SLED. The state is broken up into four regions, and I was

1 assigned -- I would have been in the greater Columbia area
2 and I was assigned to what we referred to as the Midlands
3 Unit. I was an investigator in that unit, and we
4 investigated things from public corruption to violent
5 crimes, homicides, police involved shootings and we were
6 there to -- some of the cases were original cases that we
7 had complete custody over and a lot of times the smaller
8 agencies would call and as for manpower issues and help
9 guide them through some more difficult violent crimes they
10 may have had within their area.

11 Q After your time in investigations what did you do?

12 A I was accepted into the Criminal Profiling Understudy
13 Program at SLED.

14 Q What is that?

15 A Starting in about 1980, SLED -- the late 80s, SLED was
16 chosen by the FBI to have an agent sent to live and work
17 along side FBI agents in Quantico, Virginia to be part of
18 the new program of criminal profiling. SLED sent an agent
19 up there and the agent came back and became what's commonly
20 known as our criminal profiler, and he would assist in
21 difficult and complex cases throughout the State of South
22 Carolina. SLED is very forward thinking in this and while
23 other agencies -- unfortunately have not kept theirs up,
24 SLED has and I was chosen to be -- to go through that
25 understudy program to become a criminal profiler.

1 Q How long is -- what is the understudy program that
2 you're referring to?

3 A The understudy program is an intense training program
4 where you train underneath a -- you understudy or become an
5 apprentice underneath an already qualified criminal profiler
6 that is received the appropriate degree of training, and
7 basically, I became his shadow for two years even though I'd
8 already had all of this crime scene investigative
9 experience. We're looking at things different. We're
10 looking at things from the behavioral part, the threat
11 assessment of the crime scene. I followed him and shadowed
12 him. I went to specialized training through the US Marshall
13 on threat assessment, the Naval Investigative Service, NCIS.
14 I went and trained with the Department of Mental Health,
15 along side the doctors there in the -- at several different
16 forensic psychology places where people were receiving
17 in-patient treatment. I was fortunate enough to continue my
18 training right outside of Quantico, Virginia. I moved up
19 there for two months and worked along side of the FBI's
20 criminal profilers for two months as a peer and conducted
21 case review and case work up there as an independent adjunct
22 of the FBI.

23 Q The unit that you're in right now, what is the name of
24 that unit?

25 A The Behavioral Science Unit.

1 Q Okay. You've been talking about profiles, but what
2 else does a behavioral scientist do?

3 A We -- the best way to describe what we do is we look at
4 -- we receive request from one of the local agencies of
5 anything that is maybe a little weird, odd, bizarre or might
6 be a little complicated behaviorally for them to assess and
7 interpret. We work a lot of threatening behavior; letters
8 to the Governor's office, different state senators,
9 different judges, different federal employees, state
10 employees. We get contacted a lot -- state agency A is
11 getting ready to let an individual go. They'll call us in
12 to do an assessment on the best way to allow that person to
13 be fired where there's no retribution. We will be called to
14 look at specific parts of another case and tell us -- ask
15 our opinion on what is happening within that -- why would an
16 offender to A, B, and C. Why would this crime scene unfold
17 this way. And then, of course, the traditional -- what we
18 see on Criminal Minds, unfortunately is not that way. It's
19 not that glamorous, but we will get a case where they will
20 have a death and there's no offenders in custody and they
21 will ask us to look at it and to come up with a -- not a
22 portrait, not as in a picture, but a behavioral aspect, a
23 behavioral portrait of what the individual or individuals
24 may look like when they go to find them. Are they going to
25 be married, are they going to be single. Do they live at

1 home. Are they educated. Are they uneducated. Prior
2 military. That kind of stuff and we get that from the crime
3 scene and the behavior. The whole interpretation of
4 criminal profiling is we believe the behavior that is shown
5 in a crime scene, that offender will have that behavior
6 outside in their real life. You can't hide behavior.

7 Q If I ask you what the term crime scene analysis, what
8 is that?

9 A Crime scene analysis is taking what forensics are at
10 the crime scene, what the crime scene construction, the
11 crime scene assessment and also the behavior, the psychology
12 of what's going on and merging all of that in to providing
13 the agencies who request us with a flow and idea -- how many
14 offenders, how many -- what type of offender, that type of
15 stuff.

16 Q What makes you an expert in crime scene analysis?

17 A I'm not quite sure -- what makes -- I believe the
18 training that I've gone through, the intense crime scene
19 work that I've already done for the state where I'm
20 testified as a -- an expert in crime scene reconstruction
21 and assessment and the intense two-year training program
22 that I went through, and I believe that when I was accepted
23 by my brothers and sisters within the FBI as an equal and
24 allowed to write criminal and crime scene analysis and
25 profiles for the FBI with my name attached and the SLED

1 letterhead with the FBI seal right next to it, and they
2 allowed it to kind of go out to different agencies. I
3 worked one in California, Utah. Those type of things where
4 my name was attached to those people who I admire and
5 respect and who are the leaders in the behavioral science
6 world. I guess I want to say -- I mean, it's not my
7 decision to say, but I believe that my training and
8 experience has put me up there. I'm on equal plain with my
9 peers within the FBI.

10 MR. GRAHAM: Your Honor, at this time, State would
11 offer Agent Paul LaRosa as an expert in crime scene
12 analysis.

13 THE COURT: What says the defense?

14 MR. FLOYD: May I?

15 THE COURT: Yes, sir.

16 PAUL LAROSA - CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q Mr. LaRosa, have you ever been accepted as an expert in
19 crime scene analysis in court before?

20 A Never before in crime scene analysis, but the other
21 areas I have. Yes, sir.

22 Q But you've never been accepted in crime scene analysis?

23 A Never in crime scene analysis. No, sir.

24 Q And do you have a degree in psychology?

25 A No, sir. The degree program that I went through there

1 is no understudy diploma that you can receive.

2 Q What formal training from an educational institution
3 have you received in psychology?

4 A I've never received anything from a formal college. No,
5 sir. But the internship with the Department of Mental
6 Health where I was accepted with their forensic psychiatrist
7 as an equal and diagnosed and performed treatment plans for
8 patients. It's -- that's the extent of my forensic
9 psychology, forensic psychiatry background.

10 Q How long did that internship last?

11 A It was for 30 days. I went and worked every day with
12 them and I still receive phone calls from the doctors there
13 on complicated cases that may involve criminal aspects, and
14 they will call me and ask my opinion and we'll get together.
15 We still consult the experts with the Department of Mental
16 Health ion. we still consult forensic psychology, the
17 forensic psychiatrist and psychologist. We talk to each
18 other, if not weekly, every other week on difficult and
19 complex cases.

20 Q Okay.

21 A We share the information.

22 Q So Mr. LaRosa you've had no educational training, no
23 formal institutional educational training in the area of
24 psychology. You've had 30 days of internship in psychology?

25 A Yes, sir. Putting it that way, that's about accurate.

1 Q Thank you.

2 MR. FLOYD: Your Honor, we would object that he be
3 qualified as an expert. He doesn't have the training to
4 make those kinds of decisions.

5 THE COURT: State.

6 MR. GRAHAM: Your Honor, I think that it's under
7 702 he is an expert and he has education and training that
8 was assist the trier of fact in obtaining evidence in this
9 case. I believe he is qualified as an expert.

10 THE COURT: I'll qualify him as an expert over
11 objection.

12 PAUL LAROSA - REDIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q Mr. LaRosa, Agent LaRosa, did you have an opportunity
15 to review photographs of the crime scene in this case?

16 A Yes, sir, I did.

17 Q Specifically, let me show you State's 20, 21, and 23,
18 and ask if you recognize those as some of the items that
19 you've looked at?

20 A Yes, sir?

21 Q. In addition State's No. 39 from the autopsy?

22 A. Yes, sir.

23 Q. Did you also review the autopsy reports?

24 A Yes, sir, I did?

25 Q. And did you review the responses -- excuse me -- the

1 reports or statements of the first officers on the scene and
2 the first medical personnel on the scene?

3 A Yes, sir, I did.

4 Q. In addition to that were you present in the courtroom
5 when the defendant testified?

6 A. Yes, sir. I was.

7 Q. As far as the crime scene itself and what you saw, the
8 autopsy, and the statements of the first responses as to how
9 they found the crime scene did you have an opportunity to
10 form an opinion regarding the behavior that you observed?

11 A. Yes, sir, I have.

12 Q. And did you also review that opinion with your peers at
13 SLED?

14 A. Yes sir. As part of any work that we are going to
15 testified to or work product that we're going to release is
16 peer-reviewed within our own unit. Besides myself there's
17 two other criminal profilers at SLED.

18 Q And did they agree with your opinion?

19 A Yes, sir, they did.

20 Q. What does the word, staging mean?

21 A Staging is a term used in both crime scene assessment
22 reconstruction, crime scene analysis, is the offenders way
23 of altering the crime scene from what truly happened. It is
24 to get law enforcement first responders, whoever sees the
25 victim or the crime scene, to get them off on a different

1 idea. We see it -- you might have a husband who kills his
2 wife and makes it appear that it's a burglary. That can be
3 staged. It can be very elaborate or very subtle.

4 Q And did you see evidence of staging in this case?

5 A Yes, sir, I did.

6 Q Okay. What was some of the evidence of staging that
7 you saw?

8 A The two key points that I reviewed and is my opinion is
9 staging is the carving of the word rapist on the victim's
10 backside.

11 Q We're talking about the photograph of State's No. 39?

12 A Yes, sir.

13 Q Why is that staging?

14 A Because it doesn't impact the actual murder itself. It
15 has no -- it's a superficial wound. It's the offender's way
16 of saying, hey, look at this guy. Not only is he a bad guy,
17 he's bad enough that somebody's carving rapist in his back.
18 I want the world to know that this guy is a rapist. Whether
19 or not that is what they believe or not, I can't say, but
20 they want to project that to the first responders that this
21 guy's a rapist.

22 Q Well, if he really was a rapist, couldn't something
23 like this have been done?

24 A I -- asking around to the others in my unit, some have
25 more experience, more years on the job than me, no one has

1 ever seen --

2 MR. FLOYD: Your Honor, I object to this.

3 THE COURT: Objection sustained.

4 BY MR. GRAHAM:

5 Q Why is it superficial, Agent LaRosa?

6 A That based upon the pathology it's superficial and
7 there doesn't appear to be a lot of anger with the carving
8 of the word rapist in there. If there's some hatred, if
9 there's just some explosion of emotions you would typically
10 see the harder, more thorough cuts than the superficial. We
11 look at it that at the end of the day this offender had many
12 different routes to take. And he took the route of placing
13 the word rapist on a victim's backside and the cuts are just
14 deep enough so that the wound could be seen. That is part
15 of the staging that we are looking at.

16 Q Looking at State's No. 23, what is it about State's No.
17 23 that indicates staging?

18 A It's another example of evidence that is not necessary
19 to commit the crime. We have not only is this offender, the
20 personality wanting to carve rapist into this individuals
21 back, he finds that one item for shock value to show what
22 type of rapist he is and places gently next to him or places
23 it gently underneath his arm pit. So you've got rapist on
24 the backside, and now you've got an adult sex toy laying
25 next to him, which had nothing to do with the murder.

1 There's no signs, evidence from the autopsy report that that
2 dildo was used in any manner.

3 Q. Agent, what is your understanding of how Mr. Stewart
4 was found. I know we have photographs in States 21 and 20
5 showing Mr. Stewart on his knees, face-down on the couch;
6 correct?

7 A That that is correct, yes, sir.

8 Q. And his -- What's your understanding of the condition
9 of his clothing?

10 A The clothing were was that way, covering his body.

11 Q Was word rapist visible?

12 A. No, sir.

13 Q. Was there -- is there any other information you have as
14 far as Mr. Stewart was covered or uncovered, like those
15 pictures?

16 A The information that I reviewed from reading the
17 initial responder's reports is that he was covered with that
18 blanket and also a pillow.

19 Q If I use the word, uncovering, is that a term that you
20 understand or undoing?

21 A Undoing is a term that we use in crime analysis where
22 an offender would want to erase, symbolically erase what has
23 happened. In this case, it could be -- it's on a spectrum.
24 You could have a lot or you can have a little, where an
25 offender may throw a t-shirt over a victim's face because

1 they can't look at it any more. It's not what they want --
2 they don't want to remember him a certain way. This is a
3 classic case of undoing, which is covering up the victim
4 with a blanket and a pillow. It is symbolically erasing
5 what has occurred in the scene.

6 Q Is staging and undoing show the same emotion?

7 A They are in absolute conflicts with each other. You
8 have this -- I don't want to call it elaborate, but I'll
9 call it detailed staging of taking the time to carve the
10 word rapist in the back of the victim and then placing the
11 adult sex toy next to him to show first responders that this
12 guy is a rapist. Hey, look at this. They are yelling. They
13 are expressing this is the way I want this guy to be
14 portrayed, as a rapist. Then you have another personality
15 that goes in and says, I'm not comfortable with that. I'm
16 going to undo it, cover it up. You have two distinct
17 personalities which points us to me and my opinion that you
18 have two offenders within that scene at the same time.

19 Q One offender for staging --

20 A Yes.

21 Q -- and another offender for the --

22 A Yes, yes. Two distinct offenders who at the heat of
23 the moment one of them decides to carve the word rapist and
24 place an adult sex toy, a dildo next to him, and the other
25 one taking blankets and wanting to erase, to just undo what

1 has just occurred.

2 Q Thank you, Agent LaRosa. Please answer any questions
3 Mr. Floyd may have.

4 PAUL LAROSA - RE-CROSS EXAMINATION

5 BY MR. FLOYD:

6 Q Agent LaRosa, are you saying the same person could not
7 commit a crime and feel guilt and cover it up?

8 A I have never seen in my research in my literature and
9 neither have the others in my office where you have such a
10 detailed staging a detailed altering of a crime scene where
11 you're writing rapist into someone's back and putting a sex
12 toy and then deciding at the end that you don't want that to
13 be seen. Never seen it. It is more indicative, most
14 indicative of two separate offenders.

15 Q. All right. You say offenders. Are you saying that
16 someone who did not participate in the crime is covering it
17 up?

18 A Offenders is a word that generally -- a word that we
19 use for subjects.

20 Q Which means two different people?

21 A Two different people.

22 Q You think one person did it and one person covered it
23 up?

24 A I'm not saying -- there's not enough information to say
25 who hit him because we have seen both suspects, offenders

1 who have beat someone to death and then covered them up.
2 Also have seen offenders who have beat someone to death and
3 then staged it to look like something else. I can't tell
4 which offender, if both of them were not participating in
5 the crime itself, of the physical assault, but there were
6 two offenders that have different personalities, different
7 behaviors at the end while the victim is dying. One is
8 staging it to look like something and the other one is
9 erasing it or undoing it.

10 Q Agent LaRosa, you've had 30 days of psychology?

11 A More than that. I mean, I have had some classes but I
12 don't have any formal degree from college.

13 Q Have you studied the mental health records of Joshua
14 Phillips?

15 A No, sir. As part of the package there was no mental
16 health record of any of the individuals involved.

17 Q Are you saying -- would you agree with me that the
18 mental health or the emotional stability of an individual
19 could affect the way they act?

20 A It -- it possibly could. Yes, sir.

21 Q And not everybody reacts the same way --

22 A That is correct.

23 Q Not every rape victim is going to act the same way, are
24 they?

25 A That is accurate. Very accurate.

1 Q Now, but you have no idea of Joshua Phillips mental or
2 emotional stability?

3 A No. I have not researched anybody's.

4 Q You don't know whether he has an psychosis?

5 A No.

6 Q Any neurosis?

7 A No, sir.

8 Q Or whether he's a split personality; do you know that?

9 A That -- No, sir. As I understand your question, no,
10 sir, I've not reviewed any literature that anyone has any
11 mental health issue.

12 Q Were you aware there was a knife found in the floor?

13 A A knife. I know that a knife was collected.

14 Q What kind of knife was it?

15 A I don't know the specifics of the knife.

16 Q You don't recall a butter knife being found on the
17 floor in the crime scene?

18 A No, sir.

19 Q Did you review the crime scene?

20 A I've reviewed the crime scene pictures looking at the
21 behavior, yes, sir.

22 Q Did you read the notes and the settings of the crime
23 scene?

24 A Yes, sir. I did.

25 Q And you don't remember seeing about a butter knife

1 being there?

2 A I don't recall that right here. No, sir.

3 Q Okay. The fact it was a butter knife that was used on
4 there, that would take a lot of force wouldn't it?

5 A That's -- that's -- I'm not an expert in weaponology or
6 edged weapons. No, sir.

7 Q Now, you don't know who did what do you?

8 A Right. That is correct. I can't say which offender
9 did what.

10 Q Okay. Now, you keep saying offenders. How many people
11 were in the house?

12 A Multiple people were inside that house. Yes, sir.

13 Q Well, how many?

14 A Mr. Rabon was in his bedroom. Mr. Prather said that he
15 was there. Mr. Phillips said that he was there, and the
16 victim.

17 Q Okay. You heard that from the testimony?

18 A Yes, sir.

19 Q So there were at least three people other than the
20 decedent in the house?

21 A Yes, sir.

22 Q And you don't know who did what or if anyone did
23 anything?

24 A Well, my opinion is that there were specifically two
25 people in there after the crime. One that was carving rapist

1 and placing the adult sex toy and the other one undoing
2 everything, covering it up.

3 Q But you don't know if it was done at the same time do
4 you?

5 A That is correct. No, sir.

6 Q So somebody could have done a covering up minutes
7 later; is that correct?

8 A That is correct. Yes, sir.

9 Q Thank you.

10 MR. FLOYD: I have no further questions, Your
11 Honor.

12 MR. GRAHAM: Nothing else, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. GRAHAM: That would be the State's case in
15 reply, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, you
17 have heard the reply. We'll break now for lunch. You've
18 heard all of the testimony in the case. Next will be
19 closing arguments and the jury charge and your
20 deliberations. Let's see now. It's 12:35. 1:15 be time
21 enough?

22 MR. GRAHAM: Yes, Your Honor.

23 THE COURT: We'll plan to reconvene about 1:15.
24 Please go to the jury room and do not discuss the case.

25 (Jury out at 12:36 p.m.)

1 THE COURT: Mr. Floyd, any motions at this stage?

2 MR. FLOYD: Your Honor, we would renew our motions
3 for a directed verdict of acquittal for all the reasons that
4 we made at the conclusion of the State's case. I'll
5 certainly be more than happy to go through them all again, if
6 you like. I'm sure you remember them, though.

7 THE COURT: Yes, sir, I remember them.

8 MR. FLOYD: Okay. I renew my motions.

9 THE COURT: All right. And I deny them based on
10 the same reasons given.

11 We're going to discuss jury charges before we break.
12 Basically, I received Mr. Floyd's requests to charge self-
13 defense, accident, and various variations of the murder
14 charge including voluntary manslaughter, involuntary
15 manslaughter. And then in his requests he has assault and
16 battery with intent to kill, assault and battery of a high
17 and aggravated nature and simple assault. Of course, in, I
18 think, 2009 the statutes were changed and we no longer have
19 assault and battery with intent to kill. We have assault and
20 battery of a high and aggravated nature, which seem to, a
21 great degree, mirror the former assault and battery with
22 intent to kill with the same penalty. Then assault and
23 battery in the first degree, assault and battery in the
24 second degree, assault and battery in the third degree. And,
25 of course, the jury has an option of not guilty. With regard

1 to these various assault charges, and that you threw in
2 accident as well, what do you want me to -- what's your
3 requests?

4 MR. FLOYD: Your Honor, my request is that we
5 charge according to the law that was in existence at the time
6 of the accident, at the time of the incident. So we would
7 ask for murder, voluntary manslaughter, involuntary
8 manslaughter, assault and battery with intent to kill, ABHAN,
9 and simple assault.

10 THE COURT: Well, how can I charge a repealed
11 statute?

12 MR. FLOYD: Well, the other question is how can he
13 be convicted under a statute that wasn't in existence at the
14 time of the crime?

15 THE COURT: He's not charged with any of those
16 things. He's charged with murder. Murder was in existence
17 at the time. Manslaughter was and still is. Involuntary
18 manslaughter was and still is, and various assaults was and
19 still is. How can I charge him with a law that doesn't
20 exist? How could I charge the jury to find him guilty with a
21 law that doesn't exist?

22 MR. FLOYD: Well, Your Honor, it existed at the
23 time of the incident so we would.

24 THE COURT: Do you have any authority to the
25 proposition that you're arguing?

1 MR. FLOYD: I don't have any cases, Your Honor.

2 THE COURT: All right. What says the State?

3 MR. HUBBARD: It does get kind of confusing. But I
4 think it's either murder, potentially manslaughter. Judge, I
5 think you're going to end up seeing simple assault at some
6 point, or some form of assault, third because it was
7 superficial. I mean, based on his testimony ---

8 THE COURT: That's assault third degree?

9 MR. HUBBARD: Right. And so I don't think you get
10 the old assault and battery with intent to kill because it
11 gets completed. He died. And the old ABHAN, assuming that
12 old law applied, I don't see it Judge. There's a gulf in the
13 actions as to what he presented versus what we presented.
14 It's either a very simple assault, and then the other
15 perpetrator did the bad act or he did it. And the completed
16 act would be murder.

17 THE COURT: Now, what else do you think, Mr. Floyd?

18 MR. FLOYD: Well, Your Honor, I don't there's that
19 wide a gulf, even if you take the State's case. I think the
20 testimony is that he was responding to a physical encounter
21 with the victim, who put him in fear. So it's either -- I
22 guess under the State's case it's murder, but then that
23 certainly would be provocation to reduce it to manslaughter.
24 And since he didn't intend to kill him, I think it takes it
25 away involuntary manslaughter and the assault.

1 MR. HUBBARD: Your Honor, just to jump in. I would
2 concede it involuntary if he does that. If what he did, the
3 simple blows somehow lead to his death, we won't object to
4 that. But I would say murder, voluntary, and if he wants an
5 involuntary, we don't object. Otherwise, I think he walked
6 away and it's simple assault. I don't think he gets ABHAN,
7 even if that applied or a variation of it under the old law.
8 Assault and battery with intent to kill, I don't think he
9 gets because he either just committed this assault third
10 degree or he killed him. And then it would be a question of
11 causation for the jury.

12 THE COURT: Well, I mean, we have with the murder
13 and manslaughter if he killed him with malice, it's murder.
14 If he killed him without malice, it's manslaughter. And
15 malice is an issue for the jury. So we have those two.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: If he did not intend to kill him and
18 the death was an unintentional killing through recklessness
19 or whatever, then that's involuntary manslaughter. Then we
20 have the case of State v. Fields that says assault and
21 battery and assault and battery of a high and aggravated
22 nature, is not a lesser included offense of murder, except
23 where there is a dispute as to whether the victim died as a
24 result of the battery. So we have the proximate cause issue
25 as to the cause of death, which brings in the assault and

1 assault and battery as lesser included offenses of murder.
2 Because there is a dispute as to whether the victim died as a
3 result of the battery. So I'm sitting here all morning
4 thinking about this, it appears to me that the Defendant gets
5 all of those things charged based on the contorted facts of
6 this case. It's murder, voluntary manslaughter, and
7 involuntary manslaughter, assault and battery of a high and
8 aggravated nature, assault in the first degree, second
9 degree, and third degree, because it depends on the jury's
10 finding as to the degree of the assault. So I'm charging all
11 of those things. And, of course, not guilty. Where there is
12 a doubt, let the jury sort it out.

13 All right. How about this armed robbery charge, Mr.
14 Floyd?

15 MR. FLOYD: Well, Your Honor, of course, we don't
16 feel there's any evidence of an armed robbery. If you're
17 going to give the charge, we assume you are, we would ask --

18 THE COURT: I think I denied your motion for a
19 directed verdict on that, so I have to give a charge.

20 MR. FLOYD: We would ask for a lesser included
21 offense of petit larceny.

22 THE COURT: And the question is, is petit larceny a
23 lesser included offense of robbery? I don't think so.

24 MR. FLOYD: Then we'd ask for strong arm robbery?

25 THE COURT: Strong arm robbery is a lesser

1 included, but petit larceny is not. Would you agree with
2 that Mr. Graham?

3 MR. GRAHAM: Yes, Your Honor. And the dollar
4 amount, certainly an armed robbery or a strong arm robbery.

5 THE COURT: All right. So it's either armed
6 robbery, strong arm or not guilty. He doesn't get petit
7 larceny.

8 MR. FLOYD: Well, conceivably it could be some
9 unlawful taking of property accompanied by a theft.

10 THE COURT: Well, he's not charged with that. He's
11 not charged with larceny. He's charged with robbery. And
12 larceny is based on dollar amounts. You don't get that
13 unless you -- and then you have self-defense and you want --

14 MR. FLOYD: Yes, sir.

15 THE COURT: And defense of others. You want
16 accident, you want, criminal intent you want -- and proximate
17 cause. Of course, I have charges on all of those things.

18 MR. FLOYD: Okay.

19 THE COURT: And, of course, with the self-defense
20 and defense of others, you requested, based on the size --
21 differences in size and intoxication and threats and words or
22 something.

23 MR. FLOYD: Yes, sir.

24 THE COURT: All right. Anything from the State?

25 MR. HUBBARD: Your Honor, just a question on the

1 proximate cause charge. I think we handed up one from Judge
2 Anderson's book. I didn't know -- I think the Defense handed
3 one up that might have been from Professor Hubbard's book,
4 but I was just wondering if yours is a standard bench book or
5 --

6 THE COURT: Let's see. The standard on proximate
7 cause is where a person inflicts a fatal injury on another
8 and that other person dies at a later time, you must be
9 convinced beyond a reasonable doubt of the infliction of the
10 first injury was the proximate cause of the victim's death.
11 Proximate cause and direct cause as to immediate cause,
12 sufficient cause, without which the death of the victim would
13 not have resulted. Chain of causation from the time the
14 injury was inflicted until the time of the death. It does
15 not necessarily mean that it occurred immediately prior to
16 the death. There may be more than one proximate cause. The
17 acts of two or more persons when they combine together to be
18 a proximate cause. The Defendant's act may be regarded as a
19 proximate cause if it's a contributing cause of the death of
20 the victim. The fact that other causes also contribute to
21 the death does not relieve the Defendant from responsibility.
22 The Defendant's act need not be the sole cause of death. It
23 must be a proximate cause contributing to the death of the
24 victim. So that's the standard proximate cause charge. Mr.
25 Floyd had a similar request, but-for type proximate cause

1 request, which we don't have.

2 MR. HUBBARD: Yes, sir. Thank you, Your Honor.

3 THE COURT: All right. And the hand one the hand
4 of all. Any comment regarding that, Mr. Floyd?

5 MR. FLOYD: Your Honor, kind of what I argued
6 yesterday. I just don't think the evidence establishes that.
7 There's no joint, concerted effort at all. I think the
8 testimony was that there was an altercation between Mr.
9 Phillips and the decedent earlier in the evening. This man
10 was not involved and broke it up. And then, Mr. Prather had
11 his conflict with the decedent when he came back into the
12 house and saw him naked. Mr. Phillips was not involved with
13 that.

14 THE COURT: Well, you have the State saying that
15 Mr. Prather said that he hit him. And you have Mr. Prather
16 saying that the other guy hit him. So you have testimony in
17 the record that he was beaten by both.

18 MR. FLOYD: But not in a concerted fashion. The
19 fact that Mr. Prather both times took him away from the
20 decedent when he attacked the decedent. So there was no
21 concerted effort.

22 THE COURT: Yeah, I understand. But that's what
23 the State has to prove. The State has to prove that there
24 was in effect a concerted effort. But I think the evidence
25 is in the record for me to charge it. The State still has to

1 convince the jury beyond a reasonable doubt that it exist. I
2 understand your point. It's not a typical case where two
3 people who go into rob a store. But you have a case where
4 you have some evidence that two people beat him and he died.
5 So that's pretty much the hands of one the hands of all in
6 the sense that I think I'd have to charge it.

7 MR. FLOYD: Well, Your Honor, suppose one guy beats
8 a stranger on the street, leaves. A few minutes later
9 somebody else comes along and beats him again. I think
10 that's what you got here. It's not a concerted effort.

11 THE COURT: And, of course, I mean, it's part of
12 the proximate cause charge. I says the acts of two people
13 combined to cause -- I mean, this is not a proximate -- the
14 hand of one doesn't necessarily help the State so much
15 either, because they have to prove a whole lot for the hand
16 of one is the hands of all. The proximate cause charge says
17 that the acts of two or more persons may combine together to
18 be the proximate cause of the death of the decedent. Maybe
19 the State doesn't want proximate cause and the hand of one,
20 because the hands of one goes into about two or more people
21 acting together, committing a crime. Mere presence is not
22 enough. There must be prior arrangement and all of those
23 things.

24 MR. HUBBARD: And, Your Honor, just out of
25 curiosity when you read that, does that apply to both of the

1 charges, the armed robbery and the murder.

2 THE COURT: Well, I just read it all at one time.

3 MR. HUBBARD: Okay. All right.

4 THE COURT: As it relates to all of them --

5 MR. HUBBARD: Yes, sir.

6 THE COURT: I try not to define one thing twice.

7 MR. HUBBARD: I got you. Thank you, Your Honor.

8 THE COURT: Do you also want hands of one charge?

9 MR. HUBBARD: Yes, sir, Your Honor.

10 THE COURT: All right. All right.

11 MR. HUBBARD: Your Honor, there is one that we
12 would -- we had asked for implied malice. We will concede
13 with the testimony that we'll withdraw that.

14 THE COURT: Okay. Yeah, I've taken out implied
15 malice and also the inference based on State v. Bell2:cher.

16 MR. HUBBARD: Yes, Your Honor. And, Your Honor, I
17 know I keep jumping up and down. Is malice a part of your
18 charge as well? I'm assuming it is. I didn't know what you
19 charged?

20 THE COURT: It's just the standard may be inferred,
21 may be -- and felony murder -- All right.

22 MR. HUBBARD: Yes, sir, Your Honor.

23 THE COURT: All right. Okay. We have it. So we
24 said 1:15, did we say?

25 THE BAILIFF: Yes, sir.

1 THE COURT: All right.

2 MR. FLOYD: Your Honor, you still want us back by
3 1:15?

4 THE COURT: Yes, sir. Well, 1:20.

5 (Court in recess for lunch at 12:51
6 p.m.)

7 (Court in session after lunch at
8 1:29 p.m.)

9 THE COURT: Thank you. Be seated. Regarding the
10 jury charge, y'all want to put something on the record?

11 MR. HUBBARD: Yes, sir, Your Honor. The State
12 would consent to the Defense's request of the common law
13 charge of ABHAN and simple assault, in lieu of the new
14 assault --

15 THE COURT: And what would be the penalty for the -
16 -

17 MR. HUBBARD: The common law, ten years.

18 THE COURT: A ten-year penalty?

19 MR. HUBBARD: Yes, sir.

20 THE COURT: All right. Mr. Floyd?

21 MR. FLOYD: That's correct, Your Honor. I think
22 that is what we had requested.

23 THE COURT: All right.

24 Now, Mr. Prather, if you'll stand for a moment.

25 MR. PRATHER: (Complied)

1 THE COURT: The law changed in 2009, I think it
2 was, in which the assault charges and the penalties were
3 modified, changed. Assault and battery of a high and
4 aggravated nature now carries up to twenty years. Back then,
5 it carried up to ten years. And the assault charges were,
6 different degrees of assault were added to run ten years,
7 three years -- is three years for a second degree?

8 MR. FLOYD: Yes, sir.

9 THE COURT: Thirty days for third degree.
10 Ordinarily, we don't charge a law that no longer exists, but
11 both the State and your lawyer says they want me to charge
12 those laws in this case. Have you discussed that with Mr.
13 Floyd?

14 MR. PRATHER: Yes, sir.

15 THE COURT: And is that what you want?

16 MR. PRATHER: (Confers with counsel) Yes, sir.

17 THE COURT: All right. So what we'll do, if you
18 all will hand up those old verdict forms, then I'll change
19 them to a possible --

20 MR. HUBBARD: I marked mine up, Your Honor.

21 THE COURT: That's okay. That's good. And the
22 possible verdict forms then would be, regarding the murder
23 charge, guilty of murder, voluntary manslaughter, involuntary
24 manslaughter, assault and battery of a high and aggravated
25 nature, carrying up to then years, and simple assault, thirty

1 days. And it's a charge of armed robbery, guilty of armed
2 robbery, robbery and not guilty. And, also, with regard to
3 the murder charge, not guilty is an option as well.

4 All right. Ready for the jury?

5 MR. FLOYD: The Defense is ready, Your Honor.

6 THE COURT: All right. Let's bring them on.

7 (Jury in at 1:32 p.m.)

8 THE COURT: All right. Madam Forelady, members of
9 the jury. You've heard all the evidence, received all of the
10 evidence. It's now time to hear the arguments from the
11 lawyers. The arguments are not evidence. They're certainly
12 an important portion of the trial. Please give your lawyers
13 your attention at this time.

14 The State waives opening?

15 MR. HUBBARD: Yes, sir, Your Honor.

16 THE COURT: All right. Mr. Floyd.

17 MR. FLOYD: Thank you, Your Honor.

18 DEFENSE CLOSING

19 BY MR. FLOYD:

20 Madam forelady and ladies and gentlemen of the jury,
21 this portion of the trial is what we call closing argument.
22 But before I get into that, I'd like to express appreciation
23 to each one of you for the attention that you have given to
24 this matter. It's a most time in the life of Robert Jared
25 Prather. And the decision that you make about him, well, it

1 will effect him for a long time and we appreciate you giving
2 it your attention.

3 Now, I'm going to repeat something to you. It's not
4 that I think you have forgotten. It's just that it's so
5 important because it goes to what you, the jury, actually
6 decide. Remember this, Jared Prather comes before you to be
7 judged with what we call the presumption of innocence. So
8 you must look at Jared Prather and you must say in your heart
9 and in your mind, Jared Prather is innocent, and he remains
10 innocent unless the State proves his guilt, to each one of
11 your satisfactions, beyond a reasonable doubt.

12 Now, what do we mean by that? Reasonable doubt is often
13 defined as that doubt, which would cause a reasonable person
14 to hesitate to act. That doubt which would because a
15 reasonable to person to hesitate to act. So if you could
16 somehow take all the evidence you have heard in this case and
17 put it in the shape of this piece of paper, and because of
18 one piece of the evidence or the lack of a piece of evidence,
19 you would hesitate before you would vote to find him guilty,
20 then your obligation as a juror, is to return a verdict of
21 not guilty, even though the evidence in the case may make you
22 suspicious of his guilt. Because you see, when you vote
23 guilty or not guilty, you're not voting on whether or not you
24 think he did it. What you're voting on has the State proved
25 his guilt beyond a reasonable doubt? That's what you're

1 voting on.

2 Now, let's talk about the case itself. Jared Prather is
3 charged with murder. Now, along with the charge, it does
4 included certain, what are called, lesser included offenses,
5 which I'll get into in just a moment.

6 Now, let me caution you on one thing. As I stand here
7 and speak to you, I will be talking to you about the law as
8 well as the facts. When I'm finished speaking with you, one
9 of the Solicitors will get up and they'll get to speak to you
10 about the law as well as the facts. If either one of us
11 states something different than what Judge Newman says about
12 the law, it's not on purpose and then you should go with what
13 Judge Newman tells you about the law because he is the Judge
14 of the law. And he will speak to you when we lawyers finish.

15 Murder: Murder, is an unlawful killing of another
16 person with malice aforethought.

17 Now, before I get into that, let me stop and that second
18 word, unlawful. In order for Jared Prather to be found
19 guilty of either murder or any of its lesser included
20 offenses, the State must prove to you beyond a reasonable
21 doubt that his striking of Gerald Stewart was unlawful, okay?
22 That is because there is a defense in the law called self-
23 defense.

24 Now, the Defendant doesn't have to prove to you self-
25 defense. It is the burden on the State to prove to you that

1 there was no self-defense beyond a reasonable doubt. Now,
2 what have you heard about this case? The Judge will charge
3 you on the law itself. Basically, the Defendant must not be
4 at fault in bringing on the difficulty. He must respond
5 accordingly. He must be in fear of danger or reasonably
6 personally feeling danger.

7 What does the evidence show us? When Jared Prather came
8 back into the house that night, and when he met Gerald
9 Stewart, he came out of that bedroom naked, he was confronted
10 with a situation -- particularly when you consider the words
11 that were said, and I'm not going to repeat them. You'll
12 remember them. He's confronted with this 6'4" 285 pound man,
13 speaking to him in a fashion that puts him at ill-ease,
14 knowing there's something going on this house that shouldn't
15 be. He goes to try to see what he can do for his friend, who
16 is no longer where he was supposed to be. After hearing
17 these things said about his friend, by this man who has
18 confronted him, and this 6'4", 285 pound man grabs him.
19 Grabs him. Puts him up on his arm. Puts him up, because
20 he's a lot taller than him.

21 Ladies and gentlemen, don't you think it was reasonable
22 to be in fear of injury at that point? And don't you think
23 it would be reasonable to respond to that movement by
24 throwing your fists to try to free yourself from this attack?
25 He hits him once. It doesn't work. Hits him a second time

1 it doesn't work. Finally, the third hit, they fall free and
2 he fell over something. And you remember the medical records
3 where he had some injury there to his right arm, had a
4 scraping injury, Mr. Prather was falling on that right side
5 when he fell to the floor.

6 Now, ladies and gentlemen, I suggest to you that the
7 evidence shows it's self-defense. And you know something, if
8 it's self-defense, that makes the striking lawful. And,
9 therefore, he's not guilty of any offense because all of
10 those offenses of murder and the lesser included assaults and
11 manslaughter all require unlawful hitting.

12 Now, in like manner, there is another defense. It's
13 called defense of others. So if you feel that what he was
14 doing was not defending himself, as defending Josh Phillips,
15 the same rules apply. Defense of others is the same as self-
16 defense. So if you find either of those -- remember this
17 now, the Defense does not have to prove to you self-defense
18 or defense of others. The State has to prove to you that
19 there is no self-defense and that there is no defense of
20 others, and they must prove it to you beyond a reasonable
21 doubt. So I suggest to you the evidence is clear. It should
22 not even be any consideration. However, I have discussed it
23 with you in case you get that far.

24 Murder: Murder is the unlawful killing of another with
25 malice. It requires intent. The Defendant must intend to

1 kill a person. And it must be done with malice or with an
2 evil heart with ill will.

3 Ladies and gentlemen, what evidence at all is there that
4 there was any malice toward Mr. Stewart by Mr. Prather? What
5 does the evidence show you? We know there was an altercation
6 earlier in the evening between Mr. Phillips and Mr. Prather
7 {sic} And Mr. Prather broke it up. Mr. Prather attended to
8 Mr. Stewart's injuries. We know they then went out to Uncle
9 Louie's. There's certainly no animosity there. Remember me
10 telling you how the State was trying to stretch the case?
11 That's why they tried to make something big out of this throw-
12 away remark of I could kick his ass. Because they know
13 there's no evidence of malice. So what they've got to try to
14 convince you is that there's the malice. That he had malice
15 in his heart because he thought he was going to get stiffed
16 for the bill at the bar, because there is no other evidence
17 whatsoever to show ill will from Jared Prather to Gerald
18 Stewart. None whatsoever.

19 Now, another interesting issue in the case of murder is
20 that the State must prove to you beyond a reasonable doubt
21 that the actions of Jared Prather was the proximate cause of
22 the death of Gerald Stewart. What did we hear about the
23 death of Gerald Stewart? You heard Dr. Ross. Gerald Stewart
24 had a heart twice the size of a normal heart. He was a
25 walking time bomb, who, in her professional medical opinion,

1 could have dropped dead at any time. Dropped dead at any
2 time. Now, what else did we hear? He also had cirrhosis of
3 the liver, also a disease that can be fatal. And he had, in
4 his system, .342 blood alcohol in the ocular fluid. It was
5 admitted that it could have been higher than that before, but
6 that's what it was at the time of the death. Now, what else
7 did she say? Also, there was in his body Valium. So he had
8 .342 alcohol and Valium, which can have, what they call, a
9 synergistic effect when both of them are depressants that can
10 actually stop you from breathing. In fact, you remember Ms.
11 Shacker from SLED? According to the literature, .35 alcohol
12 level is fatal. And that's without Valium. And even Dr.
13 Ross admitted she knew of someone who died of an alcohol
14 poisoning at .34. The injuries that were suffered, that she
15 observed were not fatal even -- there was no one fatal
16 injury, and even if you added up all of the injuries she
17 observed on Gerald Stewart's body, they were not fatal. A
18 fractured nose. If I miss one, I'm sure they'll remember it.
19 A cut lip, fractured ribs, a black eye, abrasions and so
20 forth. But what's important is that none of the injuries
21 were fatal.

22 So basically, what you have is pure speculation. Well,
23 there's so much going on here, it must be the stress of the
24 beating. Interestingly there, she refers to it in her
25 report, she found all that stuff on Gerald Stewart. She did

1 a report. It wasn't a final report. What does it say? This
2 is Defendant's Exhibit 2. Immediate cause of death: pending
3 toxicology and police investigation. Manner of death:
4 pending investigation. So it certainly wasn't clear enough
5 to her from looking at this autopsy, in performing this
6 autopsy, it was not clear enough to Dr. Ross to call this a
7 homicide at that time.

8 Now, doesn't that make you hesitate to decide whether or
9 not any actions of Jared Prather was the proximate cause of
10 the death of Gerald Stewart, because, see, in order for there
11 to be murder, there's got to be a killing with malice
12 aforethought, but there's got to be a killing. So it's got
13 to be unlawful. So you've got to get around self-defense and
14 defense of others. It's got to be a killing, which means you
15 did something that proximately caused the death. And it's
16 got to be with malice aforethought with evil in your heart.
17 You intended to kill the person.

18 Now, ladies and gentlemen, what evidence is there that
19 there was any intended killing of Mr. Stewart, because his
20 injuries are not fatal. Now, whether or not there was stress
21 involved, those don't mean he intended to kill somebody. If
22 he'd intended to kill somebody, there would have been some
23 fatal injuries here, but there were none. Even all this talk
24 about the writing on the back and -- as he said, it's
25 discussing. Jared said, that's disgusting. It's

1 superficial. It didn't contribute to the death or anything,
2 they're just superficial scratching on the skin.

3 So every charge for murder carries with it what's called
4 lesser included offenses. So if you find that the State has
5 failed to establish that the Defendant is guilty of the crime
6 of murder, then you may considered what are called lesser
7 included offenses. They are, voluntary manslaughter,
8 involuntary manslaughter, assault and battery of a high and
9 aggravated nature, and simple assault.

10 Now, the Judge will tell you all the details of each one
11 of those offenses. I will just try briefly to run through
12 then with you and explain them. Remember murder, unlawful,
13 but don't forget, to get to unlawful you've got to reject
14 self-defense and defense of others, because if there's self-
15 defense or the defense of others, the actions of the
16 defendant when he struck Mr. Stewart would be lawful and not
17 unlawful. So you've got unlawful. Killing, the second one.
18 Then you've got to go to well, did it actually cause the
19 death? Follow me. Did the actions of the Defendant, were
20 they unlawful? Did they cause the death? Now, if they were
21 lawful and if they caused the death, then you go to a third
22 step. Was it with malice aforethought, which we've already
23 discussed, that makes it murder. But if it was unlawful,
24 killing, but without malice, then it's called voluntary
25 manslaughter. That's the intentional killing of someone

1 without malice. Okay. Follow me on this. Now, what's the
2 next step? Involuntary manslaughter. Let's go through it
3 again on that one. Unlawful -- remember, was there self-
4 defense or defense of others. Unlawful, killing, what was
5 the proximate cause? Did the actions of the Defendant cause
6 the death or was there other some reason for his death? To
7 get past unlawful killing -- and here we don't have
8 intentional. You follow me on that. So for involuntary,
9 it's an unlawful killing that's not intentional. It's by
10 accident or some reckless conduct.

11 Now, I've thrown a lot at you and you've probably
12 already got it, but let me just run through it one more time.
13 Murder: unlawful, intentional killing with malice
14 aforethought. And you remember the issues on each of them.
15 Was it lawful or unlawful? Was it self-defense or defense of
16 others. An intentional killing, were the actions are the
17 proximate cause of the death, or was there some other reason
18 for his death? Malice: Evil, intent in your heart. And
19 again the Judge will explain malice in more detail. That's
20 murder. Voluntary manslaughter: Unlawful killing, unlawful.
21 Intentional killing without malice. Involuntary
22 manslaughter: Unlawful, unintentional killing. Still got to
23 be the killing, it's still got to be the proximate cause of
24 death, but death was not intended. That's involuntary
25 manslaughter. Now, let's go beyond that, the next step. If

1 -- back to unlawfully. Next, as if there was no killing. . .

2 Assault and battery of a high and aggravated nature:

3 Unlawful assault. So you've still got your defenses of self-
4 defense and defense of others. Of a high and aggravated
5 nature. And the Judge will tell you what can be high and
6 aggravated nature. Well, it could be like there was a weapon
7 involved. There's a weapon here in the assault. Was there a
8 great difference in their ages? A great difference in their
9 sizes? A difference in sexes, serious injury, things that
10 take it beyond what's called simple assault.

11 So if you feel the evidence fails to establish that the
12 Defendant is guilty of a killing, then you still can consider
13 whether or not he was guilty of a lesser included offense of
14 assault and battery of a high and aggravated nature. Still
15 define unlawful assault but without a killing. And then
16 below that is simple assault. Still an unlawful act, a
17 violent injury to the person of another. But it doesn't have
18 to be serious injury or none of the other aggravating factors
19 that we discussed with assault and battery of a high and
20 aggravated nature.

21 So, your first decision in connection with the offense
22 of murder, and the Judge -- you'll have a jury verdict form
23 and have all these choices on it. And to the defense of
24 murder, to the charge of murder, was there a murder?
25 Voluntary manslaughter, involuntary manslaughter, assault and

1 battery of a high and aggravated nature, simple assault or
2 not guilty.

3 Now, you will also have to consider the separate charge
4 of robbery, armed robbery. And listen closely to the Judge's
5 charge on that, because I suggest to you there's just no
6 evidence in this case that any property was taken through the
7 threat of any weapon or any threat of violence to Mr. Stewart
8 by Jared Prather.

9 Now, what have you heard on that? They found a Coca-
10 Cola box in the passenger side floorboard. They found some
11 coins in Joshua Phillips' pocket. They found a wallet in
12 Joshua Phillips' pocket. Jared Prather didn't have anything
13 of Gerald Stewart's. He didn't have anything of Gerald
14 Stewart's. So how can that help but hesitate. Help to
15 hesitate to finding him guilty of robbery. In that one,
16 you'll have a similar choice. Armed robbery, robbery, not
17 guilty. But what evidence at all is there to connect Jared
18 Prather with any of that property because it's all in Josh
19 Phillips' possession, except for what was put in the
20 floorboard of the car. That's still in his possession. No
21 evidence at all that Jared Prather knew what that was or knew
22 he had any of that property.

23 You know, they're going to charge you on what's called
24 the hand of one is the hand of all. I want you to listen
25 closely to that charge. Because you see, in order for that

1 charge to be effective, in order for someone to be guilty
2 just because somebody else who was there does something
3 guilty, well, the State must prove, and they must prove it
4 beyond a reasonable doubt, that the two people planned it.
5 And that they acted in concert or they'd had a previous plan.
6 The mere fact that two people are together or in the same
7 area and one of them commits a crime, doesn't make the other
8 one guilty. In order to be the hand of one and the hand of
9 all, they have to be able to prove that they planned it
10 together. There's just no evidence on that part whatsoever.

11 You know, just a few comments on the evidence in the
12 case. First of all, there's testimony -- you saw all the
13 pictures of Gerald Stewart. Gerald Stewart had a lot of
14 blood on him. And I can't find the one right now, but the
15 one where he's got a lot of blood on his shirt. And you
16 can't see it too much there. But I think there was one. But
17 anyway, he had a lot of blood on him.

18 Now, do you remember the police in the beginning, they
19 didn't see any blood on Jared Prather and they thought, gosh,
20 he must have changed clothes, because the blood they saw on
21 the scene, they were of the opinion that whoever was involved
22 in this act here had to be covered in blood. They took his
23 clothes. They find a little speck of blood on the back of a
24 tee shirt. A little speck of blood on the sock. And we
25 already know that he had helped Mr. Stewart up out of the

1 back yard. Remember after Mr. Stewart and Josh were
2 wrestling in the back yard. He helped and got him up, put
3 his arm around him and carried him inside. Then once he got
4 inside, Josh Phillips hit him again a couple of times and
5 more blood. He gave him some assistance then. Don't you
6 think that that could account for those little tiny specks of
7 blood. Surely these little tiny specks of blood couldn't
8 have come from that bloody scene that we saw there with
9 Gerald Stewart. So doesn't that make you hesitate?

10 You know this last guy that testified, I'm going to
11 bring up something about that. Of course, you heard me
12 object to him because I don't know how a thirty-day class can
13 may you some kind of psychological expert. But all he said
14 was he though one person did this because they staged it.
15 And then somebody else, maybe somebody else to cover it up,
16 although he really couldn't answer whether or not the
17 psychological health of Joshua Phillips might have had some
18 impact on it or whether or not somebody could have staged it
19 and then covered it up. But your remember this talk about,
20 something about a cord across his leg? Let me show you that.
21 This is State's Exhibit 21. This is State's Exhibit 27.
22 Now, by the way, y'all will have all of this stuff back in
23 your evidence [sic] room. Y'all look at these two
24 photographs. You know what that is? That cord, that's a
25 cord from an electric blanket. So what was on top of Gerald

1 Stewart is an electric blanket. Where you keep electric
2 blankets is in the bedroom and took electric blankets out of
3 the living room to cover up with on the couch.

4 Now, remember what they said when they walked in that
5 back bedroom? Ronald Rabon was covered up head to toe with a
6 sheet. A sheet. Not a blanket. Maybe that blanket used to
7 be on Ronald Rabon's bed, was taken in there and put over
8 him, you know. I don't know how a person who can hear when
9 somebody steps on the floor because he's heavy, hears a door
10 open, has no problem hearing us here in this courtroom,
11 didn't hear whatever went on in that room, first between
12 Jared Prather and Gerald Stewart, when they both fell to the
13 floor. And then whatever when Josh Phillips has his
14 confrontation with him, with Gerald Stewart and Jared Prather
15 first waked him. And he doesn't wake up. And I don't know
16 how he doesn't hear people pounding on the door, yelling
17 through the window, and doesn't respond to the them as they
18 come in the room. And there he is covered up completely with
19 the sheet. Is there something going on there. You know,
20 remember me asking them, they didn't do a crime scene in that
21 back bedroom, did they? And the clothing might have blood on
22 them. Any bed clothes back there with blood on them? Nobody
23 knows that. Doesn't that make you hesitate?

24 You know, Josh Phillips had, what was it, thirty-three
25 abrasions? Gerald Stewart, including -- he had two on his

1 hand, the dorsal part of his hand, but thirty-three on his
2 body. Gerald Stewart had the abrasion on the upper area of
3 his hand, like he hit somebody. Jared Prather, they took him
4 to the doctor. They took him to the hospital and said, check
5 that man's hands out. A professional doctor checks his hands
6 out, nothing. Nothing. Now we're not saying he didn't hit
7 him. He says he did. What I suggest to you he didn't hit
8 him very hart. He thought he did, but he was drinking too
9 and he's all adrenalined up and a guy's got a hold of him and
10 so forth. There's just no evidence physically, that Jared
11 Prather was responsible for the death of Gerald Stewart.

12 Now, I'm going to shut up. I know you've been here a
13 week. I've talked a long time. I apologize. But you see,
14 when I finish speaking with you, all I can do is go over
15 there and sit. And either Mr. Hubbard or Mr. Graham, one of
16 those two gentlemen, will get up behind me and speak to you,
17 like I'm speaking to you. But I can assure you they're
18 probably going to try to talk to you about the evidence in a
19 different fashion. And they're going to try to convince you
20 that the evidence proves a guilty Jared Prather.

21 Now, one of the reasons I talked so long up here is I
22 have to try to cover everything they might say. Because you
23 see, the system doesn't allow us to do it the way that would
24 be much more efficient, for me to like ask you is there a
25 question you've got about the evidence that I might could

1 speak to. Is there a question about this piece of evidence
2 that I might could speak to. But the rules don't allow the
3 lawyer and the jury to interact in that way. So I have to
4 try to talk to you about every possible thing that they might
5 bring up. There's no way I could ever do that, because
6 there's always going to be things that I forget to tell you
7 about and they will talk about them. All we can ask is that
8 when you get back in your jury room, think how we could have
9 responded to the things they bring up, because you see, they
10 get to go last, which is an advantage because they have the
11 burden of proof. The State must prove the guilt of Jared
12 Prather beyond a reasonable doubt.

13 Go back in your jury room and remember this, the
14 question is, has the State proven the guilt of Jared Prather
15 beyond a reasonable doubt? And when you go to analyze it,
16 remember the little chart, Murder, unlawful. The same with
17 voluntary manslaughter, unlawful. Same with involuntary
18 manslaughter, unlawful. Same with assault and battery of a
19 high and aggravated nature, unlawful. Same with simple
20 assault, unlawful. Therefore, if the State fails to prove
21 beyond a reasonable doubt that Jared Prather did not act in
22 self-defense or in defense of others, he's not guilty. Right
23 there from the first question. Second question, intentional
24 killing. Have they proven beyond a reasonable doubt. Let's
25 say you get passed that first one. Have they proven beyond a

1 reasonable doubt that there was an intentional killing?
2 Meaning that the actions of Jared Prather were the proximate
3 cause of the death of Gerald Stewart. That he didn't die
4 because of his double-enlarged heart, his blood alcohol
5 reading, his Valium and so forth, but that he died through
6 the proximate cause through the acts of Jared Prather. Okay?

7 Next, if there was no killing, then you go back to
8 assault and battery of a high and aggravated nature. Follow
9 me on that. If there was a killing and it was intentional,
10 it was the proximate cause and it was within an unlawful act
11 with malice, evil, depraved spirit, murder. Without malice,
12 voluntary manslaughter. Unintentional, but a killing,
13 involuntary manslaughter.

14 I know it's complicated, so listen carefully to the
15 Judge when he gives you the charge. Once again, I thank you
16 for your presence.

17 The police can arrest you. The police can charge you
18 with a crime, including this terrible crime of murder. The
19 worst crime we've got in our whole society, murder. The
20 State can prosecute you. The only way you can be found
21 guilty is if twelve members of the jury unanimously agree
22 that the evidence proves the guilt beyond a reasonable doubt.

23 So you are kind of the last hope for Jared Prather, and
24 all we can ask is that you go back and consider the evidence
25 closely and carefully. And we think if you would do that,

1 you will conclude that the only fair and just verdict is one
2 of not guilty. And we feel comfortable placing Jared in your
3 hands.

4 Thank you very much.

5 THE COURT: Now, ladies and gentlemen, we'll take a
6 short break. Please do not discuss the case.

7 (Jury out at 2:19 p.m.)

8 THE COURT: We'll take about five minutes.

9 (Court in recess for a short break.

10 (Court in session after short
11 break.)

12 THE COURT: All right. Thank you. Be seated.
13 Bring them on.

14 (Jury in at 2:31 p.m.)

15 THE COURT: All right. Mr. Graham.

16 MR. GRAHAM: Thank you, Your Honor.

17 STATE CLOSING

18 BY MR. GRAHAM:

19 On cross-examination Jared Prather admitted that he
20 agreed with Stephen King, when Stephen King said, we all have
21 a monster inside of us and sometimes it wins. And that's
22 what happened to Gerald Stewart, to Radar. A monster that
23 was inside, that is inside Jared Prather came out on April
24 22nd, 2005 and Gerald Stewart is dead as a result of it.

25 At the beginning, I told you that we were going to

1 uncomfortable places, to places Gerald Stewart wouldn't want
2 you to see. A man that had two lives. An outgoing man, a
3 man who wanted to be the life of the party, a man who wanted
4 to impress people, and a closet homosexual, that people
5 didn't know about, that he wanted to hide, wanted to hide it
6 from. But apparently he didn't hide it from Mr. Prather or
7 from Mr. Phillips, or should I say Jerry and Ray. Why were
8 they using names that aren't theirs. Well, he had a quick
9 response. Well, I say my name's Jared and people hear Jerry.
10 And if you believe that you give a lot of weight to his word.
11 But he didn't have an answer for Ray, other than Ronald Rabon
12 was lying. But at the end of the day that's what this case
13 comes down about, it's about credibility.

14 Mr. Floyd was up here and he spoke for a long time. And
15 I'm probably going to speak for a lot longer than you all
16 would like as well.

17 You know, some names I didn't hear him say, and we're
18 going to talk about them. Lieutenant Kleckley, West Columbia
19 Police Department. Officer Suber, West Columbia Police
20 Department. Donna Sharpe, nurse at Lexington Medical Center.
21 Major Matt Edwards an investigation at the time, with the
22 West Columbia Police Department. The reason Mr. Floyd didn't
23 want to talk to you about those people and what they had to
24 say is because each and everyone of them contradicts Mr.
25 Prather's story that he told up on that stand.

1 On cross-examination, Mr. Hubbard was talking to Mr.
2 Prather. You're either lying or you're telling the truth.
3 If you lie, you're lying about everything, then you're lying
4 to protect yourself. You're lying to try to pull the wool
5 over your eyes and convince you that he didn't do anything
6 wrong.

7 Mr. Floyd wanted to talk to you about reasonable doubt.
8 And he had a piece of paper and he tore off a piece of paper
9 and he carried it in his hand throughout most of his closing
10 with you, just a little doubt and you could find him not
11 guilty. But that's not what the law is. The law is a
12 reasonable doubt, regardless of whether it's little or a big
13 piece or two little pieces or two big pieces. The question
14 becomes do you know what this is at the end of the day? If I
15 take that map and I tear off a small corner, I have a piece
16 of the map that's missing. But is there any question in each
17 and every one of you, that that's a map of the West Columbia
18 area, the river and the Vista, and the answer is no. It's
19 only when it gets to a point that there's so many pieces
20 missing or such important pieces missing, that you don't know
21 what it is, that it becomes reasonable doubt, and it's at
22 that point that you find him not guilty. Because it's our
23 job, it's Mr. Hubbard's job and my job to convince each and
24 every one of you beyond a reasonable doubt that Jared Prather
25 is a murder and/or a thief, an armed robber. And if we have

1 failed to do that after your deliberation, it is your duty to
2 let him go.

3 But this case comes down to credibility. You've got Mr.
4 Prather's story, which sets him free. I came into the house.
5 I was met, and I know whether it was at the door or at the
6 bedroom, but I think he said up on the stand, when Mr.
7 Stewart came out of the bedroom, he was naked with an
8 erection holding his clothes in his hands. And he started
9 talking about, he said that Mr. Stewart started talking about
10 having sex with Josh.

11 This case is confusing. It's about things you don't
12 want to hear about. Who's gay? Who's not gay? Who had sex?
13 Did they have sex? Did they not have sex? Why is Gerald
14 Stewart dead? And we may not know the reason and you want
15 to. But the law does not require the State of South Carolina
16 to prove why. We can guess. We can guess. I can give you
17 examples. Maybe Gerald Stewart had a check earlier that day
18 or earlier that week. He had a check y'all heard about. He
19 got the check cashed. He was a flamboyant personality. He
20 liked to impress people. Here's Joe Frazier. Let me call
21 him on the phone. Let's go out and have drinks. He wanted to
22 be somebody, to be important, to be liked, to fill the lonely
23 existence that he had. In reality, he had a house that his
24 parents left him that he couldn't sell because it was in
25 trust. He had a small allowance, but he had to have an old

1 police officer who he worked for as a confidential informant
2 bringing him crackers and a diet Pepsi because he didn't have
3 anything to eat, which brings us to another thing, two young
4 men, early twenties. Josh Phillips or Ray -- why would you
5 give a fake name? Because you don't want them to know who
6 you are because you're up to no good, because you have an
7 evil heart. Jerry, not Jared, evil heart, up to no good.

8 Why are two young men, in the primes of their lives,
9 hanging out with Gerald Stewart. People said that he was the
10 life of a party and a fun drunk, but he was a sad individual.
11 He was fighting demons maybe because of his homosexuality or
12 maybe for some other reason. He had addiction problems. He
13 lived by himself. The only roommate that he had was a man
14 that he had met and offered to help, maybe because he wanted
15 some companionship or somebody there, not in a sexual way,
16 because Ron Rabon said that he never came on to him. Maybe
17 he just wanted company, wanted to help somebody. Maybe
18 that's why he wanted these young men, Jerry and Ray, maybe
19 that's why he let them in the house. Maybe that's why he
20 spent the money he had on them for alcohol, cigarettes,
21 whatever they bought over that two-day period. That's what
22 Rabon, Ron Rabon said that it was a two-day period. That
23 he'd met Jerry the day before. But that's not what Mr.
24 Prather said.

25 Then we go back to that credibility issues is why is Mr.

1 Prather lying? And if he's telling the truth, why is
2 everybody else lying? What does Ronald Rabon have to gain
3 about his story, about meeting them? What does he care
4 whether he met them that day or the day before. He told you
5 what happened. He also told you that he was threatened by
6 Mr. Prather, asking him -- Mr. Prather asked him if he was a
7 homosexual. I've got a surprise for you. Well, we're going
8 to have a surprise for you anyway. What was that about? Is
9 that a man with an evil heart? Yes. Is that evil intent, up
10 to no good with mischief in his heart? Yes. And why would
11 Ronald Rabon lie about it? You have to go through each
12 witness and determine their motives for lying. And I submit
13 to you Ronald Rabon had no motive to lie. He told you that
14 he saw an altercation between Ray and Gerald Stewart. He saw
15 in the house Ray punch him twice. Who stopped it? He did.
16 But it wasn't the way he described on the stand. Mr. Rabon
17 said he stopped it by ordering him, Ray, stop it or I'll beat
18 you now. I'll take care of you. Mr. Prather wants you to
19 believe that he went and helped Radar get cleaned up. That's
20 not what Mr. Rabon said. He said the leader of the pack,
21 Jerry, told Ray to clean it up. And that's what he said he
22 did. Why would he lie about that? Because he wants to look
23 like a good guy, a helpful guy. He doesn't want you to see
24 the monster that was inside.

25 Why are the two of them hanging out with him? They're

1 obviously looking for something.

2 Unemployed, small trust, house, no real money and they
3 figure that out. He figures it out when he goes to the bar
4 with him that night. There's no testimony that says that
5 Gerald said, let's go drink. Radar said, let's go drink.
6 And he said he didn't want to leave Josh and he didn't really
7 want to go out drinking because he didn't have any money, but
8 he goes out drinking, and he leaves Josh. Why? And Why? He
9 had a car throughout the day, and I don't know whether he
10 agreed that it was a weird day, but it was a weird day. He
11 had a car. He could have left at any time.

12 Why are they staying? Why are they there? What are
13 they looking for? To take advantage, to steal from Gerald
14 Stewart.

15 He goes to the bar, Mr. Stalnaker says, because Radar's
16 across the street at the Capital Club, the tab's twenty-three
17 dollars. You need to pay. And he said, according to Mr.
18 Stalnaker -- again, why would he have a reason to lie -- I'll
19 kick his ass or I'm going to kick his ass or I could kick his
20 ass. I don't remember the exact words. But I. That's not
21 what Jerry said on the stand. What he said on the stand was
22 somebody should have because he wants to distance himself
23 from the person who said that he was going to do it. Now,
24 Mr. Stalnaker said, I took it with a grain of salt. I don't
25 know what he meant. And if nothing would have happened, then

1 maybe it would have been just talk. But when you start by
2 saying, I could kick his ass, and then you end up doing it.
3 That shows you a glimpse into his heart. The evil that is
4 within, the monster that's inside of him. But at Uncle
5 Louie's Jared Prather finds out that he doesn't have any
6 money.

7 They go back to the house. Did Radar and Josh Phillips
8 have sex? I don't know. Ron Rabon says that it looked like
9 there was some kind of sexual activity between them. Was it
10 consensual? I don't know. There's no evidence, however,
11 that it wasn't. The sexual assault kit was negative for
12 everything. No sign of injury or trauma anywhere. No semen
13 in places that it shouldn't be. And the man that Jerry is
14 trying to blame didn't have any blood on him. All his
15 clothes were looked at it. All of them were sent to SLED.
16 None of Gerald Stewart's blood was found on him.

17 You're never going to know exactly what happened.
18 That's why there are so many charges. That's why there are
19 so many options because it's unclear. Don't get hung up on
20 wanting to know what happened. Look at what's been proven.
21 The State doesn't have to prove why something happened. Just
22 that -- let's talk about our descriptions of these people.
23 We know they're using -- there's testimony they're using
24 false names. Josh Phillips is described by Ron Rabon as
25 following his orders. Stop hitting him or I'm going to beat

1 on you. Go clean him up. At the hospital when they're
2 saying that a rape occurred, who's doing the talking and
3 who's being quiet. Who's looking down at the floor? But
4 who's got the story? Josh Phillips is looking down at the
5 floor. He's sitting quiet. Who's got the story? The
6 leader. Jared Prather has the story. Here's the story,
7 nurse. Here's what happened. If you believe the story, if
8 you believe his testimony, he's not guilty. It was self-
9 defense. And if that's what you believe, you've got a duty
10 to let him go. To say, you are not guilty. Go home. But
11 it's not your job to reward anybody. It's not your job to
12 show mercy. And it's not your job to punish. It is your job
13 to listen. It's your duty to evaluate the evidence and if
14 and when you find him guilty beyond a reasonable doubt, then
15 you say, he's guilty.

16 Proximate cause. Mr. Floyd wanted to talk about
17 proximate cause. Janice Ross went on to explain that these
18 are the different manners of death. And I think she said she
19 did six thousand autopsies. And it sounded like lately she's
20 been doing three a day. I don't know how many times she said
21 she'd testified as an expert. These are the different --
22 undetermined, I don't know. That's not what she said. She
23 gave an opinion. Mr. Floyd wanted to show you an exhibit
24 that he put in. I think it was signed on the day the autopsy
25 was done. It said pending investigation, pending toxicology.

1 She would have been remiss in her duty if she would have came
2 up with a conclusion, not waiting for more information, not
3 waiting for the toxicological results. Undetermined means, I
4 don't know. That's not what she said here.

5 Did he have problems? Was he an unhealthy man? He was.
6 He was. He was an alcoholic. He had cirrhosis of the liver
7 and he had an enlarged heart. Could he have dropped dead at
8 any day? The answer is, yes. The question that needed to be
9 asked that was asked of Dr. Ross was did he die that day from
10 natural causes? She said, no. No, sir. Not natural causes,
11 not that day, not that time.

12 It wasn't Gerald Stewart's day to die, but he made it.
13 He chose the day and the time, the last day that Radar was on
14 this earth. Was it an accident? I think you have an
15 accident charge. If you think that applies. Find it as an
16 accident, find he died of an accident. That's not what Dr.
17 Ross said. That wasn't her opinion. Not a suicide. That
18 leaves a homicide. And that's what she said. Her
19 professional opinion, her expertise, six thousand plus
20 autopsies, all the education, all the experience she's had,
21 all the times testifying in court, it was a homicide. A
22 killing by another.

23 And what was the cause of death? The Judge is going to
24 charge you on proximate cause. And I don't know the exact
25 language he's going to use. You listen to it and apply it.

1 It's a direct cause, the cause.

2 Here's what Dr. Ross says the cause of death is. He had
3 an enlarged heart. He lived with that every day. It wasn't
4 his day to die. The beating, the stress of the beating, the
5 multiple blows, the contusions, the abrasions, the carving on
6 the back. The pain and the stress from the injuries
7 inflicted on him by Jerry and by Ray caused a cardiac
8 arrhythmia, caused him to die. Were of those injuries by
9 themselves on a healthy person lethal? The answer is, no.
10 But that's not the question. That's not the question that
11 you need to consider. The question is, did the beating cause
12 the death? And it did because he chose his victim. He chose
13 a man that had an enlarged heart. He's responsible for the
14 death of Gerald Stewart.

15 If you don't think that's the cause, if you don't think
16 that this is the cause, then he's not responsible for a
17 killing at all. And if you believe that, you find him not
18 guilty of murder. And find him not guilty of all these other
19 things, because this is not a simple assault.

20 Notice how this story changed over time. We have all
21 these stories. The story that the other witnesses told that
22 Mr. Floyd didn't mention to you, let's talk about them.
23 Donna Sharpe was the first person who heard the Defendant say
24 anything. Friday morning, I think 4:28 in the morning on the
25 22nd, Gerald Stewart's lying in his house, Jared and Josh go

1 into the emergency room. Not Josh, but Jared, need a rape
2 kit. Okay. So they get that started. Well, what happened?
3 Well, I left my friend, who was an acquaintance, or an
4 acquaintance of acquaintance, or a friend I went to high
5 school with. Why is there a difference there of what's being
6 described? Why is Donna Sharpe saying that he said or a
7 close friend and he wants to push him away? Who's telling
8 the truth and why is somebody lying? He said he left him on
9 the couch passed out with a pillow, but why leave your friend
10 there when you have a car and you're running errands and your
11 friend's already been in a fight and you're twenty-two years
12 old, and you're with an unhealthy, overweight, alcoholic, who
13 just got out of rehab, who your friend had been in a fight
14 with and he's passed out and defenseless. Why would you do
15 that or would you? He says that he went and ran off --
16 whatever errand he ran. He didn't tell anybody originally
17 that he was going to try to find Cocaine. He ran some
18 errand. He came back. She said that Mr. Prather told her,
19 the old guy answered the door buck naked. But in his
20 testimony, he wanted you -- the story to you is that he came
21 out of the bedroom. That he came in the house and that
22 Gerald Stewart, Radar, came out of the bedroom and shut the
23 door. But Donna Sharpe says the old guy answered the door.
24 Donna Sharpe told you all when she was testifying that this
25 case struck her as so odd, the things that he said were so

1 odd, that set off so many alarms, she sat down as soon as
2 they were gone from and she typed up exactly what happened.
3 Her words were, so if she was going to lie, she started to
4 lie before anybody was arrested. What motive would she have
5 to lie on either one of these men? She said that Mr. Prather
6 had talked to him, saying that Mr. Stewart asked him or the
7 old man had talked to him about having sex with the friend,
8 Josh. And said, we've been friends for years. That's what
9 she said. He said acquaintances. Then he said he found Josh
10 in bed with his boxers on. He doesn't describe any type of
11 attack yet, of him putting any hits, any blows, on Mr.
12 Stewart. That time line is different from what he told you
13 up on the stand. The time line on the stand is that the old
14 man naked, carrying his clothes, which I don't know when he
15 got dressed, but apparently some time when he beat him and he
16 ended up on the couch, he got dressed. When Jared was
17 beating him, when Josh was beating him, he got dressed. He
18 put shoes on. And he had a knife and cigarettes in his
19 pocket. A violent man who had threatened him who was lifted
20 up by his arm, who was getting beat, he didn't pull a knife.
21 Nobody ever said anything about pulling a knife. He had one
22 in his pocket. If he wanted to defend himself from these two
23 young men who were jumping on him, he could have if he had a
24 chance. But if he wanted to have them sit down and don't go
25 anywhere, a knife sure would have been better than grabbing

1 him by the arm. But if you believe that he grabbed him by
2 the arm and that he attacked him, and that everything that
3 was done was in self-defense, you give it what weight its
4 worth. You let him go if you think that's what happened. He
5 told Donna Sharpe -- there's one more thing I want to talk
6 about. He said that Gerald Stewart came out with an
7 erection. And I'm sorry we have to talk about it, but we do.
8 This was a man who had a blood alcohol content of, I don't
9 know what the numbers were the toxicologist said. But she
10 said eighteen to twenty drinks. That doesn't even account
11 for elimination. Who's on Valium, all central nervous
12 systems depressants. Use your common sense on whether you
13 think that's right. There's no sign of forced rape on Josh
14 Phillips, no sign. But if you believe that, you give it what
15 weight its worth. He never told Donna Sharpe when he was
16 talking to her that Josh Phillips did any of the beating, it
17 was always him beating. I beat him up. I did. Never told
18 anybody that until he got up on the stand and told you all
19 that. Not to Donna Sharpe, not to the police when he talked
20 to them. He had three different police officers that he
21 talked to and he never said that the co-defendant in this
22 case was part of it. He said that he told Joshua to get
23 dressed. He said it took about an hour and a half for him to
24 find all the clothes in the house and get dressed. That's
25 what Donna Sharpe said, that she wrote down immediately after

1 it happened. It took an hour and a half for us to get up our
2 clothes and get dressed. An hour and a half. That's not
3 what he told you on the stand today.

4 Now, would it take an hour and a half to do what they did to
5 him, may be. He's got cigarette burns on his knuckle. He's
6 got carvings in his back. He's dressed. He's covered up
7 with blankets. Oh -- and, oh, yeah, we needed to case the
8 house and steal things too. We have a wallet in the pocket.
9 Gerald Stewart's wallet. We have Coke memorabilia found in
10 whose car? Jerry's car, but he didn't know anything about
11 it. There's a knife found under there. That had been there
12 for months, is what he saying. But doesn't that look like
13 the kind of knife that could make those kind of cuts. We
14 know those cuts were made on him when he was still alive.
15 And we know that the Coca-Cola set that his dad had, that he
16 wouldn't part with, was found in his car. That's an armed
17 robbery right there.

18 So what was the weirdest thing that Donna Sharpe said
19 that let's you see a glimpse into his heart. She said that
20 he washed his hands. And said that he didn't like or hated
21 having blood on his hands. And he chuckled. He chuckled.
22 That monster inside chuckled. That's malice. He was proud
23 of what he had done. He was happy with what he'd done. He
24 didn't tell anything to Donna Sharpe about self-defense. He
25 didn't say the old man came at me. He said I went in the

1 house, thought my friend had been raped. The time line is
2 different. The story is different from what we've heard.
3 And she had no motive to lie. Wayne Floyd didn't ask her a
4 single question about why she'd make this up.

5 Ronald Suber, that was the first officer, the young
6 officer, from West Columbia who spoke with Mr. Prather when
7 he was on the scene at the Lexington Medical Center. They
8 were outside in the ambulance bay, I think is where it
9 happened. Not in custody, not making him talk or not
10 interrogating him. In fact, I want to say Officer Suber said
11 that he came over and talked to them. He stated that Mr.
12 Prather told them that he had gone to do some errand, didn't
13 know what. Came back to the house. And that the victim,
14 again, that Gerald Stewart, again, came to the door
15 completely naked. Not the bedroom like you all heard today,
16 but the door. The front door completely naked. Nothing
17 about clothes in the hand. Nothing about an erection. Some
18 of the statements he said were the same. Asked him if he'd
19 ever had sex with Josh before. You know -- pardon me for
20 saying it -- did you know that Josh liked to have his dick
21 sucked? He said that Gerald Stewart said that. If there was
22 a real rape, why would Gerald Stewart be bragging about it.
23 If he had taken advantage of an unconscious man who's passed
24 out, who could somehow have an erection, why would he brag
25 about it to his friend? It doesn't make any sense. You use

1 your common sense to what we know. He said he pushed his way
2 into the house and he noticed that Mr. Phillips wasn't on the
3 couch. Then he goes to the bedroom door. Again, there's
4 nothing about self-defense. There's nothing about Mr.
5 Stewart attacking him. There's nothing about Mr. Stewart
6 threatening him. To the police and to Ms. Sharpe, he finds
7 his friend, thinks he's been raped, and then he beats him.
8 But that makes him guilty of something and he doesn't want to
9 be guilty of something, which is why you heard a different
10 story. He says he kicked opened the bedroom. Said that he
11 immediately tried to wake Josh up. I shouted at him, and
12 pulling his hair and shaking him. He said he finally woke
13 him up and he said, let's get out of here. He said, quote, I
14 beat the shit out of him. I beat the shit out of him and
15 those were devastating blows. Those were not the blows he
16 showed you up on the stand. He's got me by my left arm.
17 Well, on the stand he said that he hit Mr. Stewart here. If
18 y'all remember where he pointed, he said, I hit him up here
19 three times. When Mr. Hubbard had him down here and had him
20 up by the arm, the blows were coming down here. Mr.
21 Stewart's [sic] is 6'3" and Mr. Stewart's 6'4". Mr. Prather
22 was on his tiptoes and he still was only punching Mr. Hubbard
23 in the cheek, because that's not where he punched him.
24 That's not what he hit him with. Did he use his fist? I
25 don't know. That's what he says. He had rings on when he

1 was arrested and there's no ring marks that were noted.
2 Maybe he use an object. Maybe he picked up something. There
3 should have been some marks if he used his hand. But he did
4 have blood on him and Mr. Phillips didn't.

5 Wayne Kleckley, now Lieutenant Kleckley, he said that he
6 met and spoke with Mr. Prather, not in custody, not
7 interrogating him, not making him talk. Mr. Prather spoke to
8 him voluntarily. He was met at the door by the victim who
9 was naked. Not coming out of the bedroom with an erection
10 with his clothes in his hand. That's not what he said. So
11 Wayne Kleckley must be a liar too. Or we're changing our
12 story so that you all will find him not guilty. Look at the
13 credibility and look at the reasons to lie. Again, have you
14 ever had sex with Josh? The same statement about oral sex.
15 He said he pushed his way into the residence. When he saw
16 Josh wasn't on the couch, he then kicked the bedroom door and
17 found Josh in the bed only in his boxers. And then time line
18 wise again, no mention of being attacked by Mr. Stewart. No
19 mention of self-defense. No mention of being threatened. I
20 beat the shit out of him and I laid some devastating blows on
21 him. Not the three that he showed you. Devastating blows.
22 An I may have forgotten what Donna Sharpe -- I want to say
23 that she said that Mr. Prather said, I left him alive.
24 Barely, I think. You didn't hear anything about that when he
25 was up on the stand. He denies saying that. Donna Sharpe's

1 a liar. Wayne Kleckley is a liar. Officer Suber is a liar.

2 Matt Edwards, Major now, he interviewed him at the West
3 Columbia Police Department after Mr. Prather was in custody.
4 He read him his Miranda Rights. He waived them, said he
5 understood them, said he wanted to talk to the police. Said
6 that he had met Mr. Stewart playing pool at Calloway's in
7 West Columbia. Didn't know that he was a homosexual at the
8 time. When asked if he was a homosexual got offended.
9 Denied it. Got offended. Said, hell no. Said he had known
10 Josh for four or five years from high school. Well, that
11 goes with what Donna Sharpe said, doesn't it. They're good
12 friends, not an acquaintance of an acquaintance or met him
13 through a girlfriend. Playing cards all day and drinking.
14 Because you've got to remember that this is -- he's under
15 arrest now. If he's going to tell the story and have it be a
16 true story, now is the time to tell it. This is his chance.
17 He says, we were playing cards and drinking all day.
18 Everything's cool. Not anything about a fight between
19 Phillips and Gerald Stewart. And wouldn't that be important?
20 Wouldn't that be something that he should have told him.
21 Hey, I'm not the bad guy here. It's Phillips. That's the
22 story he wants you to believe now, but that's not what he
23 told Major Edwards. He didn't mention that. He's got him
24 running errands and going back and forth. He said that
25 evening the victim and Josh got very drunk on whiskey. Josh

1 fell asleep on the couch in the den around midnight. And
2 then he goes -- sometime after that, he took a box of clothes
3 back to Josh Phillips' brother's apartment. But I don't
4 think that's the story he told you then. You've got to pay
5 attention to the time line because the time line's not the
6 same. Sometimes after that, he took the box of clothes over.
7 Of course, he didn't tell anybody about cocaine, about going
8 to get cocaine on credit from a drug dealer because I know
9 that happens all the time. He had no money. Mr. Stewart had
10 no money. He's going to a drug dealer he doesn't know
11 expecting to get cocaine for free. If you believe that
12 happened, you give it what weight it's worth. He said that
13 Mr. Stewart told him to just come back in and that he would
14 leave the door unlocked. And then he goes, oh, yeah,
15 Investigator Edwards, I forgot to tell you, but we went to
16 Uncle Louie's before that. But we're changing the time line.
17 He started to tell it the way it really happened, but then he
18 needed to switch the time. He wanted to go to Uncle Louie's
19 before midnight. So they went to Uncle Louie's and I didn't
20 take the box of clothes back at midnight. It was more like
21 2:00 or 3:00 a.m. Because he knew he didn't go to the
22 hospital until 4:30. And he needs to not be in the house to
23 have a story for something happening and them coming in for a
24 rape that didn't occur. I walked straight through the front
25 door is what he told Major Edwards. As he was walking in, he

1 saw the victim walking out of the bedroom completely naked.

2 Now you're starting to hear the story that you heard
3 today. Because go back and ask why. Why is this story
4 changing already? Donna Sharpe set off his senses. Hey,
5 they're not believing me. I need the wallet. I need to go
6 check on this guy. You don't want people thinking that you
7 robbed him. Give me the wallet. He didn't really have much
8 more to say to her after that because the story doesn't make
9 sense. Again, the statement about oral sex. He says he
10 pushed aside, went in the bedroom to get Josh out of bed.
11 Nothing about him coming out with an erection. Nothing about
12 him coming out with his clothes or clothes in his hand.
13 Nothing about being attacked there prior to finding Josh.
14 Again, it's going in finding Josh and coming back out. Ask
15 yourself why the story's changing because that's not the way
16 it happened because it didn't happen. He could not wake Josh
17 up, so he pulled him out of bed by his hair and he grabbed
18 his clothes. Then he has, for the first time, the victim
19 grab him by the arm when they started to leave. There's no -
20 - he told Major Edwards so he pushed the victim and the
21 victim fell over and he hit him as he was falling. Again,
22 that's not what you heard today. He grabbed him by the arm
23 is what he testified to today and he punched him three times,
24 either up here or on the cheek, not as he was pushed over
25 falling. That's not the story he told you today. Matt

1 Edwards is a liar or he is. Wayne Kleckley is a liar or he
2 is. Donna Sharpe is a liar or he is. Officer Suber's a liar
3 or he is. He and Josh immediately, immediately, immediately
4 left. That's what he told Major Edwards. Immediately.
5 That's not an eight or ten minutes. I'm under arrest. I
6 need to tell you the whole story. Oh, yeah. He went back
7 in. He knows he's under arrest because someone's seriously
8 hurt or somebody's dead. He doesn't think it's important to
9 say that Josh Phillips beat him too. That Josh went back in
10 the house. It was a blood scene. In his description of his
11 blows, he never describes any blood. Never said once when he
12 was on the stand that any blood came from the blows he hit.
13 I think what he said was Gerald had a busted lip from earlier
14 in the day. You've got a man who's dead or seriously injured
15 and he doesn't think to tell the police the whole story
16 because there wasn't a whole story to tell until now. Not
17 eight or ten minutes, not an hour and a half, immediately.
18 But he's alive. Why, I don't know. But if you believe his
19 story he's a liar.

20 First he said we went straight to the hospital. And
21 then, no, that doesn't work because there's too much time.
22 This happened at 2:45 or 3:00 in the morning if the time line
23 is right. They leave Uncle Louie's at 2:00. It's closing.
24 They drive back. If you believe the story, he drops Mr.
25 Stewart off and he goes over to look for cocaine. He's gone

1 for -- not very many blocks away. However long it takes to
2 go to look for cocaine and come back. So 2:45, 3:00.
3 There's an hour and a half between 3:00 and being at the
4 hospital at 4:28. And what did they do? They covered up a
5 crime is what he did. What they did. They covered up a
6 murder. They covered up a beating death. They had to come
7 up with a story. They didn't go call 9-1-1. This guy just
8 raped my friend. Get over here. They didn't stop by the
9 police station to report it. But on the map it's closer.
10 It's closer than going to the hospital. What he told Major
11 Edwards was, we went to Calloway's, a bar -- at whatever time
12 in the morning that would have been -- and played pool.
13 That's not what he said. So Major Edwards must be a liar
14 again.

15 He said that we were near the intersection and Josh
16 Phillips is all agitated and upset. He jumped out of the
17 car. I pulled over in front of the Chinese Station. He went
18 in and whatever he said happened. This is the same man who
19 goes to the hospital, who's looking down at the floor and
20 really doesn't have much to say because he let his leader
21 take over and tell the story, because it didn't happen.

22 Matt Edwards goes to confront him. You must have
23 changed your clothes. You must have changed your clothes
24 because there's blood. We found blood. It was a bloody
25 scene. And again, when he shut down with Ms. Donna Sharpe

1 when she said, give me the wallet. You don't want people to
2 think it's robbery. On, no, no, it wasn't that. Here you
3 go. But he knew it was there. According to her, he turned,
4 he said to Josh Phillips, do you still have the wallet. So
5 he knew that he took it from the house. There wasn't any
6 question like he told y'all today about an ID card, whether
7 he might have it or might know who he is. He took the wallet
8 and he knew it or Donna Sharpe's lying again.

9 I mean, he was accused and the story did get believed,
10 when Matt Edwards said, I don't believe your story. You're
11 lying to me. He shut down. He pulled away in a fetal
12 position and started to cry, because he knew he wasn't going
13 to be able to convince the police that he didn't do it,
14 because his story didn't make sense. I'm clean. He didn't
15 tell them I might have blood on my clothes. No, these are
16 the clothes I've got on. There's nothing on them. Well,
17 what did they find? They find blood on them. On the back
18 here where your hands wiped off or maybe a knife is wiped off
19 on the back of the shirt. On the socks, they're drops.
20 Drops. Round, circular drops. That's how they were
21 described. That's not wiping something on. That's not
22 getting them on your hands. It's some kind of splatter or
23 spatter of blood flying through the air. Round, circular
24 drops.

25 He's either telling you the truth and he's not guilty or

1 he's lying and he's guilty of murder. Everything in between,
2 you've got to pick out these pieces and parts. And you can
3 do that if you think that's what's happened. That he's
4 telling you part of the truth or some of it's true or
5 somebody's not being honest, he can do that. But it's either
6 murder or it's simple assault. It's either armed robbery or
7 it's not. A knife was used to cut him while he was still
8 alive. Things were stolen. Either he was part of it or he
9 wasn't. You can find him guilty of murder, guilty of armed
10 robbery. Guilty of a murder, not armed robbery, any
11 combination you want.

12 Let's talk about some of the things that we got, we
13 talked a little bit about that. That was in Gerald Stewart's
14 hands. Somehow that he put back on after he saw him naked
15 with an erection, and he hit him only three times. And Josh
16 beat on him somehow. Somehow before he died and somebody
17 carved rapist on him, he pulled his pants on, his shirt, and
18 he had that in his pocket. But he sure didn't -- there was
19 no testimony about using a knife to threaten anybody, but he
20 had one in his pants pocket. Maybe he didn't threaten him.
21 His wallet, credit cards, identification, stolen and
22 everybody knew it. Not like he said on the stand I thought
23 he an ID card, I thought I knew who he was or something like
24 that. He knew he had the wallet according to Donna Sharpe
25 but that's not what he wanted to tell you.

1 Blood, Gerald's blood, on Josh, excuse me, on Jerry's
2 clothes. Not on Ray's clothes. That's Ray, the follower,
3 the one that does what he's told to do. The one without a
4 car. If you think he's the mastermind and did this all by
5 himself, then he's not guilty. A knife found in his car. In
6 his car. He's the one with the car. Commemorative Coke in
7 the bottom on the passenger's side of his car, that Gerald
8 Stewart would not have parted with. Yet, he wants you to
9 believe that he saw Josh Phillips carry out something from
10 the car, and he didn't know what it was. Well, he didn't
11 take anything over there. Whatever possessions he had, he'd
12 taken them back in a box earlier is what he told you. So he
13 had nothing, except the clothes he had on.

14 Radar was left on his knees, over a couch, with a broken
15 nose, broken ribs, and he was left like this. Nobody called
16 9-1-1 to help him. They had a blanket over him, they had a
17 pillow over him. Nobody tried to help him. But what did
18 they find when they took off the pillow and the blanket?
19 They found the sexual object that had absolutely no purpose
20 in this beating because a rape didn't happen. There's a
21 cigarette -- y'all are going to have this picture back there.
22 There's a cigarette on his shoulder. How did that get there?
23 Who placed it there? There's a burn, a circular burn mark
24 that the doctor talked about, Dr. Ross talked about on his, I
25 think, left ring finger. Where did that come from? Isn't it

1 possible that somebody took a cigarette and put it on him to
2 see if he was still alive or to torture him more, to cause
3 him more pain, pain that causes his heart to stop beating?
4 Maybe that's a cigarette that did that. But somebody for
5 sure put it there after he was dead and lying on that couch.

6 Did Gerald Stewart do it to himself? Did Ron Rabon come
7 in and see his gay homosexual roommate, that he didn't know
8 about, who was moving out the next day and decide to do this?

9 Did Josh Phillips do it all by himself or did Jerry do
10 it? Well, Josh Phillips was arrested when he went to get his
11 rape kit at the hospital. And you'll have the actual items
12 back there. There's no cigarette's in here. There's no
13 lighter in here.

14 Do you remember Officer Vinkemulder, the one who used to
15 work for West Columbia had just started and now he's down in
16 Florida, and he came back to testify. He got Jerry -- Jared
17 Prather's personal belongings. A pack of Marlboro
18 cigarettes. Five of them in the box. A lighter, I believe,
19 and two rings. Who was smoking? Who had a reason? Who
20 showed hatred and contempt, for what reason, we don't know,
21 on Gerald Stewart's lifeless body. But the cigarette and the
22 sexual object wasn't enough. Hey, this a rape everybody.
23 Pay attention.

24 So what do we know? Somebody pulls up his shirt and
25 pulls down his pants, because this is the way the police

1 found him. Pants up, shirt down, the word rapist not
2 visible. So somebody either dressed him after the fact or
3 they pulled it down while they did it. They took a knife,
4 and not a butter knife, but a share-pointed blade and carved
5 the word rapist. And Mr. Prather told me he saw rapist up
6 there. You heard him say that. R-A-P-I-S-T, rapist.
7 Thirteen years in school, he knows how to spell rapist. He
8 could read.

9 What do we know about Josh Phillips? We know that
10 Investigator Mark Jones with the West Columbia Police
11 Department saw him write the word rapist or write a word that
12 looks like rapist, R-A-P-E-I-S-T. That is not what was
13 carved into the back of Radar. So either Josh Phillips is a
14 follower, who's not real bright, who doesn't know how to
15 spell or he's a mastermind at everything on his own, even to
16 the point of spelling the word rapist wrong. And if that's
17 what you think then he's not guilty and he didn't have
18 anything to do with it.

19 Let's talk about staging. Staging. You heard Paul
20 LaRosa, the last witness that we called up, talked to you
21 about staging. He's a behavioral unit at SLED. Staging is
22 the attempt to misdirect you from what happened. That's
23 exactly what this is. This is a beating and a killing. It
24 wasn't a rape and a beating. It wasn't a self-defense and a
25 beating. You'd call the police on that. I just -- this guy

1 was coming at me and I hit him. He's not breathing. I
2 didn't hit him that hard, but he's not breathing. Look to
3 his actions and to his words. Carving into him, putting a
4 dildo on him, flicking a cigarette, making burns. Hey,
5 world, this is a rape staging. Is that what somebody who had
6 really been raped would do? If Josh Phillips really did
7 that, if he was so mad and he was so angry because he thought
8 he'd been violated by Gerald Stewart, is that what he would
9 have done or would it have been worse? Would he have plunged
10 the knife into him, over and over to kill him and spell out
11 the word rapist? Would he have mutilated him? Cutting off
12 or disfiguring a body part that offended him, his mouth or
13 his genitals? Would the dildo be under his armpit or would
14 it be somewhere else? It's staging. I didn't happen.

15 That's not the reason Gerald Stewart was killed. It was
16 not the reason he was beat. An attempt to cover him up with
17 a blanket and a pillow. I think he called it undoing. A
18 different behavior, a different person. Two people with one
19 leader, one follower. He told you his story. If we have
20 proved to you beyond a reasonable doubt that it's not true,
21 he's guilty of murder.

22 Murder, as the Judge will tell you, is the unlawful
23 killing of another with malice aforethought. It is not the
24 unlawful, intentional killing of another with malice
25 aforethought. You will not hear the Judge issue those words.

1 It's an unlawful killing. Malice describes the state of mind
2 of the person who did the killing. So if you get to the
3 point where you believe that the stress of the beating caused
4 the death and he did the beating, you've got an unlawful
5 killing. Then the question is, what was in his heart? What
6 was on his mind? What was the monster inside of him thinking
7 when he beat him at that moment. It doesn't have to be
8 premeditated. You don't have to make a list of what you're
9 going to do. It just has to happen right before and at the
10 time that the fatal blows are delivered. If taking a knife
11 and disfiguring and mutilating a man who is dying, who's
12 still alive, is not malice, then what is? He left behind his
13 heart, the evilness that was inside him for everybody to see
14 on Mr. Stewart's body.

15 Thank you all for your attention.

16 At the beginning I asked you to give justice. To give
17 justice to Jared Prather. And at the end, I will ask you to
18 give him justice. Justice is that Jared Prather is a
19 murderer and the verdict is guilty. Justice is that he's an
20 armed robber and he's guilty of armed robbery.

21 Ladies and gentlemen, thank you.

22 THE COURT: Ladies and gentlemen, give me just a
23 couple of minutes, three or four minutes. Please do not
24 discuss the case.

25 (Jury out at 3:31 p.m.)

1 THE COURT: We'll be at ease for just a couple of
2 minutes.

3 (Court in recess for a short break.)

4 (Court in session after short break)

5 THE COURT: All right. Let's bring the jury.

6 (Jury in at 3:43 p.m.)

7 THE COURT: Madam Forelady, and members of the
8 jury, you've heard the testimony, the evidence, and the
9 arguments of the State and the Defendant. I will now explain
10 to you the law that applies to this case.

11 Under the Constitution and laws of South Carolina, you
12 are the finders of the facts in this case. I do not have the
13 right to pass upon the facts or even to express any opinion
14 that I might have as to them because this is a matter solely
15 for you, the jury, to determine. As jurors, then, it is your
16 duty to determine the effect, the value, the weight, and the
17 truth of the evidence presented during this trial. You are
18 also judges, the sole judges of the credibility, that is the
19 believability of the witnesses who have testified and of the
20 evidence, which has been presented during this trial.

21 In passing upon credibility you can or may take into
22 consideration many things, such as the demeanor or manner of
23 testifying, whether the witness had reason to be biased or
24 prejudiced or whether a witnesses testimony was contradicted
25 on the one hand or supported and corroborated on the other

1 hand. All these things you will consider, bearing in mind
2 that you should give the Defendant the benefit of any
3 reasonable doubt.

4 It becomes your duty as jurors to analyze and to
5 evaluate the evidence and determine that evidence, which
6 convinces you of its truth.

7 Now, rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses we call expert
10 witnesses. A witness who, by training, education, and
11 experience, who has become an expert in some art, science or
12 calling, may state an opinion as to relevant and material
13 matter in which the witness claims to be an expert. They may
14 also state the reasons for the opinion. You should consider
15 any expert opinion received in evidence in this case, and
16 like the other evidence, give it the weight that you think it
17 deserves. If you decide that the opinion of an expert is not
18 based on sufficient training, education and experience, or if
19 you conclude that the reasons given in support of the opinion
20 are not sound, or that the opinion is outweighed by other
21 evidence, you may disregard the opinion entirely. An expert
22 witness's testimony is to be give no greater weight than that
23 of other witnesses simple because the witness is an expert.
24 Further, you're not required to accept an opinion from an
25 expert, even though it is not contradicted.

1 Now, as the trial judge, it is my responsibility to
2 preside over the trial of this case and to rule upon the
3 admissibility of the evidence offered during this trial. You
4 are to consider only the testimony, which, as presented from
5 this witness stand, together with any exhibits which have
6 been made a part of the record. I have the additional duty
7 to charge you the law applicable to this case. And as the
8 presiding judge, I am the sole judge of the law of this case.
9 It is your duty as jurors to accept as correct the law as I
10 now state it to you, and then reach your verdict. And
11 finally, I charge you in this regard that you should not be
12 concerned with what you think the law ought to be, but rather
13 what I charge you that the law is.

14 Now, the fact that the Defendant was arrested, charged,
15 and indicted in this case is not evidence and cannot be
16 considered by you as evidence of guilt in this case. Nor
17 does it create any presumption or inference of guilt. The
18 indictments are simply the formal written instruments, which
19 contain the charges made against the Defendant. An
20 indictment is the formal document by which a case is brought
21 into court. The Defendant has pled not guilty to the charges
22 in the indictment. And that plea places the burden on the
23 State to prove the Defendant guilty.

24 A person charged with committing a criminal offense in
25 South Carolina is never required to prove himself innocent.

1 I charge you that it is an important rule of the law, that
2 the defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be presumed to
4 be not guilty of the crime for which the indictments were
5 issued, unless guilt has been proven by evidence satisfying
6 you of that guilt beyond a reasonable doubt. The presumption
7 of innocence does not end when you begin your deliberations.
8 It accompanies the Defendant throughout the trial until you
9 reach a verdict of guilt based on evidence satisfying you of
10 that guilt beyond a reasonable doubt. The presumption of
11 innocence is like a robe righteousness placed about the
12 shoulders of the Defendant, which remains with the Defendant
13 until it has been stripped from the Defendant by evidence
14 satisfying you of the Defendant's guilt beyond a reasonable
15 doubt. Now, the presumption of innocence is not a mere legal
16 theory. It's not just a legal phrase. It is a substantial
17 right to which every defendant is entitled unless you, the
18 jury, are satisfied from the evidence of the Defendant's
19 guilt beyond a reasonable doubt.

20 The State must prove the Defendant guilty beyond a
21 reasonable doubt. So what is a reasonable doubt in the law?
22 A reasonable doubt is a doubt which makes an honest, sincere,
23 juror in search of the truth to hesitate to act. Proof
24 beyond a reasonable doubt is, therefore, the proof of such a
25 convincing character that a reasonable person would not

1 hesitate to rely and act upon it in the most important of his
2 or her own affairs. Proof beyond a reasonable doubt can also
3 be described as proof that leaves you firmly convinced of the
4 Defendant's guilty. Now, there are very few things in this
5 world that we know with absolutely certainty. And in
6 criminal cases the law does not require proof that overcomes
7 every possible doubt. If, based on your consideration of the
8 evidence, you are firmly convinced that the Defendant is
9 guilty, then you must find him guilty. If, on the other
10 hand, you think that there is a real possibility that he is
11 not guilty, you must then give him the benefit of the doubt
12 and find him not guilty.

13 Now, the indictments in this case allege two different
14 offenses against the Defendant. The charges are murder and
15 armed robbery. The charges are separate and distinct
16 offenses. You must decide each offense separately on the
17 evidence and the law applicable to it uninfluenced by your
18 decision as to any other charge. The Defendant may be
19 convicted or acquitted on any or all of the offenses charged.
20 You'll be asked to complete the verdict form, indicating a
21 separate verdict of guilty or not guilty for each charge.
22 The Defendant is charged with murder. The State must prove
23 beyond a reasonable doubt that the Defendant killed another
24 person with malice aforethought. Malice is hatred, ill-will
25 or hostility towards another person. It is the intentional

1 doing of a wrongful act without just cause or excuse. And
2 with the intent to inflict an injury or under circumstances
3 that the law would infer an evil intent. Malice aforethought
4 does not require that malice exist for any particular time
5 before the act is committed. But malice must exist in the
6 mind of the Defendant just before and at the time the act is
7 committed. Therefore, there must be a combination of the
8 previous evil intent and the act. Malice aforethought may be
9 expressed or inferred.

10 These terms, the expressed and inferred do not mean
11 different kinds of malice, but merely the manner in which
12 malice may be shown to exist. That is either by direct
13 evidence or by inference from the facts and circumstances,
14 which are proved. Expressed malice is shown when a person
15 speaks words, which express hatred or ill will for another or
16 when the person prepared beforehand to do the act, which was
17 later accomplished. For example, lying in wait for a person
18 or any other act of preparation, going to show that the deed
19 was within the Defendant's mind, would be expressed malice.
20 And if one intentionally kills another during the commission
21 of a felony, the inference of malice may arise. If facts are
22 proved beyond a reasonable doubt, sufficient to raise an
23 inference of malice to your satisfaction, this inference will
24 simply be an evidentiary fact to be taken into consideration
25 by you, along with all the other evidence in the case and you

1 may give it the weight that you think that it should receive.

2 I charge you that under South Carolina law, armed
3 robbery is a felony. Now, if you find that the State has
4 failed to prove beyond a reasonable doubt that the Defendant
5 committed murder, you may consider whether the State has
6 proven beyond a reasonable doubt that the Defendant committed
7 voluntary manslaughter. To prove voluntary manslaughter the
8 State must prove beyond a reasonable doubt that the Defendant
9 took a life of another in the sudden heat of passion, based
10 on sufficient legal provocation. Both heat of passion and
11 sufficient legal provocation must be present at the time of
12 the killing to constitute voluntary manslaughter. Sudden
13 heat of passion may, for a time, effect a person's self-
14 control and temporarily disturb a person's reason. The
15 sudden heat of passion must be the type that would make an
16 ordinary person unable to cool and reflect on his actions and
17 would produce an uncontrollable impulse to do violence.
18 Sufficient legal provocation must be the type that would make
19 a person of ordinary reason and caution become enraged and to
20 lose control temporarily. The provocation needed for
21 voluntary manslaughter must come from some act or related to
22 the victim. Words alone, however vulgar or insulting, are
23 not enough to be legal provocation.

24 Where death is caused by the use of a deadly weapon, the
25 words must be accompanied by some overt threatening act,

1 which would have produced the heat of passion. The exercise
2 of a legal right, no matter how offensive it is to another,
3 is never sufficient legal provocation for voluntary
4 manslaughter. If the heat of passion had cooled or if there
5 was enough time between the provocation, if any, and the
6 killing, for the passion of a reasonable person to cool. A
7 killing would not be voluntary manslaughter. In deciding
8 whether a reasonable person would have had enough to cool
9 off, you should consider all the circumstances surrounding
10 the killing. You may consider the nature of the provocation,
11 if any, the Defendant's mental and physical state, and the
12 circumstances and relationships between the parties. Now,
13 with regard to malice being inferred. Malice may be inferred
14 from conduct showing a total disregard for human life.

15 Now, Madam Forelady and members of the jury if you find
16 that the State has failed to prove beyond a reasonable doubt
17 that the Defendant committed voluntary manslaughter, you may
18 consider whether the State has proved beyond a reasonable
19 doubt that the Defendant committed involuntary manslaughter.
20 To prove involuntary manslaughter, the State must prove
21 beyond a reasonable doubt that the Defendant unintentionally
22 killed the victim without malice, but while engaged in an
23 unlawful activity, naturally tending to cause death or great
24 bodily harm, or that the Defendant unintentionally killed the
25 victim without malice while engaged in a lawful activity with

1 reckless disregard for the safety of others. Unintentional
2 means that the Defendant did not intend for anyone to be
3 killed or seriously injured. Reckless disregard for the
4 safety of others is more than mere negligence or
5 carelessness. Mere negligence or carelessness is the failure
6 to use the care that a person of ordinary reason would use
7 under the same circumstances. Recklessness is a conscious
8 failure to use ordinary care. Reckless disregard for the
9 safety of others means that you are not interested in the
10 consequences of your acts or the rights and safety of others.
11 The State must also prove beyond a reasonable doubt that the
12 Defendant's act was the proximate cause of death.

13 Now, when a person inflicts a fatal injury on another
14 person and that person dies at a later time, you must be
15 convinced beyond a reasonable doubt that the infliction of
16 the first injury was the proximate cause of the victim's
17 death. Proximate cause is the direct cause. It is the
18 immediate cause. It is the efficient cause. It is that
19 cause without which the death of the victim would not have
20 resulted. There must be a chain of causation from the time
21 of the injury inflicted by the Defendant until the time of
22 the victim's death. Proximate cause does not necessarily
23 mean that it occurred immediately prior to death. There may
24 be more than one proximate cause. The acts of two or more
25 persons may combine together to be a proximate cause of the

1 death of a person. The Defendant's acts may be regard as the
2 proximate cause if it is a contributing cause of the death of
3 the victim. The fact that other causes also contribute to
4 the death or contributed to the death of the victim does not
5 relieve the Defendant from responsibility. The Defendant's
6 act need not be the sole cause of the death, but be the
7 proximate cause contributing to the death of the victim.

8 Now, if you find that the State has failed to prove
9 beyond a reasonable doubt that the Defendant is guilty of
10 murder or manslaughter, that's either voluntary or
11 involuntary, you must then determine whether the State has
12 proven beyond a reasonable doubt that the Defendant is guilty
13 of assault and battery of a high and aggravated nature.
14 Assault and battery of a high and aggravated nature is an
15 unlawful act, a violent injury to the person of another,
16 accompanied by circumstances of aggravation. An assault
17 occurs when a person unlawfully attempts or offers to commit
18 a violent injury another person and have the present ability
19 to complete the attempted injury. An assault is the
20 intentional creation of a reasonable fear of immediate bodily
21 harm. It is not necessary that the attempted injury or harm
22 actually take place. For example, if I walk up to you and
23 when we are within arms reach I draw back to hit you, that's
24 an assault. A battery is an unlawful touching of another
25 person by a person who has committed an assault. And

1 unlawful touching can be caused by a part of the accused body
2 or by any object the accused puts in motion. The battery is
3 the completion of the assault by using or applying force to
4 another person, however slight, in a rude, angry, or
5 resentful manner without legal justification for doing so.
6 Using my earlier example, if I carry through the assault by
7 hitting you, then that's a battery.

8 The State must also prove that a circumstance of
9 aggravation -- circumstances of aggravation includes the use
10 of a deadly weapon, the intent to commit a felony, the
11 infliction of serious bodily injury, a great disparity
12 between the ages or physical condition of the parties. The
13 purposeful infliction of shame and disgrace and the
14 resistance of lawful authorities. These are only examples of
15 circumstances of aggravation.

16 If you find that the State has not proved beyond a
17 reasonable doubt that the Defendant is guilty of murder,
18 manslaughter, or assault and battery of a high and aggravated
19 nature, you must then decide whether the State has proven
20 beyond a reasonable doubt that the Defendant is guilty of
21 simple assault and battery. Simple assault and battery
22 contains all of the elements of assault and battery of a high
23 and aggravated nature, except the circumstance of
24 aggravation. If you find the State has failed to prove
25 beyond a reasonable doubt that the Defendant is guilty of

1 simple assault and battery, you must return a verdict of not
2 guilty.

3 Now the Defendant is charged with armed robbery. In
4 order to prove this offense, the State must first prove
5 beyond a reasonable doubt that the Defendant took personal
6 property from the person or presence of another person.
7 Properties in the presence of a person if it is within the
8 person's reach, inspection, observation or control so that
9 the person could, if not overcome with violence or prevented
10 by fear, keep possession of the property. The State must
11 also prove beyond a reasonable doubt that the Defendant
12 carried the property away, intending to permanently deprive
13 the owner of the property, and to keep the property for the
14 Defendant's own use. The taking and carrying away of the
15 property must have been done with violence or by putting the
16 owner of the property in fear of violence.

17 Finally, the State must prove beyond a reasonable doubt
18 that the Defendant was armed with a deadly weapon during the
19 robbery. A deadly weapon is any article, instrument or
20 substance, which is likely to cause death or great bodily
21 harm. Whenever an instrument or object has been used as a --
22 whether an instrument or object has been used as a deadly
23 weapon depends on the facts and circumstances of each case.
24 A hand or fist is not normally considered a deadly weapon.
25 However, under some circumstances, depending on the manner

1 and means of its use, the wounds inflicted and other relevant
2 facts, a hand or fist may be considered a deadly weapon. It
3 is for you, the jury to decide in this case beyond a
4 reasonable doubt whether or not a hand or fist is a deadly
5 weapon. Let me restate that. It is for you, the jury, it is
6 for you to decide in this case has proven beyond a reasonable
7 doubt that a hand or fist was used as a deadly weapon.

8 If you find that the State has not proved beyond a
9 reasonable doubt that the Defendant was armed with a deadly
10 weapon, you may then consider whether the State has prove
11 beyond a reasonable doubt that the Defendant committed
12 robbery. In order to prove robbery, the State must prove
13 beyond a reasonable doubt all of the elements that I have
14 just explained for armed robbery, except that the Defendant
15 was armed with a deadly weapon.

16 Now, a statement alleged to have been made by the
17 Defendant has been admitted into this case. While the Court
18 has determined that the statement is admissible, I instruct
19 you that the ultimate decision of whether or not the
20 Defendant made the statement, I am instructing you that you
21 make the ultimate decision of whether or not the Defendant
22 made the statement. If the Defendant did make the statement,
23 you must determine whether the statement was made by the
24 Defendant voluntarily and of his own free will. This means
25 that the statement was not caused by pressure, force, fear,

1 threats, coercion or intimidation or by hope or a promise or
2 leniency or reward of any kind. In determining whether the
3 statement was voluntary, you should consider both the
4 characteristics of the Defendant and the details of the
5 questioning. Some of the factors you must consider are the
6 age of the Defendant, the Defendant's education or lack of
7 education. The Defendant's mental ability or capacity. The
8 Defendant's IQ or intelligence. The Defendant's background
9 and environment, place and length of the detention, the
10 nature of the questioning and the advice or lack thereof to
11 the Defendant of his Constitutional Rights, including, but
12 not limited to the right to remain silent, that any statement
13 could be used against him in a court of law. The right to
14 have a lawyer present. That if he could not afford a lawyer,
15 a lawyer would be appointed to represent him without any
16 costs. And that he could stop making a statement at any
17 time. You must carefully consider all the circumstances --
18 all of the surrounding circumstances before you give any
19 weight to an alleged statement.

20 The State has the burden of proving beyond a reasonable
21 doubt that the alleged statement was voluntary. If you
22 determine it was, you may give the statement any further
23 consideration that you deem proper. You must decide what
24 weight, if any, should be given to the alleged statement. If
25 you determine the alleged statement was not the free and

1 voluntary statement of the Defendant, you should not consider
2 the statement at all.

3 In order to establish criminal liability, criminal
4 intent is required. For example, the mental state required
5 to be proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness or criminal
7 negligence. Criminal intent must be proven by the State
8 beyond a reasonable doubt. And criminal intent is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation. There is no way to
11 prove intent to a mathematical certainty. There is no way
12 medical science can dissect a person's brain and determine
13 whether what the person had in mind. So the law says that
14 criminal intent may be inferred from the circumstances shown
15 to have existed.

16 This is how you make a determination of whether or not
17 the element requiring intent was present. It is not
18 necessary to establish intent by direct and positive
19 evidence, but intent may be established by inference in the
20 same way as any other fact by taking into consideration the
21 acts of the parties and all of the facts and circumstances of
22 the case. Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you to determine what the Defendant
24 intended to do based on the circumstances shown to have
25 exited. Criminal intent can arise from actions or a failure

1 to act. It may arise from negligence, recklessness or
2 indifference to duty or to consequences that is considered by
3 the law to be equivalent of criminal intent.

4 Now if a crime is committed by two or more people who
5 are acting together in committing the crime, the act of one
6 is the act of all. A person who joins with another or others
7 to commit an unlawful act is criminally responsible for
8 everything done by the other person, which happened as a
9 probable or natural consequences of the acts done in carrying
10 out the common plan and purpose. For example, two people can
11 be guilty of killing another person knowing one of the two
12 had a gun. There's only one bullet and only one of the two
13 fired the shot that caused the death. If two or more people
14 are together acting together, assisting each other in
15 committing the offense, the act of one is the act of all. As
16 is sometimes said, the hand of one is the hand of all. Prior
17 knowledge that a crime is going to be committed without more
18 is not sufficient to make a person guilty of that crime.
19 Mere knowledge that another person is going to commit a
20 crime, even if the Defendant is present when the crime is
21 committed is not sufficient to convict the Defendant as a
22 principal. Guilt as a principal is shown by actual or
23 constructive presence at the scene as a result of a prior
24 arrangement. Therefore, a finding of a prior arranged plan
25 or common scheme is necessary for a finding of guilt as a

1 principal.

2 The State must prove beyond a reasonable doubt by
3 competent evidence the theory of the hand of one is the hand
4 of all. A principal in a crime is one who either actually
5 commits the crime or who is present aiding, abetting, or
6 assisting in committing the crime. When a person does an act
7 in the presence of and with the assistance of another, the
8 act is done by both. If there are two or more acting with a
9 common plan or intent are present at the commission of a
10 crime, it doesn't matter who actually commits the crime, all
11 are guilty. The hand of one is the hand of all. Present at
12 the scene -- present at the commission of a crime means to be
13 sufficiently near to aid and abet and assist in the
14 commission of the crime. However, mere presence at the scene
15 of a crime is not sufficient to convict one as a principal on
16 the theory of aiding and abetting. Intent is also a
17 necessary element. There must have been a common design or
18 intent to commit the crime and the crime must have been
19 committed pursuant thereto with the person aiding and
20 abetting with some overt act. Intent means intending the
21 result that actually occurs, not accidentally or involuntary.
22 Intent may be shown by acts and conduct of the Defendant and
23 other circumstances from which you may naturally and
24 reasonably infer intent. The State must prove these elements
25 beyond a reasonable doubt.

1 The Defendant has raised the defense of self-defense.
2 Self-defense is a complete defense. And if it is
3 established, you must find the Defendant not guilty. The
4 State has the burden of disproving self-defense by a proof
5 beyond a reasonable doubt. If you have a reasonable doubt of
6 the Defendant's guilty after considering all the evidence,
7 including the evidence of self-defense, then you must find
8 the Defendant not guilty. On the other hand, if you have no
9 reasonable doubt of the Defendant's guilt after considering
10 all of the evidence, including the evidence of self-defense,
11 then you must find the Defendant guilty. The following
12 elements are required to establish self-defense. First, the
13 Defendant must be without fault in bringing on the
14 difficulty. If the Defendant's conduct was the type which
15 was reasonably to calculated to and did provoke a deadly
16 assault, the Defendant would be at fault in brining on the
17 difficult and would not be entitled to acquittal based on
18 self-defense. The second element of self defense is that the
19 Defendant was actually in imminent danger of death or serious
20 bodily injury or that the Defendant actually believed he was
21 in imminent danger of death or serious bodily injury. If the
22 Defendant was actually in imminent danger, it must be shown
23 that the circumstances would have warranted a person of
24 ordinary firmness and courage to strike the fatal blow to
25 prevent death or serious bodily injury. If the Defendant

1 believed he was in imminent danger of death or serious bodily
2 injury, it must be shown that a reasonably prudent person of
3 ordinary firmness and courage would have had the same belief.
4 In deciding whether the Defendant actually was or believed he
5 was in imminent danger of death or serious bodily injury, you
6 should consider all the facts and circumstances surrounding
7 the crime, including the physical condition and
8 characteristics of the Defendant and the victim. The
9 Defendant does not have to show that he was actually danger.
10 It is enough if the Defendant believed he was in imminent
11 danger. And a reasonably prudent person of ordinary firmness
12 and courage would have had the same belief. The Defendant
13 has a right to act on appearances, even though the
14 Defendant's beliefs may have been mistaken. It is for you to
15 decide whether the Defendant's fear or immediate danger of
16 death or serious bodily injury was reasonable and would have
17 been felt by an ordinary person in the same situation. Words
18 accompanied by hostile acts may, depending on the
19 circumstances, establish self-defense. The relative sizes,
20 ages and weights of the Defendant and the victim may be
21 considered in deciding the apparent or actual need for force
22 in self-defense and the amount of force needed. Threats made
23 by the victim may be considered in determining whether the
24 Defendant actually was or believed he was in imminent danger.
25 The intoxication of the victim may be considered in deciding

1 whether the Defendant's fear of death or bodily injury was
2 reasonable. The final element of self-defense is that the
3 Defendant had no other probable way to avoid the danger of
4 death or serious bodily injury than to act as the Defendant
5 did in this particular instance. A person cannot be required
6 to make an exact calculation as to the degree or amount of
7 force, which may be needed to avoid death or serious bodily
8 harm. Therefore, in self-defense, the Defendant has the
9 right to use the force needed to avoid death or serious
10 bodily harm. The force used in self-defense does not have to
11 be limited to the degree or amount of force used by the
12 victim. The Defendant has the right to use so much force as
13 appeared to be necessary for complete self-protection in
14 which a person of ordinary reason and firmness would have
15 believed to be needed to prevent death or serious bodily
16 harm. Under the law of self-defense, the Defendant may take
17 another's life in defense of others. The right to intervene
18 to protect another person is subject to the same rights and
19 limitations as the right of self-defense. The Defendant may
20 take the life of a person who assaults a friend, relative or
21 bystander if that friend, relative or bystander would have
22 had the right of self-defense. To show that the person being
23 defended had the right of self-defense and must be -- it must
24 first be shown that the person being defended and the
25 Defendant were both without fault in bringing on the

1 difficulty. If the conduct of the person defended or the
2 Defendant was the type which would reasonably, which was
3 reasonably calculated to and did provoke a deadly assault,
4 the person would be at fault in bringing on the difficulty
5 and would not have the right to self-defense. Therefore, the
6 Defendant would not have a right to use deadly force in
7 defending that person. The defense of another person is
8 excusable if the Defendant had reasonable grounds to believe
9 and in good faith did believe that the person being defended
10 was in imminent danger of death or serious bodily harm from
11 the victim.

12 In deciding whether the person defended actually was or
13 that the Defendant actually believed the person was in
14 imminent danger of death or serious bodily injury, you should
15 consider all the facts and circumstances surrounding the
16 crime including the physical condition and characteristics of
17 the parties.

18 The Defendant has raised the defense of accident. An
19 accident may be excused on the ground of accident if it is
20 shown that the act was unintentional, and that the Defendant
21 was acting lawfully and that reasonable care was used by the
22 Defendant. The burden is on the State to prove beyond a
23 reasonable doubt that the act was not an accident.

24 Now, if you have a doubt as to whether the Defendant is
25 guilty of a greater offense or a lesser offense, you must

1 give the Defendant the benefit of the doubt and find him
2 guilty of a lesser offense. Likewise, if you have a
3 reasonable doubt as to whether the Defendant is guilty of any
4 offense, you must give the Defendant the benefit of the doubt
5 and find him not guilty.

6 Now, Madam Forelady, and members of the jury, I am
7 required to charge you the law as I have done through these
8 instructions now being given to help guide you to a just and
9 lawful verdict. Whether some of these instructions will
10 apply will depend upon what you find to be the facts. The
11 fact that I have instructed you on various subjects on this
12 case must not be taken as indicating an opinion of this Court
13 as to what you should find to be the facts or what your
14 verdict should be.

15 In conclusion, you have been selected by both the State
16 and the Defendant to be fair and impartial jurors. It is
17 your duty then, in your joint deliberations, to determine the
18 truth in this case giving the Defendant the benefit of every
19 reasonable doubt on each charge. And from the facts that you
20 determine to be true, you take and apply the law, which I
21 have just given you. And, thus, arrive at a verdict which
22 speaks the truth in this case. I've told you the standards
23 you have to apply to the charges of murder and armed robbery.
24 I will give you a copy of these instructions in written form
25 and during your deliberations you may refer to the

1 instructions to guide your decision. You must consider the
2 instructions as a whole and not follow some and ignore
3 others.

4 You've heard the evidence and now you have heard the
5 law. The possible verdicts, which you may find in this case
6 are indicated on the verdict form, this verdict form. As to
7 the charge of murder you may find the Defendant guilty of
8 murder, guilty of voluntary manslaughter, guilty of
9 involuntary manslaughter, guilty of assault and battery of a
10 high and aggravated nature, guilty of simple assault or not
11 guilty. And whatever verdict, you'll check one of these as
12 to the charge of murder. As to the charge of armed robbery,
13 you can find the Defendant guilty of armed robbery, guilty of
14 robbery or not guilty. Whenever you have a verdict as to the
15 armed robbery charge, you check the one that you have
16 determined to be the unanimous verdict of the jury as to that
17 charge.

18 Now, there is no significance whatsoever in the order in
19 which I state these possible verdicts. Certainly, it's
20 simply one must be stated before the other. Whatever your
21 verdict is to the charge, you indicate on the verdict form,
22 sign and date the verdict form. Remember that although the
23 Forelady is the only juror who writes the verdict, it is not
24 hers alone. The verdict has to be a unanimous verdict, and
25 Madam Forelady, you're not authorized to write the verdict

1 until all of you have agreed as to what the verdict should
2 be.

3 Now, ladies and gentlemen, I'm going to send you to your
4 jury room, but do not begin to discuss the case until you
5 have received a copy of this jury charge, verdict form, and
6 the exhibits. Once you receive these things, that will be
7 your signal to begin your deliberations. Once you begin your
8 deliberations, you will deliberate until you have reached a
9 verdict, at which time you will knock on the door, advise the
10 bailiff, and he will bring you out to receive your verdict.

11 Now, we picked fourteen jurors, but since the first
12 twelve have survived the trial without any slippage in
13 numbers, then the final two will not be able to go to the
14 jury room and to participate in the deliberations. So if the
15 first twelve of you will go to the jury room and wait to
16 receive the exhibits, the verdict form, and jury charge, and
17 that will be your signal to begin your deliberations Madam
18 Forelady.

19 (Jury out at 4:29 p.m.)

20 THE COURT: All right. If you'll have a seat just
21 for a moment.

22 Are there any additions or exceptions to the charge, by
23 the State?

24 MR. HUBBARD: None from the State, Your Honor.

25 MR. FLOYD: Your Honor, the only exception of the

1 Defense would be Your Honor's failure to charge the lesser
2 included offense of petit larceny.

3 THE COURT: Well, I understand. Okay. Let's see.
4 All right. If y'all will check the exhibits.

5 (Alternate jurors excused at)

6 (Jury form and evidence delivered to
7 the jury at 4:43 p.m.)

8 THE COURT: We'll be in recess awaiting the verdict
9 of the jury.

10 (Court in recess at 4:43 p.m.)

11 (Court in session for verdict at
12 8:22 p.m.)

13 THE COURT: All right. Thank you. Be seated. I
14 understand from the bailiff that the jury has a verdict; is
15 that right?

16 THE BAILIFF: Yes, Your Honor.

17 THE COURT: All right. Bring them in. Of course,
18 I do not have a clue as to what the verdict is. But one
19 thing for sure is that there cannot be any outburst in the
20 courtroom. Any outburst constitutes contempt of court and
21 would subject the violator of a six-month prison sentence
22 without a jury. So you have to control yourself.

23 (Jury in at 8:23 p.m.)

24 THE COURT: All right. Madam Forelady, have you
25 reached a verdict?

1 MADAM FORELADY: Yes, Your Honor.

2 THE COURT: Is it unanimous?

3 MADAM FORELADY: Yes, Your Honor.

4 THE COURT: All right. Thank you if you'll pass it
5 on up and you may be seated.

6 The Defendant will stand.

7 MR. PRATHER: (Stands)

8 THE COURT: You may publish the verdict.

9 THE CLERK: Indictment 2012-GS-32-2619, The State
10 versus Robert Jared Prather, and indictment 2012-GS-32-02621,
11 The State versus Robert Jared Prather. We, the jury, by
12 unanimous consent find the Defendant, Robert Jared Prather,
13 as to charge of murder, guilty of murder. As to the charge
14 of armed robbery, guilty of robbery. And it is so signed by
15 the forelady dated November the 29th, 2012.

16 Madam Forelady, ladies and gentlemen of the jury, if
17 this is your verdicts please indicate each of you by raising
18 your right hand.

19 (All jurors' right-hand raised.)

20 THE CLERK: All hands were raised, Your Honor.

21 THE COURT: Any additional polling requested.

22 MR. FLOYD: We request polling, Your Honor.

23 THE COURT: Would you poll the jurors individually,
24 please. And you and the Defendant may be seated.

25 THE CLERK: Ladies and gentlemen, in just a moment

1 I'll be calling you by name. When I call your name if you'll
2 please hold your hand up, not stand up but just hold up your
3 hand. I will ask you, as to the verdicts were these your
4 verdicts and are they still your verdicts. Please respond at
5 that time?

6 Or do you wish me to individual on each charge?

7 THE COURT: Individually on each charge.

8 THE CLERK: Okay. I will ask as to the charge of
9 murder was it your verdict? Is it still your verdict. And
10 then as to the charge of armed robbery, the verdict of
11 robbery. Is that your verdict and is it still your verdict.
12 And then I'll -- so it'll be two independent responses, okay?

13 THE COURT: Actually, you can actually do it once.

14 THE CLERK: Just one, as to the verdicts?

15 THE COURT: Yes.

16 THE CLERK: All right, sir. Okay.

17 Tandra Young. As to the verdicts, were these your
18 verdicts and are they still your verdicts?

19 MS. YOUNG: Yes, ma'am.

20 THE CLERK: Craig Otto. As to the verdicts, were
21 these your verdicts are they still your verdicts?

22 MR. OTTO: Yes, ma'am.

23 THE CLERK: Victoria Cheu. As to the verdicts,
24 were these your verdicts are they still your verdicts?

25 MS. CHEU: Yes, ma'am.

1 THE CLERK: Ashley Wright. As to the verdicts,
2 were these your verdicts are they still your verdicts?

3 MS. WRIGHT: Yes, ma'am.

4 THE CLERK: Tabitha Perkins. As to the verdicts,
5 were these your verdicts are they still your verdicts?

6 MS. PERKINS: Yes, ma'am.

7 THE CLERK: Ann Thompson. As to the verdicts, were
8 these your verdicts are they still your verdicts?

9 MS. THOMPSON: Yes, ma'am.

10 THE CLERK: Tammy Steverson. As to the verdicts,
11 were these your verdicts are they still your verdicts?

12 MS. STEVERSON: Yes, ma'am.

13 THE CLERK: Amanda McMillan: As to the verdicts,
14 were these your verdicts are they still your verdicts?

15 MS. MCMILLAN: Yes, ma'am.

16 THE CLERK: Michael Grabowski: As to the verdicts,
17 were these your verdicts are they still your verdicts?

18 MR. GRABOWSKI: Yes, ma'am.

19 THE CLERK: William Haskin. As to the verdicts,
20 were these your verdicts are they still your verdicts?

21 MR. HASKIN: Yes, ma'am.

22 THE CLERK: Lynn Garner. As to the verdicts, were
23 these your verdicts are they still your verdicts?

24 MS. GARNER: Yes, ma'am.

25 THE CLERK: Donna Fuller. As to the verdicts, were

1 these your verdicts are they still your verdicts?

2 MS. FULLER: Yes, ma'am.

3 THE CLERK: All jurors polled, Your Honor.

4 THE COURT: All right. The jurors have been polled
5 individually. The verdict is the unanimous verdict of the
6 jury.

7 Mr. Floyd, are there any post-trial motions?

8 MR. FLOYD: Your Honor, I would make my post-trial
9 motions in writing.

10 THE COURT: You request ten days to do so?

11 MR. FLOYD: Yes, sir.

12 THE COURT: Any objection by the State?

13 MR. GRAHAM: I'm sorry?

14 THE COURT: Any objection by the State?

15 MR. GRAHAM: No, sir. No, sir.

16 THE COURT: You will be granted ten days. However,
17 disposition and sentencing will not be delayed pending those
18 motions.

19 MR. FLOYD: Yes, sir.

20 THE COURT: All right. Ladies and gentlemen, thank
21 you very much. That will conclude your duty. As you are
22 well aware at this point in time, it's not easy. It's very
23 hard. It's one of the prices of citizenship is one of the
24 highest calling that a citizen can be called upon, that is to
25 sit in judgment of your fellow man. Precisely, you don't

1 judge the person, neither do I. You judge the conduct and
2 you decide cases based on the law and the evidence. And
3 that's what you have done in this case. This is our system
4 of government. This is the most renowned system in the
5 world. It's the best we have. You have unanimously
6 concluded that the Defendant is guilty and that speaks the
7 truth of this case. So I want to thank you. Once you have
8 found a person guilty, then I have the additional duty to
9 impose a sentence. Typically, I invite the jurors to stay
10 but it's been a long day for all of you, a long week. You
11 don't have to stay. Your services are over, but we are going
12 to proceed with the sentencing at this time.

13 A person who is convicted of murder faces a minimum
14 sentence of thirty years in prison and a maximum sentence of
15 life imprisonment. Strong arm robbery or robbery, is it
16 fifteen or twenty years?

17 MR. HUBBARD: It's fifteen, Your Honor.

18 THE COURT: Fifteen years in prison, is the
19 possible sentence. So we're going to proceed with sentencing
20 at this time. And I will let you all go if you'd like to go.
21 You may stay if you want to stay.

22 (Jury out at 8:46 p.m.)

23 THE COURT: We'll take a few moments and let folks
24 compose themselves.

25 (Court in recess for a short break.)

1 THE COURT: All right. Thank you. Be seated.
2 Anything else prior to preceding for sentence? Anything by
3 the State?

4 MR. HUBBARD: No, Your Honor. I have spoke with
5 the family member, Ms. Mefford, and she says she does not
6 wish to speak. Your Honor, we don't have any other
7 convictions as far as priors. We leave everything in Your
8 Honor's discretion.

9 THE COURT: All right. Mr. Floyd, Mr. Prather if
10 you'd come around.

11 (Mr. Floyd and Defendant approach
12 the bar.)

13 THE COURT: Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor. I'm not going
15 to go back through the case. You heard the case. You heard
16 the facts. As you are aware, we tried this case three years
17 ago. The jury could not reach a verdict, and the jury was
18 way passed murder, so for some reason, they've come back with
19 a verdict today. He has no other record. He's doing real
20 good in school. Had an A-average, a good family. We know
21 your hands are, your discretion is a little restricted in
22 what you can sentence him to. We ask that you could be as
23 merciful as you can with him. Certainly, we'll request that
24 rather than a life sentence, a thirty-year sentence. He did
25 about a year and twelve days in jail before he was able to

1 bond out, and he's without any convictions since that time
2 and that's seven years.

3 THE COURT: Regarding the possible sentence and the
4 law now versus the law at the time of the commission of the
5 offense, do you have any additional thoughts on that? First,
6 from the State?

7 MR. HUBBARD: No, sir, Your Honor. As to the
8 robbery charge?

9 THE COURT: As to robbery and murder. And I don't
10 know, at some point murder was one thing -- the sentence was
11 one thing and now another thing and another thing.

12 MR. HUBBARD: My understanding is that back in 2005
13 it's what it was now, that it was still mandatory thirty to
14 life. Nothing could be suspended. It's day for day.

15 THE COURT: All right.

16 MR. HUBBARD: Thank you, Your Honor.

17 THE COURT: All right. That was my thought as
18 well. I guess I've been doing it so long my mind is drifting
19 back when it was something else, but 2005 was, relatively
20 speaking was not that long ago as far as the law is
21 concerned.

22 Do you agree with that Mr. Floyd?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: All right. Mr. Prather, what would you
25 like to say if anything?

1 MR. PRATHER: You know, I know I've made some
2 mistakes in my life. I didn't kill that man and I didn't rob
3 him. I didn't take anything from him. And I've tried to
4 move forward the best I can with this over my head. And I'm
5 sorry that the entire incident took place. I really am. For
6 everyone. But I didn't kill him. And I didn't hurt anyone.

7 THE COURT: Well, obviously, the facts of the
8 matter have been in dispute and they've been dispute since it
9 occurred. You had a trial and the jury could not decide.
10 You've had a trial and the jury has decided. And as I told
11 the jury throughout, the facts of the matter is for them to
12 determine. The jury has spoken and the jury has found you
13 guilty. And I know Mr. Floyd has -- his intention is to file
14 a post-trial motion, within ten days. And so I won't comment
15 any further on anything that might appear to affect or pre-
16 judge the motion that is coming up. But I will not delay
17 sentencing pending anything being filed. When the jury finds
18 a person guilty, it's either a sentence of thirty years up to
19 life. It can be thirty, forty, fifty, sixty, seventy, a
20 hundred, a thousand. And on the robbery charge, it's up to
21 twenty years. Up to fifteen years, I'm sorry.

22 MR. FLOYD: I think it was zero to fifteen back
23 then.

24 THE COURT: Yeah, strong arm robbery is up to
25 fifteen. It seems like that might have changed too. I'm not

1 sure. But on the robbery charge, the sentence is ten years.

2 On the murder charge, the sentence is thirty years.

3 Good luck to you.

4 MR. FLOYD: Thank you. Your Honor.

5 MR. HUBBARD: Thank you, Your Honor.

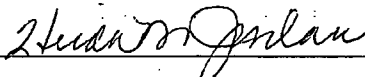
6 (This proceeding was concluded.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING
IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR
LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 26 DAY OF NOVEMBER,
2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
NOR INTEREST IN ANY PARTY HERETO.


Hilda M. Jordan, CVR-M

April 9, 2015

1 THE COURT: You may call your next witness.

2 MR. FLOYD: Your Honor, we call the Defendant, Mr.
3 Robert Jared Prather.

4 ROBERT JARED PRATHER, being duly
5 sworn, testified as follows:

6 CLERK: State your name for the record, please.

7 WITNESS: Robert Jared Prather.

8 DIRECT EXAMINATION

9 BY MR. FLOYD:

10 Q. Mr. Prather, where do you currently live?

11 A. Currently?

12 Q. Yes.

13 A. With my mother at 400 Old Chalk Board Road, Batesburg,
14 South Carolina.

15 Q. How old are you?

16 A. Twenty-seven.

17 Q. And where did you go to high school?

18 A. At Brookland Cayce.

19 Q. Did you graduate?

20 A. Yes, sir.

21 Q. And when did you graduate?

22 A. When? Two thousand.

23 Q. And did you have any educational training beyond
24 high school?

25 A. Some college.

429

*< Prather previously
Delivered >*

00871

MR. PRATHER ON DIRECT

1 Q. Where was that?

2 A. At York Technical College in Rock Hill, South
3 Carolina, and Midlands Technical College.

4 Q. And how much post high school education did you
5 have?

6 A. About two semesters.

7 Q. And how long were you in the military?

8 A. About seven months after training.

9 Q. What branch of the military were you in?

10 A. The National Guard.

11 Q. What kind of specialty did you have in the military?

12 A. I was a petroleum supply specialist.

13 SOLICITOR: Your Honor, I hate to interrupt. I am
14 actually having a little difficulty hearing both of these
15 individuals.

16 THE COURT: I can't hear y'all ever. Y'all are all
17 grown men. Speak up.

18 If the jury can't hear the testimony they are not
19 going to be able to determine the facts. I agree with
20 you, Solicitor.

21 The vent blows right on my right ear. It's very dif-
22 ficult to hear. Speak up for us a little bit, Mr.
23 Prather.

24 WITNESS: Yes, sir.

25 THE COURT: The jury wants to hear you and the parties

MR. PRATHER ON DIRECT

1 want to hear you.

2 Mr. Floyd, you may proceed.

3 BY MR. FLOYD:

4 Q. What type work have you done, Jared?

5 A. All types, from customer service to fast food.

6 Managing restaurants, construction.

7 Q. Are you currently employed?

8 A. Yes.

9 Q. Where do you work right now?

10 A. For Hammerhead Building Systems in Chapin, South

11 Carolina.

12 Q. What type of work are you doing?

13 A. Post framing buildings, construction.

14 Q. Is that your mother over there?

15 A. Yes, sir.

16 Q. Which one is your mother?

17 A. Far right in the yellow.

18 Q. And who is that seated next to her?

19 A. That's my girlfriend.

20 Q. And next to her?

21 A. Next to her, that is my grandfather.

22 Q. And how about next?

23 A. My grandmother.

24 Q. Next to her?

25 A. My pastor.

MR. PRATHER ON DIRECT

1 Q. I think I skipped somebody.

2 A. That's one of my good friends.

3 Q. Have you pretty much been a lifetime resident of the
4 Lexington County area?

5 A. Mostly, yes, sir.

6 Q. Now, Jared, do you recall this night and date, April
7 22, 2005, and what happened with Gerald Stewart?

8 A. Yes, sir.

9 Q. First of all, when did you first meet Gerald Stewart?

10 A. Probably three weeks to a month before April 22nd.

11 Q. Where were you when you met him?

12 A. At Calloway's Bar in West Columbia off of Number 1
13 Highway.

14 Q. And as a result of meeting him there, did you have
15 another meeting with him?

16 A. I met him through Josh Phillips, and he introduced
17 us. They had played pool up there together sometimes
18 and that -- well, I had gotten in trouble a little bit
19 in Richland County, so he said that he knew a Judge that
20 could possibly lower my fine.

21 Q. Was this a magistrate level kind of thing?

22 A. It was a magistrate level judge, yes, sir.

23 Q. And so, as a result of that conversation, did you
24 have another contact with him?

25 A. Not immediately. I later ran into him later by

MR. PRATHER ON DIRECT

1 myself up at Calloway's, and he handed me a note that he
2 had been looking for Josh to give to -- about getting in
3 touch with him to make an appointment with the judge.

4 Q. And so did you follow that up?

5 A. We eventually followed that up, and I picked him up
6 in front of his house one afternoon; went and met the
7 judge, and dropped him back off in front of his house.

8 Q. How long was that before this night that this inci-
9 ent occurred?

10 A. Probably two weeks.

11 Q. Tell us about what did you do the night before,
12 April 21st?

13 A. The night before, April 21st, I met some friends at
14 Calloway's to shoot some pool, and Joshua Phillips was
15 there and some friends of mine. They left.

16 I was in the middle of a game of pool with him and
17 having a few drinks. So we finished out our games of pool
18 and he said his brother was having a get-together or a
19 party at his brother's apartment; would I like to come.
20 I said okay.

21 Regardless, I had agreed to give him a ride to his
22 brother's apartment anyway because he didn't have a ride,
23 so I went over there and hung out with them all night
24 and eventually I went to sleep on the couch.

25 Q. Where was that apartment?

MR. PRATHER ON DIRECT

1 A. Woodvine Apartments off of Platt Springs in West
2 Columbia.

3 Q. And what time did you get up the next day?

4 A. Around eleven, somewhere around there.

5 Q. What did y'all do?

6 A. Sat around for a moment, and he was like, do you
7 want to find something to do? I said whatever. I did-
8 n't have anything to do at the time.

9 And he said, well, I know a guy's house we can go to
10 play cards. He said he is cooking out and we can go
11 over there and drink and hang out. I said okay.

12 So he called what turned out to be Gerald Stewart
13 and we went over there.

14 Q. Now, was this the first time you had actually been
15 inside Gerald's house?

16 A. Yes, sir.

17 Q. What time did y'all get over there?

18 A. We got over there probably around one-ish, one
19 thirty.

20 Q. Once you got over there, who was present there at
21 that time?

22 A. Just Gerald.

23 Q. And now Josh. How did you know Josh, other than
24 seeing him at the bar?

25 A. A good friend of mine knew a girl that Josh was

MR. PRATHER ON DIRECT

1 dating at the time in high school, so he wasn't really,
2 you know, a friend of mine. More of an acquaintance
3 through an acquaintance.

4 Q. So what time did y'all arrive at Gerald Stewart's
5 home on April 21st?

6 A. On April 21st -- about one, one thirty or so.

7 Q. What did y'all do once you got there?

8 A. Once we got there, we sat in the living room and
9 joked around a little bit. We started drinking. They
10 were drinking whiskey and I was drinking Bud Light.

11 Basically I don't know -- Gerald made a lot of ran-
12 dom phone calls to people, joking with them and stuff.
13 He called some like at Joe Frazier's Boxing Gym. I don't
14 know what that was about, but maybe he was trying to im-
15 press us or something.

16 Q. Did y'all leave the house at some point?

17 A. We did multiple times to go on -- really there was a
18 lot of Bud Light but they kept running out of whiskey,
19 but mostly to get whiskey and cigarettes is why we kept
20 leaving the house.

21 Q. How many trips would you say that y'all took, leaving
22 the home and coming back that afternoon?

23 A. Probably about four.

24 Q. And who drove?

25 A. I drove.

MR. PRATHER ON DIRECT

1 Q. And what kind of car did you have?

2 A. 1987 Toyota Camry.

3 Q. No question, that car?

4 A. That's mine. Yes, sir.

5 Q. Did anybody else eventually come to the home?

6 A. The roommate, Ronald Rabon, came home eventually.

7 Q. What time would that have been?

8 A. Six-ish.

9 Q. At that point in time is everybody getting along
10 fine?

11 A. Everybody was fine. I believe we were in the
12 kitchen at that time playing poker and drinking and what-
13 not. Everything was fine until then and for a while
14 after that.

15 Q. When was the first time there was any kind of trou-
16 ble with anybody?

17 A. Well, hours passed, and we were still in the kitchen,
18 and Gerald started talking about he had a shed in the
19 back yard with all this stuff in it.

20 If we wanted to make some extra money one weekend
21 or something, we could come by and clean it out for him.

22 It is a bunch of old furniture, things he didn't
23 want, so he was like, I will show it to you. So we were
24 like okay.

25 So they got up and they walked into the back yard,

MR. PRATHER ON DIRECT

1 and I stopped by the refrigerator and grabbed a beer and
2 I walked out the door.

3 When I got out the door, they were rolling on the
4 ground, fighting, and Josh was hitting him in his chest
5 and stomach and cussing and screaming, and I didn't know
6 what was going on.

7 Q. So what did you do then?

8 A. I started yelling at them to stop and everything.
9 So eventually Josh stood up, and I jumped between them
10 and separated them, and Josh started crying and was all
11 upset.

12 Q. And then what happened?

13 A. Gerald tried to get up but I think he was kind of
14 dazed and intoxicated. So I helped him up and took him
15 in the house, and Josh was like a few feet behind us.

16 So I took Gerald inside and I sat him on the chair,
17 and his lip was bleeding. So I told him I was going to
18 get him something for his lip.

19 While I was in there, Josh was -- well, before I
20 left the room Josh was still standing at the edge of the
21 kitchen. When I went to go get tissue out of the bath-
22 room, Josh hit him again and he fell.

23 He slid down the chair onto -- like sitting on the
24 floor with his back against the chair.

25 Ron Rabon was standing there, and he said something

MR. PRATHER ON DIRECT

1 to Josh. I came back in there and I yelled at Josh to
2 get out of the room or whatnot, you know, and helped --
3 Gerald got back on the chair, and I gave him the toilet
4 tissue, and he proceeded to fix his lip.

5 Q. So he was bleeding at that time?

6 A. Yes, sir.

7 Q. In fact, he was bleeding in the back yard to start
8 with?

9 A. He was bleeding in the back yard.

10 Q. And did you have to help him back in the house?

11 A. I did.

12 Q. Did you touch him?

13 A. I kind of held his arm up, like his shoulder, to
14 give him some balance.

15 Q. After that happened, what happened with everybody?

16 A. After that happened, I talked with Josh for a minute.
17 I just was, what was going on? Everything was fine, and
18 then I walked out in the back yard and y'all are fighting
19 each other.

20 He really -- he wouldn't tell me. He was just cry-
21 ing and upset.

22 So Gerald was saying, it's okay, it's okay, it's
23 okay, and all this stuff. I thought it best I'm just
24 going to take Josh home, but him and Gerald started talk-
25 ing again and kind of patching things up.

MR. PRATHER ON DIRECT

1 So about an hour or so later on me and Ron -- Ron
2 asked me if I knew where to get any cocaine. I said yes,
3 so I said, well, I will take Josh home now anyway. We
4 were going to go that way anyway because Josh knew the
5 guy that lived behind his brother's apartment that could
6 get it.

7 So we went to Josh's brother's apartment where Josh
8 and his brother got into it apparently because Josh was
9 still riled up over fighting in the back yard and drunk
10 and just angry at everybody.

11 So me and Ron went back there to the black guy, to
12 the other guy that had the cocaine. We got the cocaine
13 and sat in my car and did the little amount that it was.

14 At that time Billy, Josh's brother, threw a box of
15 stuff at him and told him if he was going to be drunk
16 and acting like that he could get out.

17 So Josh put the stuff, the box of stuff, in my car,
18 and we left and I took them back to Gerald's house.

19 Q. What time would it have been by then?

20 A. About then elevenish -- eleven or so.

21 Q. So when you got back at that point in time, who all
22 was at Gerald's house?

23 A. No one, just Gerald.

24 Q. Did all three of you go back?

25 A. All three of us went back.

MR. PRATHER ON DIRECT

1 Q. Once you got back, who all would have been in the
2 house?

3 A. Including us?

4 Q. Yes.

5 A. Ron Rabon, myself, Josh and Gerald.

6 Q. What happened after that?

7 A. After that, Josh apparently wore himself out. He
8 sat down on the couch. Ron went to his bedroom to retire
9 for the night. Gerald threw in a movie, Tombstone, the
10 Wyatt Earp movie, and we watched the movie.

11 Around halfway through Josh passed back out and went
12 back to sleep.

13 Q. Josh was sleeping at that point in time where?

14 A. He was in and out in the back seat of the car, but
15 he walked himself in the house and passed -- went back
16 to sleep on the couch and laid out. I gave him a pillow.
17 He put it under his head, and me and Gerald watched the
18 rest of the movie.

19 Q. After that, what did you do?

20 A. After that it was late. It was probably like one
21 fifteen or so, and Gerald started talking about going out.
22 I told him then that I didn't have any money to go out.
23 We could just hang around the house. I didn't want to
24 leave Josh or whatever.

25 So anyway he convinced me. So I said okay. Well,

MR. PRATHER ON DIRECT

1 let me take this stuff to my car to -- I don't want to be
2 riding around with Josh's stuff in my car going downtown
3 and bar-hopping and whatnot.

4 I took it back to Josh's brother's house, and he was
5 mad at me before, I think, because his brother was drunk
6 and acting that way, but apologized and I gave him the
7 box back and he asked where he was.

8 I said he was asleep on the guy's couch. He was
9 like, okay. He took the box and I sat there and talked to
10 two friends, I believe, that were on the front porch. I
11 asked one of them for a glass of water and they got it,
12 and one bummed a cigarette off of me, and then I came back
13 to Gerald's house.

14 Q. How far in distance is it from where Gerald lived
15 to these Woodvine Apartments?

16 A. Five blocks at the most.

17 Q. A short distance?

18 A. Not far.

19 Q. So what time would you say you got back to Gerald's
20 house?

21 A. Probably one thirty, one twenty-five, something like
22 that.

23 Q. Then what did y'all do?

24 A. I pulled up and honked the horn and sat there for a
25 minute, and then I remember I honked the horn the second

MR. PRATHER ON DIRECT

1 time and he came out and got in the car, and we rode
2 off.

3 We rode down to -- he said, go to State Street. I
4 want to go in there and see if somebody is in this place
5 real quick. I parked on the side of Street Street where
6 Mangi, Mangi is, all those restaurants in that strip bas-
7 ically.

8 I parked on the side there and he got out and walked
9 down a few shops and went into somewhere and came back
10 in about ten or fifteen minutes later and got in the car,
11 and we went to Uncle Louie's.

12 Q. And what time -- I understand you weren't checking
13 your watch everywhere you went.

14 A. No.

15 Q. What time would you say you got to Uncle Louie's?

16 A. Around two or a little after two -- sometime around
17 there.

18 Q. And what did you do at Uncle Louie's?

19 A. We went in and Gerald ordered some beers, and we sat
20 there and I sipped on mine. He drank his really fast.
21 He drank a lot more than me at Uncle Louie's.

22 He kept ordering shots of vodka, and I don't drink
23 vodka, so I told him, you know, I pass. So he drank
24 them all, and I think he ordered about three rounds of
25 vodka for me and him but I didn't drink any of that.

MR. PRATHER ON DIRECT

1 Q. Oh, I'm sorry. I didn't want to stop you.

2 A. Keep going?

3 Q. Yes.

4 A. Eventually I went to the bathroom and while I was in
5 the bathroom he left. The guy, the bartender, told me
6 that he said he was going to the ATM across the street
7 and that he would be back.

8 So I said, okay, and then I saw tehre with him for a
9 little while. He kept giving me this look, where is your
10 buddy at, you know? Somebody's got to pay for the tab.
11 I'm closing.

12 So I looked out of there. We made our way toward
13 the door and then my car horn honks. I looked in my car
14 and he is in the car, so that was about when I looked --
15 he was like, I guess he's not going to pay the tab.

16 I looked and I did say jokingly -- I was like, oh, I
17 could kick his ass. I told the bartender also that I
18 didn't have the money to pay for it and Gerald knew that.
19 He said, don't worry about it.

20 SOLICITOR: Objection to the bartender's statements,
21 Your Honor. I would also request that it be a little
22 more question and answer, instead of this running narra-
23 tive.

24 THE COURT: All right. I would sustain the objection
25 as far as hearsay.

MR. PRATHER ON DIRECT

1 Mr. Floyd, you may ask your next question.

2 BY MR. FLOYD:

3 Q. So were you angry with him?

4 A. No, sir. No.

5 Q. Was that just a figure of speech?

6 A. Yes. I didn't have any intention of following
7 through with that.

8 Q. And when you got outside, what happened next?

9 A. I got in the car. The bartender spoke with Gerald
10 and everything was okay. We left. We headed back to
11 Gerald's house.

12 While we are driving back, Gerald asked me if I
13 could get any more cocaine like I had gotten Ron. I
14 said I didn't know, I could see.

15 I said, how much do you want? He said, I don't have
16 the money to buy it. Do you think the guy would give it
17 to you and I can pay him later?

18 I said, I could talk to him and see if that's possi-
19 ble, even though I didn't know him that well. We seemed
20 to get along. So we made that arrangement.

21 Q. And where did you first stop? Did you stop by
22 Gerald's house first?

23 A. I stopped by Gerald's house and I dropped him off,
24 and I told him I would be back in a minute because it
25 wasn't that far.

MR. PRATHER ON DIRECT

1 He told me, just come in. Don't knock. I will leave
2 the door open. Just come in. I said okay.

3 So I went to the guy's house and knocked on the
4 door and he came -- he didn't immediately come to the
5 door. I was walking back to my car and he opened the
6 door and asked me what I wanted.

7 I told to him. He said, it's late, come back tomor-
8 row. So I said okay, so I went back to Gerald's house.

9 Q. How long were you gone?

10 A. I was gone probably twenty, thirty minutes.

11 Q. When you got back to Gerald's house, tell us what
12 happened?

13 A. When I got back to Gerald's house, I parked the car
14 in the driveway and I got out. I walked in the front
15 door like he told me to. I announced myself when I was
16 in the den, the front door area, and I announced myself
17 as being there.

18 I walked through the kitchen and into the living
19 room, and I noticed Josh wasn't on the couch any more, so
20 I said, hello, you know, just announcing myself some more.

21 The bedroom door came open and Gerald walked out
22 naked with what appeared to be an erection and with
23 clothes in his hand. He shut the door behind him. At
24 first it was like time slowed down for a minute.

25 I looked at him. I said, what the hell is going on?

MR. PRATHER ON DIRECT

1 He looked at me. He said, did you know Josh likes to
2 get his dick sucked? I was like, what the hell -- really
3 a little bit worse than that.

4 He goes -- he is putting his pants on as he was
5 telling me this and asking me these things, and he is
6 looking at me, going, have you ever fucked Josh, and all
7 this stuff.

8 Then I started asking him where the hell Josh was
9 and what was going on.

10 He started walking toward me and he was like, don't
11 worry about Josh, Josh is taken care of, and I said, no,
12 I think I need to get Josh and I think we need to leave.
13 He said, I'm not going any fucking where. I will sit
14 down and shut the fuck up -- all this stuff like that.

15 Then I went to move past him. He grabbed me to
16 where my arm, my elbow was above my head, and I'm stand-
17 ing on one foot. I told him he needed to let me go;
18 that I will go get the police, and I'm taking Josh with
19 me, and I'm going to get the police.

20 He told me, I wasn't going to do a fucking thing and
21 I will sit the fuck down and shut the fuck up, so I de-
22 fended myself and I hit him.

23 Q. What did you hit him with?

24 A. My hand.

25 Q. How many times did you hit him?

MR. PRATHER ON DIRECT

- 1 A. Three times.
- 2 Q. Where did you hit him?
- 3 A. In the head.
- 4 Q. And after you struck him those three times, what
- 5 happened? When you struck him the first time, did he
- 6 let you go then?
- 7 A. No. He kept coming toward me and actually like it
- 8 seemed like he tried to grab me a little bit more.
- 9 Q. How about the second time?
- 10 A. The second time he was trying to pull me, like,
- 11 with him as he was going away from me, but he was pulling
- 12 me toward him.
- 13 Q. How about after the third time?
- 14 A. The third time he fell one way and I fell the other.
- 15 Q. So were you free from him at that point?
- 16 A. I was free from him but I fell through something
- 17 and hit the ground and got back up, and -- continue?
- 18 Q. Let me ask you another question first. How tall
- 19 were you back then and how much did you weigh back then?
- 20 A. About five eight, about a hundred thirty-eight pounds.
- 21 Q. And is Gerald a lot bigger than you?
- 22 A. A lot bigger than me.
- 23 Q. So once you got yourself free from him, tell us
- 24 what happened next?
- 25 A. I got up and went to the bedroom and opened the

MR. PRATHER ON DIRECT

1 bedroom door and Josh was laying in the bed in his boxers,
2 so I immediately started like shaking him to get up, and
3 he kept trying to -- it looked like he was trying to get
4 up but he couldn't.

5 Because every time he opened his eyes -- like a
6 couple of times he opened his eyes and looked dead at me
7 but his eyes rolled back into the back of his head.

8 So like, I mean, I tried everything, from shaking
9 and slapping his face a little bit, to grabbing his hair
10 and pulling him out the bed.

11 But eventually he came to and looked at me and he
12 looked down at himself and was, like, what the hell is
13 going on? I said, I think something just happened to you.
14 About that time we both looked over on the bed and there
15 was a dildo laying at the foot of the bed like beside
16 his legs.

17 Q. And what happened?

18 A. He just really freaked out after that.

19 Q. So what happened after that?

20 A. After that, he got out the bed and he was cussing
21 and asking me what the fuck is going on. I was just
22 like we've got to find the clothes and get the hell out
23 of here.

24 We found his pants by the foot of the bed, and he
25 threw those on real fast, so we left the bedroom.

MR. PRATHER ON DIRECT

1 When we were going down the hallway, the hallway is
2 real short -- a real short distance to the living room,
3 but when we get into the living room Gerald was getting
4 up off the couch. Like his knees on the floor but pick-
5 ing himself up off the couch, and Josh just blew past
6 me and jumped on him.

7 Q. And what happened then?

8 A. He was screaming and cussing and crying, freaking
9 out, and kicking and hitting Gerald. I grabbed Josh once
10 and I don't really think he meant to but he shoved me
11 away.

12 Then I grabbed him again and pushed him toward the
13 kitchen. We went into the kitchen and we proceeded to
14 leave, even though he really didn't want to stop. He
15 wanted to keep fighting or whatnot.

16 We found his shirt. It was laying on the kitchen
17 counter but he started talking about his shoes and he
18 wanted his shoes.

19 I got him to the front door to leave. I told him,
20 the hell with the shoes, let's go. We can get more shoes.
21 We can go to get the police and get to the hospital.

22 So when we got to the front door he stops and breaks
23 away from me and runs back in the house screaming he
24 wanted to find his damn shoes.

25 Q. What did you do at that point?

MR. PRATHER ON DIRECT

1 A. I went out of the house and I cranked my car and
2 backed my car up down the driveway. Well, no, actually
3 after a while I backed my car up down the driveway.

4 Q. How long were you outside before Josh came outside?

5 A. Anywhere from -- it could have been eight minutes to
6 ten minutes.

7 Q. Do you know what went on inside there when you were
8 not in there?

9 A. No, sir.

10 Q. When you left Gerald Stewart's home, was Gerald
11 Stewart alive?

12 A. Yes, sir.

13 Q. When you left Gerald Stewart's home, had anything
14 been carved on his back?

15 A. No, sir.

16 Q. Did you ever produce a knife or any kind of a wea-
17 pon?

18 A. No, sir, I didn't have a knife or a weapon.

19 Q. The last time you saw Gerald Stewart that night,
20 what did you see? What was he doing? What did you see?

21 A. He was being beaten by Josh.

22 Q. When you got Josh away from him, out to the door,
23 was Gerald still functioning at that point? Could you
24 see what Gerald was doing at that point?

25 A. He appeared to be unconscious but I was just trying

MR. PRATHER ON DIRECT

- 1 to get out of there.
- 2 Q. Now, did you see Josh leave the house? Did you see
- 3 Josh leave?
- 4 A. Yes.
- 5 Q. What door did he leave out of?
- 6 A. The front door.
- 7 Q. What happened once he got outside?
- 8 A. When he got outside he came up to the car, and he
- 9 had a black thing in his hand and a box.
- 10 Q. Do you know what those were?
- 11 A. No, it was dark.
- 12 Q. Did he say anything about any property or anything?
- 13 A. No. He sat down in the car and had it in the front
- 14 seat with him.
- 15 Q. So you didn't know what it was?
- 16 A. No.
- 17 Q. Did you ever take anything from Gerald Stewart's
- 18 home?
- 19 A. No, sir.
- 20 Q. Did you take his wallet?
- 21 A. No, sir.
- 22 Q. Did you take a coca cola commemorative set?
- 23 A. No, sir.
- 24 Q. Did you take any personal property from Gerald
- 25 Stewart?

MR. PRATHER ON DIRECT

1 A. No, sir.

2 Q. So when you left there, tell us what happened next?

3 A. When I left there he was still frantic and every-
4 thing. About the time I backed up onto Decree Street or
5 Avenue he started talking about he couldn't find his
6 shoes and could I take him to his brother's house since
7 it was around the corner to get shoes before we went to
8 the hospital.

9 I said, well, okay, I can do that for you, so I took
10 him to his brother's house and pulled up at his brother's
11 house. He jumped out and took the thing with him, the
12 black thing with him or whatever, and walked around the
13 back of the car.

14 Q. How long was he gone at that point?

15 A. I don't know, to tell you the truth. I was kind of
16 like dazed out, like staring at my lap. It could have
17 been like three minutes.

18 Q. Did he go in his brother's apartment or his apart-
19 ment?

20 A. Not immediately, because after a while I noticed
21 that he didn't come back around the other side of the
22 car. When I went to look out the side of the car, he
23 came around the side of the car and went into his brother's
24 apartment.

25 Q. How long did he stay in his brother's apartment?

MR. PRATHER ON DIRECT

1 A. Probably not even five minutes.

2 Q. Did you ever go inside?

3 A. No, sir.

4 Q. You stayed in the car?

5 A. Yes, sir.

6 Q. And what happened after he came out of his brother's
7 apartment?

8 A. He got back in the car and I drove down Platt
9 Springs Road, which at the time -- well, I guess it
10 still is Dreher. I turned down Dreher Road and took a
11 left on Augusta Highway, Number 1 highway, to go toward
12 I-26 to get on the Interstate to go to Lexington Medi-
13 cal Center.

14 Q. Did y'all stop anywhere?

15 A. Yes, because Josh was freaking out. He started
16 screaming about he didn't want to go to the hospital and
17 that he was fine and this and that. He didn't want to go
18 to the hospital, and crying and frantic and all.

19 So I pulled over ironically in Calloway's parking
20 lot, more in front of the chinese food place there that
21 is across the way. I was trying to calm him down; that
22 it's okay, you know. We're going to get the police, and
23 we are going to get you checked out, and everything is
24 going to be okay. He jumped out of the car and ran into
25 the bar.

MR. PRATHER ON DIRECT

1 Q. So what did you do?

2 A. I jumped out the car and followed him and tried to
3 get him to get back in the car, and eventually I suc-
4 ceeded in that when I found him inside the bar.

5 Q. Once you got him back in the car, what did y'all do?

6 A. Then I took him to the hospital.

7 Q. And tell us what happened when you got to the hos-
8 pital?

9 A. When I got to the hospital, we walked in, waited a
10 little while. Then that nurse -- they took his vitals
11 and pulse and the usual routine, and they separated us.

12 She came and talked to me and
13 asked me if I knew who did this and I
14 didn't. I just knew his name was
15 Gerald and that he lived down there in
16 West Columbia.

17 But Josh had said something in the car about he
18 had his ID or he had something with his ID on it, so she
19 said, could you get that for me? I said yeah.

20 So I said, have you still got the guy's ID? He
21 handed me the guy's entire wallet, and, I mean, even I
22 thought funny about it but I gave it to her anyway.

23 Did you tell her that you hit him - hit Gerald
24 Stewart?

25 A. Yes, I told her there was an altercation and the

MR. PRATHER ON DIRECT

1 guy came at me and I had to hit him.

2 Q. Did you tell her you hit him hard or with de-
3 vastating blows?

4 A. I don't recall saying hard but I told her that
5 there was an altercation.

6 Q. But you never denied hitting him, did you?

7 A. No, sir.

8 Q. Did you tell her that when you left he was
9 laying on the floor, or anything like that?

10 A. I don't recall saying that.

11 Q. Were you still in kind of a state of shock at
12 that point?

13 A. I was intoxicated and tired and shaken up.

14 Q. You don't deny that you hit Gerald Stewart three
15 times?

16 A. No, sir.

17 Q. Did you ever hit him other than in self-defense?

18 A. No.

19 Q. Did you ever intend to kill him?

20 A. No.

21 Q. Did you ever rob him?

22 A. No.

23 Q. Did you ever possess a knife?

24 A. No.

25 Q. On this night in question?

MR. PRATHER ON DIRECT

1 A. No, sir.

2 Q. Did you ever possess any kind of deadly weapon?

3 A. No, I didn't have any weapons or anything like
4 that.

5 Q. So after you met with the nurse, did you get con-
6 fronted by the West Columbia Police?

7 A. Right.

8 Q. Did you tell them what happened?

9 A. I told them that there was an altercation as
10 well basically. They asked me what the guy looked
11 like. I believe it was Officer Suber.

12 So I told him the guy was a lot bigger than me.
13 He asked me how hard I hit him. I said, hard. He
14 is a lot bigger then me, so, yes.

15 Q. Jared, please look at this jury. Jared, did
16 you kill Gerald Stewart?

17 A. No.

18 Q. Did you ever hit Gerald Stewart other
19 than in self defense?

20 A. No.

21 Q. Did you rob Gerald Stewart?

22 A. No.

23 Q. Did you ever have a weapon around Gerald Stewart?

24 A. No.

25 Q. Thank you. Answer any questions that the

MR. PRATHER ON DIRECT

1 Solicitor has for you.

2 THE COURT: Solicitor.

3 CROSS EXAMINATION BY SOLICITOR RIDDLE:

4 Q. The last time you saw Gerald Stewart at his
5 house, I think you said he was unconscious on the
6 couch?

7 A. With Josh on top of him, yes, sir.

8 THE COURT: You need to speak up a little bit
9 for us, please, Mr. Prather.

10 WITNESS: Yes, sir.

11 Q. Say that again.

12 A. With Josh, me pulling Josh off of him.

13 Q. So y'all were going to leave?

14 A. Yes, sir. That was my intention.

15 Q. Y'all had talked to Joe Frazier gym that
16 night, hadn't you?

17 A. I hadn't.

18 Q. I didn't ask if you had. Y'all had together
19 as a group. Right?

20 A. Yes.

21 Q. You didn't pick up the phone and dial nine one
22 one?

23 A. No.

24 Q. Let's see. Then you go over to Billy's house,
25 his brother. Right?

MR. PRATHER ON CROSS

- 1 A. Yes, sir.
- 2 Q. So that Josh could get some more shoes. Right?
- 3 A. Yes, sir.
- 4 Q. Billy got a phone?
- 5 A. I don't know if Billy has a phone.
- 6 Q. Well, you've been over there a couple of times,
- 7 haven't you?
- 8 A. Once.
- 9 Q. Spent the night there the night before,
- 10 didn't you?
- 11 A. Yes, sir.
- 12 Q. Anybody there have a cell phone? It was 2005,
- 13 wasn't it?
- 14 A. Yes, sir.
- 15 Q. Did you ask?
- 16 A. No, sir.
- 17 Q. You didn't try to call nine one one then, did
- 18 you?
- 19 A. No, sir.
- 20 Q. So you leave there, right?
- 21 A. Yes.
- 22 Q. And you're driving down the road and you are
- 23 so concerned about Gerald (sic) that you are going
- 24 to take him to the hospital. Right?
- 25 A. Excuse me?

MR. PRATHER ON CROSS

- 1 Q. You are going to take Josh to the hospital,
2 right?
- 3 A. Yes, sir.
- 4 Q. And it just so happens you pull into Calloway's.
5 Right?
- 6 A. Yes, sir.
- 7 Q. The very place where you met Gerald Stewart.
8 Right?
- 9 A. Yes, sir.
- 10 Q. Calloway's got a phone?
- 11 A. I'm sure they do.
- 12 Q. Well, you were inside.
- 13 A. I wasn't inside to stay in there.
- 14 Q. Any of the customers in Calloway's have a
15 phone?
- 16 A. I don't know.
- 17 Q. Did you ask?
- 18 A. No, sir.
- 19 Q. Why not?
- 20 A. Because I was trying to get to the hospital to
21 get the poilce.
- 22 Q. You grew up in this area, didn't you?
- 23 A. Yes, sir.
- 24 Q. All right. Decree Street is right there, isn't it?
- 25 A. Yes, sir.

MR. PRATHER ON CROSS

1 Q. The West Columbia Police Department is right
2 there. Right?

3 A. Yes, sir.

4 Q. So instead of going from Decree Street to the
5 West Columbia Police Department, you went from Decree
6 to the Woodvine Apartments, to Calloway's, to
7 Lexington Medical Center. Right?

8 A. Yes, sir.

9 Q. How many phones you reckon you passed in that
10 trip?

11 A. I wouldn't know.

12 Q. Which one is farther, Lexington Medical Center
13 or the West Columbia Police Department?

14 A. Lexington Medical Center.

15 Q. But you didn't go there, right?

16 A. Where?

17 Q. To the police department.

18 A. No, sir.

19 Q. And you got to the hospital. Right?

20 A. (Witness nodding, indicating affirmative re-
21 sponse)

22 Q. Well, let me back up. On your way to the
23 hospital, I think you testified Josh is all shook
24 up. Correct?

25 A. Yes, sir.

MR. PRATHER ON CROSS

- 1 Q. He is crying?
- 2 A. Yes, sir.
- 3 Q. He is carrying on?
- 4 A. Yes, sir.
- 5 Q. He is panicked?
- 6 A. Yes, sir.
- 7 Q. Can't control himself. Right?
- 8 A. He is really freaked out, yes, sir.
- 9 Q. Really freaked out. That will work, and he
- 10 runs into Calloway's as soon as you stop the car.
- 11 Right?
- 12 A. Not as soon as I stopped the car, no.
- 13 Q. What happens between the time you stopped the
- 14 car and he runs into Calloway's?
- 15 A. He was screaming about he doesn't want to go to
- 16 the hospital.
- 17 Q. He is screaming, right?
- 18 A. Well, yes, ranting and raving about he doesn't
- 19 want to go to the hospital.
- 20 Q. Ranting and raving, and then he goes into
- 21 Calloway's. Right?
- 22 A. Yes, sir.
- 23 Q. And how long are you all in Calloway's?
- 24 A. I was probably in there thirty seconds.
- 25 Q. Thirty seconds. What do you do while you are

MR. PRATHER ON CROSS

1 in there?

2 A. Me?

3 Q. Yes, sir.

4 A. I went in directly -- you know, the first thing
5 I did was look for him.

6 Q. Did you find him?

7 A. I found him.

8 Q. You found him. When what did you do with him?

9 A. I got him out the door.

10 Q. How did you get him out the door

11 A. I took a pool stick from him, laid it against
12 the wall, and took him back out the door.

13 Q. Pool stick?

14 A. Yes, sir.

15 Q. What has he got a pool stick for?

16 A. I don't know why he had a pool stick.

17 Q. Had he already started a game?

18 A. No, not that I'm aware of.

19 Q. Did he have a beer too?

20 A. No.

21 Q. Just a pool stick?

22 A. Yes.

23 Q. Is he still ranting and raving?

24 A. No. At first though he was resisting me, but
25 he came with me anyway.

MR. PRATHER ON CROSS

1 Q. So twenty seconds ago when he is out in the
2 car, he is ranting and raving and carrying on --
3 freaked out. He runs into Calloway's. He picks up
4 a pool stick. By the time you get there, he is
5 calmed down?

6 A. He is still upset.

7 Q. Is he still ranting and raving?

8 A. Not in public.

9 Q. Is he still freaked out?

10 A. Yes.

11 Q. And you got him back in the car?

12 A. Yes.

13 Q. And you put him in the car?

14 A. He got in the car.

15 Q. He got in the car. Is that coca cola box un-
16 der his feet?

17 A. I assume. I didn't pay that no attention. I
18 never touched that.

19 Q. It's your car, isn't it?

20 A. My car.

21 Q. Did you see it?

22 A. No.

23 Q. Never saw it?

24 A. Not at that time.

25 Q. You saw Josh get in the car with all that

MR. PRATHER ON CROSS

1 stuff, didn't you?

2 A. I did, but you are asking me if I saw it
3 when we were in Calloway's parking lot.

4 Q. You get back in the car. Right?

5 A. Yes.

6 Q. And from Calloway's, where do you go?

7 A. Up I-26 to Lexington Medical Center.

8 Q. How long does that take you?

9 A. Not that long, ten minuets.

10 Q. Ten minutes?

11 A. Eight minutes.

12 Q. You could have almost gone back to the police
13 department in that length of time, couldn't you?

14 A. No, sir.

15 Q. Okay. By the time y'all get to the hospital --
16 right? Y'all go in, right?

17 A. Yes, sir.

18 Q. And by the time y'all get in the hospital, old
19 freaked-out Josh is just sitting in the chair look-
20 ing at the floor, isn't he?

21 A. I reckon, yes, sir.

22 Q. That's what you are telling this jury, isn't
23 it?

24 A. Yes, sir.

25 Q. He has gone from a complete raving lunatic to

MR. PRATHER ON CROSS

1 sitting in the chair looking at the floor between
2 Calloway's and the hospital? Is that what you are
3 telling this jury?

4 A. Yes, sir.

5 Q. Okay, and so you've got to take over then, don't
6 you?

7 A. No, sir.

8 Q. But you do, don't you?

9 A. He didn't know what happened.

10 Q. He didn't know what happened?

11 A. That's what he told me. He didn't know what
12 happened. He woke up next to a dildo.

13 Q. Holy smoke. He didn't know what happened? If
14 he didn't know what happened, how in the world, Mr.
15 Prather -- how in the world would he know to carve
16 rapist across that man's buttocks?

17 A. I don't know.

18 Q. You don't know?

19 A. No.

20 Q. Do you always keep an open knife on the floor-
21 board of your car?

22 A. It's not my knife.

23 Q. I didn't ask you if it was your knife. I asked
24 you if you always keep an open knife on the floorboard
25 of your car.

MR. PRATHER ON CROSS

1 A. No, I don't keep knives in my car.

2 Q. Do you keep them in your pocket?

3 A. No, sir.

4 Q. You told the nurse you hit Mr. Stewart. Correct?

5 A. Yes, sir.

6 Q. You told her they were devastating blows,
7 didn't you?

8 A. No, sir.

9 Q. And you told her that he might be alive but
10 just barely. Isn't that what you told her?

11 A. No, sir.

12 Q. Did you tell her that you were afraid you were
13 going to go to jail over this?

14 A. I don't recall saying that.

15 Q. Okay. Did you tell her that you hated having
16 blood on your hands and you needed to wash them?

17 A. No, sir.

18 Q. And then chuckle as you are doing that?

19 A. No, sir. I asked her if I could wash my hands
20 from my ring. There was a mark on my hand from my
21 ring.

22 Q. Because you hated having blood on your hands?

23 A. No, sir, it wasn't blood.

24 Q. Did you tell Mr. Suber and Mr. Kleckley that you
25 had been in the military so you knew how to deliver

MR. PRATHER ON CROSS

1 some blows?

2 A. No, sir, I didn't say that. Mr. Suber was ob-
3 serving my identification and my wallet and asked me
4 if I had been in the Armed Services, and I said yes.
5 He said, so you know how to fight? I said, I guess,
6 for what training they give you.

7 Q. How long were you in the military?

8 A. Not long. About six or seven months.

9 Q. Why did you get out?

10 A. I was honorably discharged.

11 Q. Why did you get out?

12 A. For drugs.

13 Q. You were honorably discharged for drugs?

14 A. Yes, sir.

15 Q. Was it cocaine?

16 A. Yes, sir.

17 Q. When you were over at Mr. Stewart's house, the
18 three of y'all, you and your buddy, Josh Phillips --
19 right?

20 A. Right.

21 Q. And the roommate, Mr. Rabon. Y'all left and
22 y'all went to get some cocaine. Right?

23 A. Yes, sir.

24 Q. And who used that cocaine?

25 A. Me and Mr. Rabon.

MR. PRATHER ON CROSS

1 Q. You and Mr. Rabon?

2 A. Yes, sir.

3 Q. Gerald didn't use any of it, did he?

4 A. No, he asked for some later.

5 Q. Asked for some later? That's when you dropped
6 him off at the house?

7 A. Yes, later that night when we came from
8 Uncle Louie's.

9 Q. After you had been to Uncle Louie's?

10 A. Yes.

11 Q. Tell me what time it was you went back over
12 to Mr. Phillips' house to deliver that box or what-
13 ever it was?

14 A. Probably one twenty-five, one thirty.

15 Q. And how long were you gone?

16 A. How long was I gone?

17 Q. Yes.

18 A. Probably twenty to thirty minutes.

19 Q. So at one thirty you went over to Billy's?

20 A. More or less around that time.

21 Q. That's the brother's name. Right? Josh's bro-
22 ther's name. Right?

23 A. Yes.

24 Q. And at one thirty you went over to Billy's. So
25 what time would you he gotten back to Mr. Stewart's?

MR. PRATHER ON CROSS

1 A. Probably one forty-five if it wasn't one thirty.

2 I wasn't there long. I talked to the two people on
3 the porch and was there probably fifteen minutes.

4 Q. When you got back to Mr. Stewart's house, did
5 you come inside?

6 A. No.

7 Q. So if Mr. Rabon heard you and Mr. Stewart talk-
8 ing before you went to Uncle Louie's, he is mistaken
9 too?

10 A. I was inside before I went to drop the box off,
11 but I never came inside when I picked Gerald up to go
12 to Uncle Louie's.

13 Q. What time did y'all get to Uncle Louie's?

14 A. Probably around two something.

15 Q. Around two something?

16 A. At two fifteen, two ten.

17 Q. And you stayed at Uncle Louie's until when?

18 A. Til -- I couldn't tell you. I didn't know un-
19 til he closed.

20 Q. Until he closed?

21 A. Or appeared to be closing. Gerald was just in
22 the car ready to go.

23 Q. Were you there -- did you hear Gerald out you
24 that night?

25 A. Excuse me?

MR. PRATHER ON CROSS

1 Q. Did you hear Gerald out you that night?

2 A. Out me as in . .

3 Q. Out you -- tell Mike Stalnaker that you were
4 his new companion? Did you hear him out you?

5 A. . .

6 MR. FLOYD: Your Honor, I object . .

7 A. No, sir.

8 MR. FLOYD: . . and I move for a mistrial.

9 This man is not . .

10 THE COURT: Wait a minute. Don't argue in front
11 of the jury.

12 Step to your jury room, please, ladies and gen-
13 tlemen. Do not discuss the case during this brief
14 recess.

15 (Jury excused from Courtroom)

16 THE COURT: Mr. Floyd, I would be glad to hear
17 from you.

18 MR. FLOYD: Your Honor, Mr. Riddle just accused
19 Mr. Prather of being a homosexual in front of the
20 jury. It's not relevant. It's slanderous to him.
21 Not only that, he is not even gay.

22 I think he is just trying to prejudice him in
23 the eyes of the jury by making them think he is gay,
24 and it's not allowed. We move for a dismissal for
25 prosecutorial misconduct or in the alternative for

1 a mistrial.

2 THE COURT: I will deny your motion, Mr. Floyd.
3 I will give the jury a curative instruction and
4 strike the testimony from the record.

5 Anything further?

6 MR. FLOYD: How are we going to unring that
7 bell, Your Honor? If the State has got some kind of
8 proof he is gay -- they've either got to have it
9 and put it up or if they didn't have it then they
10 shouldn't have been asking the question, and they
11 don't have it.

12 SOLICITOR: I don't want to argue with Your
13 Honor's ruling. I have absolutely no interest in
14 doing that, but I think Mr. Floyd is mischaracteriz-
15 ing what I said.

16 I'm not sure how to address that with Your Honor
17 without appearing to be arguing with your ruling.

18 THE COURT: You can address it, Solicitor.

19 MR. RIDDLE: Thank you, Your Honor. What Mr.
20 Stalnaker, the bartender . .

21 THE COURT: Mr. Stalnaker testified Mr. Stewart
22 said that Mr. Prather was his companion.

23 MR. RIDDLE: Correct.

24 THE COURT: His objection is to the form of
25 the question about outing Mr. Prather. That's the

1 basis of his objection and the basis of his motion
2 for a mistrial.

3 SOLICITOR: My question was did he hear that.
4 I understand what your ruling is now, but I think I
5 have a basis for asking if he heard Mr. Stalnaker
6 asked that question. I understand what you are
7 saying.

8 THE COURT: I agree with you. You can ask the
9 question. I wrote that down. Did you hear Mr.
10 Stewart tell Mr. Stalnaker -- that question, but no-
11 body has characterized that as outing. Nobody but
12 you, Solicitor, has characterized that as outing
13 Mr. Prather.

14 That's the basis of Mr. Floyd's motion for a mis-
15 trial, so I am just saying his objection is -- his
16 motion is for mistrial.

17 I have denied his motion for a mistrial. How-
18 ever, I think that's an improper form of the question.
19 I will tell the jury that. I will advise the jury
20 they are not to consider that question. The question
21 is not evidence anyway.

22 I will tell the jury that, and that that would
23 be no part of their deliberations. That's what I
24 was trying to do.

25 SOLICITOR: You and I were not gee-hawing. You

1 were speaking clearly and I was not understanding.

2 Am I allowed to ask him the question, did he
3 hear Mr. Stewart introduce him as his companion?

4 THE COURT: Do you have an objection to that?

5 MR. FLOYD: He didn't introduce him as his com-
6 panion. That's not what Mr. Stalnaker said. Mr.
7 Stalnaker said at some point he called him his com-
8 panion, not that he did it in Mr. Prather's presence.

9 THE COURT: I think he can ask that question and
10 his response can be whatever his response is. Yes, I
11 did, or, no, I didn't.

12 Why don't we take just a few minutes while the
13 jury is out?

14 (Whereupon, the Court took a brief recess, after
15 which the witness resumed the witness stand.)

16 THE COURT: Anything before we bring in the
17 jury, Mr. Floyd?

18 MR. FLOYD: Nothing further, Your Honor.

19 THE COURT: Solicitor?

20 SOLICITOR: No, sir.

21 (Jury returned to the Courtroom)

22 THE COURT: Ladies and gentlemen, before we start
23 back, there are certain things I would like to advise
24 the jury.

25 First off, the questions are not evidence. The

1 answers to the questions are evidence. That's common
2 sense and good judgment. Y'all know that. The
3 witnesses are those individuals testifying under
4 oath.

5 There was a question asked, did you hear -- I
6 am paraphrasing. I didn't review the record pre-
7 cisely, but I believe the question was, did you
8 hear Mr. Stewart out you to Mr. Stalnaker, I believe
9 it was, the bar owner, as being his, Mr. Stewart's,
10 companion.

11 There was an objection at that point. I have
12 ruled that that was not a proper question. I do not
13 believe Mr. Prather answered the question.

14 If he did answer the question, both the ques-
15 tion and the answer are stricken, if that's a word,
16 from the record.

17 What that means as far as the jury is concerned,
18 you are not to consider either that question nor that
19 answer if there was an answer.

20 Many times people say, well, it's very hard to
21 unring a bell, but it can be done.

22 That question and that answer would not be part
23 of your consideration and your deliberations and
24 your determination of what the facts are in the trial
25 of this case. Under your oath, you tell me you can

1 do that. With that being said, Solicitor, you may
2 ask -- and the whole issue, just as one follow-up to
3 that.

4 I guess in modern parlance the word out perhaps
5 has certain connotations with it, and that is not
6 relevant evidence in the trial of this case.

7 There has been no evidence offered in that re-
8 gard as to Mr. Prather, and I have ruled it is
9 not relevant.

10 With that being said, Solicitor, you may proceed.

11 CROSS EXAMINATION CONTINUED

12 BY SOLICITOR:

13 Q. Mr. Prather, while you and Mr. Stewart were at
14 Uncle Louie's at some point he left there. Is that
15 correct?

16 A. Yes.

17 Q. And the bartender, Mr. Stalnaker, the owner,
18 mentioned to you about a tab. Is that correct?

19 A. Yes.

20 Q. Do you recall how much that tab was?

21 A. I do not.

22 Q. Would you agree with Mr. Stahnaker that it was
23 mid-twenties -- something like that?

24 A. It very well could have been.

25 Q. You don't have any qualms with that or quibble

MR. PRATHER ON CROSS

1 with that?

2 A. No.

3 Q. And you told Mr. Stalnaker, the bartender, the
4 owner . .

5 A. Yes.

6 Q. . . that you didn't have any money?

7 A. Right.

8 Q. And you told Mr. Stalnaker that you were going
9 to kick his ass for bumping that check. Correct?

10 A. Yes.

11 Q. What time did y'all leave there?

12 A. I really couldn't say.

13 Q. Didn't you testify earlier that you were there
14 about thirty or forty-five minutes?

15 A. At Uncle Louie's?

16 Q. Yes.

17 A. Very well. Yeah.

18 Q. And didn't you testify that you got there some-
19 time after two A.M.?

20 A. Yes.

21 Q. So what time do you think about that you left
22 Uncle Louie's?

23 A. Around three.

24 Q. And from Uncle Louie's you went where?

25 A. To Gerald's house.

MR. PRATHER ON CROSS

1 Q. And when you arrived at Gerald's house,
2 did you go inside?

3 A. No.

4 Q. Where did you go?

5 A. I let him out in the carport and I went
6 around to go see about the cocaine.

7 THE COURT: Speak up for me just a little bit.

8 WITNESS: Would you like for me to repeat that
9 for you?

10 THE COURT: Please.

11 WITNESS: I dropped him off in the driveway, in
12 the carport, and left to go see about the cocaine.

13 BY SOLICITOR:

14 Q. How long were you gone then?

15 A. I was gone then probably about thirty minutes.

16 Q. So what time would that have put you getting
17 back to Mr. Stewart's house?

18 A. Sometime around three thirty, three forty, some-
19 where around there.

20 Q. And when you came in, did you walk in the front
21 door?

22 A. Yes, sir.

23 Q. And did you testify on Direct that Mr. Stewart
24 came out of the bedroom naked with a pile of clothes
25 in his hands and an erection?

MR. PRATHER ON CROSS

1 A. No, sir, not a pile of clothes. He just had
2 like a shirt and pants in his hands and an erection,
3 yes, sir.

4 Q. Did he have on shoes?

5 A. I believe so.

6 Q. So he was naked with shoes?

7 A. Yes.

8 Q. And an erection?

9 A. Yes.

10 Q. The same Mr. Stewart that had a thirty-five
11 blood alcohol level?

12 A. Yes.

13 Q. And was it your testimony on direct that he
14 walks out and he is starting to get dressed?

15 A. Yes, sir, after he shut the door behind him.

16 Q. And he's getting dressed while he's asking you
17 about a sexual encounter that him and Josh are hav-
18 ing? Is that your testimony?

19 A. He was asking me did I know that Josh liked to
20 get his dick sucked.

21 Q. Didn't you say on Direct that he's standing
22 there putting on his pants while he is asking you
23 that question?

24 A. Yes, sir.

25 Q. And it's at that point that he tells you to sit

MR. PRATHER ON CROSS

1 down and what?

2 A. No, he walked toward me.

3 Q. Okay.

4 A. Right, and I asked him what the hell was going
5 on.

6 Q. And what does he tell you?

7 A. I asked him where Josh was at. He said, don't
8 worry about Josh. Josh is taken care of. Sit down
9 and shut up.

10 And I said, no, I think I will take Josh and
11 get out of here. He grabbed me and told me to sit
12 the fuck down and shut the fuck up, I'm not going
13 any fucking where.

14 Q. Did he have his clothes on by then?

15 A. He had on a shirt and pants.

16 Q. Shoes?

17 A. I believe he did have on shoes.

18 Q. So he goes from a sexual encounter to sit down
19 and shut up in what period of time?

20 A. In about twenty seconds.

21 Q. And then you hit him three times?

22 A. Yes. His questioning and his attitude wasn't
23 nice. He looked very dangerous and he wouldn't
24 let me go.

25 Q. Now, you hit him three times and what happened

MR. PRATHER ON CROSS

- 1 to him?
- 2 A. After the third time?
- 3 Q. Uh huh.
- 4 A. He fell one way and I fell another.
- 5 Q. Which way did you fall?
- 6 A. I fell backwards.
- 7 Q. Backwards where?
- 8 A. Backwards. Like if I fell that direction right
- 9 here, it would be that way.
- 10 Q. Is that backwards toward the living room, back-
- 11 wards toward the bedroom?
- 12 A. Backwards toward a wall in the living room.
- 13 Q. Were y'all in the hallway?
- 14 A. No, we were in the living room.
- 15 Q. Didn't you testify on Direct that you were in
- 16 the hallway when that occurred?
- 17 A. No, he came through the hallway into the living
- 18 room.
- 19 Q. Where did he fall?
- 20 A. He fell toward the couch.
- 21 Q. Face up, face down?
- 22 A. Face up on the side.
- 23 Q. Was he bleeding?
- 24 A. Not that I'm aware of.
- 25 Q. And you went back there and you tried to

MR. PRATHER ON CROSS

1 wake Josh up. Right?

2 A. Yes.

3 Q. Because he was passed out. Right?

4 A. Yes.

5 Q. Out cold?

6 A. Yes.

7 Q. You couldn't wake him up, could you?

8 A. I did eventually. It took some effort.

9 Q. Right.

10 A. He came to and when he came to he was awake.

11 Q. But isn't it true that you went back there and
12 you tried to wake him up and he wouldn't wake up
13 and his eyes rolled back in his head and he went back
14 to sleep?

15 A. About twice.

16 Q. About twice. He was real drunk, wasn't he?

17 A. Either that or something else was wrong with him.
18 I don't know.

19 Q. Okay, and you finally snatched him up by the
20 hair, didn't you?

21 A. No, that's not how I got him up.

22 Q. That's not how it happened?

23 A. He sat up on his own in the bed.

24 Q. You didn't have to snatch him out of the bed
25 by his hair?

MR. PRATHER ON CROSS

1 A. No.

2 Q. And when he got up, was he still groggy?

3 A. Not when he realized he was in his underwear.

4 Q. So he goes from passed out to fully alert, just
5 like that?

6 A. Yes, sir.

7 Q. He goes from can't wake up without two or three
8 times of grabbing and shaking and all that, to fully
9 alert, just like that?

10 A. He may have been groggy but when he looked down
11 and realized he was naked and in boxers, he sobered
12 up.

13 Q. Y'all looked for his clothes?

14 A. Yes.

15 Q. And then I think your testimony was that you
16 left?

17 A. At what point?

18 Q. Well, what happened next?

19 A. After waking him up?

20 Q. After you looked for Josh's clothes.

21 A. He found his pants, his shirts, made it to the
22 front door. Josh screamed he wanted his shoes and
23 went back in, and I went outside.

24 Q. What exactly did you do when you went outside?

25 A. I went around to the carport and got in my car.

MR. PRATHER ON CROSS

- 1 Q. And did what?
- 2 A. I waited for Josh.
- 3 Q. Didn't you tell us on Direct that you turned
- 4 your car around in the driveway?
- 5 A. I didn't turn the car around. I backed up some
- 6 after a while so that I could see the front of the
- 7 house, and then he came out a few minutes later.
- 8 Q. You were ready to go?
- 9 A. I was ready to get out of there.
- 10 Q. All right, and the last time you saw Gerald
- 11 Stewart was how?
- 12 A. On the couch.
- 13 Q. What position?
- 14 A. Where Josh had hit him, so he was lying on his
- 15 stomach.
- 16 Q. Just like he was found?
- 17 A. I guess.
- 18 Q. That's (indicating) the position he was in?
- 19 A. Something like that.
- 20 Q. Something like that. Was he alive?
- 21 A. Yes.
- 22 Q. Barely?
- 23 A. I wouldn't say barely.
- 24 Q. I'm sorry.
- 25 A. I wouldn't say barely. He was alive.

MR. PRATHER ON CROSS

1 Q. How do you know that?

2 A. Because I got Josh off of him and he was still
3 alive. He was breathing and everything. He was
4 fine. He moved some.

5 Q. I'm sorry?

6 A. When I pulled Josh off of him, he moved some.

7 Q. So after he is beaten up and down on the couch
8 like that, Josh is on him. Right?

9 A. No, he wasn't.

10 Q. Did you just say you had to pull Josh off of him?

11 A. Yes, but he wasn't beaten down on the couch
12 when Josh was on him.

13 Q. Where was he when Josh was on him?

14 A. When Josh was on him, when Josh jumped on him,
15 he was getting up from our incident.

16 Q. How far up was he?

17 A. Almost standing, knees bent, hands still on the
18 sofa.

19 Q. And that's when Josh jumped on him?

20 A. And that's when Josh jumped on him.

21 Q. So you hit him three times and knocked him down?
22 Is that correct?

23 A. Yes, sir.

24 Q. And he stays down while you shake Josh, can't
25 wake him, shake Josh, can't wake him up, can't wake

MR. PRATHER ON CROSS

1 him, shake Josh, can't wake him up, shake Josh again,
2 get him up, show Josh the dildo where something
3 might have happened, find Josh's pants, find Josh's
4 shirt, come out into the living room, and he is just
5 standing up. Correct?

6 A. It really doesn't -- it didn't take that long.

7 Q. Well, how long do you think all that takes,
8 Mr. Prather?

9 A. I wouldn't know.

10 Q. Would you agree with me it took at least twenty
11 seconds just to say it all?

12 A. (Brief pause) Yes, it took you twenty seconds
13 to say it all.

14 Q. Do you think it took longer to do it all than
15 it took me to say it all?

16 A. Yes.

17 Q. So when you knocked him down, he was down for
18 the count for a while, wasn't he?

19 A. He may have been.

20 Q. Because you put some . .

21 A. He was very intoxicated.

22 Q. That's right, and you put some devastating blows
23 on him, didn't you?

24 A. No, I wouldn't say all that.

25 Q. Did you beat the shit out of him, Mr. Prather?

MR. PRATHER ON CROSS

1 A. No, no.

2 Q. And after you pulled Josh off of him, according
3 to you, he was barely alive, wasn't he?

4 A. No.

5 Q. And you didn't know this coca cola box was in
6 your car?

7 A. I didn't know what the box was, sir.

8 Q. Did you know it was in your car?

9 A. I knew he brought some box in the car.

10 Q. Had he taken a box in?

11 A. Excuse me?

12 Q. Had he taken a box into Mr. Stewart's?

13 A. No.

14 Q. So you knew he was bringing something out of
15 that house that didn't belong to y'all, didn't you?

16 A. I didn't know what it was.

17 Q. You didn't take it in, did you?

18 A. No, I didn't.

19 Q. Josh didn't take it in, did he?

20 A. Not that I'm aware of.

21 Q. So when he brought it out, that's new to you
22 guys. Right?

23 A. Right.

24 Q. And put that right in your car. Right?

25 A. Right. Yes, sir.

MR. PRATHER ON CROSS

1 A. Away y'all go. Right?

2 A. Right.

3 Q. And this (indicating) is on the floor board of
4 your car. Right?

5 A. If that's where you found it.

6 Q. Well, didn't you just tell me he put it in the
7 car?

8 A. He put it in the car but I didn't know what it
9 was at the time.

10 Q. Did you see him put this box in the car, Mr.
11 Prather?

12 A. I saw him put something square, box-like, in
13 the car.

14 Q. All right. Thank you.

15 (Brief pause in the proceeding)

16 BY SOLICITOR:

17 Q. Did you see that (indicating) in your car?

18 A. No, sir.

19 Q. Do you know what that was used for?

20 A. No, sir.

21 Q. Tell me something, Mr. Prather. How do you get
22 blood on the back of your shirt?

23 A. I don't know.

24 Q. It couldn't be where you wiped the knife off,
25 could it?

MR. PRATHER ON CROSS

1 A. I didn't have a knife.

2 Q. That couldn't have happened, could it?

3 A. No, sir.

4 Q. Tell me, Mr. Prather, how do you get Mr. Prather's
5 blood on your sock?

6 A. I don't know.

7 Q. It couldn't be because you kicked him when he
8 was down, could it?

9 A. No, sir.

10 Q. Tell me, Mr. Prather, how it is that Josh
11 Phillips is the one jumping all over Mr. Stewart, and
12 he ain't got a drop of Gerald's blood on him?

13 A. Maybe because he was half dressed.

14 Q. Well, didn't you testify earlier that y'all
15 found Josh's pants and you found Josh's shirt, and
16 y'all were fixing to leave when Josh went crazy and
17 jumped on him? Isn't that what you told these folks
18 a few minutes ago?

19 A. No, it's not what I told these folks a minute ago.

20 Q. What did you tell them a few minutes ago then,
21 Mr. Prather?

22 A. He found his pants in the bedroom, and as we
23 were going through the living room he jumped on
24 Gerald. The shirt was found later as we went through
25 the kitchen. It was on the counter, and then we made

MR. PRATHER ON CROSS

1 the way out to the front door.

2 Q. And you left. Right?

3 A. I left. I went outside.

4 Q. Did Josh go outside with you?

5 A. No, he wanted his shoes.

6 Q. He wanted his shoes. He wanted his shoes. So
7 you go out?

8 A. Yes, I got out of there.

9 Q. And Josh goes back in?

10 A. Yes. Well, he never came out. He stopped
11 at the front door.

12 Q. Josh goes back in. Right?

13 A. Right.

14 Q. When he goes back in, he has got a shirt and
15 pants on. Right?

16 A. Right.

17 Q. So, again, Mr. Prather, let me ask you. How
18 does Josh not have any blood on him if the only time
19 that (indicating) could have been carved is while
20 you are outside and he is inside alone? How can
21 that be?

22 A. I don't know.

23 Q. You don't know?

24 A. No, sir.

25 Q. You don't know. You don't know nothing about

MR. PRATHER ON CROSS

1 this box until the police find it. Right?

2 A. No, sir.

3 Q. You don't know nothing about that knife until
4 the police find it?

5 A. No, sir.

6 Q. But when you get to the hospital, you know all
7 about that wallet, don't you?

8 A. I knew he had some form of identification.

9 Q. Tell me how that came up?

10 A. How that came up?

11 Q. Yes, sir.

12 A. Josh said something about it in the car. He had
13 the guy's ID.

14 Q. He had the guy's ID. He mentions that in the
15 car?

16 A. Yes.

17 Q. Doesn't mention anything he stole?

18 A. No.

19 Q. Doesn't mention anything he did to him?

20 A. No.

21 Q. Doesn't mention covering him up?

22 A. He asked me a couple of times what really hap-
23 pened, what I thought happened about the dildo and
24 why he was naked and things like that, but I don't
25 recall what I told him. I was really trying to

MR. PRATHER ON CROSS

1 console him.

2 Q. Josh had no idea that anything had happened to
3 him, did he?

4 A. Excuse me.

5 Q. Josh had no idea that something bad had happened
6 to him, did he?

7 A. He assumed with him being in his boxers and the
8 dildo being beside him.

9 Q. Josh was asking you what had happened, what you
10 thought had happened. Isn't that what you just
11 said?

12 A. Right, considering I am the one that found him.

13 Q. Because he didn't have any idea. Correct?

14 A. That's how he acted.

15 Q. So tell me then, again, why would he carve rap-
16 ist if he doesn't know what happened?

17 A. I don't know.

18 Q. You don't know?

19 A. No, sir.

20 Q. The only thing you do know when you get to the
21 hospital is you know he has got that wallet?

22 A. I knew he had some form of ID, like I said be-
23 fore.

24 Q. Who told the nurse that Josh needed a rape kit?

25 A. We both did.

MR. PRATHER ON CROSS

1 Q. You both did?

2 A. Yes, I told her I thought this friend of mine
3 had been raped or something sexual had happened to
4 him and he needed to be checked out, and she asked him
5 and he agreed.

6 Q. Who told the nurse about Gerald supposedly
7 answering the door naked?

8 A. I never said he answered the door naked, so I
9 wouldn't know.

10 Q. That he came out of the bedroom naked?

11 A. I did.

12 Q. You did?

13 A. Yes, sir.

14 Q. Josh didn't know that, did he?

15 A. No, he didn't.

16 Q. When did you tell him about that?

17 A. Who?

18 Q. Josh.

19 A. When did I tell him about that?

20 Q. Uh huh.

21 A. I don't recall if I did.

22 Q. You never told Josh . .

23 A. Except when he was in the room. He possibly
24 overheard it.

25 Q. Who were you talking to if he overheard it?

MR. PRATHER ON CROSS

- 1 A. It would have been the nurse.
- 2 Q. Oh, that's when you were asking for the rape
3 kit?
- 4 A. That's when we were asking for help, yes.
- 5 Q. So the first time Josh heard about Gerald being
6 naked was at the hospital. Correct?
- 7 A. Possibly.
- 8 Q. Because the time you woke Josh up, Gerald was
9 already dressed. Right?
- 10 A. Yes.
- 11 Q. Then why would Joshua Phillips carve rapist in
12 this man's behind if he didn't even know anything
13 about Gerald Stewart being naked until you and he
14 arrived at the hospital?
- 15 A. Because he knew something happened to him. I
16 don't know. You'll have to ask him.
- 17 Q. I am asking you, Mr. Prather.
- 18 A. I don't know.
- 19 Q. Where did you grow up?
- 20 A. West Columbia.
- 21 Q. Went to B.C. Right? Isn't that what you said?
- 22 A. Yes, sir.
- 23 Q. So you have all this happen at Decree Street.
24 Correct?
- 25 A. Correct.

MR. PRATHER ON CROSS

1 Q. But you don't go to the police station. Correct?

2 A. No.

3 Q. When you get to Woodvine Apartments, you don't
4 ask Josh's brother, please let me use your phone be-
5 cause your brother has just been raped, do you?

6 A. No, sir. I didn't see Josh's brother either,
7 so . . .

8 Q. You didn't even bother to go in, did you?

9 A. No, sir, I didn't.

10 Q. Okay. Then you get to Calloway's. Right?

11 A. Yes, sir.

12 Q. And you do go in there?

13 A. Yes, it wasn't my intentions to though.

14 Q. Did you ask the bartender to call the cops down
15 there?

16 A. No.

17 Q. Because my buddy has been raped?

18 A. No.

19 Q. Because there's a man barely alive over at
20 this other house?

21 A. No, but I didn't know he was barely alive.

22 Q. When you get to the hospital, do you recall
23 telling the nurse, do you think I'm going to get in
24 trouble and go to jail for this?

25 A. With the expression on her face when I handed her

MR. PRATHER ON CROSS

1 the wallet and she asked why do I have the wallet, and
2 the fact that I had been there in his own house, that
3 is why I said that, do you think I will get in trouble
4 for this.

5 Q. Because you thought it might come to that,
6 didn't you?

7 A. No, not really.

8 Q. Did you tell that to Donna Sharpe?

9 A. Did I tell what?

10 Q. I thought it might come to this.

11 A. No.

12 Q. Mr. Prather, let me make sure I understand. It is
13 your testimony that you waked Josh up. Correct?

14 A. Yes, sir.

15 MR. FLOYD: Your Honor, I object. We have been
16 through this about four times.

17 SOLICITOR: I will be wrapped up in three minutes,
18 Your Honor.

19 THE COURT: You may proceed, Solicitor.

20 BY SOLICITOR:

21 Q. You waked Josh up with difficulty. Correct?

22 A. With some difficulty.

23 Q. It's after you hit Mr. Stewart three times.

24 Correct?

25 A. Yes, sir.

MR. PRATHER ON CROSS

1 Q. Then somehow Mr. Stewart manages to get dressed?

2 A. He was already dressed.

3 Q. That you go to leave and Josh wants his shoes?

4 A. Yes.

5 Q. That Josh goes back in. Correct?

6 A. Yes.

7 Q. That Josh must be the one that carved rapist?

8 A. Yes, but there's also someone else in the house.

9 Q. So now you think Mr. Rabon did it?

10 A. I don't know who did it, sir.

11 Q. Okay, and he did all that and he didn't even

12 know that Mr. Stewart was naked until y'all got to

13 the hospital. Correct?

14 Q. Who's to say? As far as I know, he didn't know.

15 Q. Wasn't that your testimony?

16 A. Yes.

17 Q. He didn't know that Mr. Stewart had ever been

18 naked until y'all were at the hospital?

19 A. Yes, possibly.

20 SOLICITOR: Nothing further.

21 THE COURT: Redirect, Mr. Floyd?

22 MR. FLOYD: A couple of questions.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MR. FLOYD:

MR. PRATHER ON REDIRECT

1 Q. Jared, are you a homosexual?

2 A. No, sir.

3 Q. Are you a bisexual?

4 A. No, sir.

5 Q. Have you ever had sex with a man?

6 A. No, sir.

7 Q. Look at the jury. Are you sure of that?

8 A. I'm positive.

9 MR. FLOYD: No further questions.

10 THE COURT: Recross, Solicitor?

11 SOLICITOR: None.

12 THE COURT: Thank you. Mr. Prather, you may step
13 down.

14 (Witness excused from stand)

15 -----END OF REQUESTED TRANSCRIPT OF TESTIMONY -----

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for
South Carolina Court Administration, do hereby certify
that the foregoing Transcript was prepared from the re-
cords of Coconut Pansari to the best of my ability, hav-
ing been heard in the Court of General Sessions for
Lexington County, South Carolina, on October 26, 27, 28
of 2009.

FURTHER, I certify that I am neither of kin nor
counsel to any party to the within matter, nor do I have
any interest in the outcome thereof.

March 29, 2012

Cops 11-9-12
Harriet P. Bennett

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
STATE OF SOUTH CAROLINA)
Plaintiff,)

vs.)

ROBERT JARED PRATHER,
Defendant.)

IN THE COURT OF GENERAL SESSIONS

CASE NO.: 2012-GS-32-02619

CASE NO.: 2012-GS-32-02621

MOTION FOR A NEW TRIAL

BETH A. HARRIS
CLERK OF COURT
LEXINGTON COUNTY, SC

2012 DEC -7 PM 3:33

FILED

Comes Now the Defendant who files this his Motion for a new trial in connection with his trial and sentence on November 29, 2012 in the Lexington County Court of General Sessions. Defendant is informed and believes that he is entitled to a new trial because of the following errors in his trial:

1. the court erred in allowing over objection the reply testimony of SLED Agent DeRosa and by qualifying said witness as a "crime scene analysis" "expert" and allowing his testimony that in his opinion they were two (2) different people involved in the murder of the victim because of the staging and covering of the crime scene. This was error because the witness was not properly qualified as an expert and because the substance of the testimony was not reliable nor was there sufficient vetting or finding of reliability. Furthermore the testimony was extremely prejudicial to the Defendant as it was completely contrary to the Defendant's testimony that the Co-Defendant Phillips remained in the house after the Defendant left and that he was not

present when the word rapist was carved on the victims back nor when the victim was covered with a blanket.

2. the court erred when it allowed over the Defendant's objection the State to introduce the word "rapist" out of the Co-Defendant Josh Phillips statement to the Police. This constitutes inadmissible hearsay and violated the Defendant's right to confront a witness giving testimony against him. This was especially prejudicial to the Defendant as the word in the Co-Defendant's statement was spelled differently than the word was spelled on the back of the victim and the Defendant was denied the opportunity to cross examine Co-Defendant Phillips about the spelling and his motive for the spelling.
3. the court erred when it denied Defendant's motion to suppress the search of the Defendant's vehicle on the grounds that the search warrant was fatally defective in that the affidavit relied upon to issue the warrant did not describe any criminal activity justifying the issuance of said warrant.
4. the court erred when it denied Defendant's motion to dismiss the charges for violation of the Defendant's rights to a speedy trial as the case was over seven (7) years old.
5. the court erred when it allowed the State over Defendant's objection to bolster the character of the decedent through witnesses Nefford and Setree.

6. the court erred when it allowed the introduction of the Defendant's clothing into evidence over Defendant's objection as there was a fatal break in the chain of evidence in that the witness that seized the clothing was not present when the Defendant's clothing was removed and that witness did not receive the clothing from the Defendant.
7. the court erred when it refused Defendant's request to charge the lesser included offense of Larceny.
8. the court erred when it charged over Defendant's objection the hand of one is the hand of all charge as there was no evidence that the Defendant and Co-Defendant were acting jointly in the commission of any crime.
9. the court erred when it sent the case to the jury for deliberation after four o'clock p.m. The jury was obviously pressured by the lateness of the commencement of deliberation as they reached a verdict in approximately four hours after receiving the case. The jury in the first trial in 2009 received the case for deliberation in the middle of the day and deliberated fifteen hours over two days before declaring they could not reach a verdict.
10. the court erred when it denied the Defendant's motion for directed verdict of acquittal at the close of the State's case and at the close of all testimony as there was no competent evidence in the case to justify a verdict of murder as there was no competent evidence of malice on the part of the Defendant in the record and, there was evidence from

the medical examiner that the victims health conditions could have caused him to drop dead at any time and from the medical examiner and the toxicologist that the victims alcohol level could have been fatal in and of itself. Furthermore the injuries inflicted upon the victim, even if all were made by the Defendant, were not fatal injuries as admitted by the medical examiner.

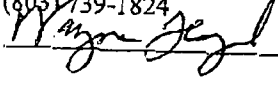
11. In considering the impact of the above matters it should be noted that the defendant was at a distinct disadvantage in retrying this matter as the State had already seen the Defendant's defense. They knew that he had testified that codefendant Phillips went back into the house after Defendant left. Therefore the State, having had the opportunity to discover the defense prior to this trial, was able to tailor the prosecution to counter the defense position. The State then produced new evidence that was not disclosed prior to trial including the testimony of SLED Agent DeRosa, the "Crime Scene Analysis" expert, with his opinion that two people had to die involved in the crime scene and by pulling out the work "RAPEIST" out of codefendant's statement and introducing it at trial. Both of these items of evidence were strongly objected to by the defense. Although retrials may be inherently unfair to a defendant who testified at the first trial Defendant is informed and believes that the particular circumstances of this case make defendant's retrial especially unfair. The admission of a portion of co-defendant's statement was hearsay

and deprived the Defendant of the right to confront his accuser and the "Crime Scene Analysis" testimony invaded the province of the jury was unscientific and unreliable and the combination of all these factors violated Defendant's constitutional rights of due process, equal protection of the law and fundamental fairness.

Therefore, for all the reason set forth above, Defendant respectfully moves that this Honorable Court grant him a new trial in connection with this matter to set aside the verdicts of guilty of murder and robbery.

Respectfully submitted,

WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972
(803) 739-1824

By: 

West Columbia, South Carolina

December 7, 2012.

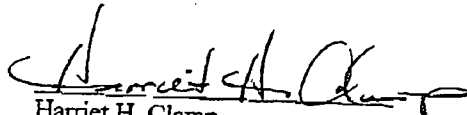
CERTIFICATE OF SERVICE

This is to certify that the undersigned, Michelle M. Wash, Paralegal to Wayne Floyd, Esquire, has this 7th day of December, 2012 served the foregoing MOTION FOR A NEW TRIAL.

- ☒ Hand delivering a copy hereof.
- ☐ Depositing a copy hereof in the United States mail postage prepaid
- ☐ Certified Mail (Return Receipt Requested).
- ☐ Facsimile Transmission.

upon:

Rick Hubbard, Deputy Solicitor
Lexington County Solicitor's Office
205 E. Main Street
Lexington, S.C. 29072


Harriet H. Clamp,
Paralegal to Wayne Floyd
WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972
(803) 739-1824

COPY

FILED
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)
JAN 18 P 2 2013 CASE NO.: 2012-GS-32-02619, 02621

STATE OF SOUTH CAROLINA)
JAN 18 P 2 2013

Plaintiff,)

vs.)

ROBERT JARED PRATHER,)

Defendant.)

**MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL**

Mr. Prather was tried before this Honorable Court during the week of November 26, 2012 following a 2009 mistrial due to a hung jury. The defense asserts that the deficiency of evidence as to Mr. Prather's guilt along with numerous errors during the second trial require the granting of a new trial.

Harmless Error Analysis

As the gatekeeper, this Court has a responsibility to aggressively guard against the admission of unreliable and otherwise suspect evidence both during the trial of a case and during its review of post-trial motions. The errors outlined herein require the grant of a new trial because they are not harmless in nature. "Error is harmless when it could not reasonably have effected the result of the trial" which cannot be said here. State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971).

In each of the following enumerated errors, the Court cannot conclude beyond a reasonable doubt that the trial error did not contribute to the guilty verdict. From the improper admission of speculative rebuttal testimony to a highly suspect cause of death to virtually no evidence of the knowledge or participation of Defendant Prather

in the death of the victim, each error in the aggregate or in isolation was a substantial supporting component of the conviction. The fact that the first trial ended in a hung jury is clear evidence of the frailty of the State's case and without the erroneously admitted evidence in the second trial, the prosecution would not have been able to prove its case against Mr. Prather beyond a reasonable doubt.

I. The trial court abused its discretion by allowing the State to present a "crime scene analyst" who was not sufficiently qualified to give his opinion and whose non-scientific "expert" testimony was unreliable, speculative, and highly prejudicial.

In *rebuttal* and for the very first time, the State presented SLED agent DeRosa who was offered under SCORE 702 as an expert witness based upon his involvement in crime scene investigations (although not in this investigation). Agent DeRosa conceded his testimony was non-scientific but was proffered as "experience" based. He further conceded during pre-admission *voir dire* by defense counsel that his review of the case was limited to the crime scene photos/video and the courtroom testimony of Defendant Prather and the decedent's roommate. Agent DeRosa did not review the full investigative file, was not involved in investigating the case, and interviewed no witnesses. More importantly, despite Agent DeRosa's speculation as to the psychological elements he imagined were going through the minds of the participants, he never reviewed the available mental health records of co-defendant Phillips, and his testimony did not establish any sufficient training in the area of psychology – especially important as his opinion was "cloaked" in putting himself in the minds of the assailants as there were no witnesses or supporting physical evidence of his theory of multiple participants. Had Agent DeRosa reviewed those records, he would have found that co-defendant Phillips had a history of hallucinations and delusional behavior and was quite

capable of both carving "rapist" into the decedent's back and covering him up – all without the presence of Defendant Prather.

Over the objection of defense counsel, Agent DeRosa opined that two people had to be involved in "staging" the crime scene. Specifically, he believed that one person carved "rapist" into the decedent's back while another person, feeling the shame, covered the decedent with a blanket.

Agent DeRosa's "staging" testimony was used to support the State's otherwise unsupported theory that co-defendant Phillips and Defendant Prather acted in concert and contradicted Defendant Prather's testimony that he was not involved in nor did he witness any carving of the word "rapist" on decedent's person and had no knowledge as to the decedent being covered in a blanket. It also contradicted Defendant Prather's testimony that he left co-defendant Phillips in the house alone with the decedent.

Agent DeRosa's testimony was admitted over the objections of the defense who argued that Agent DeRosa was not properly qualified to give such an opinion on an ultimate issue, that additionally he had failed to review co-defendant Phillips' available mental health records and other important case documents, and that the opinion based upon "experience" was insufficient under the tests set forth in State v. Council, State v. White, and State v. Tapp, and was therefore unreliable. Moreover, the defense argued that the prejudice of such testimony was outweighed by its probative value.

As the gatekeeper, the trial court had a duty to exclude Agent DeRosa's testimony as it went to the heart of the case. Now the Court has a duty to right the wrong

by granting a new trial. As required by the Supreme Court's opinion in State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), nonscientific evidence of the type presented by Agent DeRosa which he labeled "crime scene analysis" must be subjected to careful pre-admission "vetting." That vetting must include not only a finding of expert qualifications but also a finding that the testimony is sufficiently reliable. The Supreme Court in the recent June 2012 opinion of State v. Tapp, ___ S.E.2d ___ (2012)(S.Ct. Op. No. 27129) stated, "The familiar evidentiary mantra that a challenge to evidence goes 'to weight, not admissibility' may be involved only after the trial judge has vetted the matters of qualification and reliability and admitted the evidence." Id. (internal citations omitted). The admission of a SLED agent's expert testimony as a crime scene analyst and victimologist was deemed error in the Tapp case.

Our Supreme Court in State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) and State v. White, 676 S.E.2d at 684, set forth the schematic for the consideration of the admission of scientific and nonscientific opinion evidence under Rule 704 SCRE. In Council, the Court rejected the standard of Frye v. United States, 293 F.2d 1013 (D.C. Cir. 1923) and reaffirmed the admissibility standards of State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979) for the admission of scientific evidence. Thereafter in State v. White, the Supreme Court considered the standards for admissibility of non-scientific expert testimony under Rules 702, 703 and 705 in the context of drug tracking dogs. The Court concluded the determination of expertise was the threshold decision, but the reliability of the witnesses' testimony was required before admission. In State v. Tapp, the Supreme Court left no doubt that an articulated on the record reliability "vetting" analysis was an absolute predicate to admissibility.

Here, Agent DeRosa's testimony of multiple actors at the death scene was unsupported by any valid science or physical evidence and was unreliable, speculative, and condemning opinion offered by one not properly qualified for the purpose of supporting the State's otherwise unsupported and un-provable theory. In a nutshell, Agent DeRosa's testimony was not reliable.

In the facts of this case, the improper admission of expert testimony to establish and bolster the State's theory (on an ultimate issue) of co-defendants acting in concert in the commission of the crimes of murder and robbery without any other evidence was an abuse of discretion and not harmless error. *See State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001), *State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009)(Pleicones dissenting). The testimony of the agent should not have been admitted and was extremely prejudicial in the jury's considerations. Rule 403, SCRE. Agent DeRosa's "expert" testimony – in the eyes of the jury blessed with the patina of reliability and respectability by the Court in allowing its admission - was in direct contradiction to Defendant Prather's testimony as intended by the prosecution. This left the jury to conclude that Mr. Prather was untruthful and the testimony went to the ultimate issue. This Court, in light of *State v. Tapp* and the cited cases, has a duty to grant a new trial and by doing so, protect the sense of fair play and justice in our courtrooms.

II. The State committed error in failing to notify the Defense under SCRCrP. Rule 5 of the State's intention to offer expert testimony of Agent DeRosa, and the Court erred in permitting the State to admit the evidence.

In the wake of a previous mistrial, the State re-tooled its defense and "engineered" a new case presentation unsupported by any other physical or testimonial

evidence. This new theory relied upon the improper admission of the hearsay evidence involving co-defendant Phillips' spelling of "rapeist/rapist" (offered through Officer Mark Jones) and the "expert" rebuttal testimony of Agent DeRosa as to multiple defendants acting in concert. The likelihood of the State's reliance upon this expert opinion in the second trial was no mere spontaneous development. This was presumably known to the State at the time it produced discovery to the defense under its Rule 5 obligations as late as November 28, 1 day before trial, and at the time of the second trial when the State presented its extensive list of State's witnesses for jury *voir dire* – which did not include Agent DeRosa's name (see attached).

Our Supreme Court has often emphasized that "vigorous cross examination [and] presentation of contrary evidence" are traditional and important to attacking shaky but admissible evidence. State v. Dinkins, 319 S.C.415, 462 S.E.2d 59 (1995)(cited in State v. Council). In Council, the Court found no error where DNA results were provided to the Defense on the eve of trial, but the defense was aware months in advance of trial of the likelihood of such evidence, and had a more than ample opportunity to meet the Confrontation challenge in preparing a cross examination attack. No such advance notice was given to the defense here and such a failure prejudiced the defense and rendered the defense unable to adequately prepare cross-examination and prevented the defense from presenting opposing expert testimony. This "ambush" expert testimony subverted the right of confrontation, the letter and spirit of Rule 5, and rendered the process unfair.

III. The State improperly “sandbagged” the defense by offering Agent DeRosa’s testimony, for the first time, during its rebuttal.

Agent DeRosa was not a witness in the first trial that ended in a hung jury.

The State’s use of Agent DeRosa did not occur until the rebuttal at the end of the second trial – new evidence that was not disclosed prior to trial. This conduct constituted impermissible “sandbagging,” was improper reply testimony, and prejudiced the defense by springing its surprise theory in rebuttal the timing because the defense did not have the opportunity to properly prepare for or address the testimony. A sandbagging occurs when a prosecutor argues new theories or makes new arguments not previously made that takes defense counsel by surprise and affords him no opportunity to answer or clarify what the prosecutor said. Moore v. United States, 344 F.2d 558 (D.C. Cir. 1965); Hall v. United States, 540 A.2d 442 (D.C. App. 1988).

For example, in Coreas v. United States, 565 A.2d 594 (D.C. App. 1989), the prosecutor in his initial closing argument in a murder case asserted that the defendant’s story was inconsistent with the autopsy evidence and this pointed to the defendant’s guilt. The defense then argued self-defense. The prosecutor, for the first time in his rebuttal summation argued an entirely new theory, i.e., that the defendant was “lying in wait” for the victim, a theory arguably supported by the autopsy report and the trajectory of bullets. The appellate court concluded that the prosecutor’s summation sandbagged defense counsel and constituted plain error. Additionally, by not affording defense counsel an opportunity to respond, a prosecutor’s misconduct during rebuttal summation may have a greater capacity to deny a fair trial. United States v. Cannon, 88 F.3d 1495, 1503 (8th Cir. 1996) (inflammatory rebuttal summation mandates reversal).

Furthermore, the expert testimony, known to the State well in advance of the trial, was improper Reply or Rebuttable testimony, and its admission was error resulting in grave prejudice to the defense. Reply testimony should be limited to rebuttal of matters raised by the defense rather than to complete the Plaintiff's case in chief. State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010)(citing State v. Farrow, 504 S.E.2d 131 (Ct. App. 1998). Our Supreme Court has stated the improper admission of such evidence may not serve as the basis for reversal unless found to be prejudicial. Id. at 133.

Here, the State cannot assert surprise as the justification for the admission of the sandbagging "rebuttal" testimony of the expert when the State well knew from the previous trial what the testimony would be, which did not change in the second trial. The "ambush" testimony of the expert was the improper fulfillment of the State's trap to surprise the defense and complete its new theory of prosecution and the prejudice to the defense in not being able to refute or challenge such testimony through its own expert was insurmountable. As such, a new trial should be granted.

IV. The trial court abused its discretion by allowing the State to present the hearsay statement of the co-defendant.

The trial court erred when it allowed the introduction of the non-testifying co-defendant's hearsay statement during the presentation of Mark Jones of the West Columbia Police Department. Officer Jones was allowed to blow up the written statement of co-defendant Phillips allegedly made to police wherein he misspelled the word "rapeist." Co-defendant Phillips did not testify at trial. Both the enlarged exhibit of the purportedly misspelled word, and the officer's testimony regarding it, constituted hearsay, and were improperly offered and permitted so as to support the State's otherwise

unsupported theory that Co-defendant Phillips and Defendant Prather acted in concert and by inferring that only Defendant Prather could have been responsible for engraving "rapist" on the decedent's back as the word was spelled correctly at the scene unlike Defendant Phillips' misspelling of rapist in his statement to police.

V. The officer's statements constitute rank hearsay.

Hearsay is an out-of-court statement, made by a declarant, offered to prove the truth of the matter asserted. SCRE, Rule 801(c). Officer Jones was allowed to testify that co-defendant Phillips misspelled "rapeist" in the alleged statement he gave to law enforcement in connection with this investigation. While the trial court did not allow the statement to be admitted, it did allow an enlarged portion of that statement purporting to be Co-defendant Phillips' misspelling into evidence.

Co-defendant Phillips' statement to law enforcement is hearsay because it was a statement made by him to law enforcement, and co-defendant Phillips was not present to testify to the statement. SCRE, Rule 801(c). The officer's testimony pertaining to Co-defendant Phillips' statement is also hearsay because the officer testified to the statement which was offered to prove the truth of the State's theory, i.e. that Defendant Prather carved the word into the decedent, and that the two co-defendants were equally culpable in the death of the decedent. *Id.* Neither statement falls within an exception to the hearsay rule. SCRE, Rule 803. This testimony was inadmissible.

VI. The officer's testimony denied Defendant Prather his right to due process because the testimony was unreliable.

Co-defendant Phillips' purported misspelling of "rapeist" in his statement to law enforcement is unreliable to show that Defendant Prather must have been the party

who engraved the properly spelled "rapist" in the decedent's back. While a trial judge has broad authority to admit evidence at trial, that evidence must be reliable.

A trial judge is accorded broad discretion in ruling on the admissibility of the testimony. State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (holding the admissibility of evidence with little probative value was harmless where it did not affect the outcome of the trial), *cert. denied*, 508 U.S. 915, 113 S. Ct. 2355, 124 L.Ed.2d 263 (1993). "Reliability is...a due process concern." White v. Illinois, 502 U.S. 346, 363-364 (1992). Hence, the Due Process clauses of the federal constitution require that criminal convictions be reliable and trustworthy. See Donnelly v. DeChristoforo, 416 U.S. 637, 646 (1974); Thompson v. City of Louisville, 362 U.S. 199, 204 (1960).¹ Here, the officer's testimony that Defendant Prather must have been the offender since co-defendant Phillips misspelled "rapeist" in his statement was pure speculation on the part of the officer. It is, for example, quite possible that co-defendant Phillips purposefully misspelled the word to cast suspicion on Defendant Prather. It is equally plausible that Co-defendant Phillips could have been distracted while giving his statement or that he asked for help by a third party in spelling the word. co-defendant Phillips was not available to be questioned as to how the spelling occurred. In any event, the officer did not provide any basis - other than his speculation - to show that his inference had any scientific basis or was otherwise reliable.

¹ The requirement of reliability stretches across our criminal justice system and is the backbone of much constitutional analysis. Thus, the Sixth Amendment standard of ineffective assistance of counsel looks at whether counsel's error or omissions undermines confidence in the reliability of the outcome. Strickland v. Washington, 466 U.S. 668, 693-94 (1984). Due process precludes the admission of identification evidence if, under the totality of the circumstances, the identification process was impermissibly suggestive so as to give rise to a substantial risk of misidentification. Stovall v. Denno, 388 U.S. 293 (1967). The linchpin for the admission of identification testimony is its reliability. *E.g.*, Manson v. Braithwaite, 432 U.S. 98, 114 (1977); Neil v. Biggers, 409 U.S. 188 (1972). Unless a confession is free and voluntary, it is legally unreliable and its admission at a criminal trial violates the Fifth and Fourteenth Amendments. Malloy v. Hogan, 378 U.S. 1 (1964); Culombe v. Connecticut, 367 U.S. 568 (1961).

VII. The officer's testimony violated Defendant Prather's Six Amendment right to confront the witnesses against him.

This Court has been tasked with the responsibility of upholding the constitutional rights of Confrontation of citizens appearing before it. Officer Jones' testimony violated Defendant Prather's right to confront the witness against him, all in violation of the Confrontation Clause. As a rule, if an out-of-court statement is testimonial in nature, then under the Confrontation Clause it may not be introduced against the accused at trial unless the witness who made the statement is unavailable and the accused has had a prior opportunity to confront the witness. Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011). Even the obvious reliability of a testimonial statement (which is not the case here) does not dispense with the Confrontation Clause. Id. There is no question that co-defendant Phillips' statement to law enforcement in connection with this investigation were "testimonial" for purposes of confrontation clause analysis. Crawford v. Washington, 541 U.S. 36 (2004)(defining the "core class of testimonial statements" to include affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially).

Because co-defendant Phillips gave this statement to law enforcement in connection with an investigation without an opportunity for Defendant Prather to cross-examine him, introduction of Officer Jones' testimony concerning the statement violated Defendant Prather's rights under the Confrontation Clause. The case against Defendant Prather was not particularly strong as evidence by the first jury's inability to reach any verdict. Admission of this testimony was not harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24 (1976).

Furthermore, the State in failing to provide notice of its intention to use an expert opinion in advance of trial in violation of the spirit of Rule 5, and then ambushing the defense in rebuttal defeated the fundamental requisites of the State and Federal guarantees of Right to Confrontation which inherently include notice and the opportunity to prepare to meet the challenge.

VIII. Officer Jones' testimony was inadmissible under SCRE, Rule 403

The statement was also inadmissible because its probative value was substantially outweighed by its unfair prejudice, in violation of Rule 403. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). The testimony was extremely prejudicial to Defendant Prather as it was completely contrary to his testimony and the jury was left to believe only that co-defendant Phillips could not have carved "rapist" into the decedent's back as co-defendant's Phillips spelled the word "r-a-p-e-i-s-t."

As this hearsay evidence was unreliable, denied Defendant Prather his constitutional rights, and was inadmissible under Rule 403, the error was not harmless and the defense motion for a new trial should be granted.

IX. The trial court erred when it denied the defense motion for a directed verdict on cause of death as there was no competent evidence to justify a verdict of murder.

The Medical Examiner testified at the trial that the decedent could have died at any time from his many health conditions regardless of whether there was a fight and the toxicologist testified that the decedent's alcohol level could have been fatal in and of itself. The death here could have equally been caused by the decedent's exertion while in voluntary combat as evidenced by the bruising on the decedent's knuckles and his

health conditions. The decedent was 285 pounds had a host of medical issues including an enlarged heart, sclerosis of the liver, enlarged spleen, evidence of diazepam in his system, history of alcoholism, and blood alcohol level of .279. Moreover, as testified to by the medical examiner, the injuries inflicted on the decedent (i.e. the superficial cuts to the back spelling out "rapist") were not fatal injuries. Taken as a whole, the opinion of the State's pathologist amounted to unvarnished speculation.

"The defendant's act may be regarded as the proximate cause if it is a contributing cause of the death of the deceased. The defendant's act need not be the sole cause of the death provided that it be a proximate cause actually and contributing to the death of the deceased." State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990) In other words, "one . . . is deemed to be guilty of the homicide if the injury inflicted contributes immediately to the death of the deceased. Id., 302 at 498 (internal citations omitted). Here, in the light most favorable to the State, the State has failed to prove an essential element of its case - proximate cause between the death of the decedent and any act by Defendant Prather and has further failed to prove intent. As such, this Court erred in not granting a directed verdict.

X. The trial court erred in denying Mr. Prather's motion for speedy trial.

As set forth in the written motions on file, the incident in question occurred on April 22, 2005. Defendant Prather asserted his speedy trial rights by motion filed on January 13, 2006 wherein he "invoke[d] his rights to a speedy trial" and further requested that if he was not granted a speedy trial, that the charges be dismissed or that he be released on bond. While defendant was eventually given a bond, his first trial which ended in a mistrial did not take place until October 26, 2009.

With his speedy trial rights still asserted, Defendant Prather remained on bond including the prohibition on out of state travel with his life being placed "on hold" pending resolution of the charges.

Three years and one month later (seven and a half years since the incident) with his speedy trial rights still preserved, the case was called for trial again in November 2012. This seven and a half year delay created a substantial impairment of Defendant Prather's liberty, caused a severe disruption in his life, and violated Defendant Prather's Sixth Amendment Right to a fair and speedy trial. See U.S. Const. amend. VI; Barker v. Wingo, 407 U.S. 514 (1972); S.C. Const. art. 1, §14.

The speedy trial right "is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." United States v. MacDonald, 456 U.S. 1, 8 (1982). As stated by our Supreme Court, "[t]he main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense." State v. Langford, ___ S. Ct. ___, filed November 21, 2012 (S.Ct. Op. No. 27195)(citing State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978).

In reviewing the merits of a speedy trial claim, the Court conducts a case by case analysis and considers four factors: (1) the length of the delay (in this case a 7 ½ year delay); (2) the reason the Government assigns to justify the delay (no good reason here); (3) when and how the defendant asserted his right to speedy trial (he filed his original motion in January 2006), and (4) prejudice to the defendant. State v. Foster, 260

S.C. 511, 197 S.E.2d 280 (1973), State v. Monroe, 262 S.C. 346, 204 S.E.2d 433 (1974); Doggett v. U.S., 505 U.S. 647, 652 n.1 (1992)(in dicta court suggested that delay of more than year is "presumptively prejudicial."); State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997).

Here, there was a 7 ½ year delay not caused by the defense, the Government has no good reason to justify it other than neglect, and the delay should be found presumptively prejudicial. See State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (S.C. 2007)("ultimate responsibility for the trial of a criminal defendant rests with the State"). The defendant asserted his speedy trial right as early as January 2006 by motion, and the prejudice to the defendant has been great as he was deprived of freedom of movement and had his life placed on hold for a little less than a decade. As such, this Court should find that Defendant Prather was deprived of his constitutional right to a speedy trial.

While the State may argue that after the first motion for speedy trial was filed the defendant was released on bond, the concept and right to speedy trial does not solely rest on custody or bond, but the general notion that "justice delayed is justice denied," a recognized legal maxim since the Magna Carta and in many legal cases, and most recently espoused by Chief Justice Jean Toal on January 16, 2013, in her appearance before a South Carolina House Subcommittee on docket reform.

- XI. The trial court erred in not suppressing the Coca-Cola glasses and knife as the search warrant that resulted in their introduction was fatally defective in that the affidavit relied upon to issue the warrant did not describe any criminal activity justifying the issuance of the warrant.**

The only physical evidence of property belonging to the decedent arguably

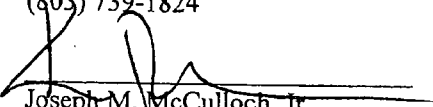
(found on or Defendant Prather in connection to any robbery was the Coca-cola glasses and the knife found on the passenger's side of Defendant Prather's vehicle. These items were located by the police during a search of Defendant Prather's vehicle conducted pursuant to a search warrant. While a search warrant may issue only upon a finding of probable cause, the only justification for the search given in the Affidavit is insufficient under any stretch of the imagination as it states only: "The above vehicle transported a victim from the crime scene to Lexington Hospital for treatment." See South Carolina Code §17-13-140 ("A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant"); State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997). As such, the Court erred in not excluding the evidence from the trial – which was the only physical evidence arguably found in Defendant Prather's possession (although on the passenger side).

CONCLUSION

For the reasons set forth above, this Court should grant a new trial and in so doing protect and safeguard the constitutional rights and liberties of all South Carolina citizens. Additionally, this Court should direct a verdict in favor of Defendant Prather and dismiss the charges against him.

Respectfully Submitted on Behalf of the
Defense,

Wayne Floyd
Wayne Floyd Law Office, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, South Carolina 29171
(803) 739-1824



Joseph M. McCulloch, Jr.
Kathy R. Schillaci
Law Offices of Joseph M. McCulloch, Jr.
1426 Richland Street
Columbia, South Carolina 29201
(803) 779-0005

This 18th day of January, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
THE STATE)
vs.)
ROBERT JARAD PRATHER)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS

POTENTIAL WITNESS LIST

2012-GS-32-02619, 2621, & 2622

1. Holly Andrew
2. Chris Bailey
3. Candace Barton
4. April Bayne, WCPD
5. Ralph Becknell
6. Harriett Bennett
7. Chuck Bramlett, WCPD
8. Sheree Brown, SLED
9. Janice Bryan, SLED
10. Betty Butler, SLED
11. Robert Cobb, Lexington County EMS
12. K.D. Corley, SLED
13. Marlene Creech
14. Pat Crooks, SLED
15. Christie Derrick
16. Angela Drayton, SLED
17. Britt Dove, WCPD
18. Matt Edwards, WCPD
19. Brandon Field, WCPD
20. John Field, WCPD
21. M.L. Fitzpatrick, SLED
22. Glenn Frick, WCPD
23. Elizabeth Fullwood, Esquire
24. Michael Gantt
25. Adrienne Hefney, SLED
26. John Hendrix, WCPD
27. Nikki Perry Hughes, SLED
28. Clifford Jackson
29. James Jeffcoat, RN
30. Mark Jones, WCPD
31. Kenny Kensey, SLED
32. Selena Kinard, SLED
33. Wayne Kleckley, WCPD
34. Ann Leaphart, Lexington Medical Center

35. Marsha J. Leitzel, SLED
36. Davis Luna
37. Lee Marshall, LCSD
38. Nelda Mefford
39. George Murphy
40. John Norman, WCPD
41. Maxey Nowell
42. Frank Neeley, WCPD
43. Coconut Pantsari
44. John Phillips
45. Joshua Phillips
46. Shane Phillips
47. Ronald Rabon
48. Emily Reinhart, SLED
49. Adrienne Riley, SLED
50. Dr. Janice Ross, Newberry Pathology
51. Brian Setree, LCSD
52. Laurie Shacker, SLED
53. Donna Sharpe, RN
54. Michael Stalnaker
55. Stephanie Stanley, SLED
56. Amy Stephens, SLED
57. Ronald Lee Stokes, III
58. Al Stuckey, SLED
59. S.M. Stuffs
60. Ronnie Suber, WCPD
61. James Sullivan, WCPD
62. Mike Sujelman
63. Bill Tyson
64. Dwight Vinkemulder, WCPD
65. Mark Wharton, WCPD
66. Magistrate Scott Whittle
67. Susan Willingham
68. Doris Yarborough, SLED
69. Virginia Youmans, Lexington County EMS
70. Billy Zeigler, Lexington County Coroner

ATTORNEYS FOR STATE:

S. Richardson Hubbard, III, Deputy Solicitor
Shawn Graham, Deputy Solicitor

ATTORNEYS FOR DEFENSE:

Wayne Floyd, Esquire

STATE OF SOUTH CAROLINA

County of Lexington

SEARCH WARRANT

Date 04/22/05

Officer BAILEY

A-2005-32-01989

LE Reports: 10-15-11

105-4664 45
19

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 16, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF CITY OF WEST COLUMBIA

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A 1987 BLUE IN COLOR TOYOTA FOUR DOOR AUTOMOBILE BEARING SOUTH CAROLINA REGISTRATION

111 SND VIN NUMBER JT2SV21E2H3123222

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL CLOTHING, WEAPONS, FINGERPRINTS, BLOOD, WRITTEN OR TYPED PAPERS, FIBERS,
PHOTOS, ANY PAPERWORK SHOWING OWNERSHIP TO THE VEHICLE OR ANYTHING ELSE THAT COULD BE
USED IN THE COMMISSION OF THE CRIME OF MURDER

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

SCCA/513
(3-78)

A-2005-32-01989

Signature of Judge

(L.S.)

LE Reports: 10-15-11

00967

LD5-4664 A
21

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

AFFIDAVIT

Personally appeared before me, one CHRIS BAILEY
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL CLOTHING, WEAPONS, FINGERPRINTS, BLOOD, WRITTEN OR TYPED PAPERS, FIBERS PHOTOS
ANY PAPERWORK SHOWING OWNERSHIP OF THE VEHICLE OR ANYTHING ELSE THAT COULD BE USED IN THE
COMMISSION OF THE CRIME OF MURDER

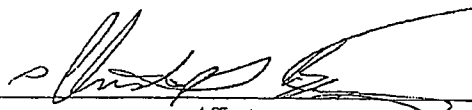
DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A 1987 BLUE IN COLOR TOYOTA FOUR DOOR AUTOMOBILE BEARING SOUTH CAROLINA REGISTRATION 111
SND AND VIN NUMBER JT2SV21E2H123222

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

THE ABOVE VEHICLE TRANSPORTED A VICTIM FROM THE CRIME SCENE TO LEXINGTON HOSPITAL FOR
TREATMENT

Sworn to and Subscribed before me
this 22 day of Aug, 19 05
Signature of Judge (L.S.)


Affiant

Address 200 NORTH 12TH STREET

WEST COLUMBIA SC 29169

Phone 803-794-3506

A-2005-32-01989

LE Reports: 10-15-11

00968

LD5-4664 6
L

RETURN

I received the attached Search Warrant APRIL 22, 19 2005, and have executed it as follows:
On APRIL 22, 19 2005 at _____ o'clock _____ M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

- ① ONE SMALL BLACK HANDLE KNIFE
- ② ONE "JIFFY LUBE" RECEIPT
- ③ ONE PAYCHECK STUB PAYABLE TO ROBERT JARAD PRATHER
- ④ ONE "COLLA COLA" 75TH COMMEMORATIVE BOX WITH CONTENTS
- ⑤ ONE WHITE UNDERSHIRT
- ⑥ ONE WHITE T-SHIRT
- ⑦ ONE TAN COAT

This inventory was made in the presence of S/A B. GANTT, A. STUCKEY
AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____
day of _____, 19 _____

Signature of Judge (L. S.)

(Signature of Officer Executing Warrant)

COPY

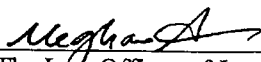
CERTIFICATE OF SERVICE

I, an employee of the Law Offices of Joseph M. McCulloch, Jr., do hereby certify that I have served all parties who have entered an appearance in this action with the **Memorandum in Support of Motion for New Trial** via hand delivery, addressed to:

Parties Served:

Samuel R. Hubbard, III
Eleventh Circuit Solicitor's Office
205 East Main Street
Lexington, SC 29072

This 18th day of January, 2013.



The Law Offices of Joseph M. McCulloch, Jr.

FILED
2013 JAN 18 2:20
J. A. CARRIGG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

STATE,

v.

ROBERT JARED PRATHER,

DEFENDANT.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
) Case No: 2012-GS-32-2619, 2621

) ORDER DENYING DEFENDANT'S
) MOTION FOR A NEW TRIAL

RECEIVED

JUL 14 2014

SC Court of Appeals

This matter comes before the Court by way of a timely filed Motion for a New Trial pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure. The State called this case for trial on November 26, 2012 before this Court. Deputy Solicitors Rick Hubbard and Shawn Graham appeared on behalf of the State at trial. Wayne Floyd, Esquire, represented the Defendant at trial. Additionally, Wayne Floyd, Esquire, and Joseph McCulloch, Jr., jointly represent the Defendant on this post-trial matter.

Procedural History

The Defendant is incarcerated in the South Carolina Department of Corrections (SCDC) pursuant to the Lexington County Clerk of Court's Order of Commitment. On April 22, 2005, West Columbia Police Department arrested the Defendant. The Defendant filed a Motion for a Speedy Trial and a Motion for Bond on January 13, 2006. On May 4, 2006, the Honorable Edward B. Cottingham set a bond in the sum of \$75,000 for the Defendant, and the Defendant was released on bond.

The Lexington County Grand Jury indicted the Defendant at the September 2008 term for Murder (2008-GS-32-2926), Burglary First Degree (2008-GS-32-2930), Armed Robbery (2008-GS-32-2929), Possession of a Firearm or Knife during the Commission of a Violent Crime (2008-GS-32-2928), and Filing a False Police Report Alleging the Commission of a Felony

(2008-GS-32-2927). The State called these indictments for trial on October 26, 2009, and the Honorable R. Knox McMahon declared a mistrial on October 30, 2009, due to a hung jury.

Subsequently, the Lexington County Grand Jury indicted the Defendant at the October 2012 term for Murder (2012-GS-32-02619), Armed Robbery (2012-GS-32-02621), and Burglary First Degree (2012-GS-32-02622). The Defendant filed a Motion to Dismiss for Violation of Speedy Trial Right on November 20, 2012 with the Lexington County Clerk of Court.

The State called the Defendant for trial on November 26, 2012. On November 28, 2012, this Court directed a verdict at the close of the State's case as to the Burglary First Degree indictment. On November 29, 2012, the jury convicted the Defendant of Murder and the lesser-included charge of Robbery. This Court sentenced the Defendant to 30 years on the Murder conviction and 10 years on the Robbery conviction, both to run concurrently. On December 7, 2012, the Defendant filed this Motion for a New Trial with the Lexington County Clerk of Court and supported it with a Memorandum filed January 18, 2013. The Court held a hearing on the Motion on February 7, 2013.

Facts

On April 22, 2005, the Defendant killed Gerald Michael Stewart, the Victim, in the home of the Victim located at 1737 Decree Avenue in the City of West Columbia, South Carolina in Lexington County. This occurred when the Defendant returned to the residence and found the Co-Defendant, Joshua B. Phillips, wearing only his underwear. The Defendant, along with his Co-Defendant, then beat the Victim, who was intoxicated, about his head and body and smothered him, a combination of which resulted in the death of the Victim. The word "rapist" was then carved on the lower back of the Victim.

Prior to leaving the residence, the Defendant and Co-Defendant took property belonging to the Victim including the Victim's wallet, collectible coins, and a 75th Anniversary Coca-Cola box set. The two then went to Lexington Medical Center and reported that the Victim sexually assaulted the Co-Defendant.

Issues

1. **The Defendant argues that the Court abused its discretion by admitting into evidence the misspelling of the word "rapist" written by the Co-Defendant arguing that:**
 - a. the word was a hearsay statement;
 - b. the word was a testimonial statement subject to the Confrontation Clause of the United States Constitution; and
 - c. the word was inadmissible under Rule 403 of the South Carolina Rules of Evidence (SCRE).
2. **The Defendant argues that the Court abused its discretion by allowing Agent Paul LaRosa to testify as a reply witness arguing that:**
 - a. the State violated *Brady* and Rule 5 of the South Carolina Rules of Criminal Procedure (SCRCrimP) by failing to disclose to the Defendant its intention of offering Agent LaRosa as an expert witness, which resulted in the State improperly "sandbagging" the Defendant; and
 - b. Agent LaRosa was not sufficiently qualified to give his opinion as a "crime scene analyst" and his testimony was non-scientific, unreliable, speculative, and highly prejudicial.
3. **The Defendant argues that the Court erred in denying three of his motions:**
 - a. Motion for Speedy Trial;
 - b. Motion for Suppression of the fruits of the Search Warrant; and
 - c. Motion for Directed Verdict on Murder as there was no competent evidence to justify a guilty verdict.

Standard

"Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. The grant or refusal of a new trial motion is within the trial court's discretion. *See State v. Simmons*, 279 S.C. 165, 303 S.E.2d 857 (1983).

A trial court's denial of a new trial motion will not be disturbed on review absent a showing of an abuse of discretion that results in prejudice to a defendant. *See State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998); *Simmons*, 279 S.C. 165, 303 S.E.2d 857.

Findings

1. The Court did not abuse its discretion by admitting into evidence the misspelling of the word "rapist" written by the Co-Defendant.

At trial, the Defendant objected to the admissibility of the misspelling of the word "rapist" and the Court held an *in camera* hearing. The Defendant raised the same issues regarding the word as raised in this Motion. After hearing arguments from both parties, the Court ruled that two exhibits (State's Exhibits 24 and 25) of the Co-Defendant's misspelling of the word "rapist" were admissible. The Court finds that it did not abuse its discretion by allowing into evidence the two exhibits of the misspelling of the word "rapist" by the Co-Defendant as the word was not a hearsay statement and it was not a testimonial statement subject to the Confrontation Clause of the Constitution. In addition, the Court did not abuse its discretion by allowing Captain Mark Jones to testify as to his observation of the Co-Defendant writing the word.

During the *in camera* hearing, the State offered to the Court a six-page statement written by the Co-Defendant describing the death of the Victim. Captain Jones observed the Co-Defendant write this statement. Captain Jones did not direct the Co-Defendant to write the statement nor did he dictate anything to the Co-Defendant for him to write. On page three of the statement, the Co-Defendant describes how the Defendant carved the word "rapist" on the Victim's back. In describing this event, the Co-Defendant wrote the word "rapist" twice. However, he misspelled the word on both occasions, spelling the word "r-a-p-e-i-s-t." The State viewed the misspelling as significant because the word carved on the Victim's back was spelled

correctly "r-a-p-i-s-t." The statement included other misspellings as well. For example, on page three, the Co-Defendant spelled "torturing" as "t-o-r-c-h-e-r-i-n-g" and "pretense" as "p-r-e-t-i-n-c-e."

Notably, the State did not introduce the six-page statement written by the Co-Defendant as evidence, nor was it ever referenced during the trial. The State cut the words "rapeist" from a copy of the statement, enlarged them, and offered them as exhibits. During the trial, the testimony offered by Captain Jones was limited. He testified that he recognized the two cutouts of the word "rapeist" as words that the Co-Defendant wrote in his presence. He acknowledged the Co-Defendant was under arrest at the time, but he never mentioned anything about the Co-Defendant writing a statement. Captain Jones testified that he did not ask the Co-Defendant to write, or tell him how to spell, the word "rapist," and that he did not ask the Co-Defendant how he spells the word. He testified that the misspelling was important because the word carved on the Victim was spelled correctly.

On cross-examination, Captain Jones testified he never told the Co-Defendant the importance of the word "rapist." He admitted that he did not know if the Co-Defendant intentionally misspelled the word. In addition, the Defendant introduced a photograph of coins and bullets that were stolen from the Victim and found on the Co-Defendant when he went to the hospital after the Victim was killed, suggesting to the jury that the Co-Defendant was the killer.

a. The word was not a hearsay statement.

Under Rule 801(a), SCRE, a "statement" is defined as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Rule 801(c), SCRE, defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." If a

statement is not offered to prove the truth of the matter asserted, it is not hearsay and is admissible. *See State v. Lewis*, 293 S.C. 107, 359 S.E.2d 66 (1987).

In *State v. Johnson*, 324 S.C. 38, 476 S.E.2d 681 (1996), the defendant was convicted of murder. During the trial, a State's witness testified about a verbal altercation that resulted in the defendant pulling out a pistol and shooting the victim. *See Id.* at 41, 476 S.E.2d at 682. The witness testified that immediately prior to the shooting he heard an unidentified individual ask the defendant "you got a gun?" and the defendant responded "yeah, and I ain't scared to shoot." *Id.* at 41, 476 S.E.2d at 682. The defendant objected on hearsay grounds. *See Id.* at 41, 476 S.E.2d at 682. The Supreme Court held that "you got a gun?" was not hearsay as it was not offered to prove the truth of the matter asserted. *Id.* at 42, 476 S.E.2d at 683. Further, the Court found that the statement was not even an assertion, but was a question asked to appellant. *See Id.* at 42, 476 S.E.2d at 683.

In this case, the misspelled word "rapeist" is not a "statement" under Rule 801(a), SCRE, because the word alone does not constitute an "assertion." The fact the word was taken from a statement written by the Co-Defendant is irrelevant. The statement **in its entirety** would certainly constitute his assertion of what **really** happened and who was **truly** responsible for the Victim's death. However, it was **never** introduced at trial.

By taking the misspelled word "rapeist" from the statement written by the Co-Defendant, the State separated the word from any assertion made by the Co-Defendant. The word "rapeist" does not say anything about what transpired or who killed the Victim. The State's theory that the misspelled word "rapeist" is evidence that the Defendant, not the Co-Defendant, carved "rapist" on the Victim's back does not change this analysis. The misspelled word "rapeist" is not hearsay, it is simply evidence for the jury to consider and judge its credibility.

Likewise, Captain Jones' testimony was not hearsay. He testified as to his observations, and the significance that **he attributed** to the misspelling. He did not testify about the Co-Defendant's version of events.

b. The Defendant's Sixth Amendment Right to Confront his Co-Defendant was not triggered and not violated.

Having determined that the misspelled word "rapeist" is not a statement, the Confrontation Clause of the Sixth Amendment to the United States Constitution does not apply. However, assuming *arguendo* the word "rapeist" is a statement, the Defendant's objection still fails the "primary purpose analysis."

The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), the United States Supreme Court held the Confrontation Clause applies to certain **statements**. Specifically, the Court held the Confrontation Clause prohibits the admission of testimonial, out-of-court statements unless the witness is unavailable at trial and the defendant had a prior opportunity to cross-examine the witness. *See Id.* at 68, 124 S. Ct. at 1374.

The United States Supreme Court has since developed the "primary purpose analysis" to determine if a statement is testimonial. *See Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011) (Sotomayor, J., concurring); *Michigan v. Bryant*, 131 S. Ct. 1143 (2011). The Court held where the primary purpose of an out-of-court statement is to serve as evidence or "an out-of-court substitute for trial testimony," the statement is testimonial. *Bullcoming*, 131 S. Ct. at 2721-23 (quoting *Bryant*, 131 S. Ct. at 1155); *see, e.g., Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S. Ct. 2527 (2009) (sworn certificates from forensic analysts were offered as a substitute for their actual testimony at trial).

However, “where no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause.” *Bryant*, 131 S. Ct. at 1155. “In making the primary purpose determination, standard rules of hearsay, designed to identify some statements as reliable, will be relevant.” *Id.* at 1155. For example, “[d]ocuments kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status.” *Melendez-Diaz*, 557 U.S. at 321, 129 S. Ct. at 2538; *see also*, *State v. Brockmeyer*, 406 S.C. 324, 751 S.E.2d 645 (2013) (which addressed the defendant’s challenge of the chain of custody of evidence and claim of a denial to confront witnesses, the South Carolina Supreme Court held that “[t]he issue of whether evidence is admissible under ‘state-law requirements regarding proof of foundational facts’ is distinct from the issue of whether a defendant’s Sixth Amendment confrontation right was violated ... Brockmeyer may not bootstrap a Confrontation Clause objection onto his objection to the State’s proof of foundational facts.”).

In this case, the primary purpose of admitting the misspelled word “rapeist” was not for the purpose of being an “out-of-court substitute for trial testimony.” The word, standing alone, in no way reflects the version of events written by the Co-Defendant in his six-page statement. The State introduced the misspelled word “rapeist” because of the independent evidentiary value it had apart from the Co-Defendant’s statement.

If the entire statement had been introduced into evidence, then the Defendant’s right to confront his Co-Defendant would attach. In this case, the Defendant was able to confront and cross-examine the witness against him. That witness was Captain Jones, who testified as to his observations, and the Defendant vigorously cross-examined him.

The word, on its own, can be compared to a handwriting exemplar. Handwriting exemplars are nontestimonial in nature and do not involve the Fifth Amendment right against

self-incrimination. See *State v. Frasier*, 341 S.C. 546, 534 S.E.2d 711 (Ct. App. 2000); *Gilbert v. California*, 388 U.S. 263, 87 S. Ct. 1951 (1967). However, the Fifth Amendment protects a handwriting exemplar by **dictation** where one incriminating aspect of exemplars was the spelling of a certain word by a defendant. See *United States v. Matos*, 990 F.Supp. 141 (E.D.N.Y. 1998). When a word is dictated, the spelling of that same word is testimonial because it is a result of the thought process of the defendant. See *Id*; see also *In re Grand Jury Subpoena to John Doe*, 475 F. Supp. 2d 1185 (M.D. Fla. 2006) *aff'd sub nom. In re Grand Jury Subpoena No.2002r02810(163), No.2005-01 to John Doe*, 176 F. App'x 72 (11th Cir. 2006); *United States v. Kallstrom*, 446 F.Supp.2d 772 (E.D. Mich. 2006) (requiring the defendant to write a **dictated** statement will constitute a testimonial act because it involves an intellectual exercise in which the defendant will be quizzed on how to spell the dictated words); *United States v. Campbell*, 732 F.2d 1017 (1st Cir. 1984) (recognizing that when a defendant writes a **dictated** word, he is saying "this is how [he] spells it" – a testimonial message in addition to a physical display).

By contrast, in this case, Captain Jones did not **dictate** the word "rapist" to the Co-Defendant, nor did he ask him how to spell the word. The Co-Defendant voluntarily wrote a six-page statement that included a word that proved to be of independent evidentiary value to the State. Similar to a handwriting exemplar not dictated, the word "rapeist" was not testimonial in nature. See *United States v. Dionisio*, 410 U.S. 1, 93 S. Ct. 764, 765 (1973).

Additionally, the Court gleans guidance from authority regarding the redaction of statements written by non-testifying co-defendants. When dealing with **statements** of non-testifying co-defendants, the Supreme Court does not take a position that would unjustifiably shackle the state in presenting an admissible confession. See *State v. Evans*, 316 S.C. 303, 450 S.E.2d 47 (1994). In cases where a co-defendant's version of the facts would otherwise be

admissible, to require the State to redact completely anything that could be viewed in combination with other evidence as a reference or allusion to the defendant, would "unduly handcuff the government's ability to introduce admissible confessions and statements against a declarant in a joint trial." *Id.* at 307 n. 2, 450 S.E.2d at 50 n. 2 (where the co-defendant's statement that he was not driving did not incriminate the defendant **on its face** was admissible, even though it was clear if there were only two people in the vehicle, the other was obviously the defendant).

In *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620 (1968), the Supreme Court held that a defendant's rights under the Confrontation Clause are violated by the admission of a non-testifying co-defendant's statement that expressly inculcates a defendant, even if a cautionary instruction is given. The Court, in *Richardson v. Marsh*, 481 U.S. 200, 107 S. Ct. 1702 (1987), specifically declined to extend this rule to the situation when the defendant's name or any reference to the defendant is redacted, and held that as long as a statement **on its face** does not incriminate the defendant, it can be properly admitted. Accordingly, if the misspelled word "rapeist" is considered an out-of-court statement, **on its face** it does not incriminate the Defendant.

The Defendant had a full opportunity to confront the witness against him, Captain Jones, and his Sixth Amendment right was not violated. The Defendant's right to confront his Co-Defendant was not an issue at trial because his Co-Defendant's statement was not admitted into evidence or even referenced. Even if the misspelled word "rapeist" was considered to be the Co-Defendant's "statement," the Defendant's rights under *Crawford* were not violated as the "statement" was properly redacted.

c. The misspelled word “rapeist” was admissible under Rule 403, SCRE.

Pursuant to Rule 403, SCRE, admissible evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” *State v. Caldwell*, 378 S.C. 268, 287, 662 S.E.2d 474, 484 (Ct. App. 2008) (citing *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311(2001)). “A trial court’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *Id.* at 547, 662 S.E.2d at 484 (citing *State v. McLeod*, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004)).

In this case, there were two people charged with murder. The misspelled word “rapeist” was clearly significant and probative because the word carved on the Victim’s back was spelled correctly. This evidence implicates the Defendant as being involved in the carving of the word on the Victim’s back.

The probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. The manner in which this evidence was presented and the fact the Defendant was able to thoroughly cross-exam Captain Jones substantially reduced any prejudicial effect of its admission.

Thus, the Court did not abuse its discretion by admitting into evidence the misspelling of the word “rapist” written by the Co-Defendant. The word was not a hearsay statement. The Defendant’s Sixth Amendment right to confront his Co-Defendant was not triggered and it was not violated. Importantly, the word was admissible because its probative value was not

substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE. As to this ground, the Motion for a New Trial should be denied.

2. The Court did not abuse its discretion by allowing Agent Paul LaRosa to testify as a reply witness.

Reply testimony is the presentation of additional witnesses for the State, after the defense rests its case, where the testimony of the reply witness contradicts issues presented by defense witnesses or addresses the credibility of defense witnesses. The admission of reply testimony is within the discretion of the trial judge. *See State v. Todd*, 290 S.C. 212, 349 S.E.2d 339 (1986).

In this case, the Defendant took the stand and testified that he did not cause the death of the Victim. Specifically, the Defendant testified that he believed the Victim sexually assaulted the Co-Defendant; that he struck the Victim only three times; that he left the house after striking the Victim; that he did not carve the word "rapist" on the Victim's back or cover him up; that he did not see either of those things occur; and that, after he left the house, the Co-Defendant remained in the house with the Victim for approximately 8 to 10 minutes.

In Reply, the State offered Agent LaRosa as an expert in Crime Scene Analysis to rebut the testimony of the Defendant. Both Parties agree, and this Court finds that the testimony offered by Agent LaRosa was non-scientific in nature.

The State established the following regarding the knowledge, skill, experience, training, and education of Agent LaRosa as it relates to Crime Scene Analysis:

Agent LaRosa has been employed by State Law Enforcement Division (SLED) for 18 years; from 1994 to 2000 as a Special Agent in the crime scene unit collecting and processing evidence, and analyzing and reconstructing crime scenes based on the evidence; from 2005 to 2010 as a violent crimes investigator; and from 2010 to 2012 as a criminal profiler assigned to the behavioral science unit.

As a behavioral analyst, Agent LaRosa studied under and is currently working with two court qualified crime scene analysts at SLED. Agent LaRosa testified that he interned with the South Carolina Department of Mental Health under a forensic psychiatrist and psychologist being treated as a peer; completed rounds at psychiatric hospitals; and gave assessments on those individuals. Agent LaRosa stated he completed a two-month internship with the Federal Bureau of Investigation (FBI) working cases and completing crime scene analysis and profiles alongside FBI Profilers. Specifically, he testified that he had an active caseload, worked independently, and that FBI Profilers peer reviewed his work.

Agent LaRosa testified that he has previously been qualified as an expert and testified in Federal Court and General Sessions Court in South Carolina as an expert in crime scene, crime scene reconstruction, and crime scene assessment. In being qualified as an expert in crime scene analysis in this case, Agent LaRosa testified that he would combine forensics, crime scene reconstruction, and the psychology and behavior exhibited at the crime scene to give an opinion as to the number of offenders involved in the crime.

Agent LaRosa testified that he reviewed the crime scene photographs and video, the reports of the first responders regarding how they found the Victim's body, and that he was present for the testimony of the Defendant in this trial.

Agent LaRosa stated he found evidence of "staging." He explained that "staging" is a term used in crime scene assessment and crime scene reconstruction that indicates that the person who committed the crime altered the crime scene in order to misdirect law enforcement and hide the truth.

Agent LaRosa opined that the carving of the word "rapist" into the Victim's back was evidence of staging. He testified that the superficial nature of the carvings supported his belief

that the scene was staged as compared to directed or real anger that he would expect to see in an actual rape. Agent LaRosa testified that the lack of evidence of real anger, such as deeper carvings, or anger directed towards the instrument of the rape, such as injury to the penis or mouth, supported his opinion of staging.

Additionally, Agent LaRosa testified that staging was also evident in the positioning of the body and in the placement of a dildo beside the Victim's body. The Victim was found on his knees face down on the sofa. There was no sign or evidence that the dildo was used in any manner or had anything to do with the murder. He explained that in his opinion the staging in this case indicated that the personality in the crime scene at the time wanted to misdirect law enforcement towards the idea that the victim was a rapist.

Agent LaRosa further testified that the crime scene showed evidence of "undoing." He testified that undoing is a symbolic message from the offender that he wants to cover up the crime or erase what has happened. Evidence of undoing was present in this case by the victim being covered up by a blanket and a pillow. He further stated that this was a classic case of undoing.

Agent LaRosa testified that staging and undoing are two completely distinct and conflicting emotions. Based on his review of the evidence and the Defendant's testimony, specifically the time line supplied by the Defendant, he concluded two offenders were at the scene at the time of the crime. In addition, Agent LaRosa stated, in accordance with SLED policy and prior to testifying, he submitted the evidence from this case to his colleagues for peer review, and they shared his opinion on this matter.

- a. The State did not violate *Brady* and Rule 5, SCRCrimP, and “sandbag” the Defendant by not disclosing to the Defendant its intention of offering Agent LaRosa in reply and as an expert witness.

Generally, the State has a duty to disclose evidence that is favorable to the defendant. *See Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194 (1963) (holding that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution”); Rule 5, SCRCrimP. A defendant asserting a *Brady* violation must demonstrate the evidence the State failed to disclose was favorable to the defendant, in possession of or known to the State, suppressed by the State, and material to guilt or punishment. *See Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Evidence is material “only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. 667, 668, 105 S. Ct. 3375, 3376 (1985); *State v. Frazier*, 394 S.C. 213, 223-24, 715 S.E.2d 650, 655 (Ct. App. 2011).

Brady and Rule 5, SCRCrimP, do not allow for the discovery of witness lists. *See State v. Miller*, 289 S.C. 316, 345 S.E.2d 489 (1986) (where parties were ordered to exchange lists and the State called a witness not on the list, the Court found the error was harmless); *State v. Nicholson*, 366 S.C. 568, 623 S.E.2d 100 (Ct. App. 2005) (defendant not entitled to suppression or continuance to get own expert where State calls expert to testify about general characteristics of a sex abuse victim; informing defense of this witness before trial was just professional courtesy).

In this case, the State was under no obligation to disclose the witnesses it intended to call. Even if it were required, it would be difficult to require that disclosure of reply witnesses the

State intends to call because reply testimony is based solely on what case, if any, a defendant chooses to present. Additionally, the Defendant is not justified in arguing that he was sandbagged because the State did not call Agent LaRosa in the first trial of this case. Neither the State, nor the Defendant, are required to try exactly the same case the second time around. This ground for a new trial is without merit.

b. Agent LaRosa was sufficiently qualified to give his opinion as a “crime scene analyst” and his testimony was reliable.

Rule 702, SCRE, governs the testimony of an expert. Specifically, Rule 702, SCRE, states,

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

“This language makes no relevant distinction between ‘scientific’ knowledge and ‘technical’ or ‘other specialized’ knowledge. It makes clear that any such knowledge might become the subject of expert testimony.” *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009) (holding that a dog handler met the requirements of Rule 702, SCRE, based on experience and training).

Accordingly, Agent LaRosa’s qualifications, as indicated above, were adequately developed, and, based on his knowledge, skill, experience, training, and education, he was properly qualified to offer an expert opinion in crime scene analysis. Specifically, Agent LaRosa provided testimony regarding staging, directed anger, undoing, and the number of personalities present given the evidence and emotions shown, and, thus, the number of offenders present.

After determining that Agent LaRosa was properly qualified as an expert, this Court next turns its attention to the reliability of the non-scientific testimony offered. *See Id.* at 273-74, 676 S.E.2d at 688. "The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating non-scientific expert testimony." *Id.* at 274, 676 S.E.2d at 688; *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999). The Supreme Court offers "no formulaic approach" to addressing Rule 702, SCRE, "reliability challenges that could arise with respect to nonscientific expert evidence." *White*, 382 S.C. at 274, 676 S.E.2d at 688.

In this instant, Agent LaRosa did not offer profile evidence or evidence of victimology. Importantly, Agent LaRosa did not offer an opinion as to who the killer was or what role the Defendant played, if any, in the murder.

The Defendant does not dispute that the concepts of staging and undoing are reliable and accepted concepts. He also does not object to Agent LaRosa's opinion that the staging and undoing showed two distinct emotions. However, the Defendant does object to Agent LaRosa's opinion that multiple actors were present at the crime scene.

The Court finds that staging and undoing are basic and accepted concepts of crime scene reconstruction and assessment, both areas in which Agent LaRosa testified previously as an expert. The Court also finds as reliable that two distinct, separate, and opposing emotions are shown in staging and undoing. Finally, the Court finds Agent LaRosa's opinion that multiple actors were present at the death scene is reliable, and is consistent with logic and common sense in light of the testimony of the Defendant.

Therefore, the Court did not abuse its discretion by allowing Agent LaRosa to testify as a reply witness. The State did not violate *Brady* and Rule 5, SCRCrimP, by not disclosing to the

Defendant its intention of calling Agent LaRosa as an expert witness in Reply. More importantly, Agent LaRosa was properly qualified as an expert witness. As to this ground, the Motion for New Trial should be denied.

Harmless Error Analysis

Having allowed the admission of the misspelled word "rapeist" and the reply testimony, the Court finds this evidence is subject to a harmless error analysis. The focus of this analysis is "whether beyond a reasonable doubt the trial error did not contribute to a guilty verdict." *State v. Jarod Wayne Tapp*, 398 S.C. 376, 728 S.E.2d 468 (2012). The United States Supreme Court mentioned a number of factors to be considered in determining whether an error is harmless, particularly concerning Confrontation Clause issues. These factors include:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S. Ct. 1431, 1438 (1986); *see also, State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002).

Applying these factors, any error would be harmless beyond a reasonable doubt. Captain Jones' testimony was extremely limited and amounted to a very small piece of the State's case against the Defendant. The evidence he provided was cumulative to other direct and circumstantial evidence linking the Defendant to the murder. The Defendant's statements to both the hospital staff and law enforcement that he assaulted the Victim (i.e., that he struck the Victim with "devastating blows" and needed to wash the Victim's blood off his hands) corroborated the evidence. This evidence was subject to rigorous cross-examination by the

Defendant, leading Captain Jones to admit he did not know if the Co-Defendant intentionally misspelled the word "rapist."

Additionally, the Defendant took the stand, addressing this evidence and testifying to his version of the facts, thereby providing the jury a basis to give this particular evidence less weight, or no weight at all. The State presented a substantial, if not overwhelming, case as to the guilt of the Defendant.

After the Defendant testified to his version of the facts, the State called Agent LaRosa as an expert in Reply to refute the version of the facts given by the Defendant. The Defendant had the opportunity to cross-examine Agent LaRosa and, similar to Captain Jones' cross-examination, the Defendant was able to elicit favorable testimony from this witness. Agent LaRosa admitted that he could not say that the **Defendant** staged the crime scene or that the **Defendant** carved the word "rapist" on the Victim's back.

The jury was the judge of the credibility of the testimony offered by Captain Jones regarding his observation of the Co-Defendant writing the misspelled word "rapeist." The jury was the judge of the credibility of the Defendant. The jury was the judge of the credibility of the testimony of Agent LaRosa in Reply.

3. The Defendant argues that the Court erred in denying three of his motions.

The Court denied the Motions for a Speedy Trial, for Suppression of the fruits of the Search Warrant, and for Directed Verdict on the Murder charge made by the Defendant. The Defendant argues that these denials were done in error and the Defendant is entitled to a new trial because of this error. The Court has broad discretionary powers in the granting or denying of motions. In this case, the denial of these motions at the time of trial is not a valid ground for the Court to grant this Motion for New Trial as no error on behalf of the Court was committed.

a. The Court did not err in denying the Motion for a Speedy Trial.

Every defendant has the right to a "speedy and public trial, by an impartial jury" under the Sixth and Fourteenth Amendments to the United States Constitution and under Article I, Section 9 of the South Carolina Constitution. The purposes of Speedy Trial are to prevent prejudice to the defendant caused by the passage of time; to minimize the possibility of lengthy incarceration prior to trial; to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on the defendant while released on bail; and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges. *See State v. Chapman*, 289 S.C. 42, 344 S.E.2d 611 (1986); *State v. Cooper*, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009).

There are four factors to consider in determining whether a defendant has been denied the right to a speedy trial, which include the length of the delay, the cause of the delay, when and how defendant asserted his speedy trial right, and prejudice to the defendant. *See Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972). Additionally, the time between a good-faith dismissal of criminal charges and the filing of new charges is not to be considered in determining the length of delay. *See United States v. McDonald*, 456 U.S. 1, 102 S. Ct. 1497 (1982).

In this instant, the Defendant filed a Motion for a Speedy Trial the week before the State called this case for trial. The Defendant was not in jail as he awaited trial and no prejudice to the Defendant has been shown.

The Court acknowledges that the murder in this case occurred on April 22, 2005, and further acknowledges that the Defendant filed a previous Motion for a Speedy Trial on May 6, 2006. However, the relief sought in the previous motion was either a dismissal of the charges or release from the Lexington County Detention Center. That relief was granted when the

Defendant was subsequently released on bond. He remained out on bond until he was convicted of Murder and Robbery on November 29, 2012.

In addition, the Defendant was tried on October 26, 2009 and a mistrial occurred. The Lexington County Grand Jury did not indict the Defendant on these charges again until October of 2012. The Defendant did not invoke his right to a speedy trial until November 20, 2012. This Court cannot consider the length of time between the mistrial of this case and when the Defendant was indicted subsequently. This Court must balance all of these factors along with the conduct of the State and the Defendant, and, in doing so, the Court finds that Motion for Speedy Trial was denied properly.

The Court finds that there was no error in denying the Motion for a Speedy Trial, and the State properly proceeded to call the Defendant for Trial. The denial of the Motion for Speedy Trial is not a valid ground for the grant of this Motion for New Trial.

b. The Court did not err in denying the Motion for Suppression of the fruits of the Search Warrant.

South Carolina Code Section 17-13-140 requires that a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record...." A magistrate may issue a search warrant only upon a finding of probable cause. *See State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997); S.C. Code Section 17-13-140. If an affidavit standing alone is insufficient to establish probable cause, it may be supplemented by sworn oral testimony to the magistrate. *See Weston*, 329 S.C. at 290, 494 S.E.2d at 802.

Alternatively, inevitable discovery is an exception to the exclusionary rule, which excludes from evidence items seized improperly. *See Nix v. Williams*, 467 U.S. 431, 446-47, 104 S. Ct. 2501, 2510 (1984). "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial.... Suppression, in

these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of justice.” *Nix v. Williams*, 467 U.S. at 446-47, 104 S. Ct. at 2510.

If the State can show by a preponderance of the evidence that the information it sought would ultimately or inevitably have been discovered by lawful means, then the evidence is admissible. *Id.* at 444, 104 S. Ct. at 2509. The State does not have to prove the absence of bad faith on the part of the police. *Id.* at 445, 104 S. Ct. at 2510 (where police would have discovered victim’s body even if defendant had not given information as result of improper interrogation).

An “inventory search” is permissible where police intrusion into vehicles impounded or otherwise in lawful police custody is based on securing or protecting the vehicle and its contents. *State v. Boyd*, 288 S.C. 206, 341 S.E.2d 144 (Ct. App. 1986).

In this case, the Defendant moved to suppress the items seized from the search of the vehicle arguing that the search warrant was defective. Although the search warrant may have been defective on its face, the evidence seized was admissible at trial because the search warrant was supplemented with oral testimony and the items would have been inevitably discovered when the vehicle was inventoried.

The Court finds that there was no error in denying the Motion for Suppression of the fruits of the Search Warrant, and the State properly proceeded to call the Defendant for Trial. The denial of the Motion for Suppression of the fruits of the Search Warrant is not a valid ground for the grant of this Motion for New Trial.

- c. **The Court did not err in denying the Defendant's Motion for Directed Verdict on Murder as there was competent evidence to justify a guilty verdict.**

"On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19, SCRCrimP.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. *See State v. Williams*, 303 S.C. 274, 400 S.E.2d 131 (1991); *State v. Brannon*, 379 S.C. 487, 666 S.E.2d 272 (Ct. App. 2008). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, then the case was submitted properly to the jury. *See State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998); *Brannon*, 379 S.C. 487, 666 S.E.2d 272.

On an appeal from the denial of a directed verdict, the appellate court must view the evidence in the light most favorable to the State. *See State v. Rowell*, 326 S.C. 313, 487 S.E.2d 185 (1997). It should only reverse the ruling of the trial court if that ruling was based on an error of law or there is no evidence in the record to support the ruling. *See State v. Dantonio*, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008). In this case, the State presented an overwhelming amount of evidence tending to prove the Defendant guilty of Murder. The case was properly submitted to the jury and its verdict should not be disturbed.

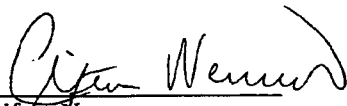
The Court finds that there was no error in denying the Motion for a Directed Verdict as to the Murder charge, and the State properly proceeded to call the Defendant for Trial. The denial of the Motion for a Directed Verdict as to the Murder charge is not a valid ground for the grant of this Motion for a New Trial.

Conclusion

The Defendant's Motion for a New Trial should be denied. Based on the reasons set forth above, the Court finds that no error occurred at trial, and, if error did occur, it was harmless. The evidence in this case was overwhelming and the testimony allowed was admissible. The Defendant has failed to raise a valid ground for the grant of a new trial.

Therefore, the Defendant's Motion for a New Trial is hereby **DENIED**.

AND, IT IS SO ORDERED.


Clifton Newman
Circuit Court Judge

July 1, 2014

Columbia, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

STATE OF SOUTH CAROLINA)

Plaintiff,

vs.

ROBERT JARED PRATHER,
Defendant.

FILED THE COURT OF GENERAL SESSIONS

Warrant NO.: J 030005, J 030007, J 030008,
2009 APR 27 10 03 AM '09, H 800623

BETH A. CARRIGG
CLERK OF COURT
LEWIS & CLARK COUNTY, SC

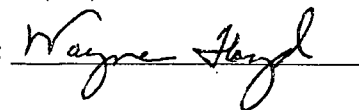
**MOTION TO REQUIRE
PSYCHIATRIC EXAMINATION
OF JOSHUA PHILLIPS**

Comes Now the Defendant who files this his Motion to require psychiatric examination of Joshua Phillips, Co-Defendant in this case, who is scheduled to testify against the Defendant at trial. In support of this Motion Defendant has attached hereto copies of the Mental Health Records of Lexington County Detention Center concerning Joshua Phillips which show that on more than one occasion he has admitted to be unable to tell fantasy from reality and that he suffers visual hallucinations. Joshua Phillips admits he needs a psychiatric examination. In further support of this Motion Defendant has attached a copy of a summary of the testimony expected to be offered by Joshua Phillips in this trial which Defendant admits is preposterous, fanciful and detached from reality.

Respectfully submitted,

Wayne Floyd Law Office, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171
(803) 739-1824

By:



West Columbia, South Carolina

April 27, 2009.

00995

CERTIFICATE OF SERVICE

FILED

This is to certify that the undersigned, Michelle M. Wash, Paralegal to Wayne
Floyd, Esquire, has this 27th day of April, 2009, served the foregoing **MOTION TO
REQUIRE PSYCHIATRIC EXAMINATION OF JOSHUA PHILLIPS**

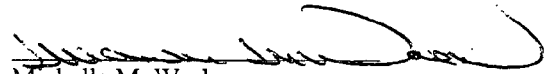
2009 APR 27 1:05
DEBRA L. HARRIGG
CLERK OF COURT
LEXINGTON SC

- ☐ Hand delivering a copy hereof.
- ☒ Depositing a copy hereof in the
United States mail postage prepaid
- ☐ Certified Mail (Return Receipt
Requested).
- ☐ Facsimile Transmission.

upon:

Dayton Riddle, Deputy Solicitor
Lexington County Solicitor's Office
205 E. Main Street
Lexington, S.C. 29072

Elizabeth C. Fullwood, Esquire


Michelle M. Wash,
Paralegal to Wayne Floyd
WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972
(803) 739-1824



MENTAL HEALTH
PRISON HEALTH SERVICES, INC.
SICK CALL REQUEST

Print Name: Phillips, Joshua Brandon Date of Request: 6-29-07
ID # _____ Date of Birth: 11-7-81 Location: 1A07
Nature of problem or request: I make noises all day long and I don't
know that I'm doing it. My roommate made me aware of the
situation. I need some kind of mild relaxer (sedative)
I NEED HELP IMMEDIATELY!!
Joshua B. Phillips
Signature

DO NOT WRITE BELOW THIS LINE

Date: 7/1/07
Time: 9:00 AM PM
Allergies: _____

RECEIVED
Date: _____
Time: _____
Receiving Nurse Initials _____

(S)ubjective: _____

(O)bjective

(A)ssessment: _____

(P)lan: _____

PLEASE SEE
PROTOCOL
SHEET

Refer to: MD/PA Mental Health Dental Daily Treatment Return to Clinic PRN
CIRCLE ONE

Check One: ROUTINE ☒ EMERGENCY ☐
If Emergency was PHS supervisor notified: Yes () No ()
Was MD/PA on call notified: Yes () No ()

See MHC Follow-up Report

Joshua B. Phillips
SIGNATURE AND TITLE

WHITE: INMATES MEDICAL FILE

YELLOW: INMATE RETAINS COPY AFTER NURSE INITIALS RECEIPT



VERY IMPORTANT INFO.

PRISON HEALTH SERVICES, INC.
SICK CALL REQUEST

Print Name: Phillips, Joshua Brandon Date of Request: 3-3-07

ID # _____ Date of Birth: 11-7-81 Location: 1A07

Nature of problem or request: Mental Health: Emotional distress, emotionally, physically and mentally depressed, memory loss, anxiety disorder, side tract
ADHD, mood swings, I can't comprehend nothing and I have a serious
learning disability. I NEED HELP WITH MY PROBLEMS. Thank you in this

matter, John B. Phillips

Eve written the way I felt on 4-28-04 but didn't want a signature to see it. After 2 wks it was stopped.
then I started again 3-3-07.

DO NOT WRITE BELOW THIS LINE

Date: ____/____/____
Time: ____ AM PM
Allergies: _____

RECEIVED
Date: <u>3/6/07</u>
Time: _____
Receiving Nurse Initials: <u>JS</u>

(S)ubjective:

(O)bjective:

(A)ssessment:

(P)lan:

Mr. Phillips -
① I will evaluate you.
② Please note that
MH does not treat ADHD or
learning disabilities in
prison.
③ Let me see what I
can find out about your
charges.
Carla Mearns
Nurse Counselor
3/6/07

Refer to: MD/PA Mental Health Dental Daily Treatment Return to Clinic PRN
CIRCLE ONE

Check One: ROUTINE () EMERGENCY ()

If Emergency was PHS supervisor notified: Yes () No ()

Was MD/PA on call notified: Yes () No ()

SIGNATURE AND TITLE

WHITE: INMATES MEDICAL FILE

YELLOW: INMATE RETAINS COPY AFTER NURSE INITIALS RECEIPT

LEXINGTON COUNTY DETENTION CENTER
INMATE REQUEST FORM

DATE: 2-20-07

HOUSING
LOCATION: 1A07

INMATE'S NAME: Joshua Brandon Phillips

TYPE OF REQUEST

☐ CELL BLOCK PROBLEM	☐ DISCHARGE DATE	☐ APPEAL
☐ SECURITY PROBLEM	☐ INDIGENT CARE	☐ PROTECTIVE CUSTODY
☐ CLASSIFICATION	☐ GRIEVANCE	☒ PERSONAL PROBLEM
☐ I/M WORKER PROGRAM	☐ CAPTAIN _____	☐ LIEUTENANT _____
☐ SERGEANT _____	☐ INVESTIGATOR _____	☒ OTHER <u>MENTAL HEALTH</u>

REQUEST: I have an anxiety disorder and cant tell reality from fantasy. I'm not CRAZY !! I need a Mental Health evaluation.

ACTION TAKEN:

Mr. Phillips —

① I will re-evaluate ② You were ^{02/12/07} evaluated on 2/7/07 & informed to complete a journal Have you done this or started

SIGNATURE: him? ③ M H does ~~not~~ treat anxiety

APPEAL: please see enclosed. ④ Since you've already been evaluated what specifically are you wanting?

SIGNATURE: Angela M. [Signature] DATE: 2/21/07

APPEAL RESPONSE: Triage Counselor

LEXINGTON COUNTY DETENTION CENTER
INMATE REQUEST FORM

DATE: 2-15-07

HOUSING
LOCATION: 1A06

INMATE'S NAME: Joshua B. Phillips

TYPE OF REQUEST

☐ CELL BLOCK PROBLEM	☐ DISCHARGE DATE	☐ APPEAL
☐ SECURITY PROBLEM	☐ INDIGENT CARE	☐ PROTECTIVE CUSTODY
☐ CLASSIFICATION	☐ GRIEVANCE	☒ PERSONAL PROBLEM
☐ I/M WORKER PROGRAM	☐ CAPTAIN _____	☐ LIEUTENANT _____
☐ SERGEANT _____	☐ INVESTIGATOR _____	☒ OTHER _____

REQUEST: Mental Health Evaluation

I would like to speak to an official in the Mental Health Department. I am seeking a complete Mental Health Evaluation. Thank you in this matter.

ACTION TAKEN:

Mr. Phillips - John B. Phillips
What are you meaning by an
"official" in mental health? What kind

SIGNATURE: of mental health evaluation DATE: _____

APPEAL: are you seeking/needding?

SIGNATURE: Carandra Means MA DATE: 2/16/07

APPEAL RESPONSE: _____