

ORIGINAL

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY CURTIS FRALEY,

APPELLANT

APPELLATE CASE NO 2015-001737

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED
AUG 26 2016
SC Court of Appeals

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
COMPETENCY EVALUATION HEARING.....	24
JACKSON V. DENNO HEARING	
DR. ANA GOZEZ (IN CAMERA)	
Direct Examination by Ms. Williams.....	25
Cross Examination by Ms. Gay.....	30
SEAN MCWILLIAMS (IN CAMERA)	
Direct Examination by Ms. Williams.....	35
Cross Examination by Ms. Gay.....	42
DAVID MITCHUM (IN CAMERA)	
Direct Examination by Mr. Poulos.....	46
Cross Examination by Ms. Gay.....	50
Redirect Examination by Mr. Poulos	55
GARY FRALEY (IN CAMERA)	
Direct Examination by Ms. Gay.....	55
Cross Examination by Mr. Poulos.....	64
MOTION IN LIMINE.....	90
OPENING STATEMENT BY MR. POULOS	114
OPENING STATEMENT BY MS. GAY.....	120
TESTIMONY	
ANA GOMEZ	
Direct Examination by Ms. Williams.....	129
Cross Examination by Ms. Gay.....	140
Redirect Examination by Ms. Williams	170
Recross Examination by Ms. Gay	174
KIMBERLY TOMPKINS	
Direct Examination by Ms. Williams.....	177

MATTHEW WOLTZ	
Direct Examination by Ms. Williams.....	183
QUENTON VICK	
Direct Examination by Ms. Williams.....	187
RUTH VICK	
Direct Examination by Ms. Williams.....	191
MINOR 1	
Direct Examination by Ms. Williams.....	203
CHAD VICK	
Direct Examination by Ms. Williams.....	221
JENNIFER MOULTRIE	
Direct Examination by Mr. Poulos.....	283
Cross Examination by Ms. Gay.....	296
DEONNA FRALEY	
Direct Examination by Ms. Williams.....	237
Cross Examination by Ms. Gay.....	259
Redirect Examination by Ms. Williams.....	260
Recross Examination by Ms. Gay.....	260
VANESSA GILCHRIST	
Direct Examination by Ms. Williams.....	262
VICTORIA BOOTH	
Direct Examination by Mr. Poulos.....	267
Cross Examination by Ms. Gay.....	272
Redirect Examination by Ms. Williams.....	273
Recross Examination by Ms. Gay.....	274
JASMYNE COLLINS	
Direct Examination by Ms. Williams.....	275
STEVE TSAFOS	
Direct Examination by Ms. Williams.....	276
Cross Examination by Ms. Gay.....	289
Redirect Examination by Ms. Williams.....	296
Recross Examination by Ms. Gay.....	303
PATROL OFFICER CHADWICK MOREE, GCPD	
Direct Examination by Mr. Poulos.....	304

CAPTAIN DAVID AARONS, GCPD	
Direct Examination by Ms. Williams.....	314
PFC DAVID COFFEY, GDPD	
Direct Examination by Ms. Williams.....	335
LT. WILLIAM SCHREURS, GCPD	
Direct Examination by Ms. Williams.....	341
Cross Examination by Ms. Gay.....	348
JOHN LEE, EMT	
Direct Examination by Ms. Williams.....	351
PAUL CLENDENNING, EMS	
Direct Examination by Mr. Poulos.....	354
Cross Examination by Ms. Gay.....	361
PATROL OFFICER SHAUN WEGNER, GCPD	
Direct Examination by Ms. Williams.....	365
Cross Examination by Ms. Gay.....	375
PATROL OFFICER DAVID MITCHUM, GCPD	
Direct Examination by Ms. Williams.....	376
KAREN DROZD	
Direct Examination by Ms. Williams.....	381
TRACY MCKINNON, SLED	
Direct Examination by Ms. Williams.....	398
DR. KENDRA KAMERA HAM	
Direct Examination by Ms. Williams.....	404
DR. DANIEL DEMERS, INTELLIGENETICS	
Direct Examination by Ms. Williams.....	411
WENDY MYERS	
Direct Examination by Ms. Williams.....	438
SEAN MCWILLIAMS	
Direct Examination by Mr. Poulos.....	459
RECALL – MINOR 1	
Direct Examination by Ms. Williams.....	467

JIM BONGALIS, PUBLIX	
Direct Examination by Ms. Williams.....	468
ACOCK PATEL, ECONOLODGE	
Direct Examination by Mr. Poulos.....	472
Cross Examination by Ms. Gay.....	475
INVESTIGATOR MICAH FOGLE, GCPD	
Direct Examination by Ms. Williams.....	476
GARY CURTIS FRALEY	
Direct Examination by Ms. Gay.....	490
Cross Examination by Mr. Poulos.....	571
Redirect Examination by Ms. Gay	611
DR. ROBERT BENNETT	
Direct Examination by Ms. Gay.....	623
Voir-Dire Examination by Ms. Williams.....	627
Resume Direct Examination by Ms. Gay.....	642
Cross Examination by Ms. Williams.....	659
Redirect Examination by Ms. Gay	678
MOTION FOR DIRECTED VERDICT	681
RULING ON MOTION FOR DIRECTED VERDICT	683
REBUTTAL – DR. TODD MAGRO, MUSC	
Direct Examination by Ms. Williams.....	684
Cross Examination by Ms. Gay.....	695
Redirect Examination by Ms. Williams.....	698
MOTIONS FOLLOWING STATE RESTING.....	700
CHARGE REQUEST	700
CLOSING ARGUMENT BY MR. POULOS.....	717
CLOSING ARGUMENT BY MS. GAY	721
CLOSING ARGUMENT BY MS. WILLIAMS.....	740
JURY CHARGE.....	763
VERDICT	784
SENTENCING	811

TRIAL BRIEF FOR THE STATE OF SOUTH CAROLINA	815
COURT'S EXHIBIT #4 – 1/20/15 MUSC LETTER TO WILLIAMS.....	837
COURT'S EXHIBIT #5 – MUSC LETTER TO GAY.....	847
COURT'S EXHIBIT #11 – DR. BENNETT CEASE AND DESIST.....	866
INDICTMENTS AND SENTENCING SHEETS	868
CERTIFICATE OF COUNSEL	902

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NO. 2014-GS-08-1505,
	)	1506, 1507, 1508, 1509,
	)	1511, 1684, 1685, 1874,
	)	1934
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
GARY CURTIS FRALEY,	)	VOLUME I OF II
	)	
DEFENDANT.	)	

Trial - July 13-17, 2015

Moncks Corner, South Carolina

B E F O R E:

The Honorable Kristi Lee Harrington, Judge;
and a Jury.

A P P E A R A N C E S:

Anne Williams, Assistant Solicitor
For the State

Daniel Poulos, Assistant Solicitor
For the State

Melisa Gay, Esquire
For the Defense

Phyllis Norton, CVR *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

Witnesses	--	03
Exhibits	--	08
Pretrial	--	16
Formal Arraignment	--	22
Jury Voir Dire	--	28
Jury Selection	--	60
Competency Evaluation Hearing	--	78
Denno Hearing	--	87
Motion in Limine	--	143
Opening Statement by Mr. Poulos	--	169
Opening Statement by Mr. Gay	--	169
Stipulation	--	183
Directed Verdict Motion	--	774
Motions Following State Resting	--	793
Charge Request	--	793
Closing Argument by Mr. Poulos	--	809
Closing Argument by Ms. Gay	--	813
Closing Argument by Ms. Williams	--	832
Jury Charge	--	855
Verdict	--	876
Motions Following Verdict	--	879
Victims Address To Court	--	881
Sentencing	--	903

CERTIFICATION OF TRANSCRIPT

-- 906

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

WITNESSES(SW) Dr. Ana Gozez (IC):

Direct Examination by Ms. Williams -- 79

Cross-Examination by Ms. Gay -- 84

(SW) Sean McWilliams (IC):

Direct Examination by Ms. Williams -- 89

Cross-Examination by Ms. Gay -- 96

(SW) David Mitchum (IC):

Direct Examination by Mr. Poulos -- 100

Cross-Examination by Ms. Gay -- 103

Redirect Examination by Mr. Poulos -- 108

(DW) Gary Fraley (IC):

Direct Examination by Mr. Gay	--	108

Cross-Examination by Mr. Poulos	--	207

(SW) Ana Gomez:

Direct Examination by Ms. Williams	--	184

Cross-Examination by Ms. Gay	--	195

Redirect Examination by Ms. Williams	--	226

Recross-Examination by Ms. Gay	--	229

(SW) Kimberly Tompkins:

Direct Examination by Ms. Williams	--	232

(SW) Matthew Woltz:

Direct Examination by Ms. Williams	--	238

(SW) Quenton Vick:

Direct Examination by Ms. Williams	--	242

(SW) Ruth Vick:

Direct Examination by Ms. Williams	--	246

(SW) Minor 1

Direct Examination by Ms. Williams	--	257

(SW) Chad Vick:

Direct Examination by Ms. Williams	--	276

(SW) Jennifer Moultrie:

Direct Examination by Mr. Poulos	--	283/290

Cross-Examination by Ms. Gay	--	295

(SW) Deonna Fraley:

Direct Examination by Ms. Williams	--	296
Cross-Examination by Ms. Gay	--	318
Redirect Examination by Ms. Williams	--	320
Recross-Examination by Ms. Gay	--	320

(SW) Vanessa Gilchrist:

Direct Examination by Ms. Williams	--	321

(SW) Victoria Booth:

Direct Examination by Mr. Poulos	--	326
Cross-Examination by Ms. Gay	--	331
Redirect Examination by Ms. Williams	--	333
Recross-Examination by Ms. Gay	--	334

(SW) Jasmyne Collins:

Direct Examination by Ms. Williams	--	335

(SW) Dallas Boggs:

Direct Examination by Mr. Poulos	--	337

(SW) Steve Tsafos:

Direct Examination by Ms. Williams	--	342
Cross-Examination by Ms. Gay	--	356
Redirect Examination by Ms. Williams	--	363
Recross-Examination by Ms. Gay	--	369

(SW) Patrol Officer Chadwick Moree, GCPD:

Direct Examination by Mr. Poulos	--	371

(SW) Captain David Aarons, GCPD:

Direct Examination by Ms. Williams	--	380

(SW) PFC David Coffey, GCPD:

Direct Examination by Ms. Williams	--	401

(SW) Lt. William Schreurs, GCPD:

Direct Examination by Ms. Williams	--	407

Cross-Examination by Ms. Gay	--	405

(SW) John Lee, EMT:

Direct Examination by Ms. Williams	--	417

(SW) Paul Clendenning, EMS:

Direct Examination by Mr. Poulos	--	421

Cross-Examination by Ms. Gay	--	427

(SW) Patrol Officer Shaun Wegner, GCPD:

Direct Examination by Ms. Williams	--	431

Cross-Examination by Ms. Gay	--	442

(SW) Patrol Officer David Mitchum, GCPD:

Direct Examination by Ms. Williams	--	444

(SW) Brian Lee:

Direct Examination by Mr. Poulos	--	448

Cross-Examination by Ms. Gay	--	456

Redirect Examination by Mr. Poulos	--	459

Recross-Examination by Ms. Gay	--	460

(SW) Karen Drozd:

Direct Examination by Ms. Williams	--	463

(SW) Tracy McKinnon, SLED:

Direct Examination by Ms. Williams	--	481

(SW) Dr. Kendra Kamera Ham:

Direct Examination by Ms. Williams	--	487

(SW) Dr. Daniel Demers, Intelligenetics:

Direct Examination by Ms. Williams	--	494

(SW) Lt. Joshua Battista GCPD:

Direct Examination by Mr. Poulos	--	520

(SW) Wendy Myers:

Direct Examination by Ms. Williams	--	525

(SW) Sean McWilliams:

Direct Examination by Mr. Poulos	--	546

(SW) RECALL Minor 1

Direct Examination by Ms. Williams	--	554

(SW) Jim Bongalis, Publix:

Direct Examination by Ms. Williams	--	555

(SW) Acock Patel, EconoLodge:

Direct Examination by Mr. Poulos	--	559

Cross-Examination by Ms. Gay	--	562

(SW) Investigator Micah Fogle, GCPD:

Direct Examination by Ms. Williams	--	563

(DW) Gary Curtis Fraley:

Direct Examination by Ms. Gay	--	583

Cross-Examination by Mr. Poulos	--	664

Redirect Examination by Ms. Gay	--	704

(DW) Dr. Robert Bennett:

Direct Examination by Ms. Gay	--	716
Voir-Dire by Ms. Williams	--	720
Resume Direct Examination by Ms. Gay	--	735
Cross-Examination by Ms. Williams	--	752
Redirect Examination by Ms. Gay	--	771

(SW) REBUTTAL - Dr. Todd Magro, MUSC:

Direct Examination by Ms. Williams	--	777
Cross-Examination by Ms. Gay	--	788
Redirect Examination by Ms. Williams	--	791

E X H I B I T S

<u>STATE NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Photo	16	ID
2	Photo	16	ID
3	Photo	16	ID
4	Photo	16	376
5	Photo	16	384
6	Photo	16	ID
7	Photo	16	ID
8	Photo	16	ID
9	Photo	16	376

10	Photo	16	349
11	Photo	16	349
12	Photo	16	349
13	Photo	16	349
14	Photo	16	535
15	Photo	16	535
16	Photo	16	535
17	Photo	16	535
18	Photo	16	ID
19	Photo	16	535
20	Photo	16	ID
21	Photo	16	535
22	Photo	16	535
23	Photo	16	535
24	Photo	16	ID
25	Photo	16	ID
26	Photo	16	412
27	Photo	16	ID
28	Photo	16	ID
29	Photo	16	273
30	Photo	16	273
31	Photo	16	273
32	Photo	16	273
33	Photo	16	273

34	Photo	16	273
35	Photo	16	273
36	Photo	16	273
37	Photo	16	273
38	Photo	16	273
39	Photo	16	273
40	Photo	16	273
41	Photo	16	273
42	Photo	16	273
43	Photo	16	273
44	Photo	16	273
45	Photo	16	273
46	Photo	16	273
47	Photo	16	273
48	Photo	16	273
49	Photo	16	273
50	Photo	16	273
51	Photo	16	273
52	Photo	16	273
53	Photo	16	273
54	Photo	16	273
55	Photo	16	273
56	Photo	16	273

57	Photo	16	273
58	Photo	16	273
59	Photo	16	273
60	Photo	16	273
61	Photo	16	273
62	Photo	16	273
63	Photo	16	273
64	Photo	16	273
65	Photo	16	273
66	Photo	16	273
67	Photo	16	273
68	Photo	16	273
69	Photo	16	273
70	Photo	16	273
71	Photo	16	273
72	Photo	16	273
73	Photo	16	273
74	Photo	16	273
75	Photo	16	273
76	Photo	16	273
77	Photo	16	273
78	Photo	16	273
79	Photo	16	273
80	Photo	16	273

81	Photo	16	273
82	Photo	16	528
83	Photo	16	528
84	Photo	16	ID
85	Photo	16	ID
86	Photo	16	ID
87	Photo	16	ID
88	Gun and Box	16	505
88A	Bullet fragments	16	505
88B	Casing	16	505
88C	Cartridge with strike on end	16	505
88D	Unfired cartridges	16	505
89	Box of bullets w/6 missing out of box	16	774
90	Victim's shirt and shorts	16	478
91	Sexual assault (rape kit)	16	479
91A	Vaginal swabs	16	513
91B	Rectal swabs	16	513
91C	Victim's underwear	16	511
91D	Buccal swabs	16	513
91E	Swabs	16	513
92	Receipt from Publix	16	540
93	Receipt from Trader World	16	541
94A	Defendant's Buccal swab - Orig Pkg.	16	517

94B	Dried DNA extracts	16	517
95	Wal-Mart receipt from Virginia	16	540
96	Defendant's Clothes	16	539
97	NyQuil Bottle, Cap, Dosage Cup	503	503
98	EconoLodge CD	16	561
99	Publix CD 1	16	557
100	Publix CD 2	16	557
101	Officer Moree's in-car camera & audio	16	379
102	Voice messages	16	236
103	Defendant's Statement 1	16	ID
104	Defendant's Statement 2	16	ID
105	Defendant's Miranda Form	16	ID
106	Defendant's Written Statement	16	ID
107	Aerial photo	16	373
108	Nitroglycerine refusal	16	426
109	(NONE)		
110	Pillow case #1	16	540
111	Pillow case #2	16	540
112	Swabs from Saturn Vue	16	541
113	Leatherman	16	ID
114	Leatherman case	16	ID
115	Bowling Alley Diagram	16	ID
116	Blood sample from victim	16	480
117	Photo	16	ID

118	Photo	16	293
119	Photo	16	ID
120	Photo	16	293
121	Photo	16	293
122	Photo	16	ID
123	Photo	16	ID
124	Photo	16	293
125	Photo	16	293
126	Photo	16	293
127	Photo	16	ID
128	Photo	16	ID
129	Photo	16	ID
130	Photo	16	293
131	Photo	16	ID
132	Letter	299	ID
133	Photo	768	769
134	(NONE)		
135	(NONE)		
136	Photo	768	769

<u>E X H I B I T S</u>			
<u>DEFENDANT</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	8 x 10 photo	159	ID
2	Display board - body	735	ID
3	Display board - brain	735	ID

<u>E X H I B I T S</u>			
<u>COURT</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Goose Creek statement coversheet	77	95 *
2	Fraley two-page statement	77	96 *
3	Transcript	78	94 *
4	1/20/15 MUSC letter to Williams	78	78 *
5	5/27/15 MUSC letter to Gay	78	
6	DVD interview of defendant - 1 of 2	78	93 *
7	DVD interview of defendant - 2 of 2	78	93 *
8	Evidence control form	181	
9	Chain of evidence stipulation	181	
10	Note from juror	463	
11	Dr. Bennett cease and desist	728	
12	Case reference jury charge 1 and 2	808	
13	Jury question	875	
14	Definition of murder	876	

* Court's Exhibits admitted for purposes of hearing only.

1 Oh, Number 2 I believe should be something that you could
2 cover in your general voir dire.

3 THE COURT: Please read it to me. Which one is it?

4 MS. GAY: Your duty if selected as a juror is to judge
5 guilt or innocence based on the evidence. It is my duty as
6 a judge to determine punishment if you are not -- if you
7 vote guilty. The law does not permit you to consider the
8 issues of punishment because there are factors having
9 nothing to do with this trial that will determine leniency
10 or harshness. Is there anybody here who would vote not
11 guilty no matter what the evidence indicates merely because
12 this crime may result in a prison sentence?

13 THE COURT: All right. I ask that just in my general
14 last question, is there any reason you can't follow the law.
15 What other -- what else ---

16 MS. GAY: The other one is have anyone -- have you or
17 anyone that you know been falsely accused of a crime. So I
18 think it's -- it's overly broad and not necessary but.

19 THE COURT: All right. I ask that in a more general
20 way. All right. Any other objection?

21 MS. GAY: No other objections, Your Honor.

22 MS. WILLIAMS: Your Honor, we were given a copy of
23 defendant's voir dire this morning. And the only one we
24 have a problem with is the last question about the assertion
25 of the insanity defense.

1 We don't have a problem with a question involving the
2 assertion of insanity defense, but there is a lot of
3 language in there about whether a jury would -- juror would
4 hesitate or have other issues with it. And I don't ---

5 THE COURT: All right. So what is the issue with --
6 where are we as far as the mental illness issue and the
7 insanity defense?

8 MS. WILLIAMS: So, Your Honor, defendant is asking for
9 a hearing initially on the issue of competency; and the
10 doctor will be here at two o'clock for that hearing.

11 And she will also cover broadly the issues of criminal
12 responsibility and not guilty -- or guilty but mentally ill,
13 which the standards are in my brief.

14 Then during testimony the doctor will testify about the
15 issue of sanity and mental illness. And I think at the
16 conclusion of all of the evidence we would be arguing that
17 that charge not be given based on everything that Your Honor
18 hears, and she will be arguing that that charge is given.
19 If the charge is given then it is a question for the jury.

20 THE COURT: All right.

21 MS. WILLIAMS: So Dr. Gomez who did two evaluations and
22 found him competent and legally sane will testify today and
23 tomorrow morning.

24 THE COURT: All right. And just for scheduling what is
25 your -- what is -- how are we going to proceed once we pick

1 three, seven. One, three, seven has been selected as the
2 foreperson.

3 (WHEREUPON, jury enters courtroom 7/13/15, 12:18 p.m.)

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen, you have been selected as the
6 jury to try this case. It is lunchtime, and so I typically
7 try to break somewhere between 12:00 and 12:30 every day.
8 So it is an appropriate time for us to break for lunch.

9 I also have some matters unrelated to this case that I
10 must take up outside of your presence, so I have determined
11 that we are going to break for the day and begin in the
12 morning. We will begin in the morning.

13 Ladies and gentlemen, please understand I am going to
14 give you just some general instructions for you to follow
15 over the evening hour. And, ladies and gentlemen, these
16 will be my general admonitions to you. My admonitions to
17 you. So please listen very carefully because these rules do
18 apply throughout the progress of this case.

19 Until you have been discharged from service in this
20 case, until I tell you otherwise, you may not perform an
21 investigation, research or experiment of any kind on your
22 own, either individually or as a group.

23 You may not consult any dictionaries or any other
24 reference material for the meaning of words or any
25 encyclopedias for the general information on the subjects of

1 this trial.

2 You may not look up anything on the Internet or
3 elsewhere concerning any matter in this case. That includes
4 the attorneys involved, the witnesses that I read to you,
5 the defendant, or any of the location names.

6 Ladies and gentlemen, do not go to the scene where any
7 of the events that are the subject of this trial are alleged
8 to have taken place.

9 You may not use any Internet maps or Google Earth or
10 anything of that nature to search for you or view any place
11 discussed in this case.

12 You must not have any discussion regarding this case.
13 And, ladies and gentleman, that means with each other. You
14 may not discuss this case with each other.

15 You may not discuss this case when you go home.
16 Sometimes I know your spouse or significant other is going
17 to wonder what you've been doing. You cannot discuss this
18 case with anyone. That does include face-to-face
19 discussions but it also includes any texting, blogging, any
20 entry on Facebook or any other social Internet media site.

21 Ladies and gentlemen, simply put, you may not discuss
22 this case with anyone in any fashion until I tell you
23 otherwise. Please understand that I give these directions
24 as part of my responsibility to preside over this case and
25 to insure the fairness to the parties in this case. Your

1 actions could jeopardize the result of this trial, so please
2 understand that is why I give these instructions. You must
3 follow them.

4 If you become aware of another juror's violations you
5 must report that matter to me immediately. Ms. Roberson,
6 you have been selected as the foreperson in this case. And
7 what that simply means, you have a couple of additional
8 duties.

9 You are the jury's spokesperson here in court. So at
10 any time if any of the remaining of you have any concerns or
11 questions, please let the foreperson know. She will always
12 be seated next to a bailiff and we will address the matter
13 immediately.

14 To my two alternates, those are your assigned seats.
15 You can switch up or if you -- if that's the one you want.
16 But those are -- those two end seats are yours.

17 And as the foreperson that is your assigned seat.

18 The rest of you when you come in the morning can sit
19 with the exception of those three seats.

20 You may have noticed when you came in this time the
21 attorneys and the parties involved in this case and the
22 members of the audience were standing. This is out of
23 respect for your new position.

24 You are now the judges of the facts of this case. So
25 please come in and have a seat because everyone will remain

1 standing until all 14 of you are seated.

2 Ladies and gentlemen, we will be in the process if they
3 haven't already done it collecting contact information for
4 you in case something should arise that we need to address
5 with you immediately.

6 We will need you back ready to begin the trial of this
7 case at 9:30 in the morning. 9:30 in the morning. Before
8 you leave the bailiffs will instruct you of where to report
9 and how to report so that you will know what door to come in
10 and all of those practical issues.

11 Please be mindful and respectful of each other's time.
12 We can't begin until all 14 of you are here. So please be
13 respectful because we cannot begin until all of you are
14 present.

15 Ladies and gentlemen, please remember my admonition. I
16 know it's -- we live in such a fast-paced and technology
17 driven world that it does become very difficult for us. We
18 always want to know what is happening. But we cannot do
19 that in this trial.

20 Do not discuss this case with anyone in any form or
21 fashion in any media until I tell you otherwise. Please
22 have a wonderful evening. I will see you back at ...?

23 JURY PANEL: 9:30 (in unison.)

24 THE COURT: 9:30 in the morning. Thank you.

25 Please rise for the jury.

1 (WHEREUPON, jury exits the courtroom.)

2 THE COURT: Thank you. Be seated. We are down until
3 2:00?

4 MS. WILLIAMS: Yes, Your Honor, just a quick question.
5 The statement by the defendant that is videotaped the State
6 is not offering that statement. It's self-serving hearsay.
7 And it is not admissible by Ms. Gay because she is not a
8 party appointment. We are only having the hearing because
9 if he testifies I think we have to prove it is voluntary.

10 Do you want us to play the tape at the hearing, or have
11 you had an opportunity to watch that? I know ---

12 THE COURT: I have not had an opportunity. You have
13 given it to my clerk?

14 MS. WILLIAMS: We did, Your Honor.

15 THE COURT: Okay. So I will view that over the --- how
16 long is it?

17 MS. WILLIAMS: It is a little over an hour.

18 THE COURT: I will view it over the lunch hour.

19 MS. WILLIAMS: And then the other thing just for
20 housekeeping purposes, the tape that is of the child for the
21 forensic interview we probably will not be offering that,
22 but we won't know until after the child testifies. And we
23 were anticipating having that short hearing like Wednesday
24 morning if it is necessary.

25 So you have that tape if you want to watch it. But ---

1 THE COURT: All right.

2 MS. WILLIAMS: --- that hearing would not be today.

3 THE COURT: All right. So what do we have today, just
4 for scheduling?

5 MS. WILLIAMS: We have a Denno hearing for the
6 voluntariness of the taped statement. Then we have a short
7 statement that he made that wasn't in response to
8 interrogation.

9 So a Denno, the prior bad acts that Ms. Gay, her -- the
10 subject of her motion in limine. I think everything else is
11 agreed upon.

12 MS. GAY: Well, as far as the statements he has also a
13 written statement. We would just discuss that. I think
14 they did that as part of the ---

15 THE COURT: All right.

16 MS. GAY: --- recorded statement.

17 THE COURT: Then we will address all of the statements
18 at the same time. All right. 2:00 o'clock. All right.
19 Thank you.

20 (WHEREUPON, recess for lunch 7/13/15.)

21 (WHEREUPON, resumed 7/13/15 after lunch.)

22 (WHEREUPON, Court's Exhibit 1, Goose Creek statement
23 coversheet was marked for identification.)

24 (WHEREUPON, Court's Exhibit 2, Fraley two-page statement,
25 was marked for identification.)

1 (WHEREUPON, Court's Exhibit 3, transcript, was marked for
2 identification.)

3 (WHEREUPON, Court's Exhibit 4, 1/20/15 MUSC letter to
4 Williams, was marked for identification.)

5 (WHEREUPON, Court's Exhibit 5, 5/27/15 MUSC letter to Gay,
6 was marked for identification.)

7 (WHEREUPON, Court's Exhibit 6, DVD interview of defendant,
8 disc one of two, was marked for identification.)

9 (WHEREUPON, Court's Exhibit 7, DVD interview of defendant,
10 disc two of two, was marked for identification.)

11 THE COURT: Ms. Gay, my office received notice that you
12 needed some additional time. Are you ready to go forward at
13 this time?

14 MS. GAY: Yes, ma'am, we are ready to go forward for
15 the competency evaluation. I might need to discuss with my
16 office anything before we take on the next step having to do
17 with the statement.

18 THE COURT: All right. Is the State ready?

19 MS. WILLIAMS: Yes, Your Honor. The State calls Dr.
20 Anna Gomez. And, Your Honor, we previously marked Dr.
21 Gomez's evaluation as State's 4 for competence. And I think
22 this will be admitted as for the purposes of this hearing
23 without objection. Court's Exhibit. I'm sorry.

24 (WHEREUPON, Court's Exhibit 4 was admitted for purposes of
25 this hearing only.)

1 (WHEREUPON, witness was duly sworn.)

2 THE CLERK: Please have a seat. State your full name
3 and spell your last name for the record.

4 MS. GOMEZ: My name is Anna Gomez, G-O-M-E-Z.

5 MS. WILLIAMS: And, Your Honor, for the purpose of this
6 hearing Ms. Gay is stipulating that she is an expert in the
7 field of forensic psychiatry so ---

8 THE COURT: Is that correct, you stipulate?

9 MS. GAY: I stipulate to that, Your Honor.

10 THE COURT: I have qualified Dr. Gomez on more
11 occasions than I can remember, so she will be so qualified.
12 Good to see you.

13 MS. GOMEZ: Likewise.

14 MS. WILLIAMS: Thank you, Your Honor. For the trial we
15 may go through her qualifications, but for this -- for the
16 purpose of this hearing it is not necessary.

17 THE COURT: And thank you for that stipulation, Ms.
18 Gay.

19 MS. GAY: Thank you, Your Honor.

20 **DIRECT EXAMINATION BY MS. WILLIAMS OF ANNA GOMEZ (IC):**

21 Q. Dr. Gomez, did you receive an order from this court to
22 examine the defendant and did you do so?

23 A. Yes.

24 Q. And when was that examination and what was it for?

25 A. The original examination was a competency to stand

DIRECT EXAMINATION BY MS. WILLIAMS OF ANNA GOMEZ (IC):

1 trial evaluation which was conducted on January 9, 2015.

2 Q. And who was present when that examination was done?

3 A. So in South Carolina you have to have two examiners, so
4 it was myself and the other examiner was a social worker who
5 is frequently a second examiner in our evaluations at MUSC.

6 Q. Do you have the name of that person by any chance?

7 A. Oh, yes, her name is Molly Dadin.

8 Q. D-A-V-I-N?

9 A. D-A-D-I-N.

10 Q. And did you meet with the defendant on that day?

11 A. Yes.

12 Q. And are you familiar with the legal standards for
13 competency?

14 A. Yes.

15 Q. And what did you review in order to get ready for that
16 evaluation?

17 A. There were a variety of records including an arrest
18 record, police records, which included arrest warrant,
19 statements, police reports. There's also some medical
20 records including records from the VA, MUSC, Regional Care
21 Hospital, and Centerville Clinic.

22 Q. And did you feel like you had adequate information
23 before the examination in order to conduct it?

24 A. Yes.

25 Q. And what was done in order to determine if the

1 defendant met the legal standards that you understood?

2 A. So that is the competency portion of the evaluation
3 which involves asking about basic legal concepts, courtroom
4 personnel, plea bargaining, trial, witnesses, evidence, and
5 ascertaining whether the individual had a factual and
6 rational understanding of that including their charges and
7 the allegations.

8 Q. Okay. So you went through with him what the charges
9 were, what the possible penalties were, ---

10 A. Correct.

11 Q. --- what a plea bargain was?

12 A. Correct.

13 Q. Did you go through what the duties of the judge, his
14 attorney and the solicitor were?

15 A. Yes.

16 Q. Did you feel like he appreciated the seriousness of the
17 charges?

18 A. Yes.

19 Q. And knew how to control his behavior in court; did you
20 talk about what happens in court?

21 A. Yes.

22 Q. And with regard to his ability to help his defense
23 attorney did you also talk to him about the role of his
24 defense attorney?

25 A. Yes.

1 Q. And did he appear to trust or accept that his attorney
2 had the job of getting the case together?

3 A. Correct.

4 Q. Is there any evidence at all that the defendant is
5 mentally retarded?

6 A. No.

7 Q. Is there evidence that he suffered from mental illness?

8 A. Yes.

9 Q. And what mental illness would you say he suffered from?

10 A. So there was two diagnoses in the report, alcohol
11 dependence in a controlled environment and major depressive
12 disorder recurrent.

13 Q. And did you feel that the mental illness would prevent
14 the defendant from having the capacity to distinguish
15 between moral, legal right from wrong at time of the crime?

16 MS. GAY: Your Honor, I think this is not this
17 evaluation. There two separate evaluations.

18 MS. WILLIAMS: I usually ask a couple of questions
19 about that if that's okay.

20 THE COURT: I don't need -- let's practice -- because I
21 am not going to do this the entire trial. If you have an
22 objection you need to state the basis for your objection;
23 and Ms. Williams, please let me make the ruling. If I need
24 any additional information I will be happy to inquire.
25 Overruled.

1 MS. GAY: Relevance ---

2 THE COURT: Overruled. All right. You may continue.

3 Ms. Williams ask your question again. Thank you.

4 BY MS. WILLIAMS:

5 Q. Did the mental illness prevent this defendant in your
6 expert opinion from having the capacity to distinguish moral
7 or legal right from wrong at the time of the crime?

8 A. My opinion is that it did not. And that was not -- I
9 just want to clarify that was not that evaluation on
10 January; ---

11 Q. But ---

12 A. --- but later, yes.

13 Q. Yes. And did you have an opinion about his ability to
14 conform his conduct to the requirements of law?

15 A. Yes.

16 Q. And what was that opinion?

17 A. My opinion is that he was able to conform his conduct
18 to the requirements of the law on the date of the
19 allegations.

20 Q. And did you in your expert opinion think that the
21 mental illness affected the defendant's competency to stand
22 trial?

23 A. No.

24 Q. And what is your opinion to a reasonable degree of
25 medical certainty to his competence in general?

1 A. My opinion is that Mr. Fraley has the capacity for a
2 rational and factual understanding of the legal situation
3 and the legal proceedings and the capacity to assist counsel
4 is his defense.

5 MS. WILLIAMS: Nothing further, Your Honor.

6 THE COURT: Ms. Gay.

7 MS. GAY: Thank you.

8 **CROSS-EXAMINATION BY MS. GAY OF DR. GOMEZ: (IC)**

9 Q. You said that as part of your evaluation process you
10 reviewed the VA records?

11 A. Yes.

12 Q. And you were able to determine that Mr. Fraley is in
13 fact on disability for his mental disorders?

14 A. I believe that is correct.

15 Q. And with those -- you said major depressive disorder.
16 Do you have information in your paperwork as to what the
17 conditions that he suffers from that for which he is
18 disabled; isn't it PTSD?

19 A. No, it is not PTSD.

20 Q. Not PTSD. Is it just depression?

21 A. It is depression and a medical issue.

22 Q. What is the medical issue?

23 A. I just have it as a cardiac -- a heart problem.

24 Q. So at the time that you were evaluating him in January
25 he was brought to you from the county jail?

1 A. Yes.

2 Q. And that was approximately -- well, at least five or --
3 four or five months after the incident that occurred that
4 brought us all to court today?

5 A. Yes.

6 Q. And at the time that you were evaluating him he seemed
7 pretty committed and making sense in January?

8 A. Yes.

9 Q. So this particular evaluation that we are talking about
10 which is a competency to stand trial evaluation on that date
11 in January he appeared to be competent and we are here today
12 to establish that he is still competent to stand trial?.

13 A. That's my understanding.

14 MS. GAY: I have no further questions, Your Honor.

15 THE COURT: Anything further?

16 MS. WILLIAMS: No, Your Honor.

17 THE COURT: You may step down. Thank you.

18 DR. GOMEZ: Can I be excused or ...?

19 MS. WILLIAMS: She is going to come back and testify
20 tomorrow about the McNaughton issues.

21 THE COURT: All right.

22 MS. WILLIAMS: As far as the State is concerned she can
23 be excused unless the court has further inquiry.

24 THE COURT: Any objection to her being excused?

25 MS. GAY: I do not object, Your Honor.

1 THE COURT: What time do you need her back?

2 MS. WILLIAMS: She should be back here probably by 9:00
3 if the jury is coming back at 9:30 just to kind of be on the
4 safe side. She's going to be the first witness.

5 THE COURT: We will see you in the morning. The jury
6 is coming back at 9:30 and then we will have some openings
7 so.

8 MS. WILLIAMS: And, Your Honor, our understanding is
9 that Ms. Gay isn't really challenging his competency today.
10 That is why she didn't meet with him again today. So just
11 so we are ---

12 THE COURT: Are you challenging his com- -- just
13 because when she leaves she won't be back until in the
14 morning.

15 MS. GAY: No, I am not challenging his competency
16 today.

17 THE COURT: What are you challenging?

18 MS. GAY: I think it is important for us to put on the
19 record that she believed that he was evaluated and that she
20 has found him competent; and I believe that the purpose of
21 the hearing was to put that in the record, Your Honor.

22 Because he did have mental problems at the time of, so
23 we want to show that there was a change. So I am not
24 objecting to her findings.

25 THE COURT: All right. Thank you.

State vs. Gary Fraley

1 DR. GOMEZ: Okay. Thank you very much.

2 THE COURT: See you in the morning. All right. Ms.
3 Williams.

4 MS. WILLIAMS: Your Honor, at this time we would ask
5 the court to make a finding that the defendant is competent
6 to stand trial based on the evaluation by Dr. Gomez and her
7 extensive research into his background, her review of all of
8 the materials in the case, a review of his medical records,
9 that she found that he was able to understand the
10 proceedings against him and he was able to meaningfully
11 assist his attorney. We would just ask that you find him
12 competent to stand trial.

13 THE COURT: All right. Ms. Gay.

14 MS. GAY: Your Honor, I am not presenting any evidence
15 to the contrary.

16 THE COURT: All right. I find that Mr. Fraley is
17 competent to stand trial. What is the next issue?

18 MS. WILLIAMS: The next issue -- Your Honor, the
19 State's position is that the statement that the defendant
20 gave, the hour-and-a-half statement, is self-serving and it
21 is hearsay. And so we are ---

22 THE COURT: And that is on the video that you gave me?

23 MS. WILLIAMS: Yes, Your Honor. And that we are not
24 offering it, but we -- we would like for the court to have a
25 finding that it is voluntary so that if he takes the stand

1 we can impeach him with it.

2 Ms. Gay is trying to get in the statement for a number
3 of hearsay exceptions which of course the State does not
4 agree with. But we are confused as to why we are having a
5 Denno hearing if Ms. Gay wants to admit the statement.

6 So, you know, if she's -- it just seems illogical. So
7 right now the State's position is that the statement is not
8 admissible because it is hearsay; however, if he takes the
9 stand I think even that -- that he can be impeached with it
10 as long as the court -- or there is an agreement that it is
11 voluntary.

12 THE COURT: Do you find that the statement was freely
13 and voluntarily given?

14 MS. GAY: Well, I think the problem that I have, Your
15 Honor, is that my client tells me that he has absolutely no
16 memory of giving the statement ---

17 THE COURT: All right. Then let's have the hearing. I
18 guess that is why we are having it.

19 MS. GAY: And then I think we should make a finding and
20 then we should discuss whether or not it is admissible.

21 MR. POULOS: The State calls Investigator Sean
22 McWilliams.

23 (WHEREUPON, the witness was duly sworn.)

24 THE CLERK: State your full name for the record and
25 spell your last name.

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS (IC)

1 MR. MCWILLIAMS: Sean Michael McWilliams,
2 M-C-W-I-L-L-I-A-M-S.

3 THE COURT: Mr. Poulos.

4 MR. POULOS: Thank you, Your Honor.

5 **DIRECT EXAMINATION BY MR. POULOS OF INVESTIGATOR SEAN**
6 **MCWILLIAMS (IC):**

7 Q. Good afternoon, Mr. McWilliams.

8 A. Good morning -- good afternoon.

9 Q. Where do you work?

10 A. Goose Creek Police Department.

11 Q. And what is your position there?

12 A. I am a general investigator.

13 Q. How long have you been with the Goose Creek Police
14 Department?

15 A. Since February of 2006.

16 Q. What do your present duties entail as investigator?

17 A. I investigate any number of different crimes.

18 Q. Is one of your duties to supervise investigations?

19 A. Yes.

20 Q. Were you employed in that present capacity in August of
21 2014?

22 A. I was a general investigator then.

23 Q. Were you involved in the investigation of Gary Fraley
24 for the events of August 5th, 2014?

25 A. Yes.

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS (IC)

1 Q. When did you first become involved in that
2 investigation?

3 A. I received a phone call that night that there was a
4 shooting and hostage situation at the bowling alley and was
5 advised to respond there.

6 Q. Did you subsequently interview him on August 6th after
7 his apprehension?

8 A. I did.

9 Q. Do you recall the time and location of that interview?

10 A. It was in the morning. It was in the interview room in
11 the criminal investigations division at the Goose Creek
12 Police Department.

13 Q. Who else was present during the interview?

14 A. Investigator Nicholas Powell.

15 Q. At that time did the defendant appear to be under the
16 influence of alcohol or drugs to the extent that would
17 impair his ability to understand what was happening?

18 A. No.

19 Q. Did he at any point display any apparent physical or
20 mental disability that would impair his ability to
21 understand what's happened?

22 A. No.

23 Q. Can you describe the physical surroundings of the
24 interview room, please.

25 A. It is a room with a round table, four chairs. It has a

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS (IC)

1 window between it and another interview room that has a
2 waste basket. That is it.

3 Q. Is it well lit?

4 A. It is well lit.

5 Q. Is it air-conditioned?

6 A. Yes.

7 Q. Is he provided a chair?

8 A. Yes.

9 Q. How long approximately was the interview?

10 A. Between -- it was approximately three to four hours.

11 Q. Were any breaks taken?

12 A. Yes.

13 Q. How many?

14 A. At least one that I recall.

15 Q. Was the defendant provided access to restrooms, food,
16 and drink?

17 A. Yes.

18 Q. Were any threats or promises made in exchange for the
19 statement you received from Mr. Fraley?

20 A. No.

21 Q. Was he under arrest at the time of the interview?

22 A. Yes.

23 Q. Was he advised of the general nature of the
24 investigation or was he aware of it?

25 A. Yes.

1 Q. Was he advised of his rights under Miranda prior to any
2 questioning regarding those crimes?

3 A. Yes.

4 Q. Who advised him of those Miranda rights?

5 A. Investigator Powell.

6 Q. And were you present when Investigator Powell advised
7 him of those rights?

8 A. I overheard it on the monitor.

9 Q. Okay. So you were outside of the room?

10 A. Yes.

11 Q. But you heard the rights given?

12 A. Yes.

13 Q. Did the defendant appear to have any difficulty
14 understanding those rights or answering?

15 A. No.

16 Q. During the course of your interview did the defendant
17 appear to be rational and responsive?

18 A. Yes.

19 Q. Was he asked if he wanted to speak to an attorney
20 before speaking to the police?

21 A. He was advised of his right to have an attorney.

22 Q. To the best of your knowledge was the statement freely
23 and voluntarily given?

24 A. Yes.

25 Q. Was the statement audio or video recorded?

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS (IC)

1 A. It was video and audio recorded.

2 Q. For purpose of the hearing I am going to show you these
3 two disks marked Court's Exhibit 6 and 7. Tell me if you
4 recognize these disks, please.

5 A. I do.

6 Q. And what do you recognize them to be?

7 A. These are the digital video and audio recording of the
8 interview with Mr. Fraley.

9 Q. How do you know those are the recordings?

10 A. I watched them and I placed my initials and the date on
11 them.

12 Q. Do they fairly and accurately represent the statement
13 given by the defendant?

14 A. Yes.

15 MR. POULOS: I offer those as Court's Exhibits 6 and 7,
16 Your Honor.

17 THE COURT: Ms. Gay, there's no objection; I've already
18 viewed ---

19 MS. GAY: No, Your Honor.

20 THE COURT: Six and seven for the purpose of this
21 hearing.

22 (WHEREUPON, Court's Exhibit 6 admitted for this hearing
23 only.)

24 (WHEREUPON, Court's Exhibit 7 admitted for this hearing
25 only.)

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS (IC)

1 Q. Investigator, have you also reviewed transcripts
2 provided of this interview?

3 A. Yes.

4 Q. And were those accurate?

5 A. Yes.

6 MR. POULOS: Your Honor, at this time I would like to
7 offer for the Court's review Court's Exhibit 3 which is the
8 transcripts of the recorded interview.

9 THE COURT: Any objection?

10 MS. GAY: No, Your Honor.

11 THE COURT: And I have been -- I was provided that over
12 the lunch hour as well. Thank you.

13 (WHEREUPON, Court's Exhibit Number 3, admitted for purposes
14 of this hearing.)

15 BY MR. POULOS:

16 Q. Did the defendant also make a written statement during
17 the course of this interview, Investigator?

18 A. He did.

19 Q. Did he sign it?

20 A. He did.

21 Q. Did he acknowledge his Miranda rights in writing prior
22 to writing that statement?

23 A. He did.

24 Q. How did he do it?

25 A. He -- we have a statement cover sheet that contains

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS (IC)

1 Miranda advisements. Next to each Miranda advisement he
2 signed his initials that he understood.

3 Q. I am going to show you Court's Exhibit 1 for
4 identification. Do you recognize this document?

5 A. Yes.

6 Q. And what is that document?

7 A. That is the coversheet that he completed prior to
8 filling out the statement.

9 Q. Is it a fair and accurate representation of the
10 document he signed?

11 A. It is the document he signed.

12 MR. POULOS: And I would offer that as Court's
13 Exhibit 1, Your Honor.

14 THE COURT: Any objection?

15 MS. GAY: No, Your Honor.

16 THE COURT: Court's 1. Thank you.

17 (WHEREUPON, Court's Exhibit 1 was admitted for this
18 hearing.)

19 BY MR. POULOS:

20 Q. Lastly, Investigator, I am going to show you what is
21 marked as State's Exhibit 2 -- excuse me, Court's Number 2.
22 Do you recognize that document?

23 A. This is the statement he prepared after completing the
24 statement coversheet.

25 MR. POULOS: I would offer that as Court's Exhibit 2,

CROSS-EXAMINATION BY MS. GAY OF SEAN MCWILLIAMS (IC):

1 Your Honor.

2 THE COURT: All right. Ms. Gay, anything further
3 regarding that document?

4 MS. GAY: I have no objections, Your Honor.

5 THE COURT: All right.. Thank you.

6 (WHEREUPON, Court's Exhibit Number 2 was admitted for this
7 hearing only.)

8 MR. POULOS: I have no further questions, Your Honor.

9 THE COURT: Ms. Gay.

10 MS. GAY: If you don't mind may I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 **CROSS-EXAMINATION BY MS. GAY OF INVESTIGATOR SEAN MCWILLIAMS**
14 **(IC):**

15 Q. So one -- one and two are the actual recorded
16 statements. Three is the transcript. And this one is not
17 marked yet. One and two actually are the advisement form
18 and the actual written statement, and then three is this --
19 and these are five and six -- six and seven. Y'all have got
20 them numbered strange.

21 But, okay, so you were the person who heard another
22 officer read him his Miranda rights while you -- you said
23 you were watching that but then you heard it.

24 A. Yes.

25 Q. And then and this is the video that was going. Your

CROSS-EXAMINATION BY MS. GAY OF SEAN MCWILLIAMS (IC):

- 1 testimony was that it was four hours long for the interview.
2 And I understand these videos are maybe about an hour. So
3 there was some point of this interview that is not on those
4 videos?
5 A. No.
6 Q. All of it is on the videos?
7 A. Yes. When we interviewed him it is all on video.
8 Q. Okay. But there were some preliminary stuff before you
9 turn the camera on?
10 A. And when -- no, we didn't talk to him prior to turning
11 the camera on. We didn't question him at all. What you see
12 on the camera is the extent of our questioning of him.
13 Q. Okay. And so this form that is signed by you and also
14 signed by him?
15 A. Yes.
16 Q. And there is no other officer that signed this form?
17 A. No.
18 Q. Okay. And then did you write this for him or did he
19 write this for himself? This is ---
20 A. That is his handwriting.
21 Q. This is his handwriting. And then I believe you may
22 have written some questions at the end for him to ---
23 A. Yes.
24 Q. --- answer?
25 A. Yes, the ---

CROSS-EXAMINATION BY MS. GAY OF SEAN MCWILLIAMS (IC):

1 Q. And this is you right here (pointing); ---

2 A. Yes.

3 Q. --- this is your signature? Okay. And during that
4 period of time do you recall Mr. Fraley telling you that he
5 hadn't eaten in eight days?

6 A. I recall that he said that, yes.

7 Q. Do you remember him telling you that he was so
8 depressed that he -- and that he had PTSD?

9 A. I do recall him saying he had PTSD.

10 Q. So in the beginning of this interview you would agree
11 with me that this gentleman was telling you that he was in
12 distress on some level emotionally and also he hadn't eaten
13 in eight days?

14 A. Yes.

15 Q. Okay. And then but you -- but yet you still continued
16 on with the interview and didn't stop to let him seek
17 medical attention or even eat?

18 A. He had been taken to the doctor the night before.

19 Q. Okay. So it was your feelings that since he had been
20 at a doctor the night before that even though he was telling
21 you that he was mentally distressed -- and there is a point
22 in there I think it is on the top of Page 3, I am so
23 depressed I think I don't even see what I'm doing. Even
24 though he said all of that to you, you still continue with
25 the interview?

CROSS-EXAMINATION BY MS. GAY OF SEAN MCWILLIAMS (IC):

1 A. Yes.

2 MS. GAY: I don't believe I have any further questions
3 for this witness, Your Honor.

4 THE COURT: Mr. Poulos?

5 MR. POULOS: Nothing further, Your Honor, from the
6 State.

7 THE COURT: You may step down. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Is he free to go for today?

10 MR. POULOS: Yes, ma'am.

11 THE COURT: I am sure I will see you later in the week.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Call your next witness.

14 MR. POULOS: The State calls David Mitchum, Officer
15 David Mitchum.

16 (WHEREUPON, witness was duly sworn.)

17 THE CLERK: Have a seat. State your full name and
18 spell your last name for the record.

19 MR. MITCHUM: David Michael Mitchum, M-I-T-C-H-U-M.

20 THE COURT: Mr. Poulos.

21 MR. POULOS: Thank you, Your Honor.

22 **DIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):**

23 Q. Officer, where do you work?

24 A. Goose Creek Police Department.

25 Q. How long have you been with the Goose Creek PD?

DIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):

1 A. I suspect around three years now.

2 Q. Okay. What are your present duties and position there?

3 A. I am currently in the strategically assigned officers,
4 which is short for SAO's, apparently to help the road and we
5 concentrate on high crime areas.

6 Q. And what position did you hold in August of 2014?

7 A. I was still in SAO's and also a member of the SWAT ---

8 Q. Same position? Were you involved in the apprehension
9 of Gary Fraley on August 5th, 2014?

10 A. Yes, sir, I was.

11 Q. Officer, were you later tasked with guarding him at the
12 Trident Hospital as he was being evaluated?

13 A. Yes, sir, I was.

14 Q. Was he under arrest at that time?

15 A. Yes, sir.

16 Q. Did the defendant make any statements regarding this
17 case to you while at the hospital?

18 A. Yes, sir.

19 Q. Approximately what time did he make those statements?

20 A. Probably would have been between 7:15 and 8:30, 8:45.

21 Q. Was anyone else present with you when he made those
22 statements?

23 A. No, sir.

24 Q. Did Mr. Fraley at any time appear to be under the
25 influence of alcohol or drugs to an extent that would impair

DIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):

- 1 A. I suspect around three years now.
- 2 Q. Okay. What are your present duties and position there?
- 3 A. I am currently in the strategically assigned officers,
4 which is short for SAO's, apparently to help the road and we
5 concentrate on high crime areas.
- 6 Q. And what position did you hold in August of 2014?
- 7 A. I was still in SAO's and also a member of the SWAT ---
- 8 Q. Same position? Were you involved in the apprehension
9 of Gary Fraley on August 5th, 2014?
- 10 A. Yes, sir, I was.
- 11 Q. Officer, were you later tasked with guarding him at the
12 Trident Hospital as he was being evaluated?
- 13 A. Yes, sir, I was.
- 14 Q. Was he under arrest at that time?
- 15 A. Yes, sir.
- 16 Q. Did the defendant make any statements regarding this
17 case to you while at the hospital?
- 18 A. Yes, sir.
- 19 Q. Approximately what time did he make those statements?
- 20 A. Probably would have been between 7:15 and 8:30, 8:45.
- 21 Q. Was anyone else present with you when he made those
22 statements?
- 23 A. No, sir.
- 24 Q. Did Mr. Fraley at any time appear to be under the
25 influence of alcohol or drugs to an extent that would impair

DIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):

1 his ability to understand what he was saying or who he was
2 saying it to?

3 A. No, sir.

4 Q. Did he appear at any time to have any physical or
5 mental disabilities that would impair his ability to
6 understand what he was saying and who he was saying it to?

7 A. No, sir.

8 Q. Can you please describe the hospital surrounding at the
9 time. Where were you?

10 A. We were in a room. I was in a chair to the left of
11 him. He was laid down in a hospital bed with a handcuff on.

12 Q. Was he ever denied access to a bathroom or to drink?

13 A. No.

14 Q. Did you make any threats or promises in exchange for a
15 statement?

16 A. Nope.

17 Q. Did you ask the defendant any questions at all?

18 A. Not at all.

19 Q. Did you interrogate him in any way?

20 A. No, sir.

21 Q. Did you attempt to engage him in any sort of
22 conversation?

23 A. No, sir.

24 Q. Why not?

25 A. Because I was instructed not to.

DIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):

1 Q. You were instructed not to speak to him?

2 A. I am just a glorified baby sitter.

3 Q. What did the defendant say to you at that time?

4 A. When he was sitting in the bed he was advising me
5 that -- well, in question -- he was -- basically said that
6 he was -- he had stopped to pick up his daughter's friend,
7 said that he was taking her to a party at the bowling alley,
8 said he thought that talking to a young girl would talk him
9 out of killing himself.

10 And then from there he said that he had stopped by the
11 -- a motel room that he had -- was staying at. He said he
12 needed to get some cigarettes and the young girl had to go
13 poo-poo. I remember that. You know, it kind of stuck out.

14 And he said there he had opened up a beer and he had
15 taken a swallow of it and didn't like the taste of it. And
16 he said from that point he then took the little girl to the
17 bowling alley to where he had gotten out of the car and gave
18 her the keys and the cell phone and said you probably
19 wouldn't see him again.

20 Q. During the course of these statements did you ever
21 encourage the defendant to continue speaking?

22 A. No, sir.

23 Q. Did you ask him any kind of follow-up questions?

24 A. No, sir.

25 Q. Did you at any point ask him any questions about any

DIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):

1 aspect of this investigation?

2 A. No, sir.

3 MR. POULOS: I have nothing further, Your Honor.

4 THE COURT: Ms. Gay.

5 **CROSS-EXAMINATION BY MS. GAY OF DAVID MITCHUM (IC):**

6 Q. So at the time that you were having these conversations
7 with Mr. Fraley he was in handcuffs?

8 A. He was in one handcuff, yes, ma'am.

9 Q. So he was certainly detained; I mean like he is not
10 able to leave the hospital that night?

11 A. No, he was under arrest so he was not ---

12 Q. Right, well, he was under arrest meaning that he wasn't
13 free to leave?

14 A. Correct.

15 Q. Okay. And so he wasn't free to leave and he is there
16 and you are at the hospital with them and he's -- it is your
17 testimony that he just starts babbling all this stuff to you
18 without any encouragement by you whatsoever?

19 A. Yes, ma'am.

20 Q. Okay. And so your testimony is is that you never once
21 said to him hey what happened man ---

22 A. No, ma'am.

23 Q. --- or anything like that?

24 A. No, ma'am.

25 Q. You had no communication with him whatsoever?

CROSS-EXAMINATION BY MS. GAY OF DAVID MITCHUM (IC):

1 A. No, ma'am.

2 Q. Okay. And ---

3 A. As far as answering his questions that was about it.

4 Q. Well, when you say answering his questions what was he
5 asking you and what were you saying back?

6 A. He was asking when Captain Aarons was going to come,
7 and I said I couldn't tell you. That was about it. Other
8 than that ---

9 Q. So ---

10 A. --- it was just a conversation.

11 Q. Okay. So let's go back a minute. So you are his
12 transport officer on some level to the hospital and he is
13 under arrest and he is at that time aware, obviously, that
14 he's being arrested, so ---

15 A. I didn't transport him.

16 Q. --- did you ever tell him that he had a right to remain
17 silent and all the things that relate to Miranda since he is
18 arrested in your possession taking him to the hospital?

19 A. This was not my case. This was not my arrest. I
20 simply was there to watch him and then transport him back to
21 the police department. And that's what I did.

22 Q. So even though it is not your case and it is not your
23 arrest you are transporting a person charged with a crime to
24 a hospital with handcuffs on in a police car and you're
25 telling me that there was no communication going on between

1 you and he about what he is doing in custody?

2 A. No, ma'am, because your facts are incorrect. I did not
3 transport him to the hospital.

4 Q. Well, you were his guard I guess, his -- the person who
5 was ---

6 A. I was the person that was watching him in the room
7 until he got evaluated, yes, ma'am.

8 Q. Okay.

9 A. Another officer rode with him in the back of the
10 ambulance.

11 Q. And who was that?

12 A. I believe that was Officer Wegner.

13 Q. Did you have any information as to whether or not Mr.
14 Wegner gave him his Miranda warnings before he made it to
15 the hospital in the police car?

16 A. No, ma'am.

17 Q. So it is your testimony at this point that nobody that
18 you know in any of these cases, none of the other officers,
19 ever Mirandized him that you are aware of?

20 A. I can't speak for them; but I didn't, no.

21 Q. And, okay, give me a timeframe. This incident happens
22 and you are at the hospital with him, what, about an hour,
23 two hours; how many hours after this incident occurred?

24 A. I couldn't recall exactly. It went from the incident
25 to where medics checked him out at the incident where he got

CROSS-EXAMINATION BY MS. GAY OF DAVID MITCHUM (IC):

1 transported to the police department.

2 When he got transported to the police department he was
3 complaining of chest pains. The EMS came back out and that
4 is when he was transported to the hospital. I was advised
5 to go to the hospital and watch him.

6 Q. So based on all of that let's imagine that that took
7 several hours. Do you remember in your own life when you
8 got home that night?

9 A. I couldn't tell you.

10 Q. Was it after midnight?

11 A. I don't think it was that late, no.

12 Q. Okay. Would -- how long do you think you were at the
13 hospital?

14 A. I would probably say between one-and-a-half to
15 two-and-a-half hours.

16 Q. So if we have one-and-a-half to two-and-a-half hours
17 that you are sitting there with him and then we have, like
18 you said it was taken from the incident location to the
19 police department and then -- and then back again to the
20 hospital, we are talking at least four-plus hours that he
21 was probably in custody before you were able to leave the
22 hospital at least?

23 A. At least four hours at the hospital?

24 Q. No, at least four hours total?

25 A. Yeah, somewhere around there. I couldn't tell you. I

CROSS-EXAMINATION BY MS. GAY OF DAVID MITCHUM (IC):

1 couldn't -- off the top of my mind.

2 Q. Okay. And so but today you are telling me that what he
3 said to you was not in furtherance of any questioning, he
4 was just babbling it out?

5 A. That's correct. I didn't ask him anything. This is
6 just him talking.

7 Q. And you have no testimony to present to the judge today
8 about the fact that he would have been Mirandized by anybody
9 in the police force before this time that you were with him?

10 A. I have answered this before, and it is going to stay
11 the same. I did not Mirandized him. I cannot tell you or
12 speak for anybody else's behalf if he was Mirandized that
13 day.

14 MS. GAY: All right. I have no further questions.

15 **REDIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):**

16 Q. Officer, is it your job to interrogate defendants in
17 your current role?

18 A. No, sir.

19 Q. Did you have any intention of interrogating Mr. Fraley
20 on the day that you were watching him at the hospital?

21 A. No, sir.

22 Q. Did you make any interrogating remarks towards him?

23 A. No, sir.

24 Q. Thank you.

25 THE COURT: Ms. Gay, re-cross?

REDIRECT EXAMINATION BY MR. POULOS OF DAVID MITCHUM (IC):

1 MS. GAY: No, thank you.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness.

5 MR. POULOS: The State has no further witnesses, Your
6 Honor.

7 THE COURT: Ms. Gay, do you have any witnesses?

8 MS. GAY: I would like to call Gary Fraley.

9 THE COURT: All right.

10 MS. GAY: I would like to ask that the solicitor to
11 limit it for purposes of this testimony, Your Honor, to just
12 this statement. I obviously think they can ask -- that are
13 not a part of this hearing.

14 THE COURT: They get to follow the rules. So that's --
15 Mr. Poulos, would this be your witness?

16 MR. POULOS: Yes, Your Honor.

17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: Please have a seat. State your full name
19 and spell your last name for the record.

20 MR. FRALEY: My name is Gary Curtis Fraley,
21 F-R-A-L-E-Y.

22 THE COURT: Ms. Gay.

23 **DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):**

24 Q. Mr. Fraley, obviously you know why we are here today,
25 and you just saw two witnesses testify in this case about

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 some statements that were made by you at the time of your
2 arrest. The first gentleman that testified do you recall
3 ever seeing that guy before?

4 A. No, ma'am.

5 Q. Why not?

6 A. I don't remember the first few days of jail. I
7 don't -- I didn't know who he was. I don't know who he ---

8 Q. Today when you saw him you ---

9 A. No, I don't -- I don't know who it is. I still don't.
10 I mean somebody -- y'all were saying that he interviewed me
11 or something. But I don't -- I don't know who he is.

12 Q. You don't have independent recollection of that?

13 A. No, ma'am.

14 Q. Okay. What about the second gentleman that talked and
15 said that you made some statements to him, do you recall --
16 do you have any independent recollection of him?

17 A. No, ma'am.

18 Q. Okay. And on the date that you -- this event
19 occurred -- and you don't have to go into great detail about
20 it, but tell the judge what was going on in your life, head
21 at that time.

22 A. I don't under -- what part -- or what -- I don't
23 understand.

24 Q. Well, this is -- you asserted an affirmative defense
25 about mental health problems, so what I would like to ask

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 you to do is explain to the judge why you don't think you
2 remember these people.

3 A. I don't -- I don't understand how -- it is very
4 difficult for me to understand anything at that point. I
5 didn't know what was going on. I didn't understand -- I
6 didn't understand life. I was in pain. I was in anguish.
7 I didn't understand -- I have -- it is a loss of words. I
8 didn't understand anything that was happening.

9 I didn't even know I was in jail for the longest time.
10 I didn't even know the even when I was in jail until
11 Corporal Samuels was pointing food out on the floor to me in
12 the cell, ---

13 Q. And I think ---

14 A. --- in all these bags.

15 Q. --- in the reported part of Fraley interview, Disc 1,
16 there is a point in here where it says that you haven't
17 eaten in eight days. Do you remember not eating for eight
18 days?

19 A. I remember not eating for a long, long time. And I
20 couldn't understand -- it was too painful. And I kept ---

21 Q. When you say too painful what does that mean; why was
22 it painful?

23 A. It was -- I -- I was throwing up blood. I was throwing
24 up. I just -- and then I couldn't think. Everything was
25 white. I was walking around in a fog. Everybody looked

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 like they were wearing pastel colors.

2 I couldn't understand -- it was like I might have a
3 brief second what to say or what is happening at that one
4 second and then -- and a day or something might have gone by
5 and then I am getting like another snapshot of something
6 that has happened ---

7 Q. Okay. In your ---

8 A. --- and that I don't understand.

9 Q. --- history, sir, there are some other things going on
10 here. At some point in time have you been diagnosed with
11 PTSD?

12 A. Dr. Kestner was my psycho- -- psychiatrist for many,
13 many years. And he had brought up some PTSD issues with me
14 that he had ---

15 Q. Okay.

16 A. --- given me a bunch of medicine on.

17 Q. And have you at some point in time been diagnosed with
18 severe depression disorder?

19 A. Yes, ma'am. That is part of my disability.

20 Q. And do you recall telling -- do you have any
21 recollection of telling the people the day of this
22 hearing -- of this interview that you hadn't eaten and that
23 you were depressed?

24 A. I might have. I don't know. I just I don't
25 remember ---

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 Q. So if it is in the interview, if it is in the notes it
2 is true in your life that you hadn't eaten ---

3 A. Oh, yeah, because ---

4 Q. --- and you suffered from depression?

5 A. --- when I was in Pennsylvania everybody was -- my mom
6 didn't -- you know, but she is an older lady. She didn't
7 even know to feed me. And I kept -- it was her sister that
8 finally gave me some food. She said I haven't seen you eat
9 this much in the whole month you have been here, this one
10 time I ate.

11 Q. I understand.

12 A. I mean stuff like that.

13 Q. And also do you take medicine?

14 A. Yeah I take -- for my PTSD?

15 Q. Yes, well ---

16 A. Yes, ma'am.

17 Q. --- let's do it this way. Do you take a lot of
18 medicine, multiple kinds of medicines?

19 A. Yes, ma'am.

20 Q. Okay.

21 A. I don't know if I can name them, but I do.

22 Q. There are many prescriptions that you have?

23 A. Yes, ma'am.

24 Q. And do you habitually take your medication as
25 prescribed?

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 A. Yes, ma'am. It's -- it's like clockwork pretty much.
2 Because I will feel something out of the norm even more so.
3 I don't know. I always take it. It is like every morning I
4 take it. Every afternoon I take it.

5 Q. I understand.

6 A. It is just like that.

7 Q. So what is in this interview, the notes of this
8 interview do you have any personal recollection of what you
9 actually said at all to these people?

10 A. Are you talk- -- okay, no; you're ---

11 Q. No, okay.

12 A. You are talk- -- no, I mean are you talking about the
13 interview with the guy that testified here?

14 Q. Right, do you remember any of it what you said?

15 A. No, no. I don't understand that. No.

16 Q. And then I think that there is -- you have told the
17 evaluators and the people in this case that at some point in
18 time about five-and-a-half weeks before this incident you
19 took some kind of shot?

20 A. Right, it was a Vivitrol shot.

21 Q. And it was at a rehab in North Carolina?

22 A. It was at a rehab in North Carolina. And they ---

23 Q. And after you took the shot describe to the judge what
24 was going on in your life.

25 A. Are you talking about how it affected me?

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 Q. Yes.

2 A. Okay. Well, they give you the shot and all they say is
3 that it is going to cause -- sometimes it causes severe
4 depression, sometimes.

5 Well, I am -- already suffered from depression. You
6 know, I've been to rehab centers just for depression a lot
7 of times. But I didn't think nothing about it because I
8 didn't feel that depressed, even though I was depressed
9 about me being there and my situation and whatnot, you know,
10 just going through that kind of stuff.

11 But I -- they didn't warn me about anything else. They
12 didn't.

13 Q. Let me ask it this way. Do you believe that you
14 suffered from severe side effects ---

15 A. Yes.

16 Q. --- from that medication?

17 A. Yes.

18 Q. And would you -- is it your testimony that those side
19 effects caused you to be mentally unstable today on the day
20 that this incident occurred?

21 A. Oh, yes, ma'am.

22 Q. And so I am going to ask you about the specific
23 documents. This is a document that is listed as Exhibit --
24 Court's Exhibit 1. And this is called a Goose Creek Police
25 Department statement coversheet. Do you recall ever seeing

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 that document?

2 A. No, I don't remember all this.

3 Q. Look on the very bottom. Does that appear to be your
4 signature?

5 A. Yeah, it does appear to be my signature.

6 Q. Do you recall signing it?

7 A. No, ma'am.

8 Q. And then I am going to show you another document marked
9 as Court's Exhibit 2. And this is a written statement. Do
10 you recall -- do you recognize this at all?

11 A. I don't recall this. Can I read it? I don't know what
12 it is about.

13 Q. It's -- okay, well, let's do this. This is more of a
14 procedure. Do you recall writing it?

15 A. No, ma'am.

16 Q. Okay. On the end it has your name?

17 A. Yes.

18 Q. Do you recall signing it?

19 A. No. I ---

20 Q. Okay. And do you have any independent recollection of
21 what it says?

22 A. No, ma'am, I don't.

23 MS. GAY: And I think, Your Honor ---

24 Q. So Mr. Fraley, these people that came and testified,
25 especially the man who came and said that he was talking to

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 you at the hospital, do you have any recollection of that
2 whatsoever?

3 A. That was the guy in the uniform? Yes.

4 Q. The second one.

5 A. Yeah, the second one.

6 Q. Do you recall being in the hospital?

7 A. I don't know if I remember being in the hospital. I
8 remember getting a blue paper suit. And I don't know if the
9 jail gave it to me or the hospital gave it to me.

10 Q. Okay. Well, and -- do you -- when you were in the
11 police car after you were arrested do you recall going from
12 the bowling alley to the police station?

13 A. Oh, no. No, I -- I very vaguely remember you know I
14 was like I got arrested and I was just tried to commit
15 suicide and the next thing I know I think I was in jail.

16 Q. So you that whole time you don't remember much?

17 A. No, ma'am.

18 Q. Do you remember anybody reading you your Miranda
19 warnings, you know, that have a right to remain silent, what
20 they say can and be used against you?

21 A. No.

22 Q. Do you remember any of the officers every reading you
23 your Miranda warnings from the time you were taken into
24 custody and taken to the jail?

25 A. No, I don't remember any of this.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY (IC):

1 Q. Okay, well, this form here says that you are signing
2 and initialing things having to do with these types of
3 rights. Do you recall ever signing your name on -- your
4 initials on here?

5 A. No, I don't recall that. I think those are my
6 initials, but I don't recall.

7 Q. And do you ever remember before they did these audio
8 tapes, video tapes, for your interview, do you ever remember
9 saying that you were okay with giving an interview?

10 A. No, I haven't even looked at that yet; so I don't ---

11 Q. Do you know what it means to waive something or give up
12 something?

13 A. Yeah, I understand what you are saying; but ---

14 Q. Do you ever recall mentally remembering that you wanted
15 to waive or give up your right to remain silent?

16 A. No, I don't.

17 MS. GAY: I have no further questions, Your Honor.

18 **CROSS-EXAMINATION BY MR. POULOS OF MR. FRALEY (IC):**

19 Q. Mr. Fraley, you testified that you do not remember
20 anything that you said to Investigator McWilliams or
21 Investigator Powell?

22 A. The two that were up here?

23 Q. Investigator McWilliams was up here. You don't
24 remember anything you said to him?

25 A. No, I don't ---

CROSS-EXAMINATION BY MR. POULOS OF MR. FRALEY (IC)

1 Q. You don't remember anything you said to officer
2 Mitchum?

3 A. Which one was Mitchum?

4 Q. Do you remember saying anything to an Officer Mitchum?

5 A. I don't know an Officer Mitchum.

6 Q. So that is a no?

7 A. No.

8 Q. Mr. Fraley, you do remember some things though;
9 correct?

10 A. It's skippy if I do remember something. But I don't
11 remember anything about this what you are talking about.

12 Q. You just testified that you remembered you hadn't eaten
13 for a while?

14 A. Yeah, in Pennsylvania.

15 Q. So you do also remember Pennsylvania?

16 A. A little bit, but not much. Hardly at all. I remember
17 going to the hospital.

18 Q. You remember getting a Vivitrol shot?

19 A. That wasn't in Pennsylvania. I got that in Wilmington,
20 North Carolina.

21 Q. When was that?

22 A. That was the last day I was at Wilmington they give
23 them to you when you leave.

24 Q. Well, what day was that?

25 A. That was 20- -- whatever the last day -- what was it,

1 the last year. No, the last day I was in Wilmington. I
2 don't know what date.

3 Q. What month was it?

4 A. It is June of last year is when I was in Wilmington.

5 Q. June of last year.

6 A. Because I -- because I missed Father's Day.

7 Q. Okay. You got a Vivitrol shot in June of two
8 thousand ---

9 A. After -- after my treatment.

10 Q. In June of 2014?

11 A. Right, the day I left.

12 Q. The day you left?

13 A. Whatever date that would be.

14 Q. And you remember that?

15 A. Yeah, I remember wondering whether or not I should get
16 the shot.

17 Q. Do you remember that after your bond hearing you walked
18 into a room full of police officers, walked straight to
19 Officer McWilliams and said do I know you; do you recall
20 that?

21 A. Who?

22 Q. Officer McWilliams, the first officer that testified.

23 A. The first one? I have a hard time understanding -- I
24 am a little nervous so I am trying to remember people's
25 names. The first officer, the big guy?

CROSS-EXAMINATION BY MR. POULOS OF MR. FRALEY (IC)

1 Q. Yes.

2 A. I don't -- don't under- -- I don't know -- I don't
3 remember him at all.

4 Q. You didn't approach him after the bond hearing after
5 you had given him a statement?

6 A. I don't even know what a bond hearing is right now.

7 Q. You stated that you were in pain during your interview?

8 A. I was -- I was complain- -- I probably was. I was
9 complaining about pain at the time.

10 Q. So you remember being in pain at the interview?

11 A. I don't remember being in pain at the interview, no. I
12 don't remember the interview, so I don't understand whether
13 or not I was in pain or not, but I know constantly when I
14 was in Pennsylvania I was ---

15 Q. I am talking about the interview, Mr. Fraley.

16 A. --- in constant pain.

17 Q. I am talking about the interview.

18 A. Well, I don't remember that part.

19 Q. Okay.

20 A. That is what I am trying to tell you. So I don't ---

21 Q. You are aware that you saw the medics twice and you
22 went to the hospital and they sent you home after four
23 hours; you are aware of that?

24 A. Say that one more time.

25 Q. You saw the medics in Goose Creek twice and you went to

CROSS-EXAMINATION BY MR. POULOS OF MR. FRALEY (IC)

1 the hospital; correct? You don't remember?

2 A. No, ma'am -- no, sir.

3 Q. Mr. Fraley, how many Vivitrol shots did you get in
4 total?

5 A. The only one I got was when I left.

6 Q. Okay. In June of 2014?

7 A. Yes, sir.

8 MR. POULOS: I have nothing further, Your Honor.

9 MS. GAY: I have no further witnesses, Your Honor.

10 THE COURT: You may step down. Thank you.

11 And no additional witnesses?

12 MS. GAY: No, Your Honor.

13 THE COURT: Any further rebuttal witnesses from the
14 State?

15 MR. POULOS: No, Your Honor.

16 THE COURT: Mr. Poulos, happy to hear from you.

17 MR. POULOS: Thank you, Your Honor. As to the recorded
18 statement in which Investigator McWilliams testified to,
19 Miranda warnings were verbally read to the defendant, and he
20 answered clearly that he understood.

21 Your Honor has seen the video. The statement was of
22 his own volition to the officers. He answered clearly and
23 articulately and knew where he was and knew the nature of
24 the questioning.

25 He was seated in a well-lit air-conditioned room, Your

State vs. Gary Fraley

1 Honor, and no promises or threats of intimidation were made.
2 He wrote a statement during the course of that videotaped
3 interview in which he acknowledged his Miranda a second
4 time.

5 Your Honor, it is the State's position Miranda was
6 properly given in the first instance and then the written
7 Miranda is, Judge, to show that he was in fact aware of what
8 was going on he received two sets of Miranda.

9 As Ms. Williams indicated, the State is looking only to
10 use this video recorded statement for impeachment purposes.
11 So although Miranda was properly given it is really
12 irrelevant to our purposes.

13 The only thing we are concerned was of the
14 voluntariness. And for all the reasons I have stated above,
15 Your Honor, the statement was clearly voluntary.

16 As far as use by the defendant at trial of that
17 statement would you like me to go into that now, Judge, or
18 reserve that for other motions?

19 THE COURT: Let me -- let me hear it now.

20 MR. POULOS: Judge, since the State is only offering
21 the statement for impeachment we are seeking to preclude the
22 defense from offering it into evidence in our case in chief,
23 through cross-examination, or through their own witness,
24 Judge.

25 It is hearsay. The only exception that allows it

1 applies to the State, admission of a party opponent. If we
2 chose not to use it the defendant cannot offer his own
3 statement, Judge, to prove what he is going to testify to.
4 If he testifies is he going to testify that I don't
5 remember. And that is the whole purpose why the defense
6 wants to put that statement in to bolster their own case,
7 and it is simply inadmissible hearsay, Judge.

8 The videos, the out-of-court statement, it is my belief
9 it is being offered for the truth of the matter that it
10 asserts; there are no exceptions, Your Honor. And, Your
11 Honor, it is a self-serving statement.

12 There are some exceptions I know Ms. Gay may rely upon,
13 Judge, but I don't believe any of those apply. And I will
14 let her make the argument as to those exceptions, and I will
15 respond to that.

16 But, Judge, in so far as the statement made to Officer
17 Mitchum at Trident Hospital, Miranda is not required because
18 there is no interrogation, Judge.

19 I think it was perfectly clear that Officer Mitchum was
20 simply there to watch the defendant at the hospital where he
21 did not interrogate him, he had no intention of
22 interrogating him. There were no interrogating questions
23 asked by him. The defendant just wanted to talk about the
24 case, which is what he did.

25 But Miranda was not legally required. And these

State vs. Gary Fraley

1 statements should be admissible against him.

2 THE COURT: All right. Ms. Gay.

3 MS. GAY: Thank you, Your Honor. This is the point --
4 not right now, but if you would just allow me -- I did get
5 some case law emailed to me, and I just would like to look
6 at it before I make my -- finalize my argument.

7 With regard to the Miranda, the recorded statement,
8 Your Honor ---

9 THE COURT: Well, do you need time to articulate your
10 argument? Because we are at the point where you need to
11 finalize your argument.

12 MS. GAY: Well, then I maybe would like to take a few
13 minutes to just read something that was emailed to me.

14 THE COURT: Okay. Let me know when you are ready.

15 MS. GAY: All right. I am going to go use the
16 telephone and walk back in this back room for just a second.

17 THE COURT: Well, how long do you anticipate that you
18 are going to need?

19 MS. GAY: I need -- the person who pulled it up knows
20 what it says. I just need to talk to him for just maybe ten
21 minutes.

22 THE COURT: That wasn't my question.

23 MS. GAY: Less than ten minutes.

24 THE COURT: All right. 3:30. 3:30. Thank you.

25 (WHEREUPON, break was had 7/13/15, 3:12 p.m.)

State vs. Gary Fraley

1 (WHEREUPON, resumed trial 7/13/15, 3:40 p.m.)

2 THE COURT: All right. Ready for argument.

3 MS. GAY: Yes, ma'am. Initially, Your Honor, I would
4 argue that my client, Mr. Fraley, has testified that he has
5 no memory of the events that happened on that day in terms
6 of his -- the taking of his statement or the giving of the
7 information that they call a verbal statement.

8 He is -- there -- I understand the documents. I
9 understand that he has a waiver of Miranda that does have
10 his signatures and his initials. I understand that there is
11 a written document that he wrote and signed, and I
12 understand that they have the videotapes of that process.

13 And, Your Honor, you heard his testimony that he
14 doesn't remember doing it. He had not eaten in days. He
15 had psychological issues that he had related to them.

16 Though they testified that he had, you know, was
17 offered food and had a bathroom and some things like that
18 and it was a well-lit place and he had a chair they -- as
19 the officer testified, they continued to interrogate him.

20 And this I believe is, you know, detained. The actual
21 police interrogation I don't believe there's any dispute as
22 to that at this time.

23 And they continued to interrogate a person who related
24 that he was mentally ill or he has -- was having active
25 mental health problems.

State vs. Gary Fraley

1 His -- the State did bring out that he had been
2 evaluated by some EMS people and he -- you know, and that he
3 had been taken to the hospital.

4 But they didn't -- but they didn't -- that wasn't all
5 that was going on in Mr. Fraley's head at the time. And Mr.
6 Fraley admitted to them, you know, that he had, you know,
7 had a lot of things going on in his head and some physical
8 problems as well; and I believe they should have stopped the
9 interview at that point based on the fact that I don't think
10 he was in any state of mind to be able to be interrogated.

11 THE COURT: What did you base that on? Did you view
12 the video?

13 MS. GAY: I have seen the video; and I have seen part
14 of the video, Your Honor. The video right now is at the
15 doctor's office, the evaluator, Dr. Bennett who is ---

16 THE COURT: Well, my question to you is what is
17 required for the law enforcement to do if he presents -- was
18 there anything on the video or anything that the officer ---

19 MS. GAY: Well ---

20 THE COURT: Ms. Gay, we are trying real hard to keep
21 the record clean. Was there anything that alerted the
22 police officer that they knew or should have known that he
23 was suffering from mental illness?

24 MS. GAY: Yes, ma'am.

25 THE COURT: Did the officer testify that he had been

1 checked out and had gone through that and there wasn't
2 anything that they saw or heard?

3 MS. GAY: Yes, ma'am, I understand. And in the written
4 record it does indicate that he says I haven't eaten in
5 eight days which I think would indicate that right there
6 somebody was mentally unstable.

7 And so he did notify them at that point that he was
8 mentally unstable and should not have been talking to them
9 at that point.

10 THE COURT: So not eating in eight days is an indicator
11 of mental illness?

12 MS. GAY: I think it is a -- an indicator of mental
13 instability.

14 THE COURT: How so, Ms Gay? I disagree, but

15 MS. GAY: If you chose to not eat for eight days, Your
16 Honor, I would imagine that your brain, you know, isn't
17 working very -- I guess that would be my argument that he
18 indicated to them things that would mean that his mental
19 state of mind was deficient at the time.

20 And so he also told them that he had other ailments.
21 He told them that he had PTSD, that he had been severely
22 depressed. And in the interview as it goes on, Your Honor,
23 he talks about his -- he thinks -- he talks about what had
24 happened to him and that he didn't have -- that he was --
25 basically he refers to it as like being in a fog, not

State vs. Gary Fraley

1 knowing what was going on.

2 So based on that -- with regard to this statement, Your
3 Honor, just in terms of the voluntariness of the statement I
4 believe that we have presented evidence that would establish
5 that his statement was not voluntary.

6 THE COURT: All right, and what are you asking me to
7 do?

8 MS. GAY: In the event that you find that the statement
9 is not voluntary, Your Honor, I would ask you to, you know,
10 to not admit it.

11 THE COURT: So you are asking me to find that all of
12 the statements, even the statement to Officer Mitchum, was
13 involuntary?

14 MS. GAY: No, I broke them up. With regard to the
15 statement with Officer Mitchum there is no testimony --
16 okay, certainly detained. He is certainly in custody.
17 Miranda would, you know, have kicked in. This was before
18 this statement, the videotaped statement which has the --
19 you know, the all the ramifications of the signed waiver and
20 all of that.

21 But he is -- has been arrested. I believe the officer
22 testified that it had probably been at least a couple of
23 hours, several hours, that he had been arrested, he had been
24 passed through these EMS people and taken to the hospital.
25 And he was there to only watch him but yet during that whole

1 period of time nobody testified that he had been in fact
2 Mirandized before he started, as he refers to it, talking on
3 his own.

4 So I believe, Your Honor, in order for that statement
5 to be admissible based on the history of what had happened
6 that he was placed in custody, he was under arrest, that
7 somebody needed to have verbally or even Mirandized him with
8 a card or something.

9 THE COURT: Why is that? What -- why -- why should
10 they -- just because somebody is under arrest doesn't
11 automatically mean that they should be given Miranda.

12 MS. GAY: Well, I believe -- I believe that Miranda
13 requires on some level you have to be in -- you have to be
14 detained and you have to -- not free to leave.

15 And certainly he was not free to leave and he was
16 detained and he actually I believe even been arrested. And
17 so ---

18 THE COURT: But what is the purpose of Miranda?

19 MS. GAY: Your Honor, the purposes of Miranda it to
20 notify him of -- that he has the right to remain silent and
21 notify him of constitutional rights that he has ---

22 THE COURT: And when did those things start applying?
23 Not when you're under arrest. It is when police are
24 questioning.

25 MS. GAY: Well, I understand that, Your Honor. But I

State vs. Gary Fraley

1 would argue that ---

2 THE COURT: There is no need for Miranda; if nobody had
3 ever asked him a question there is never a need for Miranda.

4 MS. GAY: I understand that, but I believe ---

5 THE COURT: Though Officer Mitchum testified that he
6 didn't ask any questions; he was merely the glorified
7 babysitter is I think what he said.

8 MS. GAY: I understand that. But I believe that there
9 should have been Miranda given even by the glorified
10 babysitter at that point ---

11 THE COURT: Even if you believe ---

12 MS. GAY: --- once he starts talking.

13 THE COURT: Ms. Gay, even if you believe it, show me
14 where the law requires it.

15 MS. GAY: This would be my last statement, Your Honor.
16 In the event that he starts -- this man is having serious
17 charges. He is at the hospital. That is obviously because
18 he is having some mental health -- some medical problems.
19 Forget whether they know they are medical. Mental health.

20 At the point that he starts talking I believe the
21 officer had the obligation to say oh by the way you have the
22 right to remain silent, you might -- you know, we could --
23 you know, don't talk to me about this anymore.

24 Because he is not notified that he has a right to
25 remain silent and he is not notified that he has a right to

1 give that up if he wants.

2 And I believe that he needs to be notified at that
3 point. Because he is in a situation where you cannot leave.
4 You know, as the officer said, he is handcuffed to the bed,
5 of the hospital bed.

6 And so this officer has been, you know, placed in his
7 room as a person that looks to him like he is supposed to be
8 talking to. And, you know, he is having these
9 conversations.

10 The man is -- he is asking questions, well, when is
11 this officer coming. And he says well, I don't -- I don't
12 know; I don't know.

13 Well, so at that point I believe he has the obligation
14 to Mirandize him. That would be my argument.

15 THE COURT: All right. Anything else?

16 MS. GAY: Would you like me to talk about the use of
17 the statement? Because that is the hearsay argument.

18 THE COURT: The use of the statements.

19 MS. GAY: Well, are you going to rule on whether or not
20 it is admissible and then I will argue about what might
21 happen next.

22 THE COURT: Let me just -- because I would like to
23 remind you, y'all have lived this case for now almost 18
24 months. This is my first time hearing and seeing the
25 evidence, so please be a little more clear and concise when

State vs. Gary Fraley

1 you are referring to statements because I have already
2 been -- I have already seen and heard of three.

3 MS. GAY: I understand.

4 THE COURT: Which one are you talking about?

5 MS. GAY: I am going to -- I would ask you to make your
6 ruling on admissibility and then I have other things to talk
7 about after we move forward in a different issue.

8 THE COURT: All right, let me hear your -- what your --
9 statement you are addressing whether or not ---

10 MS. GAY: The state- --- the recorded statement, Your
11 Honor. The recordings and the actual transcript. I know
12 that we may not put the transcript in it for the jury; but
13 the recorded statements and the two written documents in
14 terms of evidence, Your Honor, those are the ones I am
15 referring to.

16 THE COURT: Anything further as to the voluntariness of
17 the statement?

18 MR. POULOS: As to the voluntariness, Your Honor, I
19 will just rely on my prior argument. And as to the
20 statement at the hospital with Mitchum, just one case, Your
21 Honor, Supreme Court case, Pennsylvania v. Nunez, 110
22 Supreme Court 26-38, 1990 case, clearly states Miranda
23 doesn't apply simply because he is in Custody. It only
24 applies if he is subject to interrogation, which the
25 testimony clearly showed he was not.

1 THE COURT: Based upon my reading and understanding of
2 the law and the testimony given by Officer Mitchum, while he
3 was in custody the statements made to Officer Mitchum were
4 not in response to any questions by law enforcement and so
5 my reading and understanding is Miranda was not required.

6 So those statements are freely and voluntarily given
7 and will be -- I am only making the determination at this
8 point as to the statements voluntariness.

9 As to the statements, the other remaining statements
10 must prove -- the State has the burden of proving that the
11 statement was voluntary and taken in compliance with
12 Miranda.

13 There has been no evidence that there was any sort of
14 police coercion. I am taking into account the fact that the
15 defendant was advised of the rights, the length of
16 detention, any use of physical punishment, promise of
17 rewards, anything of that nature. I do find that the
18 statements were voluntary and taken in compliance with
19 Miranda.

20 As to the admissibility now what is the -- do we need
21 to address -- do we now -- do we need to address those
22 issues because ---

23 MS. GAY: I think -- I think you just ruled that it
24 was admissible. We have a motion in limine that has been
25 done ---

State vs. Gary Fraley

1 THE COURT: Well, there is a difference -- just because
2 some evidence exists doesn't make it admissible.

3 MS. GAY: Well ---

4 THE COURT: It still needs -- there still needs to be
5 some rule that allows it to be in.

6 MS. GAY: You have ruled that it is voluntary.

7 THE COURT: Correct.

8 MS. GAY: And that makes my next step be whenever you
9 want to heard from me I have arguments.

10 THE COURT: Well, do we need to address it; because at
11 this point how would it become admissible?

12 MR. POULOS: Well, we have a motion in limine that
13 defense cannot ask our witnesses about statements because it
14 is hearsay and they are not a party opponent, ---

15 THE COURT: Right.

16 MS. GAY: --- so we don't want ---

17 THE COURT: Which is my question to Ms. Gay how would
18 it be admissible?

19 MS. GAY: Well, Your Honor, this is what I was working
20 on during the break. And I believe that there's at least
21 two cases that are relevant in this matter.

22 One of them is State versus Garcia. I'm sorry, I don't
23 have the site. It is actually in my phone. If I can pull
24 that up I will get you that site in a minute.

25 And one of them is State versus Slocum. And that

1 appears to be 521 S.E. 2nd 507; South Carolina Court of
2 Appeals case from 1999.

3 The -- my reasoning for wanting to be able to admit
4 this either in their case in chief or whenever is that I
5 believe that this is an exception under 403-3. And
6 4033-3 -- I mean 803-3. And 803-3 says that it goes to the
7 state of mind or the -- I pulled it up and took a picture of
8 it on my phone. So hold on.

9 It was -- this is what it says, Your Honor; it says:
10 Then existing mental, emotional, or physical condition. A
11 statement of the declarant's then existing state of mind,
12 emotion, sensations, or physical condition such as intent,
13 plan, motive, design, mental feelings, pain, and bodily
14 health but not including a statement of memory or belief to
15 prove the fact remembered or believed unless it relates to
16 the execution, revocation, identification or terms of
17 defendant's -- declarant's will.

18 What I believe, Your Honor, is that this statement goes
19 to my client's state of mind at the time. Not -- so I
20 wouldn't be admitting it for the truth of what the statement
21 says, which under the hearsay; but it would be an exception
22 because it would -- the video, particularly, the video of
23 the statement would go to my client's state of mind.

24 And I argue that, Your Honor, that under -- certainly
25 relevant. And relevant is that anything that tends to make

1 the existence of a fact that is of consequence to the
2 determination of the factors in the case more probably or
3 less probably is admissible.

4 And that -- this -- the jury -- I -- this is the best
5 evidence of what my client looked like, talked like, sounded
6 like, acted like, this video, this tape. And I believe that
7 it becomes relevant because it is the best evidence of what
8 was going on with my client that day.

9 I have also provided that tape to the evaluator, Ms.
10 Gomez, from MUSC for her capacity to perform evaluation and
11 to Dr. Bennett who is the expert that we believe will be
12 testifying in our case in chief. And he has reviewed that
13 document as -- those tapes as a part of this in determining
14 what he believed to be the state of mind of my client at the
15 time of this situation occurring.

16 Now Ms. Williams says well experts often review things
17 that are not admissible. And I understand that. But this
18 is not just not admissible; this is the event -- okay, if we
19 even go -- I have done a case with you having to do with
20 videos. We all know serious cases that happen in this
21 county, in this Tri-County area with a video. This is the
22 best evidence of who my client was at the time. Because my
23 client gave a self-serving statement. He doesn't say I'm a
24 terrible guy who that went out and did all these terrible
25 things.

1 THE COURT: So you plan to introduce this statement?

2 MS. GAY: It is very possible, Your Honor, yes. And I
3 would like to be able to cross-examine the officer if he
4 testified - and if he doesn't I will find a different way -
5 about the statement and bring it into evidence so the jury
6 can -- even under my expert's testified what did you review
7 and did you review these statements; yes, I did; I would
8 like to make these statements as part of the evidence.

9 So I think that we are -- what this State v. Garcia had
10 to do with whether or not a statement was admissible or not
11 and ultimately it was determined that it was -- that it was
12 not -- that it had to do with state of mind.

13 And this -- my understanding in the State v. Slocum is
14 that the statement came in because it was a basis for some
15 type of expert opinion and that it didn't come in for -- and
16 I could even limit it as that, to bring it in during my
17 expert's testimony if they don't want me to bring it in, you
18 know, during a police officer's or something like that.

19 But this -- this expert who looked at my file and has
20 agreed to testify on Mr. Fraley's behalf, he has looked at
21 this as a picture of -- a live picture of what Mr. Fraley
22 looked like.

23 Mr. Fraley doesn't look anything the same that he did
24 or, you know, he is looking different in the statement.
25 His -- whether he was making sense, what he was saying about

State vs. Gary Fraley

1 his medical history and his psychos- -- you know, his state
2 of mind, these are things that are crucially important to
3 this jury in light of the fact that I have asserted the
4 affirmative defense that we think he is either insane or
5 guilty but mentally ill.

6 And so I believe -- it goes back to just sort of the
7 fairness, Your Honor, that I believe if we exclude the one
8 thing that the jury could look at to say who was this guy on
9 that day, because that is who this -- that is what that is,
10 who was this guy on that day.

11 And they are going to be asked, assuming that I do my
12 job and present evidence to establish that we could get the
13 jury charge for insanity and/or guilty but mentally ill,
14 they are going to be asked to make a determination about who
15 he was then.

16 It is not going to be the guy -- it is not going to be
17 the guy who is sitting here today who is competent and going
18 forward in this trial; it is going to be the guy that he was
19 then.

20 And the person he was then is on -- there is a movie of
21 him. And I think to exclude that or to tell me that I can't
22 bring that in to show the jury is -- you know, as I said, it
23 is a violation of 803. It is a violation of 401.

24 I think that, you know, this is a situation where --
25 and as I said, if I just have to do it during the

1 evaluation, during Dr. Bennett's testimony to say what did
2 you evaluate and what was -- was there a video that you
3 looked at; yes, it was; can I admit it, then I would be
4 happy to do it that way. But I -- he reviewed it as part of
5 his case and this jury needs to see it.

6 THE COURT: All right. Mr. -- Ms. Williams. I'm
7 sorry.

8 MS. WILLIAMS: Your Honor, let me just begin by saying
9 that rule specifically said but not including a statement of
10 memory or belief to prove the fact remembered. And that is
11 exactly what they are trying to do, trying to get a
12 statement in of his memory of the event.

13 Just to kind of try to very briefly take the points one
14 at a time, if she is using this rule as the basis I don't
15 see anything in Slocum that talks about that.

16 Additionally if we are looking for something to show
17 the jury what he was like that day there is admissible
18 evidence that does that. There is video of him going into
19 Publix to buy the NyQuil to drug the child. There is a
20 video of him walking into the EconoLodge minutes before he
21 rapes the child. There is plenty of evidence to show what
22 he looked like that day.

23 What we object to is trying to admit an hour-and-a-half
24 statement supposedly to say what his frame of mind is and
25 then he gets to tell his whole version of the facts without

State vs. Gary Fraley

1 testifying.

2 With regard to it should come in because it is the
3 basis of something her expert used, that theory our expert
4 looked at pages and pages and pages of him raping a
5 different woman while he was in the armed services; and yet
6 that doesn't come in.

7 We still have to use the same tests that are used in
8 the rules of criminal procedure and evidence to decide
9 whether evidence is admissible. It doesn't matter if an
10 expert relies upon it. So we would just point Your Honor to
11 the specific wording of the rule.

12 I have found no case that admits a defendant's
13 self-serving hearsay just because he makes mention of his
14 state of mind. And if Your Honor is inclined to even bring
15 any of that we would ask that it be limited to just a few
16 statements of what he says his frame of mind is, not allow
17 him to testify through a veiled -- or just let him testify
18 through this tape which is clearly inadmissible hearsay.

19 THE COURT: Anything further?

20 MS. GAY: Yes, I think it is important to say at this
21 point that the situation with her expert reviewing something
22 about his military records is he was court marshaled and he
23 was found not guilty of the court martial. So when she says
24 of him having ---

25 THE COURT: You don't have to address every issue that

1 each of you bring up.

2 MS. GAY: I believe, Your Honor, that we should allow
3 the statement to -- it is not about whether he remembers.
4 Everybody says in the report from the MUSC doctor that he
5 doesn't remember. That can be obtained in other ways.

6 It is him describing how he hadn't eaten and how he was
7 depressed and how he couldn't -- you know, his -- he
8 couldn't see and his -- the things that were about his
9 physical state at that time which I believe are relevant.

10 THE COURT: And so, Ms. Williams, your motion in limine
11 is requesting that all of the statements be found to be not
12 admissible?

13 MS. WILLIAMS: We will be admitting the statement
14 through Officer Mitchum.

15 Our position on the statement, the taped statement, is
16 that it is not admissible because it is self-serving hearsay
17 and they can't bring it in because they are not a party
18 opponent.

19 If we choose not to bring in that statement it can't be
20 admitted by the person that made the statement because they
21 are not a party opponent. And that is straight from rule I
22 think it is 801(d).

23 As far as her bringing in the statement ---

24 THE COURT: What is it from McWilliams that you plan to
25 bring in?

State vs. Gary Fraley

1 MS. WILLIAMS: We just want to be able to impeach him
2 if he takes the stand if that becomes necessary.

3 THE COURT: You don't plan to introduce it in your case
4 in chief?

5 MS. WILLIAMS: No, Your Honor.

6 THE COURT: All right.

7 MS. WILLIAMS: But in order to impeach him it has to be
8 voluntary, and that is why we went through that exercise.

9 THE COURT: All right. I am granting your motion in
10 limine to -- as to the admissibility of the statements.
11 Should anything change, you understand a motion in limine is
12 subject to change so just bring it to my attention.

13 The rule of sequestration I notice that. Any
14 objections?

15 MS. WILLIAMS: We have an agreement on that. Ms. Gay
16 has agreed that the victim's parents and the victim - the
17 other victim - and the case agent are excluded from the rule
18 of sequestration.

19 THE COURT: Is that correct?

20 MS. GAY: Yes, ma'am.

21 THE COURT: So what are the other pretrial matters or
22 motions?

23 MS. WILLIAMS: The other pretrial motion is State's
24 motion in limine on rape shield which the defendant agrees
25 with, the admission of the video should we chose to. I

1 don't think we have an objection. And lastly, if Ms. ---

2 THE COURT: The child's video, is that the video you
3 are talking about, Ms. Williams?

4 MS. WILLIAMS: Yes.

5 THE COURT: All right. No objection to the ---

6 MS. WILLIAMS: And lastly ---

7 THE COURT: Hold on. No objection to the video?

8 MS. GAY: Your Honor, I have read the rule. I believe
9 it is appropriate under the rule to be able to use it in the
10 event that she needs to or wants to.

11 THE COURT: All right.

12 MS. WILLIAMS: And the last motion is Ms. Gay has a
13 motion in limine as to prior bad acts which I will let her
14 make. The State has a response which is detailed in our
15 trial brief. And I will be happy to do that after Ms. Gay
16 makes her motion.

17 THE COURT: All right. What are the prior bad acts?

18 MS. GAY: Your Honor, there are several listed in her
19 pretrial motion. And they -- I would argue that bringing --
20 allowing the jury -- hear these -- some of these things.
21 Some of these I am not so opposed to. I will let you know.
22 But would be overly prejudicial to my client and make it
23 such that the trial against him would be unfair under 404,
24 Your Honor. But I would like to get where she tells me what
25 they are.

1 They were more in the pretrial that we had discussed,
2 but I understand -- we will go backward -- we will go from
3 the bottom up.

4 There is an incident that involves a hit and run. I
5 have no problem with that being discussed. I think that has
6 to do with his state of mind, and I'm -- I don't -- I am not
7 objecting to that.

8 Statements made to other people about threats to the
9 man he -- and his wife having an affair, this man is a
10 victim in this case and so my understanding is they are
11 trying to bolster through other people that he had made
12 threats and that Mr. -- that this gentleman was going to be
13 harmed.

14 I would say, Your Honor, that that is inappropriate
15 because it's -- the guy -- my client put a gun -- allegedly
16 put a gun to the man. I believe it is sufficient to
17 establish that he intended to harm him at that time. I
18 don't believe we need to have bad acts or events that
19 occurred before that to bolster that.

20 And something about putting a message on the Royal
21 Lanes Bowling Alley Facebook, "boom". I don't think that
22 has any connotation of any type of harm that he was supposed
23 to have to the victim at the bowling alley.

24 And I would ask -- I don't believe that that is
25 relevant. And I believe that that is not something that

1 should be admitted in this trial, Your Honor.

2 With regard to the purchase of ammunition, he does have
3 a loaded gun, Your Honor; so I could understand why the
4 purchase of ammunition would be relevant.

5 The defendant attempts to coerce another neighbor's
6 child, this is -- this is a situation, Your Honor, where he
7 is not charged with that event and that so it is uncharged
8 conduct that is extremely prejudicial in this case and they
9 I am sure are going to say that it has some type of modus
10 operandi or a plan or I believe she wants to try to argue
11 that it shows his intent.

12 But I would argue that that's -- that should not be
13 admitted because of the prejudice, Your Honor.

14 MS. WILLIAMS: Your Honor, just to take them one at a
15 time. With regard to defendant's attempt to kidnap a
16 different girl besides Minor 1 just for Your Honor's
17 reminder this occurred on Tuesday, the rape of Minor 1
18 The defendant went to a different person's house on Saturday
19 and asked if that child could come ---

20 THE COURT: The Saturday before the Tuesday?

21 MS. WILLIAMS: Yes, Your Honor.

22 THE COURT: All right.

23 MS. WILLIAMS: Asked if she could come to a birthday
24 party. He went up to the door. He shows them these rocks
25 that they are going to use as a craft at the birthday party.

State vs. Gary Fraley

1 He calls them fossils. He continues to try to get that
2 child to go to the party up to the day of the abduction of
3 Minor 1

4 While Minor 1 is in his car he turns to her and says
5 I have been trying to get Janie to go to the party too,
6 let's go see if she can go, turns the car around and goes to
7 their house. Kimberly Tompkins sees him car pull out of
8 their driveway the day of the Minor 1 abduction.

9 So we would argue three things. First of all it is
10 part of the res gestae. It is difficult for us to tell this
11 story -- it is part of the story; it is interwoven into the
12 facts in terms of place and time. And it is difficult to
13 tell the story because that is what he was doing up until
14 the minute he takes Minor 1 So the first argument is res
15 gestae.

16 The second argument, Your Honor, is they have asserted
17 an insanity defense. This defense is that this person has
18 no idea what they are doing, they don't know the difference
19 between right and wrong, can't distinguish between legal
20 right or wrong or moral right or wrong.

21 And yet he goes to a different house to try to abduct a
22 different child. He lies about where he is taking both
23 kids. He said he is going to a birthday party. There is no
24 birthday party. His daughter's birthday is in June. This
25 is August 6th. So he knows there is not a birthday party.

1 It shows that he knows the difference between right and
2 wrong, because if he didn't he would tell them I am taking
3 your kid to the EconoLodge. Instead he makes up a story and
4 he makes up the same exact story to both families.

5 The third argument -- and also, Your Honor, with regard
6 to the insanity defense Ms. Gay plans to present evidence
7 going all the way back to June, two months before these
8 events of when this man supposedly got a shot of Vivitrol.
9 And all of his irrational confused behavior for two months
10 and yet she wants to preclude the State from showing the
11 rational part, the part that he planned not only to kidnap
12 Minor 1 but a different child two house away up to the day
13 of the crime.

14 And we would just say with regard to the insanity
15 defense if we're going to bring in all of this information
16 about his activities up to June before the crime so the
17 State certainly should be able to fill in the gaps with
18 other behavior during that same period of time.

19 And I would point the court to State v. Senter. And
20 that is S-E-N-T-E-R. It is in my brief. It is 722 S.C. 2d
21 233. In that case the court determines that the defendant
22 is sane and points to activities that he was engaging in up
23 to a month before the alleged crimes in that case and it's
24 observations of the way he was behaving, how he was
25 interacting with people, some of the activities that he did,

State vs. Gary Fraley

1 some of the arrangements that he made.

2 Both of these families, the Woltz Family, W-O-L-T-Z,
3 who is the family that he tried to abduct their child first,
4 and the Vick family, that he talked to the day of the
5 abduction of Minor1 both had interactions with the
6 defendant and described his behavior as lucid, clear. He
7 was behaving just like he always did.

8 And they knew him because he lived in the neighborhood
9 for a long time. They used to see him at the bus stop. So
10 to that extent as well in terms of the insanity defense
11 their testimony would be very relevant in terms of their
12 observations of the way he was behaving when he was cooking
13 up this scheme to get a child to go to the EconoLodge.

14 Lastly, we would argue 404(b). And Your Honor, in my
15 brief I talk about one of the more recent cases that lays
16 out what the court should be looking at in terms of the
17 admission of 404(b) evidence; and that is State v. Scott.
18 It is a 2013 case.

19 And in that -- the court goes into five different
20 things that the court should look at. It looks -- for
21 guidance in terms of what should be admissible under 404(b)
22 evidence: The age of the victims at the time of the abuse.
23 The relationship between the victims and the perpetrator.
24 The location where the abuse occurred. The use of coercion
25 or threats. And the manner of the occurrence.

1 In this case the defendant goes and tries to get Janie
2 who is 14 years old. That -- he strikes out there.
3 Then he goes to the Vick house two houses away and he
4 attempts to get Madison V. who was also 14 years old.. She
5 is not home. He then settled on Minor 1 who is 11 years
6 old.

7 So two of the victims are exactly the same age. And
8 Minor 1 is only three years younger. The relationship
9 between the victim and the perpetrator is exactly the same.
10 They are both neighbors. They both live near him. Both of
11 the children played with his daughter Alta.

12 The location where the abuse occurred is identical.
13 The use of coercion or threats admittedly doesn't really
14 apply because he never got Janie in his car.

15 And the manner of occurrence is identical down to his
16 rouse with the fossils as a craft for the party. So we
17 would just submit that this is admissible under res gestae,
18 under admissible evidence to refute the affirmative defense
19 of insanity and also under 404(b).

20 With regard to the threats made on Facebook, again,
21 defendant is trying to assert that he was confused, that
22 this was something he really didn't know what he was doing,
23 he didn't know the difference between right and wrong; when
24 the months before he went and got Minor 1 and then went to
25 the bowling alley, he was telling so many different people

State vs. Gary Fraley

1 his wife was cheating on him, he wanted to get back at her.

2 He threatened Steven Tsafos to several people including
3 a lady named Jennifer Moultrie. He said, "If I go down, he
4 is going down with me; I'm going to kill him."

5 He also told Minor 1 my wife cheated on me and I am
6 going to get back at her by cheating with you and I'm going
7 to kill Steven Tsafos because that is who she is cheating
8 with. Told this all to the little girl after he finished
9 raping her.

10 He then sent multiple Facebook messages on Stephen
11 Tsafos' page that says, "tick, tick, evil". He puts "boom"
12 on the Facebook page of the bowling alley on the day of the
13 attack.

14 For that reason, the morning before he goes to the
15 bowling alley his wife goes to the police station and files
16 a report because she sees these Facebook messages, she's
17 hearing about all these threats, and she also notices that
18 he has just bought a box of ammunition the morning of the
19 crimes. And she files a report saying, "I think my husband
20 is going to kill me; I'm really worried; what should I do".

21 Goose Creek is working that report and trying to get
22 her information about an order of protection when they get
23 the call that somebody -- that shots are fired at the
24 bowling alley.

25 So that all happens within hours of each other. And

1 the whole reason she goes to file the report is because of
2 these threats.

3 And again, Your Honor, going back to the insanity
4 defense, if he is trying to say that he didn't really
5 understand what he was doing and he doesn't know the
6 difference between right and wrong, this shows motive.

7 It shows he knew exactly what he was doing. He was
8 formulating a plan, and he was telling people, other people,
9 about this plan.

10 It was concise. It was well thought out. He was not
11 shy about telling people. And then he executed the exact
12 same plan that he said he was going to execute.

13 And so for that reason we think that the threats that
14 he made to Steven Tsafos are relevant and also some of the
15 Facebook messages on the bowling alley Facebook page.

16 I believe the other two items are not in contention,
17 the hit and run and the purchase of ammunition. I will
18 leave that there.

19 MS. GAY: Your Honor, Facebook is notoriously not
20 something that is -- that has other sources that it can be.
21 Other people know each other's passwords.

22 My client has indicated to me that he thinks his
23 wife -- his now soon to be ex-wife may have posted these
24 things. They -- they were -- they had problems, Your Honor,
25 a lot of problems. And he believes that he wasn't the

1 one -- he -- he tells me he didn't even have access to
2 Facebook during that period of time. But I understand that
3 you will make the ruling on that.

4 With regard to the -- I understand that the court is
5 concerned about these -- this situation with this other
6 child. And, as I said, Your Honor, I would just argue that
7 it is so very prejudicial that I believe it should be
8 excluded, Your Honor. And that is all I have.

9 MS. WILLIAMS: And beg the court's indulgence. One
10 fact I left out is that these Facebook messages were found
11 on the defendant's phone. So they were messages in his
12 messenger on his phone. So it is not just something that
13 they found online.

14 THE COURT: Did you file a written motion?

15 MS. GAY: Yes. For the prior bad acts?

16 THE COURT: Yes.

17 MS. GAY: Yes, ma'am, I did. I can find it somewhere.

18 THE COURT: But you didn't delineate ---

19 MS. GAY: At that time she had only told me that she
20 was going to bring in information about the child, the other
21 victim, other alleged victim. And I did not -- was not
22 aware until -- oh, I guess on Friday when I -- actually it
23 was Saturday when I opened up her response, her pretrial
24 motions.

25 THE COURT: So your motion is in response to what was

1 contained delineated in her pretrial brief; is that correct?

2 MS. GAY: Yes.

3 THE COURT: You didn't file a separate motion as -- Ms.
4 Williams, that is my question, or delineate -- it was
5 delineated in your pretrial brief?

6 MS. WILLIAMS: Yes, Your Honor. I think Ms. Gay filed
7 a general motion just in limine to exclude testimony of
8 prior bad acts. Then on Thursday on that deadline we filed
9 our motion -- our pretrial brief in response to that.

10 MS. GAY: I wasn't aware of all the things she was
11 trying to allege ---

12 THE COURT: That was just my question. I just wanted
13 to make sure that I was addressing if there were things
14 contained in other motions that weren't addressed.

15 Ms. Gay, so you are requesting a motion in limine to
16 exclude the testimony of those five bullet points contained
17 on Page 12 and 13?

18 MS. GAY: Yes, ma'am, there are that I did not have a
19 problem with, one of them having to do with ammunition and
20 one of them having to do with hit and run in the EconoLodge
21 parking lot.

22 THE COURT: All right. So that would be -- they are
23 not numbered, but that would be the second one and the fifth
24 one?

25 MS. GAY: Yes, ma'am.

State vs. Gary Fraley

1 THE COURT: Do you agree in the numbering if they were
2 numbered, Ms. Williams?

3 MS. WILLIAMS: They are not numbered; they are just
4 bullet points.

5 THE COURT: Right, but that would be two and five?

6 MS. WILLIAMS: Yes, Your Honor.

7 THE COURT: Just for -- I just want the record to be
8 abundantly clear.

9 MS. WILLIAMS: Yes, Your Honor, purchasing of
10 ammunition for his gun the morning he used it for the crimes
11 and the hit and run committed by the defendant at the
12 EconoLodge as he drove Minor 1 to the Royal Lanes Bowling
13 Alley.

14 THE COURT: All right. So that the first -- one,
15 three, and four issues for the court to address.

16 I deny your motion in limine at this point. I find
17 based upon the testimony as I have been presented, my review
18 of the brief and the case law as presented by both the State
19 and the defendant, that they are relevant and admissible.

20 Note your exception to my ruling. If at any point I
21 believe that my ruling should be changed I will let you
22 know. Thank you.

23 MS. GAY: Thank you, Your Honor.

24 THE COURT: All right. I think that is all -- that is
25 all I have listed. Is there anything else we need to

1 not anticipate any need for any other pretrial motions or
2 matters; is that correct?

3 MS. WILLIAMS: I do not see any, Your Honor.

4 MS. GAY: No, ma'am.

5 THE COURT: All right. If anything arises over the
6 evening hour please email my clerk. Otherwise please be
7 here and ready to go and dressed out at 9:15. Thank you.

8 (WHEREUPON, adjourned for the evening 7/13/15, 4:21 p.m.)

9 (WHEREUPON, resume trial 7/14/15 9:32 a.m.)

10 THE COURT: Are you ready?

11 MS. WILLIAMS: We are. Ms. Gay is stipulating to the
12 chain of witnesses.

13 THE COURT: Yes, go ahead.

14 MS. WILLIAMS: And we are going to -- I am going to
15 write up the stipulation just for you to read to the jury
16 just so they are not confused that, you know, they
17 understand why we are not bringing in all the people in the
18 chain.

19 But she has stipulated to the chain of evidence. So we
20 will have the person ---

21 THE COURT: What I would like to do just for
22 scheduling -- because I have the Grand Jury coming in as
23 well. I thought they were coming in at 2:00; they are
24 coming in at 9:30.

25 I would like to go ahead and do my charge, let you do

State vs. Gary Fraley

1 your openings, take a break. That would be a logical place.
2 That will give you your comfort break, allow you to work on
3 your stipulation, let me select the grand jury, and then we
4 will resume.

5 MS. GAY: I do have one request then, Your Honor. My
6 expert was going to come and watch Dr. Gomez testify. And
7 he had one appointment between 12:00 and 1:00 that was
8 important that he needed to do and the rest of the whole day
9 is open.

10 I told him that I thought we could get it done before
11 12:00. But if that is going to be the situation I think
12 that could we agree to come back at 1:00 so that -- or ...?

13 MS. WILLIAMS: Dr. Gomez is the first witness.

14 THE COURT: Well, I'm not -- we will address it when it
15 comes. I have got 14 jurors ready to come. I am going to
16 bring the jury in. You are going to do your openings. We
17 are waiting on your client and ---

18 MS. WILLIAMS: Your Honor, she has a flight out at
19 4:00. that is not going to interfere with that.

20 THE COURT: Who has a flight out?

21 MS. WILLIAMS: Dr. Gomez. She lives in Florida now.

22 THE COURT: Counsel, please work out your schedules.
23 All right. When I call them I will -- they need to either
24 be here or not. I am going to call them.

25 MS. WILLIAMS: No, I mean I am asking when -- that she

1 would testify well before 4:00. I think Ms. Gay is under
2 the impression that she is going to be testifying this
3 afternoon. She is our first witness. So you are not ---

4 THE COURT: My grand jury takes about 20 minutes.

5 MS. WILLIAMS: That's what I thought.

6 MS. GAY: Okay.

7 THE COURT: It just takes about 20 minutes.

8 (WHEREUPON, break was had 9:34 a.m. for other matter of the
9 court.)

10 (WHEREUPON, resumed 7/14/15, 9:35 a.m.)

11 MS. GAY: Your Honor, one matter of housekeeping. I
12 have a person on my witness list. Her name is Suzie Hilton.
13 And I have decided that I am not going to call her as a
14 witness. And she prefers not to be called in this case.
15 And I understand that. And so she is a friend of his, and
16 she just since we are not going to call her could she sit in
17 the courtroom?

18 THE COURT: Ms. Williams?

19 MS. WILLIAMS: We have no objection.

20 THE COURT: I'm sorry?

21 MS. WILLIAMS: We have no objection, Your Honor.

22 THE COURT: All right. Thank you. All right. Let's
23 bring in the jury.

24 (WHEREUPON, Defendant's Exhibit 1, was marked for
25 identification.)

State vs. Gary Fraley

1 (WHEREUPON, jury enters courtroom 7/14/15, 9:37 a.m.)

2 THE COURT: Please remain standing. We need to
3 administer the oath. Everyone else can be seated.

4 (WHEREUPON, the jury was duly sworn.)

5 THE COURT: Was there any member of the panel who could
6 not take the oath; if so, please stand.

7 Thank you. All 14 jurors have indicated they were able
8 to take the oath.

9 Ladies and gentlemen, did every member of the jury
10 panel comply with the court's instruction over the evening
11 hour; if you did not comply, please stand.

12 Thank you. All 14 jurors have complied with the
13 court's instruction. Ladies and gentlemen, just a few
14 things. Please remember out of respect for your new
15 position as judges of the fact when you come in everyone
16 will be standing and to please come in and each of you take
17 your seat.

18 You do not have to stand for each other. So please
19 come in and take your seats because everyone will remain
20 standing until all of you are seated.

21 Madam foreperson, I remind you that you are the jury's
22 spokesperson here in court, so if at any time any of you
23 need an additional break, if you have any questions or
24 concerns, please let your foreperson know. She will alert
25 the bailiff. As you see, there is always one if not two

1 bailiffs right there; and we will address the matter as soon
2 as we can.

3 Madam foreperson, you are also responsible for writing
4 the verdict; but I will instruct you on that when I instruct
5 you on the law at the close of the case. So do not let that
6 be a concern to you at this time.

7 I have also made available to you notepads. That means
8 that you may take notes throughout the progress of this
9 trial. Please remember some of us are much better note
10 takers than others. One's juror's notes are no more correct
11 or accurate than another juror's notes. Those are for your
12 own use. We will collect your notepads -- we will collect
13 your notepads at the breaks, for lunch, and at the evening
14 hour, lock them up so no one will have access to that and
15 then give them out to you.

16 I caution jurors do not feel that you have to write
17 down word for word what is happening before you. If at the
18 end when you are retired to consider your verdict you need
19 testimony played back we will simply bring you back into the
20 courtroom and play that testimony for you.

21 Some jurors believe that they must write down word for
22 word what is happening. Sometimes when I am taking notes I
23 have a tendency to look down, and so if you do that as well
24 you could actually miss what is happening before you. So
25 with all of those caveats and all of those warnings you are

State vs. Gary Fraley

1 allowed to take notes throughout the progress of this trial.

2 Ladies and gentlemen, the case that we are about to try
3 is the case of the State of South Carolina versus Gary
4 Fraley, defendant.

5 Before we begin this trial I always like to take the
6 opportunity to explain to jurors what we -- what are we
7 doing here in court today.

8 Most of us -- most of you don't have the opportunity to
9 come to court as I do every day, and so some of you may get
10 your ideas as to what may be happening from television or
11 books or watching movies. Please remember those trials are
12 for your entertainment.

13 This trial is not for your entertainment. It is a
14 fundamental part of our democracy. Remember that insuring
15 that justice is done is often slow, deliberate, and
16 repetitive. The opposite of what you may have seen on
17 television or in movies or read in books.

18 This courtroom is a place of honor. It is dedicated to
19 the protection and preservation of citizen's rights through
20 what many have called the greatest justice system ever
21 created.

22 The attorneys that appear before you are advocates for
23 the parties they represent, but first and foremost they are
24 officers of this court. They are sworn to uphold the law
25 and preserve the integrity and fairness of our judicial

1 system. You should expect them to be professional and
2 competent and ethical in the representation of their
3 client's interest.

4 Please remember you have also taken an oath and you are
5 also expected to be professional, responsible, and ethical.
6 Thank you again for accepting this most important
7 responsibility of jury service and for your contribution
8 today to our justice system.

9 Please remember that the remarks that I give you
10 throughout my opening are not a charge on the law. I will
11 instruct you on the law applicable to this case throughout
12 this trial and at the close of the case before you retire to
13 consider your verdict. I simply wanted to offer you this
14 explanation so that you will be able to understand what is
15 happening before you.

16 The defendant is charged by an indictment filed in this
17 court. There are several. The indictments -- several --
18 indictments 2014-GS-08-1505, a true-billed indictment for
19 kidnapping; 2014-GS-08-1506, a true-billed indictment for
20 possession of a weapon during the commission of a violent
21 crime; Indictment 2014-GS-08-1507, indictment true billed,
22 unlawful conduct towards a child; 2014-GS-08-1508,
23 true-billed indictment for attempted murder;
24 2014-GS-08-1509, a true-billed indictment for kidnapping;
25 2014-GS-08-1511, a true-billed indictment for criminal

State vs. Gary Fraley

1 sexual conduct with a minor in the second-degree; Indictment
2 2014-GS-08-1684, a true-billed indictment for criminal
3 sexual conduct with a minor in the second-degree;
4 2014-GS-08-1685, a true-billed indictment for criminal
5 sexual conduct with a minor, second-degree; 2014-GS-08-1874,
6 a true-billed indictment for criminal sexual conduct with a
7 minor, third-degree; 2014-GS-08-1934, a true-billed
8 indictment for possession of a weapon during the commission
9 of a violent crime.

10 I will explain the elements of each of those
11 indictments, each of those chargers to you at a later time.
12 Please remember the indictment is simply the charge by which
13 this case is brought into court. It is not in any sense
14 evidence of the allegations it contains.

15 The defendant has pled not guilty to each indictment.
16 The State has the burden of proving the defendant guilty
17 beyond a reasonable doubt by proving each of the elements of
18 each indictment beyond a reasonable doubt.

19 It is your duty, ladies and gentlemen, to determine
20 whether the State has met that burden. Your purpose as
21 jurors is to find and determine the facts.

22 As I have indicated to you, you are the sole judges of
23 the facts in this case. If at any time I as the judge of
24 the law makes any comment regarding the facts in this case
25 you must disregard it.

1 You are to determine the facts from the testimony you
2 hear as well as any other evidence that is introduced in
3 court. It is up to you to determine the inferences which
4 you feel may be properly drawn from the evidence.

5 It is important that you determine and perform your
6 duty of determining the facts diligently and
7 conscientiously, because ordinarily there is no way to
8 correct an erroneous determination of the facts by a jury.

9 On the other hand and with equal emphasis, the same law
10 that makes you the judges of the facts makes me the judge of
11 the law. The law as given by this court is the only law
12 that you may follow. You must accept it and follow it even
13 though you may disagree with it.

14 I cannot tell you what I think the facts are, and you
15 cannot disagree with me about what the law is or what the
16 law should be. Your job is to take the law as I give it to
17 you, apply it to the facts as you find them from the
18 testimony of the witnesses and any other evidence that is
19 introduced. And after doing that you will render your
20 verdict, a solemn verdict under the oath that you just took
21 as jurors.

22 As I indicated to you before we broke for the afternoon
23 yesterday, you may not read, watch, listen to any news
24 accounts regarding this case should there be any. You may
25 not do any independent investigation regarding this matter,

State vs. Gary Fraley

1 either together or individually.

2 You may not go to the scene where the events that are
3 the subject of this case are alleged to have been taken
4 place. And last but certainly not least, you may not
5 discuss this case with anyone in any manner until I tell you
6 otherwise. And that does include your fellow jurors. You
7 must decide this case solely on the evidence presented here
8 in the courtroom.

9 Please remember all my admonitions apply when you are
10 in the courtroom, in the jury room, and when you are during
11 a break. Please remember if you become aware of another
12 juror's violations you must report that conduct to me
13 immediately.

14 It is important that you keep an open mind and not
15 decide any issue in this case until all of the evidence has
16 been presented, the parties have made their closing
17 arguments, and I have instructed you on the law applicable
18 to this case.

19 It is your solemn responsibility to determine the guilt
20 or innocence of the defendant, and your verdict must be
21 based solely on the evidence as it is presented to you here
22 in this courtroom.

23 In just a moment the solicitor will make what is called
24 an opening statement in which the solicitor will explain to
25 you the issues in this case or at least what the solicitor

1 believes the issues are.

2 The attorney for the defendant may also make an opening
3 statement, although the defendant is not required to do so
4 at this time.

5 Please remember what the attorneys tell you in their
6 opening statements as well as what is contained in their
7 closing argument is not evidence in this case. It is only
8 their contention as to what the issues are.

9 The evidence in this case will be presented to you by
10 the testimony of sworn witnesses from the witness stand as
11 well as any exhibits that may be introduced into evidence.

12 Ladies and gentlemen, if you do not have an opportunity
13 to view or -- the evidence or if you need any additional
14 time please do not be concerned. All of the evidence that
15 is admitted into evidence in this case will go back to you
16 in your jury room while you are considering your verdict.

17 From time to time you may hear one of the lawyers state
18 an objection or I might have the attorneys approach the
19 bench for a short while or I might have you excused from the
20 courtroom. If I have the attorneys approach the bench
21 please do not overhear us or try to read our lips or
22 anything of that nature. Please do think I am trying to
23 hide anything from you.

24 The reason why I may need to excuse you from the
25 courtroom is sometimes it is necessary for me to make a

State vs. Gary Fraley

1 comment on the facts in this case in order to issue a ruling
2 on the law, so I may excuse you for a short time so that in
3 no way what I say or do will influence you as to your
4 finding of the facts.

5 In determining what the true facts are in this case you
6 must decide whether or not the testimony you hear is
7 believable. It is my responsibility to rule as a matter of
8 law whether certain testimony is admitted. But once the
9 testimony is admitted whether or not you believe it is
10 solely for you to determine.

11 In deciding whether to believe a witness you have the
12 right to consider the interest of the witness, the bias of
13 the witness, the prejudice of the witness, the opportunity
14 for the witness to see the things about which the witness
15 may testify as well as the way the witness acts on the
16 witness stand.

17 That means that you have to pay close attention to the
18 witnesses. Please do not let your thoughts wander or lean
19 your head back and close your eyes for a short while. You
20 must pay close attention.

21 So at the close of the case after you have heard
22 closing arguments on behalf of counsel and I have instructed
23 you on the law applicable to this case you will be in a
24 position to determine what the true facts are, apply the law
25 as I give it to you, and render a true and just verdict.

1 Ladies and gentlemen, please give your strict
2 attention. Mr. Poulos.

3 **OPENING BY MR. POULOS:**

4 Good morning. August 5th, 2014, was a day that changed
5 people's lives forever. It was the day that 55-year-old
6 Steven Tsafos nearly lost his life as he stared down the
7 barrel of a 357 revolver and with Gary Fraley's finger on
8 the trigger. It was the day an 11-year-old Minor¹ had
9 her childhood, her innocence, her world ripped apart when
10 the defendant meticulously plotted and executed a sexual
11 assault on her.

12 You will hear from over 45 witnesses in this case.
13 They will all tell their piece of the story. But it all
14 comes back to the defendant.

15 It all starts with the man sitting at that table right
16 there and the world of drunkenness and self-loathing that he
17 created. Gary Fraley was a married man. His wife, Deonna
18 Fraley, will testify that he had an alcohol problem.

19 In addition, his manipulative behavior towards her, she
20 tried to help him. She tried to get him help, but he
21 wouldn't meet her half way. The marriage crumbled and
22 Deonna Fraley left.

23 Gary Fraley refused to acknowledge his role in the
24 failed marriage and insisted she had to be cheating, she
25 must have been cheating with the only other man of authority

OPENING BY MR. POULOS

1 in her life, her boss at the Royal Lanes Bowling Alley.

2 Gary Fraley decided that he was going to kill Steven
3 Tsafos. But not just kill him. He wanted to even the score
4 with Deonna. He wanted to make her feel guilt. That is
5 when his plan went into action.

6 The evidence will show you that he drove to his
7 mother's house in Pennsylvania, retrieved a 356 revolver, a
8 handgun. On his way back to South Carolina he stopped and
9 purchased ammunition.

10 When he returned to Goose Creek he started courting a
11 14-year-old girl that lived in the neighborhood. He
12 approached the Woltz family and said I need your daughter to
13 come tutor my daughter, could she come to my house. The
14 problem is Gary Fraley's daughter was out of town with her
15 mother.

16 So when that failed Mr. Fraley fabricated a birthday
17 party for his daughter, his still out-of-town daughter, a
18 birthday party that he desperately wanted this 14-year-old
19 girl to attend.

20 He called her parents. He left messages. He went to
21 her house. He talked to her brother. He showed the family
22 crafts, fossils he said they were going to make casts of.
23 He offered to pay this girl to come to the party, and she
24 refused.

25 So he turned his attention to the Vick family and their

1 14-year-old daughter. Same story, same fabricated birthday
2 party, same crafts. Their 14-year-old daughter wasn't home,
3 but 11-year-old Minor¹ was. She went with Mr. Fraley.

4 The problem was it wasn't Gary Fraley's daughter's
5 birthday. August 5th, 2014, it was Gary Fraley's birthday;
6 and there's no party.

7 He went to the -- he went to the Publix in Goose Creek,
8 left Minor in the car, went inside; purchased a six-pack of
9 beer, a bottle of NyQuil, and baby oil.

10 He then took her to the nearby EconoLodge across the
11 street from the Royal Lane Bowling Alley and told Minor that
12 she had to take a shower so she didn't get the fossils
13 dirty.

14 When she was in the shower he brought her some NyQuil.
15 Said she had to drink the NyQuil because the other kids were
16 sick. After she finished showering she put her clothes back
17 on. Left the bathroom. And Gary Fraley told her I am going
18 to get back at my cheating wife by cheating with you.

19 He made her hold the handgun in her shaking hands. He
20 made her take off her clothes. He forced his penis into her
21 mouth, and again into her rectum, and again into her vagina.

22 And after he finished having sex with this 11-year-old
23 child he puts SpongeBob on the TV and said I am going to go
24 kill Steven Tsafos.

25 He then took Minor to the bowling alley, left her in the

OPENING BY MR. POULOS

1 car and went inside. Several employees saw him, recognized
2 him. They knew who he was. He went to Steven Tsafos'
3 office. A heated argument ensued. He said, "Steven, you
4 are a dead man", and he pulled the trigger. Fortunately he
5 missed. Steven Tsafos escaped the office.

6 The Goose Creek Police Department was on the scene.
7 They negotiated with him for over an hour. And finally they
8 stormed the office, disarmed Gary Fraley and took him into
9 custody. Those are the simple facts.

10 The Woltz family will testify to Gary Fraley's attempts
11 to lure their daughter to his home. The Vick family will
12 testify that he executed the same scheme on their daughter.

13 The video surveillance will show Mr. Fraley enter the
14 Publix, purchase the beer, the NyQuil and the baby oil. The
15 video surveillance will show Gary Fraley leading Minor 1
16 into the EconoLodge and lead her away from the EconoLodge.

17 Witnesses will tell you they heard a gunshot in Steven
18 Tsafos' office. Police will tell you that they recover the
19 gun and in addition to the spent cartridge there was another
20 cartridge, another bullet in the gun that had what is called
21 a light strike on the back, meaning the hammer of the gun
22 hit the back of the bullet but it didn't fire.

23 They will also tell you when they took the gun from
24 Gary Fraley it was fully cocked and ready to shoot again.
25 They will tell you that the cylinder of the gun appeared to

1 be somewhat misaligned so it could have possibly been
2 jammed.

3 Scientific evidence will show you Minor1 DNA was
4 on the NyQuil cup, it was on the handgun, it was in Gary
5 Fraley's car. It will show you that Minor1 had NyQuil in
6 her blood. And scientific tests will show you that Gary
7 Fraley's semen was inside of Minor1 underwear, was
8 inside of her rectum, and it was inside of her vagina. The
9 evidence is clear, ladies and gentlemen.

10 I expect the defense to come before you and to say
11 conveniently that Gary Fraley doesn't remember. I expect
12 him to say that months prior he received some medication and
13 that when he began drinking again it caused him to forget,
14 it caused him to black out, it made him insane.

15 Witness after witness will testify that when they
16 interacted with Gary Fraley he was lucid, he knew who he
17 was, he knew where he was, he knew what he was doing, and he
18 knew what he was doing was wrong.

19 We will call a doctor and tell you that the assertion
20 that the medication and alcohol would cause him to blackout
21 simply isn't true. The evidence is clear, ladies and
22 gentlemen.

23 Before I finish I am going to talk to you briefly about
24 the law. I will come before you again at the end of the
25 trial and talk about the law. The judge will give you the

OPENING BY MR. POULOS

1 detail of reading of the law. But for our purposes I am
2 going to briefly go through the law with you.

3 Gary Fraley is charged with attempted murder. The
4 evidence will show that he had an intent to kill Steven
5 Tsafos. You will see that from testimony, from text
6 messages, from other messages, that he attempted to kill
7 Steven Tsafos by pulling the trigger of the gun and that he
8 did so with malice of forethought, with a wicked heart, with
9 an evil intention.

10 Kidnapping. Often times you think of kidnapping as
11 tying someone up and carrying them away. The statute only
12 requires an unlawful confinement. And the evidence will
13 show that when Gary Fraley confines Steven Tsafos to his
14 office at gun point he kidnapped him. When he confined Minor
15 to the motel room he kidnapped her. 1

16 Unlawful conduct towards a child. The evidence will
17 show that the defendant was given custody in charge of Minor
18 to take her to that birthday party. He placed her at a 1
19 risk of harm affecting her physical and mental health. He
20 maliciously caused bodily harm to her and then willfully
21 abandoned her in the parking lot.

22 Possession of a weapon during the commission of a
23 violent crime. For our purposes kidnapping is considered a
24 violent crime. During both kidnappings Gary Fraley was in
25 possession of the 357 revolver.

1 Criminal sexual conduct with a minor in the
2 third-degree. The evidence will show that the defendant is
3 over 14. He willfully committed a lewd act upon Minor 1
4 who was under the age of 16. And he did so with the intent
5 of gratifying his own sexual desires. He caressed her. He
6 touched her. He washed her in the shower. He kissed her.

7 The evidence will show that Gary Fraley committed
8 criminal sexual conduct with a minor in the second-degree,
9 that he engaged in a sexual battery with Minor 1 who was
10 11 years old.

11 A sexual battery can be sexual intercourse, fellatio,
12 and anal intercourse. Three counts, ladies and gentlemen.

13 At the end of this trial I am going to ask you to
14 listen to the law carefully as the judge gives it to you.
15 Think about all the facts, all of the testimony you have
16 heard, all of the evidence that has been shown.

17 Ms. Williams and I will ask you to render a verdict of
18 guilty on each and every count. Thank you.

19 THE COURT: Ms. Gay.

20 MS. GAY: Thank you, Your Honor. May it please the
21 court.

22 (WHEREUPON, pause to adjust podium.)

23 **OPENING BY MS. GAY:**

24 My name is Melissa Gay. And as I told you earlier, I
25 am from Mt. Pleasant. I am in practice. I represent Mr.

OPENING BY MS. GAY

1 Gary Fraley. And I am here today as part of this process in
2 this trial.

3 And the first thing I need to do for y'all is really
4 thank you. If you -- you know that we went through kind of
5 an extensive process to get you guys. There were occasions
6 where different people were excused or weren't seated on the
7 jury and then you were chosen. And there is a reason for
8 that.

9 In our country we have a process where a defendant is
10 entitled to have a jury based on their peers. And there's
11 all kinds of ways we decide who is a peer and who isn't a
12 peer and who should be on the jury and who shouldn't. But
13 in this case you are the jury that Mr. Fraley is looking to
14 to really figure out what happened here this day and what
15 the responsibility is.

16 This is an unusual trial. This is not a trial about
17 identity at all. There will be no indication that we are
18 saying that someone else did it other -- did any of these
19 acts other than Mr. Fraley.

20 One thing that the judge did mention and I want to
21 reiterate is that this is not T.V. And because it is not
22 T.V. I don't have any really great script writers who come
23 and make all these beautiful sentences that, you know,
24 connect everything up and I make all kinds of sense.
25 Sometimes I make absolutely no sense.

1 Because this is a process and it is a process that
2 starts and goes and has lots of different things. I refer
3 to it as a batmitten game where you are just trying to keep
4 the birdies going and sometimes things get very confusing in
5 the courtroom.

6 And so if there is something about me, how I look, what
7 I say, please don't let any of that affect your review of
8 the facts in the case and Mr. Fraley's right to a fair
9 trial.

10 The process itself is all about innocence at this
11 point. My client is an innocent individual sitting over
12 there right now. As innocent as any other person in this
13 courtroom. As innocent as all of us. He is what they
14 called cloaked in a shield of innocence. He is completely
15 innocent unless and until the State can prove beyond a
16 reasonable doubt that you should then declare him guilty.

17 And that is significantly important. It is one of the
18 most important judicial principals in our entire country.
19 And the judge is going to explain some of the law. Because
20 I am not the law; I am his advocate.

21 She's going to explain some of the law about the burden
22 of proof and how and what -- the way the solicitor needs to
23 show you whether or not my client is, you know, guilty
24 beyond a reasonable doubt.

25 And she will define reasonable doubt for you and you

OPENING BY MS. GAY

1 will understand. But it's layman's terms a doubt that would
2 cause a reasonable person to hesitate to act. Well, the
3 comment is beyond a reasonable doubt. So if there is doubt
4 you have to, you know -- they -- the State has to take you
5 beyond that doubt to cause a reasonable person to hesitate
6 to act.

7 So I have described some of the general things about
8 the case, that this is a very important day, that we have
9 the -- you know, he is an innocent man sitting here, that
10 the judge is going to explain to you the burden of proof.

11 What this case is about -- and I appreciate what the
12 solicitor said about his rendition of all the evidence that
13 is going to get to show you what Gary Fraley the man did
14 that day, but what it is about is criminal intent. What it
15 is about is state of mind. What it is about is whether or
16 not he was sane that day.

17 And there will be a good bit of evidence in this case
18 that Mr. Fraley was suffering from significant mental
19 deficiencies during that period of time and that those
20 mental deficiencies prevented him from knowing the
21 difference between right and wrong; therefore, the acts that
22 he did that he doesn't claim he didn't do were under the law
23 he can be found insane or not guilty by reason of insanity.

24 And so this case is an unusual situation because he's
25 not going to say he didn't do it. He is not going to --

1 there is not going to be evidence that they have the wrong
2 man.

3 What is going to be evidence in this case is that his
4 mind was not in the right place at the time that all of this
5 was going on such that in the law he because of some law
6 that the judge is going to describe to you can be found
7 insane.

8 And what is the definition of sanity? I looked up the
9 definition of sanity and it said soundness of -- of rec
10 soundness, rationality, healthiness of the human mind,
11 wholeness, rational, emotionally sound.

12 What is insanity? Brokenness, troubled consciousness,
13 compos mentis which is a Latin phrase -- and many of y'all
14 are teachers, and teachers and nurses seem to be what was
15 available this summer for the jury panel.

16 MS. WILLIAMS: Objection, Your Honor. Relevance. She
17 is not arguing the law, and she is not ---

18 THE COURT: Ladies and gentlemen, please remember what
19 is contained in opening statements as well as what will be
20 contained in closing arguments is merely the attorney's
21 contention as to what the evidence will show you.

22 Ms. Gay.

23 MS. GAY: I am wrapping up, Your Honor. Compos mentis
24 is the Latin for mastery of the mind. Compos meaning
25 mastery, mentis meaning the mind. Non compos mentis means

OPENING BY MS. GAY

1 non mastery of the mind, lack of volition, lack of
2 understanding of what is right and wrong.

3 And in this case we believe after you see all the
4 evidence in this matter that what was going on in Mr.
5 Fraley's life at the time Mr. Fraley was suffering from
6 mental problems. He was seeking help through doctors. He
7 had been provided medication that was supposed to help him
8 that made his mind fog up and him not know what was going
9 on.

10 You will see that he had gone to many, many hospitals
11 between -- during the period of this time right -- about
12 within five or six weeks of this. He did get this shot that
13 was supposed to help him.

14 He believes -- or the evidence will show that after
15 that he then went to other hospitals after, one of which
16 wanted to commit him -- or keep him for psychiatric reasons.
17 There was this long history of him not being in his right
18 mind, and then this occurred.

19 So we believe at the end of this case, ladies and
20 gentlemen, that you will find that he was in fact insane.

21 THE COURT: Ladies and gentlemen, there is a matter
22 that I must take up outside of your presence. We are going
23 to take about a 20-minute recess. Please remember all of my
24 admonitions. You can take your notepads with you or leave
25 them right in your chair.

1 Please rise for the jury.

2 (WHEREUPON, break taken 7/14/15, 10:11 a.m. for other court
3 matters.)

4 (WHEREUPON, resume trial 7/14/15, 11:35 a.m.)

5 (WHEREUON, Court's Exhibit 8, evidence control form, was
6 marked for identification.)

7 (WHEREUPON, Court's Exhibit 9, chain of evidence
8 stipulation, was marked for identification.)

9 THE COURT: All right. Any ---

10 MS. WILLIAMS: Should we inquire with the juror, the
11 one juror?

12 THE COURT: Oh.

13 MS. WILLIAMS: Because -- I mean it is okay with the
14 State if we do that at lunch. I don't think that -- I mean
15 whether he gets kicked off now or at lunch I don't think it
16 matters.

17 THE COURT: All right. We will do that at the next
18 convenient break. Please remind me. I will make a sticky
19 note.

20 MS. WILLIAMS: Yes, Your Honor.

21 THE COURT: I completely forgot. Thank you. Let's go
22 ahead and bring in the jury. You have a stipulation you are
23 prepared to read now?

24 MS. WILLIAMS: Yes, Your Honor. I will just wait for
25 your cue.

State vs. Gary Fraley

1 THE COURT: Thank you.

2 MS. WILLIAMS: And I think the court reporter is going
3 to hand you the exhibit which is what I am reading and the
4 list of exhibits that I will refer to.

5 THE COURT: What I had planned to do is just tell them
6 what a stipulation is, that you have been working -- the two
7 of you have been working very diligently to accomplish the
8 stipulation and you are going to place the stipulation on
9 the record.

10 MS. GAY: Yes, ma'am.

11 THE BAILIFF: Jury coming in.

12 THE COURT: Please rise for the jury.

13 (WHEREUPON, jury enters courtroom 7/14/2015, 11:35 a.m.)

14 THE COURT: Thank you. Please be seated.

15 Ladies and gentlemen, I appreciate your patience. As I
16 indicated to you in my opening searching for justice is
17 often slow, repetitive, and deliberate.

18 What we have been doing throughout this break is the
19 State, the attorney for the State, and the attorney for the
20 defendant have been working out what is called a
21 stipulation. And that simply means it is an agreement and
22 they have agreed to certain testimonies of certain witnesses
23 and the State will place that on the record.

24 What that means for you is we have eliminated about 20
25 witnesses I believe. So that is what they have been

1 diligently doing during our last break. Please give your
2 strict attention.

3 Ms. Williams, if you will please place that on the
4 record.

5 MS. WILLIAMS: Thank you, Your Honor. For the case of
6 State versus Gary Fraley the chain of evidence witnesses
7 will not be presented due to a stipulation entered into by
8 the State and the defense.

9 The stipulation is as follows: There was a proper
10 chain of evidence on collected items collected and tested by
11 the South Carolina Law Enforcement Division, SLED, and
12 Intelligenetics Lab.

13 These evidence items remained in the same sealed
14 condition and were properly stored and maintained from
15 collection until they reached the analysts, Tracy McKinnon,
16 Kevin Selinsky, and Stacey Matthew of SLED and Dr. Daniel
17 Demers of Intelligenitics.

18 All other evidence maintained by Goose Creek Police
19 Department was recorded, maintained, and stored in order to
20 maintain the integrity of the chain of evidence.

21 And, Your Honor, this was done after Ms. Gay and I
22 looked through all the evidence sheets and verified that
23 every single bit of the chain of evidence was followed
24 according to protocol, and we have made that along with the
25 stipulation part of the court's exhibit.

State vs. Gary Fraley

1 THE COURT: Ms. Gay, was the stipulation adequately
2 placed on the record?

3 MS. GAY: Yes, ma'am.

4 THE COURT: And was that your understanding of what the
5 stipulation would be?

6 MS. GAY: Yes, ma'am. And too for judicial economy to
7 just deal with it, the what has happened with the evidence
8 as opposed to how the evidence got from the scene to the
9 courtroom.

10 THE COURT: All right. Thank you, Ms. Gay. Thank you,
11 Ms. Williams.

12 Ms. Williams, please call your first witness.

13 MS. WILLIAMS: The State would call Dr. Anna Gomez.

14 THE COURT: Dr. Gomez, please come forward and be
15 sworn.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please have a seat. State your full name
18 and spell your last name for the record.

19 MS. GOMEZ: My name is Anna Gomez. Last name
20 G-O-M-E-Z.

21 **DIRECT EXAMINATION BY MS. WILLIAMS OF DR. ANNA GOMEZ:**

22 Q. Good morning, Dr. Gomez.

23 A. Good morning.

24 Q. Where do you work -- or where did you work back in
25 August of 2014?

1 A. I was working at the Medical University of South
2 Carolina.

3 Q. And are you in transition right now?

4 A. Yes.

5 Q. When are you going to start your new job?

6 A. Later this month.

7 Q. And what will that be doing?

8 A. I will be a psychiatrist at Grey's Point which is
9 located in Florida. And I will be doing mainly general
10 psychiatry with a small component of forensic psychiatry
11 work.

12 Q. And how long have you been licensed in your profession?

13 A. I have been licensed since 2008.

14 Q. And when you were working at the Medical University did
15 you specialize in a particular branch or field of
16 psychiatry?

17 A. Yes.

18 Q. What was that?

19 A. I was working mainly as a forensic psychiatrist.

20 Q. What is a forensic psychiatrist, for those of us that
21 don't understand all the different terms?

22 A. Sure. So forensic psychiatry is a branch of psychiatry
23 that deals with mental illness as it interacts and
24 intersects with the law.

25 Q. And as part of your duties as a forensic psychiatrist

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. ANNA GOMEZ

1 do you evaluate people that are trying to insert an insanity
2 defense?

3 A. Yes.

4 Q. And about how many of those evaluations would you say
5 you have done in your career?

6 A. I have probably done myself about 12 and worked with
7 trainees on maybe another handful or so.

8 Q. Okay. And are you a member of any specialized medical
9 or scientific groups or associations?

10 A. Yes, I am a member of the American Psychiatric
11 Association and the national association that is for
12 forensic psychiatrists.

13 Q. And have you been qualified as an expert before in
14 court?

15 A. Yes, I have.

16 Q. And what was that qualification for, forensic
17 psychiatry?

18 A. Yes, as an expert witness.

19 MS. WILLIAMS: Your Honor, at this time we would offer
20 Dr. Gomez as an expert in the field of forensic psychiatry.

21 MS. GAY: Without objection.

22 THE COURT: Ladies and gentlemen, normally a person
23 cannot give opinion testimony. Typically when a person
24 testifies they must testify as to either what they heard or
25 saw or sensed by smell or something of that nature.

1 There is an exception in our laws if someone is
2 qualified because of their education and experience. They
3 are permitted to give their opinion in certain areas. This
4 witness will be qualified in the area of forensic psychology
5 to give opinions -- is that correct?

6 MS. GOMEZ: Psychiatry.

7 THE COURT: Psychiatry. As soon as I said it I knew,
8 Dr. Gomez. I have qualified Dr. Gomez as an expert
9 previously, and she will be allowed to give opinion
10 testimony in that area.

11 Please remember that does not mean that you must accept
12 the opinion. It is simply evidence for you to use in any
13 way that you see fit.

14 Ms. Williams.

15 MS. WILLIAMS: Thank you, Your Honor.

16 BY MS. WILLIAMS:

17 Q. And the judge just reminded me. We sort of glazed over
18 some of your educational background. Please explain to the
19 jury some of your educational background and some of the
20 intern hours and residency requirements for being a doctor.

21 A. Sure. So I graduated from college with a bachelor's
22 degree in psychology, and then I went to medical school
23 where I got my medical degree. After that I did residency
24 which is four years, in general psychiatry. And that
25 involves a variety of rotations on inpatient, outpatient,

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. ANNA GOMEZ

1 substance abuse, psychiatric emergency, child and
2 adolescent; just a whole sort of to get a well-rounded
3 picture of -- mental health. And there is also some non
4 mental health requirements such as rotating on neurology,
5 internal medicine, and in the normal non psychiatric medical
6 emergency room.

7 And so I decided after completing that that I wanted to
8 do one more year and sub specialize in the field of forensic
9 psychiatry which I just described a minute ago.

10 Q. Thank you. And did you receive an order from the court
11 in this case to evaluation Mr. Fraley for his assertion of
12 an insanity defense?

13 A. Yes, I did.

14 Q. And when was that examination; how many times did you
15 meet with him?

16 A. So I met with Mr. Fraley three different times;
17 February 9th of this year, February 17th, and Feb- -- and
18 excuse me, May 13.

19 Q. And what information did you receive prior to the
20 examination to go over in order to form your opinion?

21 A. I received a variety of legal records including South
22 Carolina arrest record, arrest warrants, statements, police
23 reports. There were also medical records from places like
24 the VA, MUSC, Regional Care Hospital, Centerville Clinic,
25 Wilmington Treatment Center, Southwest Regional. There's

1 also police interview of Mr. Fraley and others that were
2 relevant.

3 And that last piece of CD's that were the interviews by
4 the police I did not review until after I had done my final
5 interview.

6 Q. And did you also receive after the interview some
7 records of Mr. Fraley from the day he was arrested from
8 Trident Hospital?

9 A. Yes, I did.

10 Q. Do you feel like you had adequate information in order
11 to form your opinion?

12 A. Yes.

13 Q. So after you reviewed all those records then you met
14 with Mr. Fraley and you got additional information from him;
15 is that correct?

16 A. Yes.

17 Q. Information about his background, information about
18 his -- how he was feeling that day, what his symptoms were
19 as he described them; is that correct?

20 A. That is correct.

21 Q. And who was present when you did your evaluation?

22 A. For the two interviews that were in February it was
23 myself only. I was the only examiner. And in May Mr.
24 Fraley's attorney attended, and there was a medical student
25 working with me who was present during that interview as

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. ANNA GOMEZ

1 well.

2 Q. And did you consult with anyone else regarding any of
3 the information that you received from Mr. Fraley or from
4 any of the records before you formed your opinion?

5 A. I spoke to a pharmacist.

6 Q. Okay. Explain that to me. Why did you speak with a
7 pharmacist?

8 A. Okay. So Mr. Fraley was making the contention that he
9 had received a medication while being in Wilmington
10 Treatment Center at the end of June that had a variety of
11 effects on his mental abilities, and that was really not
12 consistent with my knowledge of that medicine and what I
13 found myself looking at the information available from the
14 manufacturers of that medicine.

15 And so in order to be as thorough as I could be with
16 that, you know, piece of information, I went ahead and
17 contacted a pharmacist who specializes in medications
18 related to mental health and has -- she has certifications
19 in that -- to get her opinion on the medicine and its
20 effects given the issues that were arising in this
21 situation.

22 Q. And what was her opinion about the ability of the drugs
23 he was claiming ---

24 MS. GAY: Your Honor, I have an objection as to
25 hearsay. She can testify to what her ---

1 THE COURT: I just need -- I don't need speaking
2 objections. Overruled. You may -- you may continue.

3 Q. What did you learn about his contention about these
4 drugs? I think Vivitrol was one of them ---

5 A. Correct.

6 Q. --- in your report.

7 A. So basically Mr. Fraley received Vivitrol on June 21st
8 as an injection. And Vivitrol is an injection used to help
9 people who are addicted to alcohol or opiate. In this case
10 it was for alcohol.

11 Anyway so basically what happened was six weeks elapsed
12 between when he last received the injection and the alleged
13 events of August 5th.

14 And so what the pharmacist explained to me was that
15 when somebody received a Vivitrol injection the blood levels
16 really reach their maximum in about two or three days and
17 then they kind of reach this plateau of sorts, and then 14
18 days after the initial injection they continue to come down,
19 come down, and come done; such that by the end of the day
20 you have very low levels in your blood. That is why is it
21 dosed about every 28 days.

22 She also explained that the Vivitrol itself doesn't
23 change the effects of alcohol. Like if you drink you can
24 still be drunk and have blackouts. So you may not feel that
25 euphoria, that feel good from the alcohol; but everything

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. ANNA GOMEZ

1 else is still going to be a possibility.

2 And then lastly I asked her about, you know, side
3 effects that affect the mind due to this medication, and she
4 said that she was not aware of any psychiatric side affects
5 to include memory loss, loss of awareness of one's actions
6 or confusion as a result of using Vivitrol.

7 In addition, just the timeline, i.e. having received
8 the medicine six weeks earlier being in fact overdue for the
9 next dose if you are going to receive that treatment it just
10 really didn't make any sense to her.

11 Q. And made this inquiry because Mr. Fraley was telling
12 you that the Vivitrol was making him behave that way during
13 the time of the crimes; is that correct?

14 A. Yes, that was the strong insinuation.

15 Q. Okay. Now in order to do your report you have to
16 figure out whether whatever you evaluate for Mr. Fraley
17 meets the legal standard of insanity; is that correct?

18 A. Yes.

19 Q. So what is your understanding of the legal standard for
20 insanity?

21 A. So the legal standard is that due to the effects of a
22 mental illness or some kind of mental defect the person was
23 unable to distinguish moral or legal wrong from moral or
24 legal right.

25 Q. And how does voluntary intoxication, someone deciding

1 to take drugs or alcohol, enter into your analysis of that
2 legal standard?

3 A. Voluntary intoxication cannot be used as a basis -- as
4 a sole basis for lack of criminal responsibility, meaning
5 you can't say I was drunk and so I didn't know right from
6 wrong.

7 The only time that that is a consideration is if
8 somebody has permanent brain damage because they've had
9 maybe forty years or whatnot of consistent drug or alcohol
10 use such that there has been like a permanent damage to the
11 brain that is not coming back kind of a thing. And so it
12 has to be that kind of a scenario in order to consider
13 whether intoxication can be something that is usable.

14 Q. And in your expert opinion was Mr. Fraley insane at the
15 time the crimes were committed?

16 A. No.

17 Q. And in your expert opinion did he have any kind of
18 mental defect like retardation or something like that that
19 would enter into the analysis?

20 A. No.

21 Q. Now Mr. Fraley does have some mental illness, correct?

22 A. Yes.

23 Q. What is that?

24 A. Alcohol dependence in a controlled environment. And he
25 has also had depression diagnosed as major depres- --

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. ANNA GOMEZ

1 depressive disorder recurrent.

2 Q. Now are you aware of the fact that Mr. Fraley - and I
3 think he even brought this up to you - represents that he
4 was -- he left the armed services because of a PTSD
5 diagnosis?

6 A. Give me just one second to make sure I have that right.

7 Q. I think on Page 16 there is reference to him telling
8 you that.

9 A. Okay. He indicated to me that he was diagnosed with
10 PTSD. And he indicated some of it may have been related to
11 military activities and some of it was not related to
12 military.

13 Q. And did you find any evidence of that?

14 A. I did not receive anything that corroborates such a
15 diagnosis.

16 Q. And what is the reason why -- was he medically
17 discharged from the armed services?

18 A. I think the answer is yes, but let me just double check
19 here. I have that he left the military in 1996 with an
20 honorable discharge.

21 Q. And what was -- I think yesterday you testified as to
22 the two reasons that he was discharged, the two medical
23 reasons.

24 A. He had a cardiac issue and depressions.

25 Q. But not PTSD?

1 A. Correct, I could not find corroborating evidence of
2 PTSD.

3 Q. You just testified that Mr. Fraley was legally sane at
4 the time the crimes were committed. Did you also do an
5 evaluation of whether he is able to conform his behavior to
6 the law at the time the crimes were committed?

7 A. Yes.

8 Q. And what is your opinion regarding that?

9 A. My opinion is that Mr. Fraley did not have a mental
10 illness that would have impaired his ability to conform his
11 behavior to the requirements of the law.

12 Q. And that he was sane, legally sane, at the time the
13 crimes were committed?

14 A. Correct.

15 MS. WILLIAMS: Court's indulgence.

16 Thank you, Dr. Gomez.

17 THE COURT: Ms. Gay.

18 MS. GAY: Thank you, Your Honor.

19 **CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ:**

20 Q. Ms. Gomez, I just have several different things I want
21 to talk to you about. Initially you told -- I have no
22 qualms with your training and your -- and the fact that you
23 have done several of these evaluations before, you know, and
24 in the past testified as an expert.

25 Certainly every patient is different and every person

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 has different things that they either relate to you or go on
2 in their -- inside their body?

3 A. Sure.

4 Q. And in that regard there's the human body we would
5 agree has got all kinds of wacky ways of connecting itself
6 and what is going on at any given time?

7 A. Okay.

8 Q. And I think one of the things about Mr. Fraley was that
9 Mr. Fraley suffers from a good bit of digestive problems,
10 things that are -- his pancreas he had a problem with. I
11 think he has been diagnosed with Gerd's before. Are these
12 things that you remember talking to him about?

13 A. Yes.

14 Q. And so on top of that he also has a diagnosis of
15 depressive disorder and anxiety would come along with that,
16 the -- I think in the report there's lots of references to
17 him being very anxious, him being very stressed; things of
18 that nature?

19 A. Yes.

20 Q. And so this man, Gary Fraley, who was sitting there
21 talking to you about what happened was a guy who had some
22 severe stomach problems, whatever version of it it is, and
23 even at some point had an ulcer that in one of the hospitals
24 that we went to they had to fix; do you remember that ---

25 A. Yes.

1 Q. --- from the Southwest Hospital? Yes, ma'am?

2 A. Yes.

3 Q. Okay. So this -- Gary was during the period of time
4 that he was talking to you I think he had some -- such
5 anxiety or was so upset one day not doing well that he had
6 to go back and then come back again to have a second meeting
7 with you?

8 A. That was because he was -- had not slept sufficiently.

9 Q. Wasn't feeling well?

10 A. Apparently.

11 Q. And so his -- as he was reporting to you the incident
12 of his -- of -- in June through August 2014 he was also
13 suffering from some physical problems that were making it
14 harder for him to get through the evaluation with you?

15 A. Um ---

16 Q. Medical problems.

17 A. I'm not sure that his medical problems had anything to
18 do with getting through the evaluation. That -- that was --
19 I did not walk away with that.

20 Q. Okay. Well, he told you that when this happened that
21 he had been having a lot problems up until the time when
22 this occurred, and I would like to talk with you about some
23 of those problems. And I think you refer to them as sources
24 of information that you reviewed. You said that you
25 reviewed all of the police reports?

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 A. All the police reports that I was given.

2 Q. And anything that was given to you about any interviews
3 with any people -- I think you had some DVD's of different
4 people's interviews, you reviewed those; but I think you
5 said you reviewed those after you had met with him the last
6 time?

7 A. Correct. I did not have those previously.

8 Q. And so and I think you had reviewed some supplemental
9 reports and everything that was investigative in nature
10 about the arrest?

11 A. I was -- I reviewed everything I was given.

12 Q. Okay. Well, in the part that had to do with Mr.
13 Fraley's medical issues or mental health issues there was --
14 and I am just going to walk over here if you don't mind.
15 There was a number of different things that you reviewed.

16 First of all you worked at the Medical University of
17 South Carolina Forensic Department -- Psychiatric
18 Department. So you had access to whatever records may have
19 been available through the Medical University?

20 A. Correct.

21 Q. Okay. So like -- I am going to show you for an
22 example. Can you identify this?

23 A. This says Medical University of South Carolina, Gary
24 Fraley.

25 Q. So is it fair to assume that this is at least a portion

1 of MUSC's medical records? Do they appear to be in the
2 condition of what -- how medical records are prepared by the
3 Medical University?

4 A. Yes.

5 Q. Okay. So part of this evaluation you would have
6 reviewed stuff about Mr. Fraley's medical past ---

7 A. Yes.

8 Q. --- from the Medical University? And then Mr. Fraley
9 told you that he was having issues having to do with alcohol
10 before he went to the Wilmington Treatment Center, and in
11 your report you refer to that that he had told you that he
12 was drinking heavily and that he had felt as if he needed
13 rehab, to go to a rehab place? Is that what he -- why he
14 told you that he went to Wilmington Treatment Center?

15 A. He told me he was seeking treatment as a way of
16 escaping from his situation at home.

17 Q. Okay. When you say situation at home is that because
18 he believed his wife and another man were having an affair?

19 A. I believe so.

20 Q. And so he told you that because he believed his wife
21 and another man were having an affair he was not sleeping
22 and he was drinking heavily and that is why he believed that
23 he needed to go to the Treatment Center in Wilmington?

24 A. I don't remember the insomnia issue, but I remember the
25 issue about -- you know, I have it in front of me, that

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 going to rehab because of those issues at home.

2 Q. Right. And I think -- and it says -- this -- I am
3 referring to Page 6. It says that he was taking Campral for
4 alcohol cravings. Maybe you can pronounce these better than
5 me. Vivirid (ph) for antidepressants, Zaleplon for
6 sleep medicine, Prozasin for nightmares. And that he had
7 been -- he had been diagnosed with alcohol dependency and
8 post-traumatic stress disorder. That is what the report
9 says?

10 A. Yes, that was from Wilmington Treatment Center.

11 Q. Okay. And that he had gone -- undergone some
12 treatment, eye EMR eye moment, desensitization and
13 reprocessing and CPT cognitive processing therapy due to
14 PTSD; that is what is in the report ---

15 A. Right.

16 Q. --- about what you found or what he told you about what
17 happened at Wilmington Treatment Center?

18 A. Right.

19 Q. And you reviewed the Wilmington Treatment Center
20 records as a part of your case?

21 A. Yes.

22 Q. So I am just going to show you this and ask you if it
23 looks anything like what you have got and what -- if you can
24 identify that.

25 A. It says Wilmington Treatment Center at the top.

1 Q. Does it appear to be consistent with what you reviewed?

2 A. Well, I don't have a photographic memory, but it looks
3 very much like what I have reviewed.

4 Q. Do you review me -- recall actually me giving the
5 reports to review about Wilmington Treatment Center ---

6 A. No, I already had -- I didn't receive those from you.
7 I had those.

8 Q. You did -- okay, but we talked about them?

9 A. Yes, we did.

10 Q. Okay. And so when Mr. Fraley went to Wilmington he
11 told you that they had given him this shot for something
12 called Vivitrol?

13 A. Correct.

14 Q. Vivitrol has another name. Do you know what that name
15 is?

16 A. Naltrexone.

17 Q. Okay. And Vivitrol is the injectable type of medicine;
18 Naltrexone I think is given in pills, mock sometimes?

19 A. Sure.

20 Q. And so the injectable Vivitrol is what he received
21 during June, late June, of 2014 from Wilmington Treatment
22 Center?

23 A. June 21, 2014.

24 Q. Okay. So and you said in your testimony that you
25 had -- that he told you that as part of your evaluation that

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 he believed that this medication had significant impact in
2 his body, from a physiological perspective, like made him
3 fall apart; that is what he said -- was basically saying?

4 A. Correct.

5 Q. And that you had issue and wanted to -- maybe didn't
6 feel as if you had enough information in your own repertoire
7 so you contacted a pharmacist to ask some additional
8 questions about this type of medication?

9 A. I did not contact her because I didn't have enough
10 information in my repertoire. I contacted her because this
11 is her specific area of expertise and I thought it would be
12 doing a good job if I did that. I did not have to contact
13 her.

14 Q. I understand. So you feel as if you needed some more
15 info- -- could use or helpful to have more information, and
16 she told you that the drug is has a two- to three-day high,
17 if you want to call it, or a peak, and that then the effects
18 of it are to come down I believe you said after 14 or so
19 days and then you -- you usually get the shot again every 28
20 days?

21 A. Correct.

22 Q. And did you discuss with her what he was telling you
23 about his -- the way his body was reacting to this medicine
24 or was it ---

25 A. Yes.

1 Q. You did. And okay. So it's based on that you placed
2 in your report that you think that this Vivitrol could not
3 have had an effect on him for as long as to the date of the
4 incident, the date of the arrest, that you felt as if that
5 was too long?

6 A. There's two pieces to it. It is can the medicine even
7 cause that and then the timeline of how long the medicine
8 lasts. So both of those pieces don't make sense from the
9 perspective of the medicine's makeup.

10 Q. And I understand -- and I'm not any -- I'm not a
11 pharmacist or a toxicologist or anything like that, but I
12 understand from some of this information that I have looked
13 into that there are side effects to this medicine and that
14 one of those side effects can be upset stomach, nausea,
15 dizziness, things like that. Did you see that in what you
16 looked at?

17 A. I believe so.

18 Q. Okay. And so the other thing is is on an injectable
19 medicine would you -- is this a fair statement: On an
20 injectable medicine that has a life of 28 days that it is
21 supposed to have an impact in your body and help you for
22 what for 28 days that there may in fact be something called
23 a half-life's that would cotentially (sic) -- could
24 potentially extend out the effect of the medicine for at
25 least half the time of the medicine's effectiveness which

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 would be -- does that make some reasonable sense; I mean
2 somebody -- in my viewing of this stuff -- as I said I am
3 not a toxicologist. Is half-life's a reality?

4 A. Yeah, medicines have half-life's. It just means how
5 much time has elapsed before half of the medicine is gone
6 from your system.

7 Q. Okay. And so if a drug has a 28-day half-life's ---

8 A. No, the half-life's wouldn't be 28 days.

9 Q. I understand. I'm sorry. If the drug has a 28-day
10 window of application to another application and a half-
11 life's of approximately 14 days that is -- there is a
12 possibility that that could be real?

13 A. What could be real?

14 Q. That a drug has a half-life's past the time that the
15 medicine is to be effective in their body. If he needs
16 another injection in 28 days that the half light (sic) --
17 half-life's could actually be further than the 28 days out
18 into, you know, about 14 days later?

19 A. You know, in order for a medicine to last longer in
20 somebody than what kind of like the standard there has to be
21 a reason. So there has to be not passing through. So
22 metabolized by the kidney there has to be sufficient kidney
23 damage that the medicine can't be broken down and so it
24 lasts longer. If it is metabolized by the liver there has
25 to be significant liver problems like on the order of

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 nearing cirrhosis in order for the liver to not be able to
2 break the medicine down and so it stays in the body longer.

3 It would have to be some kind of severe organ damage in
4 that capacity for the medicine to, you know, stay longer in
5 somebody when the half-life's is much less.

6 Q. I understand. And one of the things that I am familiar
7 with or when I ask about this word is individualized -- I
8 think you even mentioned it in your report. It is like an
9 individualized reaction to different types of drugs. And I
10 think that without significant daily testing, blood testing
11 every day, we really don't know how any individual drug
12 affects a person without doing a lot of blood tests?

13 A. I don't know that I agree with that. There are effects
14 of medicine that have been well studied and have to be well
15 studied before a medicine is even allowed to be prescribed
16 by the Federal Drug Administration.

17 And so what was being reported by Mr. Fraley was really
18 not the side effects that would be attributable to receiving
19 that medicine. And so I don't agree that you have to keep
20 checking blood levels and whatnot, you know.

21 Regardless of the blood level the effects that were
22 being put forth do not make sense as being the result of
23 Vivitrol. That is my opinion and also the opinion of the
24 certified pharmacist that I spoke with.

25 Q. And as a part of this I know you said you did some

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 background research. Did you ever look at any of the
2 articles that were done to actually get FDA approval on this
3 medicine; is that anything you looked at?

4 A. No, I did not.

5 Q. Okay. And with -- I guess also this medicine has --
6 any medicine has a significant impact on the body when
7 different medicines are being consumed by the patient in
8 combination I guess. I think they call it synergy when they
9 combine different medicines that are in people's body and
10 how they react?

11 A. Okay.

12 Q. And so in this case I understand that it is your
13 opinion that you do not believe that Vivitrol could have had
14 the type of consequences in Mr. Fraley's life that he
15 believed. I understand that.

16 But he did report to you that he did have all types of
17 physical things going wrong with his body during this time;
18 though you don't believe it has to do with Vivitrol he did
19 report to you that he was having all kinds of physical
20 problems?

21 A. Right. And this report was actually historical. Like
22 he had already been having these issues. It wasn't I
23 received this shot and now I have five medical issues.
24 These were medical issues that he -- he was already
25 experiencing.

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 Q. I understand. And after a few days -- and I think
2 we've talked about this, but this is a medical record that
3 you didn't review.

4 Are you aware that Mr. Fraley was admitted into an
5 emergency room in Wilmington shortly after he got the shot;
6 did he tell you that?

7 A. That sounds familiar.

8 Q. Okay. And is it -- I am going to show you this and
9 just you can identify it for me what this is. I know you
10 didn't review this.

11 A. New Hanover General Medical Center.

12 Q. Okay. And let's try to get a date. The date of the
13 visit?

14 A. June 29, 2014.

15 Q. So if the check -- if the shot from the Vivitrol shot
16 from the New -- from Wilmington was at the end of June,
17 shortly thereafter on the 29th of June is when this medical
18 report, this admission, this hospital admission, is from?

19 A. Okay.

20 Q. And he told you about this that you didn't have this
21 record?

22 A. Well, this may have been the one that he told me that
23 he didn't know what hospital he was taken to because someone
24 else drove and he didn't know where he was.

25 Q. But he did tell you he thought that he had been to this

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 hospital and had received some medical treatment, and I
2 think that he referred to it as having all kinds of problems
3 with his stomach?

4 A. I am not sure.

5 Q. Okay. What page are you looking at?

6 A. Ten.

7 Q. Okay. Let me look at Page 10. He talks about the
8 Wilmington Treatment Center and he said the shot was making
9 me sick, that he went to an emergency room; and yes, I do
10 believe that is the one I am referring to. And so he said
11 that he was crawling around when he went to the ---

12 MS. WILLIAMS: Objection. She is not answering the
13 ques- -- asking a question. She -- object to the form of
14 the question.

15 THE COURT: Rephrase your question.

16 BY MS. GAY:

17 Q. In your report where he is describing this particular
18 hospital can you share with the jury what he said was going
19 on with him when he was in that hospital?

20 MS. GAY: Objection, hearsay.

21 THE COURT: All right. Counsel approach.

22 (WHEREUPON, bench conference was had 7/14/15, 12:12 p.m.)

23 Q. Do you have any idea or do you recall him in this --
24 what you based your thoughts on on what was going on, what
25 type of problems he was having when he went to that

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 hospital? Physical problems. It doesn't even have to be
2 how he said his symptoms were, but what physical problems
3 was his suffering from?

4 A. No, I don't have that.

5 Q. I understand. Because you never reviewed that
6 particular report?

7 A. He told me that he did not know what hospital he was
8 taken to because he did not know where he was; so that is
9 correct, I did not have those reports to review.

10 Q. Right. I understand. And the next time that Mr.
11 Fraley went to seek medical treatment was in Pennsylvania.
12 And could you describe to me what -- how he ended up in
13 Pennsylvania?

14 A. He drove to Pennsylvania.

15 Q. And when he was in Pennsylvania I believe part of what
16 you reviewed was the Southwestern Regional Medical Center
17 records?

18 A. Okay.

19 MS. WILLIAMS: Objection, Your Honor. We don't have
20 any of these records. Could we please get a copy while ---

21 MS. GAY: I will be happy to provide a copy of all of
22 them.

23 MS. WILLIAMS: --- she is showing them. Well, it would
24 be helpful while ---

25 THE COURT: All right. Do you need to take a break to

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 review them?

2 MS. WILLIAMS: Well, if she has another copy ---

3 THE COURT: All right. Counsel, if we are having
4 discussions I would like for you to do it at the bench. Do
5 you need a copy?

6 MS. WILLIAMS: We would just ask for a copy while she
7 is questioning the witness.

8 THE COURT: All right. Do you have an extra copy for
9 the State?

10 MS. GAY: All I am going to do is show her and then I
11 will be happy to give it to her.

12 THE COURT: Well, can you show the State before you
13 inquire.

14 (WHEREUPON, defense counsel complied.)

15 MS. GAY: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MS. GAY:

18 Q. I am going to show you that -- and ask you if this
19 looks like what it is that you

20 A. Okay. I recognize the date. I don't remember
21 specifically what these records look like anymore. But that
22 is the date that I have in my report.

23 Q. Okay. And that date is July 22nd, ---

24 A. Right.

25 Q. --- 2014? So this record is for another hospital

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 admission -- another hospital admission where Mr. Fraley
2 reported that he felt the need to have medical care?

3 A. Right.

4 Q. And in that particular situation -- and this is in your
5 report. And I think this is very important. There is --
6 you read the records. It is noted that he -- they
7 recommended a psychiatric stay in the hospital?

8 A. Yes, that was offered to him.

9 Q. And I believe you said that it may not have risen to
10 the level of involuntary commitment so Mr. Fraley chose to
11 leave?

12 A. Correct.

13 Q. But that he was seen there and was diagnosed with a
14 stomach ulcer; do you remember that?

15 A. Yes, he was -- or he arrived intoxicated.

16 Q. Intoxicated and was diagnosed with a stomach ulcer?

17 A. Correct.

18 Q. And he then -- there was medical treatment done to the
19 stomach ulcer and he was released; and after that
20 hospitalization that was the 22nd of July and the events
21 that occurred on this day that we are here for happened on
22 August 5, 2014?

23 A. Yes.

24 Q. And do you recall any medical stuff that you --
25 documentation that you may have reviewed during the period

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 of time between when he was released, which I think is on
2 the 24th of July from Southwest, to the time that this
3 incident occurred?

4 A. It was just the records I believe it was Trident where
5 he was taken on ---

6 Q. Upon his arrest?

7 A. Yes.

8 Q. And we are not there yet. Okay. So this one he did
9 stay a couple of days in the hospital?

10 A. This one being ...?

11 Q. Southwest Medical Regional ---

12 A. Yes.

13 Q. --- Center in Pennsylvania.

14 A. Yes.

15 Q. And as part of this case he factually he goes to
16 Pennsylvania and -- with -- to visit his mother and then
17 comes back. And in your report you I believe spoke to his
18 mother?

19 A. It was a social worker in our office who was familiar
20 with the case.

21 Q. And she spoke to his mother?

22 A. Yes.

23 Q. And discussed the fact that she is the one who took him
24 to the hospital in Pennsylvania?

25 A. I don't know if she took him or not. I have that he

1 was taken to a hospital.

2 Q. All right. And in the other -- as you are looking at
3 that part can you tell what page number you are on?

4 A. Fourteen.

5 Q. Okay. Okay. And as I said, the small bleeding ulcer
6 was part of what he was seen at for that hospital.

7 When Mr. Fraley was talking to you and describing
8 between the time he was released from that hospital until
9 the time in August 5th when all this happened did he give
10 you details about what was going on in his life at that
11 time?

12 A. Yes.

13 Q. Details up until the day of this?

14 A. I'm not sure what you mean. Yeah, he gave me
15 information. I mean

16 Q. Well, I mean did he give you details as to what he was
17 thinking or feeling and doing before you got to these events
18 on August 5th? Isn't it true he told you he couldn't
19 remember anything?

20 A. No, he didn't tell me he couldn't remember anything.
21 There were things that he said he couldn't remember. But he
22 gave me quite a narrative from, you know, the month prior,
23 shall we say, which is on Page 9 and all of that Page 10.

24 Q. And in that narrative didn't he describe to you that he
25 was having lots of problems, that he couldn't drive, that he

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 wasn't eating, that he was seeing white fog; these are the
2 things that are in your report that he described?

3 A. He says those things.

4 Q. Yes, ma'am, but nobody else that you talked to ever
5 said anything different about his condition during that
6 period; all you had was his interview that you were doing?

7 A. That's not exactly true. When his mom was contacted
8 she was -- she spoke to how she saw him.

9 Q. Did she say that he was not sleeping or eating well?

10 A. She described his behavior as normal though he was not
11 sleeping or eating well.

12 Q. And during this narrative that you have that he --
13 there is a point where Mr. Fraley told you that he no longer
14 remembered things of what was happening, that things were
15 coming in and out; isn't it true that he said he would
16 remember some things but not remember other things?

17 A. Something like that.

18 Q. And that he said that he found himself in a river and
19 didn't know why? That is on Page 10.

20 A. Yes, ----

21 Q. That is on Page 10.

22 A. --- he said that.

23 Q. So that -- said he couldn't drive, said he had to
24 relearn to drive. Those are the kinds of things he was
25 reporting about his life the month before this happened?

1 A. Yes.

2 Q. And with this evaluation when you got specifics with
3 him, very specific with him about what happened on the day
4 of August 5th, one of the things that you talk about in your
5 report is that he did not describe hallucinatory stuff,
6 hearing voices, seeing things, that that was important to
7 you because he didn't report hearing those things or seeing
8 things?

9 A. He did not report those symptoms as they would be
10 relevant for like a psychotic process for somebody who is
11 out of touch with reality.

12 Q. I understand. And the reason that he said -- the
13 response. Because I happened to be there the last time.
14 The response that he had was he didn't remember whether he
15 was having delusion- -- you know, seeing things or hearing
16 things; he said he didn't remember; not that he didn't have
17 them but that he didn't remember?

18 A. No, I don't think that is correct.

19 Q. Well, on Page 15 he says he does not remember whether
20 he experienced any auditory hallucinations on the day of the
21 alleged events. He said when asked about visual
22 hallucinations he said his vision was bad and everything was
23 white; he did not recall ---

24 MS. WILLIAMS: Objection.

25 MS. WILLIAMS: Well, it was in response to her

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 question.

2 THE COURT: Ms. Gay, please let me -- we have been over
3 this. Address your responses to the court ---

4 MS. WILLIAMS: Form of the question.

5 THE COURT: --- not to -- please approach.

6 (WHEREUPON, bench conference was had 7/14/2015, 12:23 p.m.)

7 MS. GAY: Okay. May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 Q. All right. Dr. Gomez, on Page 15 does it refresh your
11 recollection to see that what you wrote as to what ---

12 A. I have it right here.

13 Q. --- as to what the answer to -- and so when he -- my
14 question was did he tell you that he didn't remember having
15 them or not.

16 A. He said -- when I asked him about visual hallucinations
17 he said his vision was bad and everything was white. That's
18 what I have.

19 Q. And with regard to auditory hallucinations?

20 A. On the day of the alleged events he did not remember.

21 Q. And for you as you are talking to -- as you are doing
22 your evaluation and what you're trained to recognize and to
23 see as a slip from reality or a psychoses is if somebody is
24 having these types of auditory or visual hallucinations?

25 A. Well, that is part of it. That's not the only thing.

1 Q. And the other things that you're looking at is whether
2 or not they can articulate whether or not they were based in
3 reality?

4 A. Not necessarily.

5 Q. So other than them telling you I remember that the --
6 you know, that the devil came and told me what to do or
7 whatever, how else would you know whether somebody was
8 actively psychotic?

9 A. That is where collateral information is really
10 important, what is in the police reports, other people who
11 saw the individual, what they describe or what they did not
12 describe. That -- that piece of information that really
13 fills in the rest of the context in the story is really
14 relevant for that.

15 Q. And in this case his mother says that he wasn't
16 sleeping well and he wasn't eating well. And I don't
17 believe you had -- I think you talked to one other person
18 that he knew who said he seemed obsessed with his domestic
19 relations going on. But other than that you didn't talk to
20 anybody else about his behavior?

21 A. There was a lot of information about his behavior in
22 the police reports and in the interview that police did of
23 the various people that were relevant to this case.

24 Q. And so Gary Fraley himself telling you that he didn't
25 remember was just a piece of it?

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 A. Correct.

2 Q. And I believe you determined that there was -- that he
3 may have been experiencing blackouts?

4 A. Yes.

5 Q. And can you describe to the jury what that means.

6 A. Well, basically somebody who drinks to the point where
7 they don't remember what they are doing.

8 Q. And that would be called voluntary intoxication; that
9 is something that you testified on direct that if you
10 consume alcohol voluntarily than you would -- then this --
11 not part of a something that you could consider as to his
12 capacity to conform or his ability to know right from wrong?

13 A. Correct.

14 Q. What about involuntary intoxication, involuntary
15 intoxication being that if a person consumes something in
16 combination with something else that they may have a
17 reaction that they had not anticipated; are you familiar
18 with the idea of involuntary intoxication?

19 A. Yes, but that is not my understanding of what
20 involuntary intoxication is.

21 Q. Okay, well, isn't involuntary intoxication about
22 different medicines that people may take and how it affects
23 inside their body and what type of reactions they may have
24 for medicines; that is what involuntary intoxication is?

25 A. My understanding of involuntary intoxication is maybe

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 somebody giving you something that you didn't know what it
2 was or they told you it was something else; that it was, you
3 know, PCP or something and they told you it was, you know, a
4 Spree candy or something and you had an effect that was not
5 of your own choosing.

6 Q. And I think on some level of the involuntary
7 intoxication it says that -- you just described it has an
8 effect on you that is not of your own choosing; so it could
9 be a prescription medication?

10 A. Yes.

11 Q. And in fact if a prescription medication combines with
12 other things it can cause effects that people do not
13 anticipate and that are beyond their control?

14 A. That is possible.

15 Q. And so right now your report and your opinion is based
16 on the fact that you -- you believed that Vivitrol wasn't
17 something that was going to cause that type of reaction in
18 him?

19 A. Correct.

20 Q. Okay. And there is -- in his history of everything
21 that you looked at there was other medications that he was
22 taking, lots of other medications, that he was taking for
23 different types of problems; correct?

24 A. I believe so.

25 Q. And I'm just going to name a few of them, and if you

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 remember seeing them in his medical records. And if you
2 don't, I understand.

3 A. I just have to say I think it is important to note that
4 my impression was that there was no consistent taking of
5 medicine, of any kind of medicine. It was sort of
6 haphazard.

7 Q. I understand. But these were medicines that could have
8 either been in his blood in the medical records that we have
9 showed -- I have showed you or have -- we would have may
10 have -- may have prescriptions of. I am just going to ask
11 you if you remember any of these medicines.

12 Do you remember Gabapentin, Neurontin?

13 A. That sounds familiar.

14 Q. Do you have any idea or could you testify about any of
15 the side effects of what Neurontin was supposed to have? If
16 you can't, that's fine. I just ---

17 A. Neurontin does not usually have many side effects. It
18 is usually well-tolerated. Maybe people feel a little bit
19 sedated by it. You know, most medicines when you first
20 start taking them can cause you upset stomach, headache. It
21 doesn't matter what it is. You know, it is kind of like the
22 ground equalizer. Neurontin is generally really well-
23 tolerated.

24 Q. Okay. And how about Mesalamine Asacol?

25 A. That I don't prescribe that.

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 Q. Possibly for colitis. Do you remember seeing anything
2 in there?

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

4 Q. Okay. Campral. I believe you test -- in your report
5 it indicates that at one point he was on Campral?

6 A. Yes.

7 Q. And can you tell this -- the jury anything that you may
8 know about the side effects of Campral?

9 A. No.

10 Q. How about Tra- Tizanidine, Zanaflex?

11 A. I don't prescribe that.

12 Q. Okay. So you don't have any idea what the side effects
13 may be?

14 A. I think that is a muscle relaxer. Muscle relaxers also
15 make people sort of sedated. It relaxes your muscles,
16 right, so.

17 Q. Esomeprazole, Nexium, the purple pill?

18 A. Correct.

19 Q. And do you -- can you tell us what some of the side
20 effects for that may be?

21 A. No.

22 Q. Naproxen?

23 A. A pain medicine.

24 Q. Silenor, S-I-L-E-N-O-R.

25 A. I don't recognize that name.

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 Q. Okay. Vilazodone which is Viebrid.

2 A. It is an antidepressant. It is newer. Again, upset
3 stomach, headache, generally really well-tolerated. All
4 antidepressants are known for sexual side effects. Some of
5 them can cause a little tremor if you are sort of sensitive
6 to the medicine. Generally well-tolerated.

7 Q. Prazosin which is maybe called Minipress?

8 A. Yeah, so that is a blood pressure medicine used by
9 psychiatry for nightmares. Most people tolerate it really
10 well. If you have trouble with your blood pressure it is a
11 good medicine. If you are already on blood pressure
12 medicine then you sort of have to be careful because it is
13 also a blood pressure medicine so you don't want to -- your
14 blood pressure get too low you can get a little dizzy,
15 light-headed.

16 Young people meaning like under the age of 55 who don't
17 have any problems with their blood pressure have in my
18 experience tolerated that medicine really well.

19 Q. Cyprohepta- -- heptadine?

20 A. I don't prescribe that.

21 Q. So you wouldn't know what the side effects would be?

22 A. No.

23 Q. Ab -- nors -- Norvasc. It is Amlodipine.

24 A. It is a blood pressure medicine.

25 Q. All right. And so some of these medicines as you said

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 have -- a lot of them you said have things having to do with
2 upset stomachs, things like that.

3 And Mr. Fraley did have a history of having at least an
4 ulcer at one point, of having pancreati- -- pancreatitis and
5 other stomach related problems?

6 A. Okay.

7 Q. And his comments or as he is telling you what has
8 happened in his life is he wasn't eating because of all -- a
9 lot of these problems that he felt like he was having?

10 A. I don't know why he wasn't eating. I don't remember
11 him telling me why he wasn't eating.

12 Q. But he told you he wasn't eating?

13 A. Yes.

14 MS. GAY: One moment, Your Honor. I am going to confer
15 with my client.

16 THE COURT: Take your time.

17 Q. During the review of Mr. Fraley's various medical
18 records did you see that he has some kind of liver problem?
19 I believe in his MUSC records that he may have been
20 medicated for some type of liver problem?

21 A. I do not recall that.

22 Q. Okay. But you're not saying you don't know that that
23 is true; you just didn't recall when you may have seen the
24 records? You can't tell me that he did because you don't
25 remember seeing it in the records?

CROSS-EXAMINATION BY MR. GAY OF DR. GOMEZ

1 A. I don't know -- as far as I am aware I am not aware of
2 any liver problems.

3 Q. Okay. All right.

4 MS. GAY: May we approach?

5 (WHEREUPON, bench conference 7/14/15, 12:34 p.m.)

6 THE COURT: Ladies and gentlemen of the jury, if you
7 wish to stand and stretch now would be an appropriate time
8 to do so. Your lunch should be here about 1:00. So my
9 intent is to go through at least this witness and perhaps
10 start another one before lunch.

11 MS. GAY: I do have one more question, Your Honor.

12 THE COURT: All right. Hold on. We are -- we were
13 trying to fill the time, Ms. Gay. Let me know when you are
14 ready, Dr. Gomez.

15 (WHEREUPON, witness given water.)

16 THE COURT: All right. Ms. Gay.

17 BY MS. GAY:

18 Q. How many half-life's does it take for a drug to become
19 ineffective?

20 A. I believe it is five.

21 Q. Five half-life's?

22 A. I believe.

23 MS. GAY: Thank you, Your Honor.

24 THE COURT: Anything further?

25 MS. GAY: No further questions.

1 A. Actually I want to take that back. I don't think
2 that -- I don't know if ineffective is the right word. I
3 think the word is five half-life's to get out of somebody's
4 system.

5 Q. I might have asked the question wrong. How many
6 half-life's as it is to get the medicine out of your system?

7 A. I believe it is five.

8 Q. All right. Thank you.

9 A. Historical.

10 THE COURT: Ms. Williams.

11 MS. WILLIAMS: Briefly, Your Honor.

12 **REDIRECT EXAMINATION BY MS. WILLIAMS OF DR. GOMEZ:**

13 Q. Any of the medicines that Ms. Gay asked you about have
14 a side effect of raping an 11-year-old girl?

15 A. No, ma'am.

16 Q. How about holding people hostage with a gun?

17 A. No.

18 Q. You mentioned before that Mr. Fraley's own mother said
19 he was behaving normally while he was in Pennsylvania. Is
20 that true?

21 A. Yes, ma'am.

22 Q. And why is it important to get the observations of
23 other people and not just rely on what the patient would
24 tell you?

25 A. Well, there are several reasons for that. Sometimes

REDIRECT EXAMINATION BY MS. WILLIAMS OF DR. GOMEZ

1 people really can't give you all the information either
2 because of their mental state or because they're not being
3 forthcoming. And ---

4 Q. So -- okay, I'm sorry.

5 A. Oh, and so -- so even if somebody can't tell you
6 whatever reason, being dishonest or not, you want to see
7 that the context around them that really corroborates what
8 they're -- what they're pulling together, you know.

9 And so the police noticing things that are weird or
10 other people that are having interaction with that person,
11 things that don't make sense, things -- things that are like
12 somebody who's not really in touch with reality, you want
13 that to really make sense and fit in with the picture that
14 the person is presenting.

15 Q. So if somebody wanted to fake an insanity defense, just
16 as a hypothetical, would you evaluate what they say and sort
17 of balance it with what everybody else says?

18 A. Yes. I mean you really have to look at the collateral.
19 There is just no way around it.

20 Q. And in this case you mentioned that you noted several
21 witnesses describing the defendant's behavior as normal?

22 A. Yes.

23 Q. On the day that you interviewed him was he psychotic?

24 A. No.

25 Q. And just to clear up a little bit of information about

REDIRECT EXAMINATION BY MS. WILLIAMS OF DR. GOMEZ:

1 voluntary intoxication versus involuntary intoxication, if I
2 take Ambien and I drink a lot of Bourbin and then I go kill
3 somebody, that's -- because there is an interaction with
4 those drugs, that is not involuntary intoxication if I
5 voluntarily ingest both of those things; is that correct?

6 A. Most likely that would be correct.

7 Q. So it is the taking of the drug, not what happens once
8 it is in your body that creates voluntary versus
9 involuntary?

10 A. Well, in your example the fact that alcohol was added
11 would really muck that up because adding another substance,
12 alcohol, drugs, that you know is going to have an effect on
13 you, just sort of eliminates the involuntary intoxication
14 piece.

15 Q. Okay. But the main point is that I am taking them
16 knowingly, not that somebody slips me say a Roofie, the
17 slang term for -- I can't even pronounce that drug.

18 A. Sure. And I guess the other piece would be if you have
19 never taken Ambien before and had a bizarre reaction in you
20 as an individual that is not -- you know, that would be
21 outside of the norm and the standard reaction for -- for
22 what it is prescribed for. That may also be a
23 consideration.

24 Q. Okay. Fair enough. Doctor, you mentioned that Mr.
25 Fraley actually had not been taking his medication. I want

REDIRECT EXAMINATION BY MS. WILLIAMS OF DR. GOMEZ:

1 to refer you to Pages 10 and 11 of your report and have you
2 review some of the things he told you about whether or not
3 he was actually taking all these medication that Ms. Gay
4 read off.

5 A. Well, so on Page 10, third paragraph, he had gone to
6 get his prescriptions rewritten but he didn't fill them.
7 And then I asked him later why not. He said he was running
8 low but he still had them.

9 Q. What about the third paragraph on Page 11?

10 A. And then in the month preceding the allegations he was
11 not taking any of his medicines aside from Nexium which is
12 the stomach medicine like for reflux.

13 Q. So he wasn't taking any of those medicines except
14 Nexium according to him?

15 A. Correct.

16 Q. And the whole discussion about Vivitrol whether there
17 is a half-life's, whether it could still have been in his
18 system, even if these events had occurred the day after he
19 got the Vivitrol shot would -- would the Vivitrol have made
20 him psychotic to the point where he would have committed
21 these crimes? And that's not the case, but hypothetically.

22 A. No. I mean it is just known to be a side effect of
23 Vivitrol, and what has been described is not psychosis.

24 Q. So the bottom line is even with all this information
25 and all these drugs and everything has your opinion changed

REDIRECT EXAMINATION BY MS. WILLIAMS OF DR. GOMEZ:

1 in terms of whether or not Gary Fraley was insane at the
2 time these crimes were committed?

3 A. My opinion has not changed.

4 Q. And so he was not insane at the time these crimes were
5 committed?

6 A. That's my opinion.

7 Q. Thank you.

8 THE COURT: Ms. Gay

9 **RECROSS-EXAMINATION BY MS. GAY OF DR. GOMEZ:**

10 Q. When the solicitor asked you about the side effects for
11 these medications and you said that some of the -- you said
12 on your testimony that you didn't know all of the side
13 effects, but some of these drugs can leave you disoriented?

14 A. Not if you are not taking them.

15 Q. If you take them or if they are in you blood system?

16 A. It depends. If it is something that someone has been
17 taking and when they are used to them, be disoriented as in
18 not knowing what your name is or who you are or the date
19 would be highly unlikely.

20 Q. And with regard to half-life's and things like that
21 even if a person doesn't take a pill a certain day if they
22 are taking those pills and have been taking those pills for
23 a period of time the half-life's in the body is still in the
24 body; it hasn't gone out of the body yet even if they may
25 have not have taken the pill that day?

RE CROSS-EXAMINATION BY MS. GAY OF DR. GOMEZ

1 A. It just depends on the half-life's of the medicine.

2 Q. Right, and you said that it is normally half-life's of
3 medicine is five before it is out of your body?

4 A. So some medicines have half-life's of a few hours which
5 means half of it is gone in a few hours, and other medicines

6

7 have longer half-life's that are a few days.

8 But just because it is in your body doesn't mean it is
9 having an effect if it is not at the full level, okay.

10 Q. I understand. I understand. And as far as the -- when
11 a person -- this is the last thing I am going to ask. This
12 is sort of more of a general question: When a person thinks
13 something is real that is not, that -- what do we refer that
14 to; could it potentially be delusional?

15 A. It just depends.

16 Q. If they believe something is happening and it is not
17 and they are, you know, obsessed with that, could it be --
18 what would be the best word for just to describe that? That
19 people have told him it is not true, people have told him,
20 you know, you are wrong; but yet they still firmly believe
21 that something is happening that apparently is not.

22 A. So your question is being asked in a vacuum without
23 context.

24 Q. No, I'm not. Mr. Fraley believed that his wife was
25 having an affair with someone else. People were telling him

1 that they weren't having an affair and that he was wrong.
2 Yet he insisted on believing that up to the point where
3 even, you know, in your evaluation he is telling you that.
4 But yet other people told him and provided information to
5 him that said that that was not accurate.

6 A. And I believe someone said that it was accurate. So I
7 don't know.

8 Q. Okay. So if they were having an affair it would make
9 some sense; but if there are not having an affair it could
10 mean that he is, what, obsessed with it, a compulsive
11 disorder or delusional; what?

12 A. I'm not sure that I would ascribe it any kind of
13 diagnosis.

14 Q. But it could be troublesome in terms of his mental
15 state -- or not even his mental state, his inability to get
16 over it?

17 A. It could be troublesome for his inability to get over
18 it.

19 Q. All right. Thank you.

20 THE COURT: Thank you. You may step down.

21 Call your next witness.

22 MS. WILLIAMS: The State calls Kimberly Tompkins.

23 THE COURT: One more time, Ms. Williams.

24 MS. WILLIAMS: Kimberly Tompkins.

25 THE COURT: Thank you.

RE CROSS-EXAMINATION BY MS. GAY OF DR. GOMEZ

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: Please have a seat. State your full name
3 and spell your last name for the record.

4 MS. TOMPKINS: My name is Kimberly A. Tompkins,
5 T-O-M-P-K-I-N-S.

6 THE COURT: Ms. Williams, your witness.

7 MS. WILLIAMS: Thank you, Your Honor.

8 **DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS:**

9 Q. Ms. Tompkins, where do you work?

10 A. I work for the City of North Charleston.

11 Q. And how long have you worked there?

12 A. Twenty-four-and-a-half years.

13 Q. And where do you live?

14 A. I live at [REDACTED] Court, Goose Creek, South
15 Carolina.

16 Q. And how far away is that from Clogher Head Way or
17 Drive?

18 A. From Clogher Head -- it is a block away, Clogher Head
19 is.

20 Q. And did you live in the same neighborhood as Gary
21 Fraley?

22 A. Yes.

23 Q. And you still lived there back in August of 2014?

24 A. Yes.

25 Q. How about as the same neighborhood as the Vick family?

DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS

- 1 A. Yes.
- 2 Q. How many children are in your home?
- 3 A. Two.
- 4 Q. And what are their names and ages?
- 5 A. Matthew is 18, and Janie is 15.
- 6 Q. And how old was Janie back in August of 2014?
- 7 A. Fourteen.
- 8 Q. Now you said you lived near Mr. Fraley. Did you know
- 9 him?
- 10 A. Just by passing by, talking, walking. That's about it.
- 11 And of course having dogs and stuff like that.
- 12 Q. So he was a neighbor?
- 13 A. Yes, ---
- 14 Q. You talked to him?
- 15 A. --- just neighbor, residential. Yes.
- 16 Q. And did you observe his demeanor from time to time when
- 17 you would run into him?
- 18 A. Yeah, he was friendly.
- 19 Q. And back in August of 2014 did you have some
- 20 interaction with Mr. Fraley?
- 21 A. Yes, he left messages, several messages at the house.
- 22 Q. What kind of messages?
- 23 A. Wanting to take Janie ---
- 24 Q. Okay.
- 25 A. --- out.

DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS

1 Q. Where did he want to take Janie?

2 A. First it was for a project for school with his daughter
3 Alta.

4 Q. What kind of project?

5 A. Something with fossils and rocks.

6 Q. Did you ever see these fossils or rocks?

7 A. Yes.

8 Q. How?

9 A. He approached my house on August 3rd, that Sunday. And
10 he stopped by the house and I met him at his car. He showed
11 me the rocks.

12 Q. Okay. What did he say he was going to do with them?

13 A. He wanted to have a project for his daughter, for Alta.
14 He wanted Janie to help him -- or help her with the project
15 in a classroom. He said he would pay her \$20 to help. And
16 I told him that wasn't necessary.

17 Q. Okay. And ultimately did she wind up helping Alta?

18 A. No.

19 Q. And did you have any more communication with him?

20 A. Yes.

21 Q. Tell us about that.

22 A. Monday. That was August 4th.

23 Q. Okay. And what was that?

24 A. He came by the house again.

25 Q. And what did he want?

DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS

1 A. He wanted to invite Janie to a surprise birthday party
2 for Alta.

3 Q. And did he say anything about the fossils at that time?

4 A. No, ma'am.

5 Q. And did he tell you anything else about the party,
6 where it was going to be or ---

7 A. Yes, it was going to be at the Royal Z at noon.

8 Q. Okay. What is the Royal Z?

9 A. Royal Z Lanes is a bowling alley on Central Avenue in
10 Goose Creek.

11 Q. Okay. Is that Berkeley County?

12 A. Yes, ma'am.

13 Q. And your house is in Berkeley County?

14 A. Yes, ma'am.

15 Q. And what ever happened with that request?

16 A. We told him no because Janie had an appointment that
17 following day that Tuesday, August 5th, with her mother for
18 a hair appointment at noon and a doctor's appointment.

19 Q. And what was his reaction to that?

20 A. He wasn't really pleased about that.

21 Q. And when was the party supposed to be?

22 A. It was supposed to be at noon.

23 Q. On what day?

24 A. On Tuesday.

25 Q. And did he make any offers or anything to deal with the

DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS

1 hair appointment or ---

2 A. Yes.

3 Q. Okay. What was that?

4 A. First he wanted to pay Janie to go actually to this
5 party. And he said that he would pay for the hair
6 appointment.

7 Q. But Janie did not wind up going?

8 A. No.

9 Q. I'm going to show you what's been previously marked as
10 State's Exhibit 102.

11 MS. WILLIAMS: Your Honor, for the record, we have
12 shown this to Ms. Gay.

13 May I approach?

14 THE COURT: You may.

15 Q. Can you tell me what this is?

16 A. It is a tape of two messages from Gary Fraley.

17 Q. Okay. And how do you know that this tape has those
18 messages on there?

19 A. I listened to them, and I initialed it.

20 Q. Okay.

21 MS. WILLIAMS: Your Honor, at this time we would offer
22 State's 102 into evidence.

23 MS. GAY: Without objection.

24 THE COURT: State's 102 into evidence without
25 objection.

DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS

1 (WHEREUPON, State's Exhibit Number 102 was admitted into
2 evidence.)

3 Q. Let me just ask you a quick question about these. You
4 said there were two calls?

5 A. Yes.

6 Q. How many messages did he actually leave?

7 A. He left three, and one was accidentally erased ---

8 Q. Okay.

9 A. --- off of our answering machine.

10 MS. WILLIAMS: Your Honor, may we publish?

11 THE COURT: You may.

12 Q. While they are getting that ready, during your
13 interactions with Mr. Fraley over these few days how did he
14 seem to you?

15 A. He seemed normal to me. I mean persistent wanting to
16 take Janie.

17 Q. Nothing odd about his demeanor?

18 A. No -- no, ma'am.

19 (WHEREUPON, State's Exhibit Number 102, audio was played.)

20 Q. And who is Alta?

21 A. Alta is Gary's daughter.

22 Q. Okay. And this was August. When is Alta's actual
23 birthday?

24 A. June. Sometime in June.

25 Q. And how do you know that?

DIRECT EXAMINATION BY MS. WILLIAMS OF KIMBERLY TOMPKINS

1 A. I asked Gary that when he was at the house that Monday.
2 I asked why he didn't plan a little bit better. And he said
3 he wanted to do it for his daughter before school started
4 so.

5 Q. Thank you.

6 A. You are welcome.

7 MS. WILLIAMS: No further questions.

8 THE COURT: Ms. Gay.

9 MS. GAY: I have no questions for this witness, Your
10 Honor.

11 THE COURT: Ms. Tompkins, you may step down. You are
12 feel to go, but feel free to stay with us. Thank you.

13 MS. TOMPKINS: Thank you.

14 THE COURT: Call your next witness.

15 MS. WILLIAMS: Matthew Woltz.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please have a seat. State your full name
18 and spell your last name for the record.

19 MR. WOLTZ: Matthew Taylor Woltz, W-O-L-T-Z.

20 **DIRECT EXAMINATION BY MS. WILLIAMS OF MATTHEW WOLTZ:**

21 Q. Good morning, Mr. Woltz.

22 A. Good morning.

23 Q. Where do you live?

24 A. [REDACTED] Court, Goose Creek, South Carolina.

25 Q. And you live with Timberly -- Kimberly Tompkins ---

1 A. Yes, ma'am.

2 Q. --- that just walked out? And are you in school?

3 A. No, I just graduated.

4 Q. Okay. Are you getting ready to go to school anywhere
5 else?

6 A. Yes, after the holidays I will be going up to Winthrop.

7 Q. Okay. And who do you live with in your house besides
8 Ms. Tompkins?

9 A. Beth Woltz who is my mom and my sister Janie W.

10 Q. Okay. And did you live near -- or you still live in
11 the same house you lived in August of last year and August
12 5th?

13 A. Yes.

14 Q. And is that house in the same neighborhood as Mr.
15 Fraley, Gary Fraley's house?

16 A. Yes.

17 Q. What about the Vick's house?

18 A. Yes.

19 Q. Okay. And did you see Mr. Fraley on in early August of
20 2014?

21 A. Yes, ma'am.

22 Q. Had you had an opportunity to interact with him before
23 that date?

24 A. No, ma'am.

25 Q. Had you never talked to him before?

DIRECT EXAMINATION BY MS. WILLIAMS OF MATTHEW WOLTZ

1 A. No, ma'am.

2 Q. Okay. And what did -- what was your interaction with
3 him on that day?

4 A. He drove up to my house as I was going to go pick up my
5 sister and talked to me about a birthday party.

6 Q. Okay.

7 A. And he showed me a few fossils and said he was throwing
8 his daughter a geology birthday party.

9 Q. Okay. And when you say he showed you fossils what was
10 it he was showing you; what did it look like?

11 A. Rocks.

12 Q. Rocks?

13 A. Uh-huh.

14 Q. And do you remember exactly what day that was of the
15 week?

16 A. I think it was a Monday.

17 Q. Okay. How do you know it was Monday?

18 A. Because Kaylan talked to me because she was off work,
19 so I knew she's off every Monday and it was Monday.

20 Q. Okay. And did you find out later about an event
21 involving Minor 1 and the bowling alley?

22 A. Yeah, a few weeks later. Me and Quenton weren't
23 talking at the time, but I found -- once I -- I saw him come
24 out of the Goose Creek Police Department. I saw him walking
25 out.

DIRECT EXAMINATION BY MS. WILLIAMS OF MATTHEW WOLTZ

1 Q. Was this the Monday before that happened?

2 A. Yes.

3 Q. Okay. And how old was Janie at the time?

4 A. Fourteen.

5 Q. And what exactly did Mr. Fraley want you to do to help
6 get Janie to the party?

7 A. He told me that she had -- she had -- he asked me if
8 they had any plans. And I told him I would talk to my
9 parents. He told me to contact him, call him or text him if
10 she could go.

11 And after that I went to pick her up and I called my
12 mom and told my mom about it. And she said she heard about
13 it. And -- heard about the party. And I told her that it
14 was at this time this date.

15 And she said she had a hair appointment at that time
16 for that. And he said he would pay for her hair appointment
17 and give her 20 bucks to come to the party.

18 Q. Okay. And did you have his number before this time?

19 A. No.

20 Q. So how did you get his phone number?

21 A. He gave me his phone number.

22 Q. Did he ask for your number?

23 A. No.

24 Q. How was he texting you?

25 A. He just -- I texted him.

DIRECT EXAMINATION BY MS. WILLIAMS OF MATTHEW WOLTZ

1 Q. Okay. Okay.

2 A. I told him that I was -- I told him that I had just
3 gotten home and I was going to talk to my mom.

4 Q. Okay. Nothing further. Thank you, Mr. Woltz.

5 THE COURT: Ms. Gay.

6 MS. GAY: I have no further questions of this witness.

7 THE COURT: You may step down. Thank you.

8 MS. WILLIAMS: The State calls Quenton Vick.

9 (WHEREUPON, the witness was duly sworn.)

10 THE CLERK: Please have a seat. State your full name
11 and spell your last name for the record.

12 MR. QUENTON VICK: Quenton Tyler V-I-C-K.

13 **DIRECT EXAMINATION BY MS. WILLIAMS OF QUENTON VICK:**

14 Q. Thank you, Quenton. Are you working right now?

15 A. Currently I am a student.

16 Q. Okay. Where are you a student?

17 A. Right now it is Trident Technical College.

18 Q. What do you want to do when you get out of school?

19 A. I want to become a minister.

20 Q. And how old are you now?

21 A. I am 18.

22 Q. And where do you live?

23 A. I live on [REDACTED] Head Way.

24 Q. Is that where you were living back in August of 2014?

25 A. Yes, ma'am.

DIRECT EXAMINATION BY MS. WILLIAMS OF QUENTON VICK:

1 Q. Is that the same neighborhood as Mr. Fraley, Gary
2 Fraley?

3 A. Yes, ma'am.

4 Q. Is that also the same neighborhood as Janie W.

5 A. Yes, ma'am.

6 Q. How far away is everybody's house from each other?

7 A. About a few houses down.

8 Q. Okay. Now thinking back to August 5th, 2014, did you
9 have any contact with Gary Fraley?

10 A. On like the day of the incident?

11 Q. Yes.

12 A. Yes, ma'am.

13 Q. Okay. And what was that contact?

14 A. He came to the front door.

15 Q. What happened next?

16 A. And he asked if my sister was home because he was
17 having a surprise birthday party for Alta.

18 Q. Okay. Which sister?

19 A. Madison.

20 Q. And how old is Madison?

21 A. She is 15.

22 Q. How old was she back then?

23 A. She was 15 at the time.

24 Q. She was? Okay.

25 A. I'm sorry, 14.

DIRECT EXAMINATION BY MS. WILLIAMS OF QUENTON VICK:

- 1 Q. Fourteen?
- 2 A. Yes, ma'am.
- 3 Q. And what did you tell him?
- 4 A. I told him that Madison was not home but my sister Minor
- 5 was.
- 6 Q. And how old was Minor at that time?
- 7 A. She was 11.
- 8 Q. And did Madison and Minor know the defendant's daughter
- 9 Alta?
- 10 A. Yes, ma'am.
- 11 Q. Had they ever been over to that house?
- 12 A. Yes, ma'am.
- 13 Q. Have they been to birthday parties before?
- 14 A. Yes, ma'am.
- 15 Q. And what happened next?
- 16 A. And then I went -- I told him I was going to go get my
- 17 mother so they can talk if they were able to go to the
- 18 party. And so I went and I had my mom go out and talk to
- 19 him. And then that was -- that was all.
- 20 Q. Okay. And at any time did he have anything with him
- 21 that you saw?
- 22 A. He had dinosaur fossils ---
- 23 Q. Okay.
- 24 A. --- that he showed to my mother that I was aware of.
- 25 But that was all that I know of.

DIRECT EXAMINATION BY MS. WILLIAMS OF QUENTON VICK:

1 Q. And when you interacted with Mr. Fraley how did he seem
2 to you?

3 A. He seemed very normal. He's always very -- very nice
4 to people, very respectful. And he was always a very -- a
5 very nice man.

6 Q. Okay. And was he behaving that way that day?

7 A. Yes, ma'am.

8 Q. Okay. Thank you. Nothing further. Thank you,
9 Quenton.

10 THE COURT: Just one second. The other attorney gets
11 to ask questions. I know you were -- most people don't like
12 being in that. So I need you to stay with me just a few
13 more moments.

14 MR. QUENTON VICK: Yes, ma'am.

15 THE COURT: Can you do that for me?

16 MR. QUENTON VICK: Yes, ma'am.

17 THE COURT: All right. Thank you.

18 MS. GAY: Long enough for me to say I don't have any
19 questions.

20 THE COURT: All right. Thank you. Now you get to step
21 down. Feel free to stay with us, but you are also free to
22 leave. Thank you. Good luck to you.

23 MR. QUENTON VICK: Thank you.

24 THE COURT: Ms. Williams, I know you have some
25 witnesses that are less lengthy so I am leaving it up to

DIRECT EXAMINATION BY MS. WILLIAMS OF QUENTON VICK:

1 you.

2 MS. WILLIAMS: Yes. May we approach briefly?

3 THE COURT: You may.

4 (WHEREUPON, bench conference 7/14/2015, 1:02 p.m.)

5 THE COURT: Call your next witness.

6 MS. WILLIAMS: The State calls Ruth Vick.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please have a seat. State your full name
9 for the record and spell your last name.

10 MS. RUTH VICK: Hello. My name is Ruth Ann Vick,
11 V-I-C-K.

12 **DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK:**

13 Q. Good morning, Ms. Vick. Where do you work?

14 A. At the Medical University of South Carolina.

15 Q. And what do you do?

16 A. I am a respiratory therapist.

17 Q. How long have you worked there?

18 A. Three years.

19 Q. And where do you live?

20 A. I live at [REDACTED] Head Way.

21 Q. And who are your children?

22 A. My oldest is Quenton Vick who just testified. My
23 daughters Madison and then Minor 1 and then my youngest
24 is Adam.

25 Q. And do you know Gary Fraley?

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 A. Yes, I do.

2 Q. And do you see him here in the courtroom?

3 A. Yes, I do.

4 Q. Can you please point him out. Just tell us what he is
5 wearing.

6 A. He has a long-sleeve Oxford shirt on.

7 MS. WILLIAMS: Your Honor, please let the record
8 reflect that the witness has identified the defendant Gary
9 Fraley.

10 THE COURT: It will reflect.

11 Q. And when he lived in your neighborhood would you often
12 interact with him?

13 A. Yes, I would.

14 Q. Okay. And why is that? Tell us about that.

15 A. His daughter Alta would get off the bus in the morning
16 with my daughters, so we would interact and talk in the
17 mornings.

18 Q. How many years would you say you knew him from the bus
19 stop and other ---

20 A. At that time three plus.

21 Q. And did you run into him in August of 2014?

22 A. The day in question, yes.

23 Q. And tell us what happened.

24 A. That day it was hot. I was outside washing my car. I
25 had gone in. Quenton came and got me and said that Gary --

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 Gary was at the door and was asking to take the girls to a
2 birthday party.

3 Q. Okay. And then did you go and meet with Gary?

4 A. I did. I went outside. He was sitting on the lawn
5 chair on my front porch. And he was -- we were talking
6 about the summer, and he said that he wanted to have a
7 surprise birthday party for Alta.

8 Q. How did he seem to you; what was his demeanor like?

9 A. He was normal. There was nothing off about him. We
10 were able to talk. He didn't

11 Q. Did he seem like he always seemed?

12 A. Like normal, yes.

13 Q. And what was the plan that day -- well, first of all
14 who was home; which children were home that day?

15 A. Only three of my children were home; Quenton, Minor and
16 Adam.

17 Q. And what were Minor's plans for that day?

18 A. Minor was just hanging out at the house until her dad
19 was supposed to pick them up for dinner.

20 Q. And what time was that going to be?

21 A. That's roughly between 4:00 and five o'clock.

22 Q. And did that plan change?

23 A. Yes, it did.

24 Q. How so?

25 A. Gary and I talked about this surprise birthday party

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 for Alta, and since it is her dad's night to have her for
2 dinner and that with the other children I had to call her
3 dad whose name is Chad on the phone, speak to him about the
4 plans about the surprise birthday party. And we had to have
5 his permission in order to send her.

6 Q. And did Mr. Fraley give you any details about the
7 party?

8 A. He said that his ex-wife lived in West Ashley. They
9 were going to go over there first for some cake and ice
10 cream. Showed me the fossils that they would be doing that
11 he took out of his car and that he was going to take the
12 girls over to Royal Z Lanes which is here in Goose Creek.
13 They were going to bowl. And then we had a pickup time at
14 the house with their dad at 5:30.

15 Q. Okay. And when you are talking about these fossils
16 what was it he showed you; what did it look like?

17 A. They were like modeling kits, a couple of different
18 colors. I want to say one gray; the other one was like an
19 off-orange. They looked like dinosaur imprints.

20 Q. What about in rocks; did you see any rocks?

21 A. Not -- no, I didn't see rocks.

22 Q. And what happened next?

23 A. After that her dad and I agreed to allow Minor to go to
24 this birthday party Minor left with Gary in his vehicle.

25 Q. And when did you next hear anything about Minor 1

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 A. I received a call from Chad later on that afternoon.
2 He sounded like he was in a panic. And he said, "Stay by
3 your phone. I will call you right back. I just -- just got
4 the kids, there is something up with Minor1 I've got to talk
5 to her."

6 Q. Okay. And so then what happened?

7 A. The next call I received

8 Q. There are some tissues next to you if you need to take
9 a break.

10 A. He said he was at the Northwoods and that he had taken
11 Minor outside and talked to her while the other children were
12 inside of the food court, and then he said Minor had been
13 raped and get there as soon as we could.

14 Q. What did you do next?

15 A. I got in my car and left for the mall. And on the way
16 to the mall I called 911 and explained to 911 as much as I
17 knew and what had been told by her dad to what was going on.

18 Q. And how old was Minor at that time?

19 A. She was 11.

20 Q. And when you got to the Northwood Mall did you see Chad
21 and Minor1

22 A. I did.

23 Q. What was Minor1 demeanor like?

24 A. Minor was upset. She was crying. Chad was outside.

25 The police were outside. I went inside the mall through the

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 court food entry and headed to the bathroom because they
2 said she was coming out of the bathroom with one of the
3 officers.

4 She was hot to touch. Her hair was disheveled. She
5 was crying.

6 Q. What did she tell you?

7 A. She told me that there was no birthday party, that she
8 had been taken to the EconoLodge and raped.

9 Q. What did you do next?

10 A. At that time I knew I needed to get her medical
11 attention. And since her dad and I were in separate cars he
12 felt it was best at the time that he drive and Minor and I
13 got in the back seat of his car. And we proceeded downtown
14 to the emergency room.

15 Q. And what time did you get to the emergency room if you
16 remember?

17 A. It had to be shortly after 6:00.

18 Q. How long were you there?

19 A. Until 3:00 a.m.

20 Q. And what happened there; where were you taken; what
21 happened next?

22 A. As soon as we got to the emergency room and the
23 admission process began we checked her in. They took us
24 back to a room and they put us in a room and then they
25 called what is called a SANE nurse and she came in and

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 started to explain some of the things that had to go on, the
2 examination.

3 And then Detective Tremblay came and started -- said
4 that we would, you know, have to provide statements and
5 started talking with Minor

6 Q. And after you left the emergency room or right before
7 you left were there additional medications or follow-up
8 treatment that you were informed about regarding Minor?

9 A. Yes, before Minor left she had a whole vile of pills
10 that she had to take. We don't know what Minor was exposed
11 to so there was a lot of medications to protect her
12 including the Plan B -- Plan B pill.

13 And she got very, very ill trying to take all this
14 medication. We had to -- we can't force an 11-year-old, but
15 to try and encourage her to take as much medication. A lot
16 of the pills had to be broken in half. She got very
17 nauseated wanting to throw-up trying to take a lot of this
18 medication. So between her dad and I just trying to coax
19 her to take as many pills as she could that night.

20 Q. And did some of them have to do with STD's?

21 A. Yes, they did.

22 Q. HIV?

23 A. Yes.

24 Q. And did she have injuries to her -- to her vagina and
25 anus that you had to deal with after you left?

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 A. Yes. She was in a lot of pain in her perineal regions.
2 And so we were told to go out and buy Tucks which we did for
3 her, to have her take warm baths, anything to try and
4 minimize the pain, also take Advil, Ibuprofen until she
5 started to heal.

6 Q. Was she able to wear all of her favorite clothes after
7 that?

8 A. No, ma'am. They took her clothes. She had to wear
9 paper scrubs, which was humiliating for her.

10 Q. And afterwards did she have any trouble because of the
11 injuries with any of her clothes or ...?

12 A. She was not allowed to have her clothes back. They
13 were taken into evidence.

14 Q. Thank you, Ms. Vick.

15 THE COURT: Ms. Gay.

16 MS. GAY: One moment, Your Honor.

17 I have no questions for this witness.

18 THE COURT: Ms. Vick, you may step down. Thank you.

19 Ladies and gentlemen, we have come to a point where I
20 think it is at least appropriate for us to take a break if
21 not -- I'm not sure that lunch is here.

22 Please remember all of my admonitions. Please go ahead
23 and take your notepads with you. Do not begin discussing
24 this case. We will receive you back in at an appropriate
25 time.

DIRECT EXAMINATION BY MS. WILLIAMS OF MS. RUTH VICK

1 Please rise for the jury.

2 (WHEREUPON, jury exited 7/14/14, 1:14 p.m.)

3 THE COURT: What witnesses do you have?

4 MS. WILLIAMS: We have -- and I think we can get
5 through 12 or 13 witnesses because a lot of them are police
6 officers that, you know, ---

7 THE COURT: All right. Thank you.

8 MS. WILLIAMS: --- would be pretty quick.

9 THE COURT: All right. Thank you. We will just be at
10 ease. Take your comfort break. I need to take a Grand Jury
11 report, so take ten minutes and then we will figure out what
12 we are doing from there.

13 (WHEREUPON, break was had 7/14/15, 1:15 p.m.)

14 (WHEREUPON, resume 7/14/15, 1:17 p.m. regarding alternate
15 juror.)

16 THE COURT: Back on the record. Ms. Williams, who do
17 you believe he knows?

18 MS. WILLIAMS: He knows the Vick family. He goes to
19 church with them and Mrs. Vick and knows the children.

20 THE COURT: Thank you.

21 (WHEREUPON, alternate juror enters courtroom)

22 THE COURT: Mr. Scarborough if you would just please
23 come forward. I have a few questions to ask you. You are
24 not in any trouble. I just need to ask some questions.

25 Mr. Scarborough it had been brought to my attention

1 that you may know some of the witnesses who have testified,
2 that you go to church with the Vick family, specifically the
3 lady that testified right before we took the break.

4 A. I'm not sure that ---

5 Q. Where do you attend church? Let's do it that way.

6 A. I am a member of Crowfield Baptist Church in Goose
7 Creek.

8 Q. And the lady that just testified do you recognize her
9 from church?

10 A. I did not. I really

11 Q. All right.

12 A. I may -- I may have if I had got a closer look or
13 something.

14 Q. All right. And do you -- did you know -- I have asked
15 these questions before, but they're evidently seen you about
16 church.

17 A. Yeah.

18 Q. So is there anything about that that would affect your
19 ability to be fair and impartial in this case?

20 A. No, I don't -- I don't believe so. I don't -- no.

21 Q. And had you heard anything about this case other than
22 what -- what you have already known?

23 A. Nothing. No.

24 Q. This wasn't discussed at church in any manner?

25 A. Oh, no.

State vs. Gary Fraley

1 Q. All right.

2 A. We didn't -- I didn't know anything about it then.

3 Q. And so, Mr. Scarborough, then my question to you is is
4 there anything about me bringing you in here in open court
5 and asking you these questions that would affect your
6 ability to be fair and impartial?

7 A. Not that I know of, no, ma'am.

8 Q. All right.

9 THE COURT: All right. Any additional inquiry?

10 MS. WILLIAMS: No, Your Honor.

11 MS. GAY: None, Your Honor.

12 THE COURT: All right. Thank you, Mr. Scarborough.

13 MR. SCARBOROUGH: You are welcome.

14 THE COURT: Thank you for staying with us.

15 (WHEREUPON, alternate juror exits courtroom.)

16 THE COURT: Any motions or matters pertaining to that
17 juror, Ms. Williams?

18 MS. WILLIAMS: Not from the State.

19 THE COURT: Ms. Gay?

20 MS. GAY: No, ma'am.

21 THE COURT: All right. Thank you.

22 MS. WILLIAMS: We will be adjourned until when?

23 THE COURT: Lunch isn't here, so my intention -- what
24 do y'all want to do; do you want to continue on with a
25 witness, do you -- next witness; do you want to take a lunch

State vs. Gary Fraley

1 break at this point; what do you want to do?

2 (WHEREUPON, scheduling was discussed.)

3 THE COURT: Be back at 2:00. Be back at 2:00. We are
4 down until 2:00.

5 (WHEREUPON, a lunch break was had 7/14/15, 1:19 p.m.)

6 (WHEREUPON, trial resumed 7/14/15, 2:16 p.m.)

7 THE COURT: From the defendant?

8 MS. GAY: I have nothing, Your Honor, before we start.

9 THE COURT: Anything procedurally or legally?

10 MS. WILLIAMS: No, nothing from the State.

11 THE COURT: Ms. Gay?

12 MS. GAY: Nor the defense.

13 THE COURT: Who is your next witness?

14 MS. WILLIAMS: Minor 1

15 THE COURT: Minor 1

16 MS. WILLIAMS: Yes, Your Honor.

17 THE COURT: Is she in the courtroom?

18 MS. WILLIAMS: She is -- no, she is not in the
19 courtroom, but we can get her.

20 THE BAILIFF: The victim's advocate just went to get
21 her.

22 THE COURT: Okay. Great. Thank you.

23 THE BAILIFF: Jury coming in. All rise.

24 (WHEREUPON, jury enters courtroom 7/14/15, 2:18 p.m.)

25 THE COURT: Sometimes it is nice to switch up and get a

State vs. Gary Fraley

1 chair you weren't in before. Thank you. Please be seated.
2 Call your next witness.
3 MS. WILLIAMS: The State calls Minor 1
4 THE CLERK: Please have a seat. State your full name
5 and spell your last name.
6 MS. Minor 1 Minor Olivia Vick, V-I-C-K.
7 **DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1**
8 Q. Hi, Minor 1 How old are you?
9 A. Twelve.
10 Q. And what grade will you be in next year?
11 A. Seventh.
12 Q. What school are you going to be going to?
13 A. Westview Middle.
14 Q. Where did you go to school last year?
15 A. Westview.
16 Q. Was it middle or ...?
17 A. Middle.
18 Q. Okay. Tell me what your brothers and sisters' names
19 are.
20 A. Madison, Adam, and Quenton.
21 Q. And which ones are older than you and which one is
22 younger?
23 A. Madison and Quenton, and Adam is younger.
24 Q. Is younger. Okay. And what do you want to do when you
25 get older?

- 1 A. Pediatrician.
- 2 Q. Now you are 12 now. Where were you living when you
3 were 11?
- 4 A. [REDACTED] Head Way.
- 5 Q. And what city is that in?
- 6 A. Goose Creek.
- 7 Q. And tell me if you know who Alta F. is?
- 8 A. I do.
- 9 Q. And was she someone that was a friend of yours?
- 10 A. Yeah.
- 11 Q. And where did she live?
- 12 A. Down the street.
- 13 Q. Okay. And do you know who Janie W. is?
- 14 A. Yes.
- 15 Q. And where did she live?
- 16 A. Down the street in the cul-de-sac.
- 17 Q. And who is Alta F. father?
- 18 A. Gary Fraley.
- 19 Q. And do you remember seeing Mr. Fraley in August of last
20 year?
- 21 A. Yes.
- 22 Q. When was that; where did you see him?
- 23 A. At a birthday party.
- 24 Q. Did he come to your house? I am talking about Gary.
- 25 A. Yes.

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

1 Q. It is okay if you need time to remember. If you don't
2 remember something it is okay to tell me that.

3 You said it was at a birthday party. Where did he pick
4 you up?

5 A. At my house.

6 Q. Okay. And who was at your house at that time when he
7 came there?

8 A. My -- Quenton, my mom, and my little brother.

9 Q. Okay. And when he came to your house did he show you
10 anything?

11 A. Not until I came outside.

12 Q. Okay. What did he show you when you came outside?

13 A. Like fossils.

14 Q. Okay. What did they look like?

15 A. Like a grey something.

16 Q. Like a rock?

17 A. Yeah.

18 Q. Okay. And what were you supposed to do with the
19 fossils?

20 A. We were supposed to like create your own.

21 Q. Okay. Where were you supposed to do that?

22 A. We were going to go to some place after.

23 Q. At the party?

24 A. I think.

25 Q. Okay. And do you know where the birthday party was

- 1 supposed to be?
- 2 A. Bowling alley.
- 3 Q. Had you ever been to that bowling alley before?
- 4 A. Yes.
- 5 Q. And how did you get there -- or how -- did you -- did
- 6 you get with him in a car?
- 7 A. Uh-huh.
- 8 Q. And did he take you to the bowling alley first?
- 9 A. No.
- 10 Q. Where did he take you first?
- 11 A. To Publix.
- 12 Q. I'm sorry?
- 13 A. Publix.
- 14 Q. Okay. And did you both go into Publix?
- 15 A. No, just him.
- 16 Q. Did you see anything that he had when you came out --
- 17 when he came out?
- 18 A. Only bags.
- 19 Q. Okay. And where did he take you next?
- 20 A. To the EconoLodge.
- 21 Q. All right. Did he tell you why you were going to the
- 22 EconoLodge?
- 23 A. Because he was staying there because the power in his
- 24 house was out.
- 25 Q. Okay. And when you got there did he have a key or did

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

1 you have to go get a key; what happened when you got there?

2 A. He had a key.

3 Q. Okay. And then did you go inside a room?

4 A. Yes.

5 Q. And when you got in there what did he say; what did he
6 want you to do?

7 A. He wanted me to give him like his -- my phone battery.

8 Q. Okay. And did you have a phone with you?

9 A. I had an iPod.

10 Q. Okay. And did you give him your phone battery -- or
11 your iPod battery?

12 A. Yeah.

13 Q. Okay. Did he have -- did you see anything he had
14 with -- with him when you first came into the room?

15 A. Only like bags.

16 Q. Okay. What happened next?

17 A. Well, he tried to get the battery out with a pocket
18 knife.

19 Q. Of your iPod?

20 A. Uh-huh.

21 Q. Was he able to do that?

22 A. Huh-uh.

23 Q. And then what happened?

24 A. Then he told me that I needed to take a shower because
25 if any bacteria got in the fossil like it would destroy it.

1 Q. Okay. And so did you take a shower?

2 A. Uh-huh.

3 Q. And what happened next?

4 A. Then he came in and gave me like cough syrup or that,
5 because he said they were like sick.

6 Q. And what did it -- what did he give it to you in?

7 A. A white plastic cup.

8 Q. Okay. And where was he; were you still in the shower?

9 A. Uh-huh.

10 Q. And how did he give -- did he hand it to you; did he
11 see you?

12 A. Handed it.

13 Q. Okay. Did you drink it?

14 A. Uh-huh.

15 Q. Then what happened?

16 A. Then he came back with another cup of something like he
17 said it was like milk and whiskey or something like that.

18 Q. Okay. And did you drink that?

19 A. A little bit of it.

20 Q. Okay. And then did -- when he left did you finish
21 drinking it?

22 A. I poured it down the drain.

23 Q. What were we thinking at this point?

24 A. He's crazy.

25 Q. And how did you feel?

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

- 1 A. Nervous.
- 2 Q. And after you got out of the shower what happened?
- 3 A. Then he said come out there because he had other
- 4 clothes.
- 5 Q. Other clothes. And did he explain why you had to wear
- 6 other clothes?
- 7 A. No.
- 8 Q. Okay. And so when you came out of the shower what did
- 9 you have on?
- 10 A. Just underwear and a towel.
- 11 Q. Okay. And where was he -- where was he in the room?
- 12 A. On the bed.
- 13 Q. Was he sitting or laying; what position was he in?
- 14 A. Sitting.
- 15 Q. And then what happened?
- 16 A. Then he made me sit on his lap.
- 17 Q. And while you were sitting on his lap what did he do?
- 18 A. He was -- he was telling me like about his wife and how
- 19 they divorced and that.
- 20 Q. What did he tell you about his wife?
- 21 A. That she cheated on him.
- 22 Q. And did he tell you why you were there?
- 23 A. To get back on her.
- 24 Q. What was he going to do to you to back on her?
- 25 A. Rape me.

1 Q. Did he use that word, rape you; or do you remember?

2 A. I don't remember.

3 Q. And so at some point when you were sitting in his lap
4 did you still have on your underwear?

5 A. Uh-huh.

6 Q. And just a towel?

7 A. Uh-huh.

8 Q. And did you stay in that position for a while with you
9 on his lap?

10 A. Not for long.

11 Q. What happened next?

12 A. Then he took my underwear off and he used something to
13 rub down there.

14 Q. Okay. And then -- then what happened?

15 A. Then he made me suck his penis.

16 Q. Okay. And when he made you do that how was he; was he
17 still on ---

18 A. He was like laying on the bed.

19 Q. Okay. And where were you?

20 A. Like reaching over on his -- like.

21 Q. Did he touch any part of your body with his body?

22 A. Pushed my head.

23 Q. When you say pushed your head tell us what he did with
24 your head.

25 A. Like he pushed down near his crotch.

- 1 Q. Did he say anything to you while that was happening?
- 2 A. Go deeper.
- 3 Q. And after that what happened?
- 4 A. Then stopped. He got over me.
- 5 Q. And what position were you in at that point?
- 6 A. Under him.
- 7 Q. Okay. Were you laying on your stomach, your back, or
- 8 something else?
- 9 A. My back.
- 10 Q. Okay. And what was -- where was he in relation to
- 11 where you were laying?
- 12 A. Over me.
- 13 Q. Okay. And what parts of his body touched your body?
- 14 A. Legs.
- 15 Q. Okay. And what about where were his hands?
- 16 A. I don't remember.
- 17 Q. Okay. And did any part of his body go in your body?
- 18 A. Uh-huh.
- 19 Q. Tell me about that.
- 20 A. His penis into my vagina.
- 21 Q. Okay. Did anything come out of his penis?
- 22 A. I didn't see.
- 23 Q. Okay. And what did you do when he was doing that?
- 24 A. I started to scream and cry.
- 25 Q. Okay. And what did he do?

- 1 A. Then he let me get out and go to the bathroom.
- 2 Q. Okay. And where did he go when you were going to the
- 3 bathroom?
- 4 A. Staring at me.
- 5 Q. So were you even able to go?
- 6 A. Huh-uh.
- 7 Q. Then what happened?
- 8 A. Then he made me get back on the bed and put his penis
- 9 up my anus.
- 10 Q. And what position were you in when he did that?
- 11 A. On my stomach.
- 12 Q. Where were -- were there any pillows on the bed?
- 13 A. Yes.
- 14 Q. Where were the pillows when that was happening?
- 15 A. One was under my stomach I think.
- 16 Q. Okay. And when he put his penis in your -- do you call
- 17 it an anus; or what do you call it?
- 18 A. Butt.
- 19 Q. Okay. When that happened did anything else happen in
- 20 terms of stuff coming out of you or stuff coming out of him?
- 21 A. Uh-huh.
- 22 Q. Tell me about that.
- 23 A. Like poop came out.
- 24 Q. Okay. And did you know if anything came out of his
- 25 penis?

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

1 A. I didn't see.

2 Q. Okay. And did he touch you anywhere else on your body
3 during the time that all of these things were happening?

4 A. Only my legs I think.

5 Q. Okay. Did he touch your shoulders or your chest or
6 your ---

7 A. Chest.

8 Q. --- privates? Just your chest. Okay. Do you remember
9 when that was happening?

10 A. I don't remember.

11 Q. That's okay. Before he started touching you on your
12 body and doing these things to you did you see any of the
13 items that he got from Publix?

14 A. I saw it looks like -- like a beer bottles.

15 Q. Okay. And when you came into the room did he show you
16 anything that he had? Did you ever see a gun?

17 A. Yes.

18 Q. Okay. Tell us what the gun looked like.

19 A. It had like a black like top and a brown handle.

20 Q. Okay. And what did he do with the gun and what did he
21 say?

22 A. He showed me it and said don't test him.

23 Q. He said don't test me?

24 A. Uh-huh.

25 Q. Don't test me. And did you ever touch the gun?

1 A. Uh-huh.

2 Q. Tell us what happened there.

3 A. He had me hold the handle and some of the bullets fell
4 out.

5 Q. Why did the bullets fall out; do you know?

6 A. I don't know why.

7 Q. Okay. That's fine. And after he put the pillow under
8 you to put his penis in your butt what did you do?

9 A. I started to cry again.

10 Q. Okay. And what did he do?

11 A. After that he got off of me.

12 Q. Okay. And after all that was over what happened? Did
13 y'all leave the room right away or did you stay?

14 A. Not yet.

15 Q. Okay.

16 A. He turned the TV. on. Put SpongeBob I think.

17 Q. Okay. And what else did he tell you about what he was
18 going to do or why he was doing what he was doing; can you
19 remember?

20 A. That he was going to kill the man that his wife cheated
21 on him with.

22 Q. Did he tell you the man's name?

23 A. It was Steve.

24 Q. Okay. And do you even remember how long you watched
25 SpongeBob?

1 A. No.

2 Q. Okay. Backtracking just a little bit, when you got in
3 Gary's car and you left the neighborhood, your neighborhood,
4 did you -- did he say anything about Janie?

5 A. Uh-huh.

6 Q. Tell me about that.

7 A. He was like talking out loud and saying if he should
8 like turn around and get them.

9 Q. Okay. Do you remember if he turned around?

10 A. He did.

11 Q. Okay. And after you left the hotel room where did you
12 go?

13 A. Royal Lane.

14 Q. And was he saying anything else about what was going on
15 and what he was going to do?

16 A. He said to wait ten minutes until I get out of the car.

17 Q. Okay. And was the car parked in the parking lot?

18 A. Uh-huh.

19 Q. And so he left?

20 A. Uh-huh.

21 Q. And what did you do?

22 A. I waited like five minutes and then I got out and asked
23 the lady to borrow her phone to call my parents.

24 Q. Okay. And who did you call?

25 A. My mom and then my dad.

1 Q. Okay. And so then what happened next?

2 A. And then my dad came and picked me up and we went to
3 the Northwoods Mall.

4 Q. And did you tell him what happened?

5 A. Uh-huh.

6 Q. And where did you go next?

7 A. The hospital after the mall.

8 Q. How long were you at the hospital?

9 A. Until midnight.

10 Q. Okay. And when you got to the hospital who did you
11 meet with in terms of doctors and nurses; do you remember
12 how many people that you met with?

13 A. I don't remember the amount of people.

14 Q. That's okay. What happened to you there; like what was
15 the examination like?

16 A. Like they had to swab your mouth and that, and then
17 they had to take pictures.

18 Q. Did they have to swab anywhere else?

19 A. Down there, yeah.

20 Q. Okay. And how did they do the examination; where
21 are -- what are you on?

22 A. You had to put your feet on like how pregnant ladies
23 have to put their feet up on the stool thing.

24 Q. Okay. And at that time had you -- did you feel
25 anything after the NyQuil; did the NyQuil make you feel any

1 differently?

2 A. Dizzy.

3 Q. Okay. And after you left there did you have to take
4 any medicines or did you have to go back at all?

5 A. I had to take medicine.

6 Q. How did the medicine make you feel?

7 A. Nauseous.

8 Q. And did you have to go to any kind of counseling or
9 anything like that?

10 A. Uh-huh.

11 Q. Have you been going to counseling?

12 A. Uh-huh.

13 Q. Minor 1 I am going to show you some pictures.

14 MS. WILLIAMS: Your Honor, I am going to show Minor 1
15 State's 25 through 81. I am showing her -- we are showing
16 her 25 through -- I'm sorry, we are showing her 29 through
17 81.

18 MS. WILLIAMS: May I approach?

19 THE COURT: You may.

20 Q. Minor 1 I am going to show you a lot of pictures. And I
21 want you to look through these and tell us if they
22 accurately show what is in the picture as you remember it,
23 okay?

24 A. Uh-huh.

25 (WHEREUPON, exhibits were reviewed by witness.)

1 Q. Okay. And you just kind of you can just go through
2 them kind of quickly.

3 (WHEREUPON, exhibits were continued to be reviewed by
4 witness.)

5 Q. You are being very patient. I am going to slow down.

6 (WHEREUPON, exhibits were continued to be reviewed by
7 witness.)

8 Q. Okay. Now do those pictures accurately show the way
9 that you remember those things looked on that day?

10 A. Yes.

11 Q. Okay.

12 MS. WILLIAMS: Your Honor, at this time we would offer
13 those exhibits into evidence.

14 THE COURT: Any objection to State's 29 through 81?

15 MS. GAY: No, ma'am.

16 THE COURT: You may publish into evidence without
17 objection.

18 (WHEREUPON, State's Exhibit Numbers 29 through 81 were
19 admitted into evidence.)

20 MS. WILLIAMS: Can you put up State's 33.

21 Your Honor, may I approach again?

22 THE COURT: You may.

23 BY MS. WILLIAMS:

24 Q. Minor 1 I want you to just flip around. And do you see
25 this little red button?

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

1 A. Uh-huh.

2 Q. If you could just point to and tell us what you
3 recognize in that photograph.

4 A. The fossils.

5 THE COURT: Minor 1 I am going to need you to speak very
6 loudly. Can you -- can you ---

7 A. The fossils.

8 Q. Okay.

9 MS. WILLIAMS: And if you will put up State's 45.

10 A. The car.

11 Q. Is that the car that you were in?

12 A. Uh-huh..

13 MS. WILLIAMS: And if you can put up State's 57.

14 Q. Now what is this a picture of?

15 A. Gary's underwear.

16 Q. And where was that?

17 A. On the bed.

18 Q. And when you say on the bed where was it; in what room?

19 You don't have to tell me the number but ---

20 A. Hotel room.

21 Q. At the EconoLodge?

22 A. Uh-huh.

23 MS. WILLIAMS: Put up State's 59.

24 Q. What is that?

25 A. NyQuil.

1 Q. Is that what you had to drink?

2 A. Uh-huh.

3 MS. WILLIAMS: State's 61.

4 Q. What is that a picture of?

5 A. Feces.

6 Q. Okay. And is that from when he put his penis in your
7 butt?

8 A. Uh-huh.

9 MS. WILLIAMS: State's 68.

10 Q. What is that a picture of?

11 A. The hotel bedding.

12 Q. And is that the bed that you were just describing to
13 us?

14 A. Yes.

15 MS. WILLIAMS: Seventy-one.

16 Q. What is that a picture of?

17 A. The hotel room, the TV and bathroom.

18 Q. Is that the television that you watched SpongeBob on?

19 A. Yes.

20 MS. WILLIAMS: State's 74. Can you flip that?

21 Q. What is that a picture of?

22 A. The hotel tub, bathroom.

23 Q. Is that where you had to take a shower?

24 A. Uh-huh.

25 MS. WILLIAMS: State's 78.

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

1 Q. What is that?

2 A. The beer.

3 Q. Is that the beer that he had with him after Publix?

4 A. I believe so.

5 Q. Okay. If you don't know it is okay to say that. Do
6 you know?

7 A. No.

8 Q. Okay. Did you see that in the room?

9 A. I saw it, yes, and the mirror.

10 Q. Okay. A lot of these pictures were of the same thing
11 over and over again, weren't they?

12 A. Uh-huh.

13 MS. WILLIAMS: Court's indulgence for just a moment.

14 THE COURT: That's okay.

15 MS. WILLIAMS: Thank you. I don't have any other
16 questions. Just wait and see if Ms. Gay has any questions.

17 THE COURT: Ms. Gay, do you have any questions for this
18 witness?

19 MS. GAY: One moment, please, Your Honor.

20 THE COURT: Take your time.

21 Minor 1 do you need any water or anything?

22 MS. Minor 1 I'm good.

23 MS. GAY: I have no questions for Miss Vick.

24 THE COURT: You may step down. Thank you.

25 Call your next witness.

1 MS. WILLIAMS: The State calls Chad Vick.

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: State your full name for the record and
4 spell your last.

5 MR. CHAD VICK: Chad James Vick, V-I-C-K.

6 **DIRECT EXAMINATION BY MS. WILLIAMS OF CHAD VICK:**

7 Q. Mr. Vick, where do you work?

8 A. Roper Hospital downtown.

9 Q. And what do you do?

10 A. A registered nurse.

11 Q. And your children are -- I think we know by now. But
12 go ahead and tell us your children's names and ages.

13 A. Clinton Tyler, he is 18. Madison V. is 15. Minor
14 Olivia is 12. And Adam James is eight.

15 Q. And back on August 5th, 2014, what were your plans for
16 that afternoon?

17 A. For that afternoon every Tuesday I would come get the
18 kids and we would usually go to dinner. We would usually go
19 bowling. And it was kind of our Tuesday routine.

20 Q. Okay. And had you ever lived at Clogher Head Way?

21 A. Yes, ma'am.

22 Q. And during that time had you ever run into Mr. Fraley?

23 A. Yes, ma'am.

24 Q. And did you know him from the neighborhood?

25 A. I did.

DIRECT EXAMINATION BY MS. WILLIAMS OF CHAD VICK

1 Q. And did your girls every play with his daughter Alta?

2 A. Yes, ma'am.

3 Q. And that day that you were -- were you supposed to get
4 your kids that day ---

5 A. I was.

6 Q. --- August 5th?

7 A. I was.

8 Q. And what happened; did you?

9 A. I worked the night before. I work night shift and I
10 got a call about 2:30 and from Ruthie my ex-wife asking if
11 it would be okay for Minor to go to a birthday party. She
12 had never -- she didn't have a whole lots of friends at that
13 point and I was excited that she was able to go to a
14 birthday party. Did not ask who or where; but I trust her
15 judgment, you know, and said it was okay.

16 Q. Okay. And so did that alter the plan of when you were
17 going to see Minor that day?

18 A. It did slightly, yes.

19 Q. Okay. What was the new plan?

20 A. New plan was I believe I got there about 4:20 and
21 picked up Madison and Adam. And Madison's best friend was
22 there as well, McKensie. And we went to Zaxby's, ate dinner
23 and kind of stalled for some time. And the plan was for me
24 to pick Minor up at Minor1 house at 5:30. Excuse me
25 (sneeze), 5:30.

DIRECT EXAMINATION BY MS. WILLIAMS OF CHAD VICK

1 Q. And did that happen?

2 A. It did not.

3 Q. And why not?

4 A. We were (sneeze) -- excuse me. We were driving at
5 about 5:20, 5:25 driving from Zaxby's which is a two or
6 three minute drive to where the -- where I was supposed to
7 pick up Minor at the kid's house.

8 We were actually pointing down their road and I
9 received a phone call from a number I didn't recognize. I
10 almost didn't answer it, but I did.

11 And it was Minor telling me -- asking me where I was at.
12 And I told her I was pulling into the house, where are you
13 at, pulling out. And she is like I'm not there.

14 I asked her where she was at, and she said she was at
15 the bowling alley. And I said what do you mean you are at
16 the bowling alley, I thought I was supposed to pick you up
17 at your mom's house. And she said that Gary had dropped her
18 off at the bowling alley.

19 Q. So what did you do?

20 A. I was quite upset that an 11-year-old was getting
21 dropped off at a bowling alley by herself. And I did not
22 know it was Gary up until that point.

23 And I told her to go inside and sit at the kid's area
24 and we will be there in five minutes. That was the original
25 plan anyways was to go bowling. So we were heading that way

DIRECT EXAMINATION BY MS. WILLIAMS OF CHAD VICK

1 anyway. So we proceeded to drive to the bowling alley.

2 Q. And when you got there what was the scene like?

3 A. Chaotic. We pulled in and -- before we even made a
4 left from 176 down Central there was a black suburban,
5 unmarked, with lights blaring, passing us turning down
6 Central.

7 We went ahead and came around the corner by the bowling
8 alley and there was cops everywhere. A group of people were
9 standing down by the curb. Obviously guns and everything,
10 you know, out. So it was just in shock, you know.

11 Q. And so where did you find Minor 1

12 A. Madison saw Minor 1 I pulled up into it and just looking
13 for my daughter, and the police motioned for me to go down
14 to where a group of people were down by the curb. And
15 Madison saw as we were pulling down Minor in that -- in that
16 group.

17 Q. Okay. And so when she got into the car who else was in
18 the car at that point?

19 A. Adam, Madison, and Madison's friend McKenzie.

20 Q. Okay. And where did y'all go?

21 A. We sat there for a second just kind of trying to figure
22 what was -- what exactly was going on and taking it in. And
23 then, you know, I said I want to get the kids away from
24 there. So like Plan B was to -- the first thing that came
25 to my mind was to go to the food court and go to Dairy Queen

1 and get some ice cream and maybe go school shopping. It was
2 a week before school -- before school would start so.

3 Q. Okay. And did Minor say anything to you at first?

4 A. When she got in the car she said she was never going to
5 a birthday party again. And I had asked her what had
6 happened, and she said she needed to tell me in private.

7 Q. Okay. And what did she tell you?

8 A. She -- I asked her if she ate, and she said no. And so
9 we went to the bowling alley -- or excuse me, we went to the
10 mall. And as we were getting out of the car I kind of held
11 her back just a little bit and the other three kids were
12 walking only ten feet from us. And she told me she hope
13 she's not pregnant. And I said what do you mean. And she
14 was like I was raped.

15 And I motioned -- I told the -- I told the kids to go
16 inside, the three other kids to go inside and sit down by
17 the Dairy Queen in the food court. As soon as you walk in
18 it is right there on the right-hand side.

19 And I asked her I was like what do you mean you were
20 raped, you know. And she is like Dad I was raped. She is
21 like there was no birthday, I was taken to the hotel
22 EconoLodge. She said, "And Gary raped me".

23 And I said Minor -- I was like are you sure this is what
24 happened. And she said, "Yeah". So we walked inside to get
25 to the other kids. And they were fine. I

DIRECT EXAMINATION BY MS. WILLIAMS OF CHAD VICK

1 I tried to call their mom, and there is no signal right
2 there. So I went back outside and I had Minor come with me
3 at that point. And we were standing outside. I called her
4 mom. Actually I called her mom twice. You know, before --
5 as we were walking in I told her that, you know, you need to
6 get ready, something happen to Minor1 And I didn't want to
7 necessarily talk to her mom in front of her and make her
8 even more worried. And then when we came back out and I
9 called her mom again and told her what Minor said, that she
10 was raped, I was like you need to get here fast.

11 And then I got off the phone with her and immediately
12 called 911 as well and, you know, told them what was going
13 on. Everything was like in shock. They just -- can't
14 believe it is happening.

15 Q. And what was Minor1 demeanor like?

16 A. She was in shock. Just -- she said she was dizzy. Her
17 face was flushed as all get out. She is extremely hot to
18 touch. She is almost wobbly. I had to kind of hold my arm
19 around her so she didn't fall over. I had her sit down on
20 like a little -- like garden thing. There was a ledge.

21 And very quickly the actual mall police they were there
22 very quickly and met us there. They were I guess on the
23 phone with 911 as well. And I didn't know at the time that
24 Ruthie was calling 911 also.

25 Ruthie came. And the police were there as well. And

DIRECT EXAMINATION BY MS. WILLIAMS OF CHAD VICK

1 we knew just because we both work at hospitals we had to get
2 her to a hospital. And we knew MUSC had the SANE -- SANE
3 nurses were there, so we took her there.

4 Q. And was she crying when she saw her mom?

5 A. She was upset. She just was -- she was upset. She was
6 distraught. Her -- she just looked a mess. She was just --
7 shock is the best way to put it.

8 Q. Thank you, Mr. Vick.

9 A. Okay.

10 Q. Please answer any questions from Ms. Gay.

11 THE COURT: Ms. Gay.

12 MS. GAY: I have no questions.

13 THE COURT: Thank you. You may step down.

14 Call your next witness.

15 MR. POULOS: The State calls Jennifer Moultrie.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please have a seat. State your full name
18 and spell your last name for the record.

19 MS. MOULTRIE: My full name is Jennifer Liza Moultrie,
20 M-O-U-L-T-R-I-E.

21 **DIRECT EXAMINATION BY MR. POULOS OF JENNIFER MOULTRIE:**

22 Q. Good afternoon, Ms. Moultrie. Where do you reside?

23 A. Goose Creek, South Carolina.

24 Q. Are you currently employed?

25 A. No, I am not.

DIRECT EXAMINATION BY MR. POULOS OF JENNIFER MOULTRIE

1 Q. Are you familiar with Deonna and Gary Fraley?

2 A. Yes, I am.

3 Q. How do you know ...?

4 A. I met Deonna at a neighborhood bar and grill. And then
5 I met Gary through Deonna.

6 Q. And how long have you know them?

7 A. I have known Deonna for about seven years and about
8 four years with Gary.

9 Q. Did you ever spend time with him together?

10 A. Yes.

11 Q. And did you have occasion to see how Gary behaves
12 toward Deonna?

13 A. Excuse me?

14 Q. Did you have occasion to see how Gary ---

15 THE COURT: Mr. Poulos, there is a matter I need to
16 take up outside of the jury, address with the jury. Please
17 remember all of my admonitions.

18 Please rise for the jury. Stay seated, Ms. Moultrie.

19 (WHEREUPON, jury exited courtroom 7/14/2015, 2:54 p.m.)

20 THE COURT: Thank you. Be seated.

21 Ms. Moultrie, please step down.

22 Counsel approach.

23 (WHEREUPON, juror, Ms. Dennis, enters the courtroom.)

24 THE COURT: Hi, Ms. Dennis. I understand you know the
25 witness.

1 morning, ladies and gentlemen. Did every member of the
2 panel comply with the court's instructions over the evening
3 hour? If you did comply, please raise your right hand.

4 If you complied with my instruction -- if you
5 complied with my instructions -- if you complied with my
6 instructions -- if you followed my instructions, did what I
7 told you to do raise your right hand. Is there -- thank
8 you.

9 Is there anybody that didn't do what I told them to do?

10 Thank you, there are none.

11 Mr. Poulos, your witness.

12 MR. POULOS: Thank you, Your Honor.

13 THE COURT: And you may remember we started with Ms.
14 Moultrie yesterday afternoon before we broke. And so Ms.
15 Moultrie I remind that you are still under oath.

16 Mr. Poulos, you may begin your questioning.

17 MR. POULOS: Thank you, Your Honor.

18 **RESUME DIRECT EXAMINATION BY MR. POULOS OF JENNIFER**

19 **MOULTRIE:**

20 Q. Good morning, Ms. Moultrie.

21 A. Good morning.

22 Q. We already asked a few questions. I just want to start
23 fresh since we are coming back again today. Remind us of
24 your name, please.

25 A. Jennifer Liza Moultrie.

DIRECT EXAMINATION BY MR. POULOS OF JENNIFER MOULTRIE

1 Q. Ms. Moultrie, where do you live?

2 A. Goose Creek, South Carolina.

3 Q. Are you familiar with Deonna and Gary Fraley; do you
4 know them?

5 A. Yes, I do.

6 Q. How do you know them?

7 A. I met Deonna at a neighborhood bar and grill. And then
8 I met Gary through Deonna.

9 Q. Okay. And how long have you known them?

10 A. I have known Deonna for seven years and Gary for about
11 four.

12 Q. Have you spent social time with them together?

13 A. Yes.

14 Q. In the year or two leading up to this incident could
15 you describe what Gary's demeanor was towards Deonna.

16 A. Kind of rough around the edges. Spy like.

17 Q. Do you have regular communications with Gary and Deonna
18 from June to August 2014?

19 A. Yes.

20 Q. During that time did Mr. Fraley make any threatening
21 remarks about Steven Tsafos that you recall?

22 A. Yes.

23 Q. What did he say exactly?

24 A. He said if I am going down he is going down too. And
25 he also stated that it is the end for him.

DIRECT EXAMINATION BY MR. POULOS OF JENNIFER MOULTRIE

1 Q. It is the end for Mr. Tsafos?

2 A. Yes.

3 Q. Did Mr. Fraley ever discuss with you going to rehab?

4 A. Yes, he did.

5 Q. And did he ever discuss motives for going to rehab
6 other than for treatment?

7 A. He said that he would go to rehab and then he would
8 turn around and not go to rehab and spy on Deonna.

9 Q. Did Mr. Fraley ever send you text messages?

10 A. Yes.

11 Q. And how do you know that they were from Gary Fraley?

12 A. They were -- I saved the number in my phone, and when
13 he texted me they came from that number. And plus he would
14 call me from that number, and I recognized his voice.

15 Q. I'm going to show you some photographs, State's Exhibit
16 118, 120, 121, 124, 125, 126, and 130.

17 (WHEREUPON, documents were presented to defense counsel.)

18 MR. POULOS: May I approach, Your Honor?

19 THE COURT: You may.

20 MR. POULOS: Thank you.

21 BY MR. POULOS:

22 Q. I am going to ask you just to quickly flip look through
23 those. Just look up at me when you are done.

24 A. Okay.

25 Q. Ms. Moultrie, do you recognize these photographs?

DIRECT EXAMINATION BY MR. POULOS OF JENNIFER MOULTRIE

1 A. Yes, I do.

2 Q. And what do you recognize them to be?

3 A. My text messages from Gary and me responding very
4 little.

5 Q. Okay. Do the photos fairly and accurately represent
6 text messages he sent to you?

7 A. Yes.

8 Q. And were they sent to your personal phone?

9 A. Yes.

10 MR. POULOS: Your Honor, I would offer these into
11 evidence at this time.

12 THE COURT: Any objection?

13 MS. GAY: No objection, Your Honor.

14 THE COURT: And once again I need the numbers.

15 MR. POULOS: They are exhibits 118, 120, 121, 124, 125,
16 126, and 130.

17 THE COURT: Those will be in evidence without
18 objection. You may publish.

19 MR. POULOS: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit 118, 120, 121, 124, 125, 126,
21 and 130 were admitted into evidence.)

22 BY MR. POULOS:

23 Q. Ms. Moultrie, I am going to put some of these messages
24 on the screen behind you. Ms. Moultrie, I am going to
25 direct your attention to the white messages. Are those from

1 Gary?

2 A. Yes.

3 Q. Okay. And the bottom white message where it reads my
4 empty wine bottles were a nice touch, what did you interpret
5 that as meaning?

6 A. That someone has (cough) -- sorry. That someone has
7 placed empty wine bottles.

8 Q. I am going to show --- placed them where?

9 A. I don't know.

10 Q. Okay. I am going to show you Number 124. Direct your
11 attention to the top message there. "I used rehab as the
12 leverage to get away." What did you interpret that as
13 meaning?

14 A. So that he could go ahead and spy on Deonna.

15 Q. I am going to show you Number 125 and direct you to the
16 top message. "I have eyes when I am not there. I have
17 resources. I tell bits at a time." What did you interpret
18 that as meaning?

19 A. That he has been there.

20 Q. Been where?

21 A. Been around spying on Deonna.

22 Q. I am going to show you Number 126. I want to direct
23 your attention to the third message, third white message.
24 "Alto will cry for me when I walk away. Y'all broke her --
25 our heart, my perfect baby with no daddy." What did you

DIRECT EXAMINATION BY MR. POULOS OF JENNIFER MOULTRIE

1 interpret that as meaning with no daddy?

2 A. That he was going to commit suicide.

3 Q. I show you Number 130. "I have been watching their
4 crooked shit for about 15 months." Who is he referring to
5 there?

6 A. Deonna.

7 Q. Now these text messages go to your testimony earlier
8 where you said Gary would watch her, spy on her, be
9 suspicious of her?

10 A. Yes.

11 Q. Okay. Did you attend a trip to Florida with Deonna and
12 Steve Tsafos in July of 2014?

13 A. Yes.

14 Q. Were they there for some sort of bowling alley
15 convention or something?

16 A. Yes.

17 Q. Okay. During that trip did you get the impression that
18 there may have been something going on between the two of
19 them?

20 A. Yes.

21 Q. Did Gary ask you about that?

22 A. Yes.

23 Q. And did you tell him that you were suspicious ---

24 A. Yes.

25 Q. --- that there may be a relationship between them?

1 A. Yes.

2 Q. Okay. So that is something that you told him?

3 A. Yes.

4 Q. Okay. I have no further questions, Your Honor.

5 THE COURT: Ms. Gay.

6 MS. GAY: Thank you, Your Honor.

7 **CROSS-EXAMINATION BY MS. GAY OF JENNIFER MOULTRIE:**

8 Q. The last thing that you said to the solicitor I would
9 like to talk to you about that. These text messages that
10 you had gotten, they came before July of 2014?

11 A. No.

12 Q. They came after?

13 A. Yes.

14 Q. Okay. So these text messages that said that he was
15 going to commit suicide, that he was watching them, that he
16 had eyes and things like that that are now in evidence
17 they all came after you told him that when you went to
18 Florida that you believed they were having some kind of
19 extra-marital affair?

20 A. Yes.

21 MR. POULOS: I have no further questions, Your Honor.

22 MR. POULOS: No further questions.

23 THE COURT: You may step down. Thank you. You are
24 free to go.

25 Call your next witness.

CROSS-EXAMINATION BY MS. GAY OF JENNIFER MOULTRIE:

1 MS. WILLIAMS: The State calls Deonna Fraley.

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: State your full name for the record and
4 spell your name.

5 MS. FRALEY: Deonna Murray Fraley, F-R-A-L-E-Y.

6 **DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY:**

7 Q. Hi, Ms. Fraley. Good morning.

8 A. Good morning.

9 Q. Where do you work?

10 A. Royal Lanes.

11 Q. And when you say Royal Lanes is that the bowling alley?

12 A. Yes, ma'am.

13 Q. And how long have you worked there?

14 A. About two years.

15 Q. And who is the owner of that establishment?

16 A. Steve Tsafos.

17 Q. Is he your boss?

18 A. Yes, ma'am.

19 Q. And how long have you known Mr. Tsafos?

20 A. About maybe two-and-a-half years.

21 Q. And how did you meet him?

22 A. Gary and I go into the bowling alley, and Steve and
23 Gary became friends playing darts.

24 Q. Okay. So were they on the same dart team?

25 A. Eventually, yes, they did start up a dart team.

1 Q. So is it fair to say he was Gary's friend before yours?

2 A. Yes.

3 Q. Okay. And how long had you been married to Gary at
4 that point?

5 A. About four years.

6 Q. And where were you working when you first met Mr.
7 Tsafos?

8 A. I was working at LG's by the creek.

9 Q. Is that the only place you were working?

10 A. Well, she owned multiple restaurants. So Hanahan's Bar
11 and Grill as well.

12 Q. And while you were working there where was Gary
13 working?

14 A. He was not.

15 Q. So you were the person working in the family?

16 A. Yes, ma'am.

17 Q. And how did you get the job at Royal Lanes?

18 A. Gary asked if they were hiring, and I was looking to
19 transform out of the restaurant business.

20 Q. And what is your position there?

21 A. I am manager now.

22 Q. How did you start; what were you when you first
23 started?

24 A. I was hired to be an assistant manager.

25 Q. And during your tenure there have you ever had any

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 problems like your boss complaining about your work in any
2 way?

3 A. At the time when I started there was a manager and he
4 was a little difficult to work with.

5 Q. Okay.

6 A. I didn't have problems with Steve though.

7 Q. Okay. Did Steve ever voice any concerns about you
8 bringing personal stuff to work?

9 A. Yes.

10 Q. Okay. Tell us about that.

11 A. It was probably last year sometime in June.

12 Q. Would it refresh your memory to look at the letter you
13 got from your employer?

14 A. Yes.

15 MS. WILLIAMS: We are just -- we are not going to
16 introduce it, but for identification purposes, Your Honor,
17 we will mark this as State's ...?

18 THE COURT REPORTER: One thirty-two.

19 MS. WILLIAMS: Okay.

20 (WHEREUPON, State's Exhibit Number 132, letter, was marked
21 for identification.)

22 MS. WILLIAMS: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 MS. WILLIAMS: I am showing this witness what has been
25 marked as 132.

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY.

1 BY MS. WILLIAMS:

2 Q. Don't tell us what is in there, but just read it and
3 see if it refreshes your memory.

4 (WHEREUPON, pause for review of document.)

5 Q. And what was the date on that?

6 A. June 20th.

7 Q. And essentially what was the complaint your employer
8 had?

9 A. There were -- there were issues prior to that with the
10 manager that was there. I would express my concerns at home
11 that, you know, it was very difficult working with this man.
12 And Gary took it upon himself to confront my manager at the
13 time ---

14 Q. Okay.

15 A. --- about it. And then throughout that there were
16 multiple visits by Gary while I am working. Demands from
17 him while I was working.

18 Q. And so what did Mr. Tsafos want to happen?

19 A. I think that he wanted it to stay as a professional
20 environment and those types of, you know, incidents ---

21 Q. He didn't want Gary to come up there anymore?

22 A. Right.

23 Q. And so during this period of time in June where were
24 you living?

25 A. I had had my stuff moved into Jennifer's house.

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 Q. Okay. And so when you said you had your stuff moved
2 where was it before?

3 A. It was at our home in Goose Creek.

4 Q. Okay. And when did you start moving your stuff out of
5 your home in Goose Creek?

6 A. It was in the middle of June.

7 Q. Okay. So this is a pretty tumultuous time?

8 A. Yeah.

9 Q. And that house in Goose Creek what is the distance of
10 that house from like the Vick family and the Woltz family;
11 is it the same neighborhood?

12 A. Yes.

13 Q. Okay.

14 A. Same street.

15 Q. And did Gary know that you were moving your stuff out?

16 A. Yes.

17 Q. And at some point you left to go out of town, correct;
18 did you?

19 A. Yes.

20 Q. Okay. What month was that?

21 A. It was June.

22 Q. And where did you go?

23 A. I had a business trip down to South Florida -- or
24 Orlando, Florida, for a Bowl Expo Conference.

25 Q. Just briefly what is a Bowl Expo Conference?

1 A. It is where every vendor in the bowling industry sets
2 up their items, materials, products and lots of discounts if
3 you purchase pins, bowling balls at the expo, and incentive
4 to, you know, get into the new technology and things like
5 that.

6 Q. Okay. And who went with you?

7 A. I brought my stepdaughter Alta, Jennifer and her
8 three-year-old daughter Peyton.

9 Q. And what -- how is your relationship with Alta?

10 A. Very close.

11 Q. Is it still close?

12 A. Yes, ma'am.

13 Q. And where was Alta living at that time?

14 A. With us.

15 Q. Okay. In June?

16 A. Yes. She was visiting with her mom at that very time.

17 But that was common. You know, she would spend a week or so
18 with her mom and then but she was permanently at our home
19 usually.

20 Q. And when is Alta's birthday?

21 A. July 16th.

22 Q. And where was Alta living in August?

23 A. In August -- August.

24 Q. If you know?

25 A. She was with her mother in West Ashley.

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 Q. And in August ---

2 A. Oh, wait. I'm sorry, in August she was in North
3 Carolina visiting her grandmother in Albermont -- Albamont.
4 I don't know the name.

5 Q. Okay. And did you know anything about the home that
6 you used to live in during the month of August who paid the
7 utilities?

8 A. I did with Gary's -- our joint account.

9 Q. Okay. Was there a reason why Mr. Fraley couldn't live
10 in the house in August ---

11 A. No.

12 Q. --- to your knowledge?

13 A. No.

14 Q. Okay. All right. So when you came back from the
15 conference what kinds of issues were you dealing with with
16 Mr. Fraley; were you still having any communication with
17 him?

18 A. There was communication from him. I was not
19 responding. During the trip there was an excessive amount
20 of text messages and voice mails and phone calls to my
21 phone, Alta's phone, Jennifer's phone, Steve's phone, during
22 this conference.

23 Q. Why? What did he want?

24 A. He was invited to go. He did not want to go. And so I
25 brought my stepdaughter and friend. It was paid by my

1 company. I was doing conference and meetings and classes
2 all day. They were enjoying the pool. So that was the
3 plan.

4 Last-minute all of a sudden now he wanted to go. So
5 during the whole time there were phone calls related to I am
6 going to show up, I am going to come there, I know you are
7 cheating on me with Steve, just constant harassing.

8 Q. And is that the first time he has ever accused you of
9 cheating?

10 A. No, ma'am.

11 Q. How many times would you say?

12 A. Every single male employee I have ever worked with
13 during our relationship and sometimes customers.

14 Q. And so did he eventually take any action that you were
15 aware of with regard to where he was going to live or any
16 health concerns or anything like that?

17 A. No. No, I mean the house was left for him and Alta.

18 Q. Okay.

19 A. I didn't -- I took my personal belongings and left the
20 home for him and Alta to live in.

21 Q. Okay. And do you remember when you came back from the
22 conference?

23 A. I believe it was June 26.

24 Q. Okay. And to your knowledge where was he?

25 A. I believe he was at the house ---

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 Q. Okay.

2 A. --- at that time.

3 Q. Did he at some point go into treatment?

4 A. He was in treatment the entire month of June. I
5 believe he got out of his treatment at Wilmington Treatment
6 Facility June 23rd which was the day before we left for the
7 trip.

8 Q. Okay. And is that something that surprised you that he
9 went to treatment; ---

10 A. No.

11 Q. --- is this a new thing?

12 A. No.

13 Q. And have you dealt with Mr. Fraley's health issues over
14 the years?

15 A. Yes.

16 Q. How many times would you say you were -- you went in
17 and talked with doctors with him and dealt with those health
18 issues?

19 A. It was probably towards the last year. Because things
20 didn't make sense so I started going to doctor's
21 appointments.

22 Q. And what did you learn about his condition?

23 A. I learned that his illnesses were related to his
24 drinking. Every single doctor kept saying you need to stop
25 drinking.

1 Q. Was there ever a discrepancy between what he would tell
2 you his ailments were and what the doctors would tell you
3 what his ailments were?

4 A. He -- he always led me to believe that it was related
5 to the military and the fuel that his skin was exposed to,
6 things like that.

7 Q. Did you ever discuss PTSD with you?

8 A. Yes, he did tell me that he suffers from PTSD.

9 Q. But what were the doctors saying?

10 A. I never had a doctor or a therapist talk about PTSD
11 with us.

12 Q. And so with regard to his drinking problem was that
13 something you were concerned about?

14 A. Yes.

15 Q. And how much was he drinking every day?

16 A. I worked, but I could tell with his behavior that there
17 was drinking while I was working going on. I would -- I
18 would find empty wine bottles stashed all over our home,
19 under our step-daughter's mattress. I found them buried in
20 the backyard, hundreds of bottles.

21 Q. What was the wine of choice?

22 A. Merlot.

23 Q. And was that an issue in your marriage; did you all
24 discuss the drinking?

25 A. Yeah, we went to a lot of therapists over it. When

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 I -- when I started looking around and finding what I found
2 that is when the detox center started happening. I think in
3 eight months he was in like four different centers -- or not
4 different centers but four separate occasions.

5 Q. And during the time that you were married and up until
6 the time that you were communicating with him regularly in
7 June did you ever see any evidence of brain damage,
8 psychosis, not knowing where he was, not knowing who he was;
9 and did he know what he was doing on a regular basis?

10 A. Yes.

11 Q. When Mr. Fraley would drink did you ever notice that
12 even though he was drinking a lot he didn't seem as drunk as
13 someone who might drink the same amount, like some kind of
14 tolerance ---

15 A. Yeah ---

16 Q. --- just from your observations?

17 A. Like functioning, yeah. Because I mean Alta would come
18 home from school and we would have to work on her homework.
19 I'm not the brightest in history. He has a lot of knowledge
20 in history. And he would help her with her homework like a
21 normal person.

22 Q. So let's fast forward a little bit to the day of August
23 5th. Do you remember going to the police station that day?

24 A. Yes, ma'am.

25 Q. Do you remember what time it was?

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 A. It was around noon I would guess.

2 Q. Okay. And what was the purpose for you going to the
3 police station?

4 A. In July Gary disappeared to Pennsylvania. And, you
5 know, with the amount of messages and voice mails and
6 everything that I was going through for quite some time I
7 kept an eye on the checking account so I knew where he was.

8 And it was about two o'clock in the morning on the 5th.
9 I saw a charge on his account at a gun store. And I had
10 already been watching and I could see that he was working
11 his way back to Charleston from Pennsylvania. So then when
12 I saw that ---

13 Q. When you say watching what do you mean by that?

14 A. I would check the account regular -- a lot. Multiple
15 times a day.

16 Q. Why were you so worried about what he was charging on
17 his account?

18 A. Because he was so angry that I was leaving him. You
19 know, I was done. I couldn't -- I couldn't stand by his
20 side no more.

21 Q. And so you see the charge at the gun shop. And so
22 would that be unusual for him to be stopping at a gun shop?

23 A. Yes.

24 Q. Do you have any idea in your own personal knowledge
25 where he got the gun?

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

- 1 A. No, ---
- 2 Q. Okay.
- 3 A. --- not at that time.
- 4 Q. Okay. Did you learn where he got the gun?
- 5 A. Yes, ma'am.
- 6 Q. Where?
- 7 A. From his mother's house. I found out because she
- 8 called me and told me she was filing a police report.
- 9 Q. And why was she filing a police report?
- 10 A. Because it was a stolen gun.
- 11 Q. Okay. So it was her gun?
- 12 A. Uh-huh.
- 13 Q. And where does she live?
- 14 A. Frederickstown, Pennsylvania.
- 15 Q. Okay. And when was he in Frederickstown, Pennsylvania?
- 16 A. Pretty much the whole month of July.
- 17 Q. Do you know when he left Frederickstown?
- 18 A. No, I didn't really document, you know, his travels.
- 19 Because I would see the hotel stays and gas station stops on
- 20 the account.
- 21 Q. Do you know if he was on his way from Fredrickstown
- 22 here when he stopped at the ammunition shop?
- 23 A. No, I think he was in town for a couple of days at that
- 24 point because I had spoken to one of his friends. I had a
- 25 couple of his friends call me.

1 Q. Okay. And so you go to the police station and you're
2 concerned about this ammunition purchase. What else was
3 concerning you?

4 A. Well, actually I went to the gun store first.

5 Q. Okay. And what did you -- what happened at the gun
6 store?

7 A. I told them that my husband purchased something here on
8 our card, our account, and I wanted to know what it was.

9 Q. And did you get anywhere there?

10 A. No.

11 Q. So then you went to the police station?

12 A. Yep.

13 Q. And so what concerns did you have if any besides the
14 purchase?

15 A. Well, after talking to one of his friends and some of
16 the Facebook posts ---

17 Q. What Facebook posts?

18 A. There was something about him having to take care of
19 four people. And I knew that he had an issue with one of
20 the officers that worked at Royal Lanes that, you know,
21 helped me out one evening. And I was assuming Steve,
22 because I knew of his anger with that.

23 And so when I went there I went there with the
24 intention to let the police know that he bought something at
25 a gun store and, you know -- I don't know how to put it,

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 that there is anger and issues that he has with people here
2 in Charleston.

3 Q. And were there any posts on the bowling alley Facebook
4 page that you were concerned about?

5 A. I don't remember which post it was, because we have
6 stuff -- we have a company that does our posts for the
7 business. But I believe he -- it was one of those types of
8 posts that he had replied "boom".

9 Q. Okay. All right. So you go to the police station and
10 what is your purpose in filing a report there -- or do you
11 file a report; what do you do?

12 A. I went to the front counter and I told them that my
13 husband purchased something from a gun store, I am nervous,
14 I am worried. They were going to have me file another
15 report. I had a lot of reports with the police department,
16 whether it was regarding my home or my husband.

17 And they were going to have me file another report.
18 And I saw Captain Laffey. He had passed by. And he was
19 like what are you doing here and ---

20 Q. How do you know him?

21 A. From the bowling alley. He works as one of the
22 security officers during our cosmic evenings.

23 Q. Okay. And so you speak with Captain Laffey and then
24 what happened?

25 A. Captain Laffey had me sit with -- I forget the name of

1 the person right now, but sit down to write a statement of
2 everything that was going on that has me alarmed.

3 Q. What were you worried about? What were you worried
4 would happen? Why did you do this? Why did you file this?

5 A. I can't -- I can't exactly like remember if there were
6 direct threats to me by Gary; but I know the man, and when
7 his anger gets to that level it is scary.

8 Q. Okay.

9 A. And with all of the voicemails and messages and the
10 poor me, poor me that he kept laying out you don't just go
11 to a gun store and buy something.

12 Q. Okay.

13 MS. WILLIAMS: Your Honor, I am going to show defense
14 counsel what has been previously marked as State's 83. Your
15 Honor, may I approach the witness?

16 THE COURT: You may.

17 MS. WILLIAMS: I am showing this witness what has been
18 previously marked as State's 83.

19 BY MS. WILLIAMS:

20 Q. If you could just look at that and refresh your memory
21 as to when was that post from Mr. Fraley's phone put on the
22 Royal Lanes bowling alley website?

23 A. It was July 30th.

24 Q. Okay.

25 A. The first one. And then the second one is August 2nd.

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 Q. Okay. And what does the first one say?

2 A. I always say, dot, dot, it is all about Alta, dot, dot,
3 and I always find a way, dot.

4 Q. And what does the second one say?

5 A. Boom, dot, dot.

6 Q. So was that -- was this part of the reason why you
7 filed the report?

8 A. I remember that now because I remember I had to delete
9 it. But there was a lot of stuff like that that it was just
10 easier to push it away and forget about it than to keep
11 thinking about it.

12 Q. Okay. Did Mr. Fraley ever tell you he was dying from
13 throat cancer?

14 A. Yep.

15 Q. Any evidence that he ever had throat cancer?

16 A. Nope.

17 Q. Okay. After you went and filed the report at the
18 police station where did you go next?

19 A. To work.

20 Q. Okay. And when you got to work do you remember what
21 time it was?

22 A. No. I was at the police station for quite some time
23 so.

24 Q. Okay. And when do you next see Mr. Fraley or hear that
25 he is around or anything to do with ---

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 A. It was around five o'clock. I was in my office working
2 with the accountant.

3 Q. And what happens?

4 A. Well, one of my employers Victoria was working the
5 front desk and my accountant and I were starting a new
6 software program for our accounting. So I told her I
7 didn't -- you know, no interruptions, no phone calls.

8 In the middle of working with her Victoria knocked on
9 the door and opened it up and said Deonna your immediate
10 attention is needed.

11 Q. Okay.

12 A. And -- keep going?

13 Q. Yes, please.

14 A. Okay.

15 Q. What happened next?

16 A. At that point because I kind of filled my accountant
17 in. I knew her as well.

18 Q. When you say fill her in what do you mean?

19 A. On what had happened earlier that day.

20 Q. Okay.

21 A. So she kind of already knew that. We both reacted, me
22 more so that I knew something was going on.

23 Q. You assumed it had something to do ---

24 A. Yeah.

25 Q. --- with Mr. Fraley?

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 A. Yeah.

2 Q. Even though they didn't say?

3 A. No. So I ran out of the office immediately. I
4 started -- when you walk into the center towards the right
5 is where the higher end lanes are, Lanes 30 to 36; and one
6 of my porters that works the lanes was walking towards me
7 and I was walking towards him to find out what was going;
8 and he said it sounded like a gunshot.

9 Q. Okay. Would it assist you if we had you point to a
10 diagram to show where everything was happening?

11 A. Sure.

12 MS. WILLIAMS: Your Honor, I am going to show defense
13 counsel what has been marked as State's 115. I am going to
14 show this witness with the court's permission State's 115.
15 We are not asking to admit this. We are just going to use
16 this for demonstrative purposes.

17 Q. Ms. Fraley ---

18 MS. WILLIAMS: Can you put 115 up?

19 Q. This is a laser pointer. If you could just kind of
20 show the jury where everything was and where -- where is
21 your office where you were with your accountant?

22 A. I am here (pointing) in my office.

23 Q. And where is the front door?

24 A. The front door is right here (pointing).

25 Q. Okay.

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 A. Victoria works at the front counter (pointing). Dallas
2 was down here (pointing) where we had some bowlers.

3 Q. And where are the lanes?

4 A. These are all the lanes here (pointing). This is
5 Lane 1 (pointing). This is Lane 36 (pointing).

6 Q. Okay. So continue. Where do you go next?

7 A. I ran out of my office and walked towards Dallas and
8 met him approximately here (pointing)...

9 Q. Okay. And then what happened?

10 A. He told me that it sounded like a gunshot had gone off
11 in Steve's office which is right here (pointing).

12 Q. Okay. And what do you do next?

13 A. I ran to Steve's office and opened the door.

14 Q. And then what happened?

15 A. I saw Steve through a crack, and he slammed the door.

16 Q. Okay. What happened next?

17 A. After that I met back with Dallas and I told him you
18 need to get these people out of here.

19 Q. When you say people who is there? What -- you
20 know, ---

21 A. There were -- there were some adults and some children
22 bowling on the lanes at that time.

23 Q. Okay. All right. And so what do y'all do to get them
24 out?

25 A. He was very calm and -- actually we were all kind of

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 calm. But he got -- he went down there and he said I'm
2 sorry, we are going to have to get you, you know, away from
3 this area.

4 And while he was doing that I ran over -- well, walked.
5 Because I didn't want to -- anyways, I went to the front
6 counter where Victoria was. I told her to call the police.
7 I had to tell her twice.

8 Q. Okay.

9 A. And so she called the police. From that point I went
10 back to Dallas and -- no, I'm sorry, I believe I went back
11 into my office. I picked up my phone and conferenced
12 Steve's office, and that's when I heard Gary's voice.

13 Q. Okay. What was he saying?

14 A. I didn't make it out and I didn't stay on long enough.
15 I immediately ran back to the front desk. I got on the
16 phone and I told them who and what was going on ---

17 Q. Okay.

18 A. --- at the center. After that I gave Victoria back the
19 phone and I ran back to Dallas and I said these people all
20 need to get out of here now. And we evacuated staff and
21 customers.

22 Q. Okay. You are sort of describing this in a very calm
23 way. But at the time were you frighten; were the people
24 around you frightened; was this a pretty chaotic scene?

25 A. I remember myself to be very calm and just take care of

1 all these people and get them out.

2 Q. Okay.

3 A. That is what I remember.

4 Q. Fair enough. And so when you got everybody out what
5 happened next?

6 A. I made Victoria get out. She was one of the last
7 people there. And I stayed on the phone with the police
8 until I started seeing police officers on the front pillars
9 outside the building. And I told whoever I was talking to
10 on the phone I said the police are here, I am leaving the
11 building. And I walked out.

12 I remember telling one of the officers go in and the
13 office was to the right at the end of the building.

14 Q. Okay. Do you remember ever going by a police car and
15 kind of pointing things out and letting them know where
16 things are; do you have any memory of anything that happened
17 after that?

18 A. I remember going out into the parking lot. The
19 accountant and I were both getting people as far away from
20 the building as possible. And then while we were standing
21 out there if I remember correctly I believe it was Officer
22 Ramirez who came and got me and put me to the far right of
23 the parking lot behind a police car.

24 Q. And how old is Mr. Fraley?

25 A. Forty-seven.

DIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 MS. WILLIAMS: Court's indulgence.

2 I don't have any more questions for you, Ms. Fraley.

3 Thank you very much. Please answer any questions the
4 defense might have.

5 THE COURT: Ms. Gay.

6 **CROSS-EXAMINATION BY MS. GAY OF DEONNA FRALEY:**

7 Q. I was following your testimony and there was a lot of
8 discussion about you and your boss. Were you sleeping with
9 him?

10 A. No, ma'am.

11 Q. So it is your testimony under oath today that you at no
12 time slept with your boss ---

13 A. No, ma'am.

14 Q. --- during this period of time?

15 A. Correct.

16 Q. Now you have testified that Gary had all kind of
17 suspicions and was acting as if he believed that you were
18 sleeping together?

19 A. Yes, ma'am.

20 Q. Are you aware that your friend Jennifer told him that
21 you were sleeping with your boss?

22 A. No.

23 Q. You weren't aware that she told him that?

24 A. No.

25 Q. But you weren't sleeping with him?

CROSS-EXAMINATION BY MS. GAY OF DEONNA FRALEY:

1 A. Her and I have not been friends for almost a year now.

2 Q. Okay. I understand that. But it is your testimony to
3 this jury that you and your boss were not sleeping together?

4 A. Correct.

5 Q. And that you weren't having an extra-marital affair
6 with him?

7 A. Nope.

8 Q. I have no further questions, Your Honor.

9 THE COURT: Ms. Williams.

10 MS. WILLIAMS: Court's indulgence.

11 **REDIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY:**

12 Q. Mr. Tsafos wasn't the only guy that he thought you were
13 sleeping with?

14 A. Correct.

15 MS. WILLIAMS: Nothing further.

16 THE COURT: Ms. Gay, recross?

17 MS. GAY: Yes.

18 **RECROSS-EXAMINATION BY MS. GAY OF DEONNA FRALEY:**

19 Q. In June and July of 2014 the only person that Mr.
20 Fraley thought you were sleeping with was your boss, Mr.
21 Tsafos, at that time?

22 A. I believe I was told by his friend Dave Riggin that ---

23 Q. No, that's ---

24 MS. GAY: I would object.

25 A. He accused me of sleeping with him too.

REDIRECT EXAMINATION BY MS. WILLIAMS OF DEONNA FRALEY

1 MS. GAY: Objection.

2 THE COURT: What is your objection?

3 MS. GAY: Hearsay, I was told by his friend.

4 THE COURT: Re- -- overruled.

5 Q. I understand that at that time during this situation
6 the person that was -- that he was mad at ---

7 A. Yes.

8 Q. --- was you and your boss?

9 A. Yes.

10 MS. GAY: I have no further questions.

11 THE COURT: Thank you.

12 MS. WILLIAMS: Just ---

13 THE COURT: You may step down. Thank you.

14 MS. WILLIAMS: Okay.

15 THE COURT: Just get redirect. Thank you. Step down.
16 Call your next witness.

17 MS. WILLIAMS: The State calls Vanessa Gilchrest.

18 (WHEREUPON, the witness was duly sworn.)

19 THE CLERK: Please have a seat. State your full name
20 for the record and spell your last name.

21 MS. WILLIAMS: Ms. Gilcrest, good morning.

22 MS. GILCHRIST: Hi.

23 THE COURT: Please state your full name for the record
24 and spell your last name.

25 MS. GILCHRIST: My name is Vanessa Lauren Gilchrist,

RE CROSS-EXAMINATION BY MS. GAY OF DEONNA FRALEY

1 and my last name is spelled G-I-L-C-H-R-I-S-T.

2 THE COURT: Now Ms. Williams. Thank you.

3 **DIRECT EXAMINATION BY MS. WILLIAMS OF VANESSA GILCHRIST:**

4 Q. Good morning. So, Ms. Gilchrist, where do you work now
5 if you work?

6 A. I -- I don't work anywhere right now.

7 Q. Okay. Where were you working back in August of 2014?

8 A. The bowling alley, Royal Lanes.

9 Q. Okay. And how long had you worked there at that time?

10 A. Probably about two years.

11 Q. Okay. What did you do there?

12 A. I was the cook in the kitchen.

13 THE COURT: Ms. Gilchrist, could you speak louder,
14 please.

15 MS. GILCHRIST: Oh, I'm sorry.

16 THE COURT: The air conditioner came on so I am having
17 a hard time hearing you.

18 MS. WILLIAMS: If you would pull that microphone a
19 little closer. It bends.

20 BY MS. WILLIAMS:

21 Q. Okay. And I just asked you what you did at Royal
22 Lanes.

23 A. I'm sorry. I was a cook.

24 Q. And had you ever had any dealings with Mr. Gary Fraley?

25 A. He would order some wine every now and then.

DIRECT EXAMINATION BY MS. WILLIAMS OF VANESSA GILCHRIST

- 1 Q. Okay.
- 2 A. Come up and order a Merlot.
- 3 Q. And do you remember if you were working the day of
- 4 August 5th? That would be the day that the bowling alley
- 5 was evacuated.
- 6 A. Oh, yeah. Yeah, I had just gotten off of work.
- 7 Q. Okay.
- 8 A. I was sitting outside.
- 9 Q. And while you were sitting outside did you see Mr.
- 10 Fraley?
- 11 A. I did. He walked up, and he was smoking a cigarette.
- 12 Q. Okay. And did you have any interaction with him?
- 13 A. I did. I asked him if he was growing -- growing his
- 14 beard out. It seemed a little longer, because he was
- 15 usually clean-cut.
- 16 Q. What did he say?
- 17 A. He said yeah, I'm working on it. And he just grabbed
- 18 his beard and put the cigarette out.
- 19 Q. Okay. And was his demeanor like it usually was?
- 20 A. To me, yeah.
- 21 Q. Okay. And during the time that you were out there did
- 22 you see anybody else?
- 23 A. No, other than, you know, people walking in and out of
- 24 the bowling alley. That was about it.
- 25 Q. I'm going to show you what's been marked as State's

DIRECT EXAMINATION BY MS. WILLIAMS OF VANESSA GILCHRIST

1 Exhibit 1.

2 MS. WILLIAMS: May I approach, Your Honor?

3 THE COURT: You may.

4 Q. Ms. Gilchrist, I'm going to show you a picture. And if
5 you could just tell me if that accurately represents what is
6 in that picture. What is that?

7 A. It is the front entrance of the Royal Lanes.

8 Q. Could you just turn around and take a peek at that.
9 Show us where you were sitting.

10 A. I was sitting right there (pointing) on the bench.

11 Q. You can use this.

12 A. Okay.

13 Q. And it is a little red dot, and you can point to
14 things. Okay. So you were sitting on the bench?

15 A. Right there (pointing).

16 Q. Okay. And is that where you saw Mr. Fraley come in?

17 A. No, he was coming from over here (pointing) ---

18 Q. Okay.

19 A. --- walking up.

20 Q. And did anyone else approach you while you were there?

21 A. The little -- the little girl.

22 Q. Okay. Tell us about that.

23 A. Well, I was sitting on my phone like this (motioning),
24 you know, and I look up and all of a sudden there was this
25 girl in front of me.

DIRECT EXAMINATION BY MS. WILLIAMS OF VANESSA GILCHRIST

1 And she was just standing there with like a folder or
2 something in her hand.

3 Q. Okay.

4 A. And she comes up and she was like can I use your phone.
5 And I'm like sure, yeah. And she sits right next to me.
6 I'm trying to remember it all.

7 Q. Did she use your phone?

8 A. Yeah, she -- I handed her my phone. I'm sorry. And
9 she was flipping through some back pages, and I saw that she
10 had mom and dad written on there and the phone numbers. And
11 she had called her mom but her mom didn't pick up. And then
12 she called her dad and her dad picked up.

13 Q. Okay. Describe her demeanor.

14 A. Well, I noticed something was wrong with her because
15 she was shaky. She was really like jittery. And I -- she
16 had seemed like something had happened to her.

17 Q. Okay. And after she used your phone did you see where
18 she went?

19 A. Yeah, she was -- I told her that -- that I would stay
20 here. She told me that her dad was going to pick her up, so
21 I told her to stay there with me until, you know, her dad
22 came and got her.

23 Q. And did anything happened after that interaction that
24 kind of changed things and you ---

25 A. Yeah, after that there was a crowd of people running

1 out and saying we had to, you know, escort (sic) the
2 building and go to the parking lot.

3 Q. Okay. Is it fair to say the scene got a little chaotic
4 after that?

5 A. Yeah, it was just everywhere.

6 Q. And did you keep up with the little girl after that;
7 did you see her again?

8 A. Well, she was right beside me after we had walked
9 through the parking lot; and then after that I don't know
10 what happened and she just had disappeared.

11 Q. Okay. Did you learn later if that was the child, Minor
12 Vick; or did you just not know?

13 A. I didn't know who it was until after it had happened
14 and I heard -- I think I heard it on the news or something.

15 Q. Okay. All right. Thank you very much.

16 A. You're welcome.

17 THE COURT: Ms. Gay.

18 MS. GAY: I have no questions for this witness, Your
19 Honor.

20 THE COURT: You may step down, Ms. Gilchrist. Thank
21 you. You are excused.

22 Call your next witness.

23 MR. POULOS: The State calls Victoria Booth.

24 (WHEREUPON, the witness was duly sworn.)

25 THE CLERK: Please have a seat and state your full name

DIRECT EXAMINATION BY MS. WILLIAMS OF VANESSA GILCHRIST

1 and spell your last name.

2 MS. BOOTH: My name is Victoria Gail Booth. My last
3 name is spelled B-O-O-T-H.

4 **DIRECT EXAMINATION BY MR. POULOS OF VICTORIA BOOTH:**

5 Q. Good morning, Ms. Booth.

6 A. Good morning.

7 Q. How old are you?

8 A. I am 21.

9 Q. And where do you currently work?

10 A. I work at Royal Lanes Bowling Alley.

11 Q. How long have you worked there?

12 A. Since December of 2013.

13 Q. Ms. Booth, what is your job at the Royal Lanes Alley?

14 A. I manage the front desk.

15 Q. What does that entail?

16 A. Running the computer, watching the lanes, helping
17 customers with, you know, open bowling. and I also
18 supervise my other co-workers when a manager is not there.

19 Q. Were you working on August 5th, 2014?

20 A. Yes, sir.

21 Q. What shift were you working that day?

22 A. 5:00 p.m. to midnight.

23 Q. Ms. Booth, are you familiar with Gary Fraley?

24 A. I am.

25 Q. How do you know him?

DIRECT EXAMINATION BY MR. POULOS OF VICTORIA BOOTH

1 A. He was my boss's husband.

2 Q. Did he occasionally come into the bowling alley?

3 A. Yes.

4 Q. How often would you say he came in?

5 A. Probably about every week.

6 Q. What did he typically do when he came into the bowling
7 alley?

8 A. Sometimes he bowled. He would come in and just speak
9 with Deonna. He had just a couple of drinks sometimes, but
10 nothing unusual.

11 Q. Did you see him at the bowling alley on August 5th,
12 2014?

13 A. I did.

14 Q. Do you recall approximately what time that was you saw
15 him?

16 A. Probably about a quarter after five, five-twentyish.

17 Q. Were you at all concerned about seeing him at the
18 bowling alley that day?

19 A. I was. I knew he had a trespassing notice, but I
20 wasn't sure if it was clear or not. I did not recognize him
21 at first though.

22 Q. What did he do once he entered the bowling alley?

23 A. He came inside and he went straight into the pro shop.
24 And I didn't recognize him at first and I spoke with a co-
25 worker trying to realize if that who it -- who is was that

DIRECT EXAMINATION BY MR. POULOS OF VICTORIA BOOTH

1 we thought it was.

2 And he left the pro shop and he went across the hall
3 and he opened the front door and he looked into the office,
4 closed the door again and went back into the pro shop.

5 Q. What is the pro shop?

6 A. It is the shop we have that supplies bowlers with any
7 materials they need.

8 Q. And when you say after the pro shop he went and peeked
9 in the door where does that door lead to that he peeked
10 into?

11 A. It leads to behind the front counter.

12 Q. Can you see Deonna's officer from that door?

13 A. Yes.

14 Q. Was Deonna working that day?

15 A. She was.

16 Q. Did you eventually tell her that you saw him inside the
17 bowling alley?

18 A. I did not. She was in a meeting, and before he came in
19 told me that she did not want to be interrupted with
20 anything.

21 Q. Ms. Booth, I want to show you a diagram. I am going to
22 have to use this ---

23 MR. POULOS: May I approach, Your Honor?

24 THE COURT: You may.

25 MR. POULOS: Thank you.

1 Q. I am going to have you use this laser pointer. Can you
2 point out where the pro shop is, please.

3 A. It's right here (pointing).

4 Q. Is that the front door next to it, the main entrance?

5 A. Yes.

6 Q. Where is the front counter where you were working?

7 A. It is right here (pointing).

8 Q. And where is Deonna's office?

9 A. Right here (pointing).

10 Q. So he is heading away from the pro shop, to the door
11 near Deonna's office, back to the pro shop?

12 A. Yes.

13 Q. What did he do after that?

14 A. After that I forgot he was there. I started talking
15 with a co-worker. I did see him walk down this way
16 (pointing). I saw him go down here (pointing).

17 Q. Okay. And what -- what is down that direction?

18 A. Steve's office, the lockers, and the bathroom. I
19 thought it he was going to the bathroom. And I had forgot
20 he was there after that because I got distracted.

21 Q. Did there come a time when you heard a loud noise?

22 A. I did.

23 Q. What did you think it was at the moment you heard it?

24 A. I thought it was a barstool that could have been
25 knocked over.

DIRECT EXAMINATION BY MR. POULOS OF VICTORIA BOOTH

1 Q. And what area of the bowling alley did the noise come
2 from?

3 A. It was down at the end by the bathrooms.

4 Q. Is that near Steven Tsafos' office?

5 A. Yes.

6 Q. What did you do after you heard that noise?

7 A. I stood there at first. I wasn't sure what to do.

8 I

9 Q. Just take your time. That's fine.

10 A. I stood there and my co-worker walked down there to see
11 what was going on, and I waiting for him to come back.

12 Q. Did you eventually tell Deonna that there was something
13 she needed to tend to?

14 A. Yes.

15 Q. What did Deonna do at that point?

16 A. She walked out of her office and walked down towards
17 the other end of the alley. I remember her she came running
18 back to the front desk telling me to call 911.

19 Q. Did you call 911 at the time?

20 A. I hesitated at first, but I did call 911.

21 Q. At what point, Ms. Booth, did you leave the bowling
22 alley?

23 A. We left -- I called 911 and we got out immediately.

24 Q. And how soon was it until the police arrived after you
25 left the bowling alley?

1 A. Within one or two minutes.

2 MR. POULOS: The State has no further questions, Your
3 Honor. Thank you.

4 THE COURT: Ms. Gay.

5 MS. GAY: Thank you, Your Honor.

6 **CROSS-EXAMINATION BY MS. GAY OF VICTORIA BOOTH:**

7 Q. When you said that you didn't recognize Mr. Fraley I
8 would like to ask you some questions about that. Mr. Fraley
9 is normally a clean-shaven kind of clean-cut looking guy
10 similar to what he looks like today?

11 A. Correct.

12 Q. But on August 5th on that day isn't it true that he had
13 a big beard?

14 A. Yes.

15 Q. And didn't look like he was the same person that sits
16 here today?

17 A. Correct.

18 Q. So physically he looked a lot different at that time?

19 A. Uh-huh.

20 Q. Was he wearing a big, heavy coat; do you remember that?

21 A. Yes.

22 Q. And it was August in Charleston. It's like a hundred
23 degrees, isn't it?

24 A. Yes.

25 Q. And so wouldn't it have been odd to you that he had on

CROSS-EXAMINATION BY MS. GAY OF VICTORIA BOOTH

1 this big thermal coat?

2 A. No, I was used to him wearing coats.

3 Q. Okay ---

4 A. He usually came in wearing coats.

5 Q. But on that day it was like this big, thick, black
6 thing?

7 A. Yes.

8 Q. And so he didn't look like he does today?

9 A. No.

10 MS. GAY: I have no further questions, Your Honor.

11 THE COURT: Mr. Poulos.

12 MR. POULOS: Briefly, Your Honor.

13 **REDIRECT EXAMINATION BY MR. POULOS OF VICTORIA BOOTH:**

14 Q. Ms. Booth, was it a big thermal coat or was it a black
15 jacket? If you don't remember, that's fine.

16 A. I don't remember. I know it was black. But I
17 really

18 Q. Would he come in wearing a jacket often?

19 A. Yes.

20 Q. Throughout the year?

21 A. (Witness nods head.)

22 Q. Okay. When you saw him walking around the bowling
23 alley did he appear to be hearing voices, looking around,
24 frantically; anything like that?

25 A. He did seem like he wasn't fully there and he wasn't

CROSS-EXAMINATION BY MS. GAY OF VICTORIA BOOTH

1 thinking clearly.

2 Q. Okay.

3 A. He was kind of just walking around.

4 Q. Okay. But when he was walking around did it appear
5 that he was deliberately going to certain places in the
6 bowling alley? You say he went to the pro shop and to the
7 office and back to the pro shop.

8 A. Yes.

9 Q. Did it appear that he was purposefully during this?

10 A. Yes.

11 MR. POULOS: No further questions.

12 THE COURT: Ms. Gay.

13 MS. GAY: One moment, Your Honor.

14 THE COURT: Take your time.

15 THE COURT: Ms. Gay.

16 **RECROSS-EXAMINATION BY MS. GAY OF VICTORIA BOOTH:**

17 Q. I didn't understand the last question -- the last
18 answer. Just can you repeat what you said when -- the last
19 question, the last answer.

20 A. When he came inside he went straight into the pro shop.
21 I don't know how long he was in there, but he was like
22 walking in and out between the office -- or walking to the
23 front desk and going back to the pro shop.

24 Q. I guess what I am asking is was it your testimony he
25 did seem like he was walking around kind of confused?

REDIRECT EXAMINATION BY MR. POULOS OF VICTORIA BOOTH

1 A. Yeah, he was -- he did seem confused.

2 Q. Distracted, confused, ---

3 A. Yes.

4 Q. --- in a strange state? Thank you.

5 THE COURT: Thank you, Ms. Booth. You may step down.

6 Call you next witness.

7 MS. WILLIAMS: The State calls Jasmine Collins.

8 (WHEREUPON, the witness was duly sworn.)

9 THE CLERK: Have a seat. State your full name for the
10 record and spell your last name.

11 MS. COLLINS: Jasmyne Collins, C-O-L-L-I-N-S.

12 THE COURT: Ms. Williams.

13 **DIRECT EXAMINATION BY MS. WILLIAMS OF JASMYNE COLLINS:**

14 Q. Jasmyne, where did you work back in August of 2014?

15 A. Royal Lanes.

16 Q. And what did you do there?

17 A. I was the -- in the snack bar. The cook, cashier.

18 Q. And did you know who Gary Collins was?

19 A. Yes.

20 Q. I mean -- Gary Collins -- Gary Fraley?

21 A. Yes.

22 Q. And how often would you see him at the bowling alley?

23 A. Not very often.

24 Q. And on that day of August 5th, 2014, was there some
25 things that happened that weren't ordinary?

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

- 1 Q. And who is your manager?
- 2 A. Deonna Fraley.
- 3 Q. And how did you meet Deonna Fraley?
- 4 A. She applied for a job at the center.
- 5 Q. Okay. Had you known her husband before that?
- 6 A. Yes, I did.
- 7 Q. And is that Gary Fraley?
- 8 A. Yes.
- 9 Q. How did you meet him?
- 10 A. I met him in the bar.
- 11 Q. Did you two play darts together?
- 12 A. Yes.
- 13 Q. Okay. So how many years did you know him before Deonna
- 14 started working for you?
- 15 A. To the best of my recollections I think it might have
- 16 just been a month or two.
- 17 Q. Okay. And do you remember whose suggestion it was that
- 18 you interview Deonna for the job?
- 19 A. It was Gary's.
- 20 Q. Okay. And did you spend time with them together?
- 21 A. In the bar for a few minutes and maybe like a
- 22 pre-interview type thing.
- 23 Q. Okay. And at some point in June of last year did you
- 24 go to a bowling expo?
- 25 A. Yes.

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 Q. And who was invited to go to that?

2 A. Well, initially it was Deonna and Gary.

3 Q. Okay. And did Deonna and Gary wind up going?

4 A. No.

5 Q. Who went?

6 A. Well, then she had invited her parents I believe; and
7 then because they couldn't make it I believe she invited one
8 of her best friends.

9 Q. Okay. Besides her best friend who else was there?

10 A. Her daughter Alta and her best friend's child. I don't
11 remember the name.

12 Q. Okay. And during that time did you know of anything
13 that was alarming Deonna regarding Gary?

14 A. Well, there were always domestic problems.

15 Q. And so did those domestic problems ever bleed into
16 work?

17 A. Yes.

18 Q. And did you ever try to bring that to Deonna's
19 attention?

20 A. I actually gave her a letter of warning as a result of
21 Gary's constant interference and, you know, his mannerisms.

22 Q. Okay. Describe that. What was your concern?

23 A. Well, you know, Gary is -- it was increasing he would
24 come into the bowling center. He would hang out. You know,
25 different occasions he would come in and make remarks before

1 he had left, like he was going to go home and do certain
2 sexual acts to her.

3 He would stand outside the office door and pound on his
4 watch five after the hour like he was supposed to be
5 leaving. And, you know, things like that.

6 Q. Did you find that was interfering with your business?

7 A. Yeah, I was -- I was concerned.

8 Q. Okay. And when you came back from the expo did you
9 ever hear anything else about her concerns about him, or
10 were you concerned about him coming to the bowling alley or
11 anything like that?

12 A. Well, you know, the problems that happened like in that
13 expo really kind of threw a wrench in everything because she
14 didn't have anywhere to go. Her one best friend they were
15 arguing. And so, yeah, it was a mess.

16 Q. Okay. And so she had planned to move in with the
17 friend; and that ---

18 A. Exactly, yeah. I think she had already moved in with
19 her friend.

20 Q. Okay. And so then after that did she then move her
21 stuff into your house?

22 A. Yes, she moved in a dresser and some of her belongings.

23 Q. Okay. Did she ever stay there?

24 A. Yes, she stayed there.

25 Q. Okay. And do you have -- how many bedrooms are in your

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 house?

2 A. Two bedrooms.

3 Q. Okay. And so did she stay in that one bedroom and
4 you ---

5 A. Well, yeah, if she stayed in the bedroom I stayed on
6 the sofa. Or like I would work late. If she was on the
7 sofa I would go into the bedroom. I mean it is completely
8 brother-sister or professional. I don't know how to
9 describe it.

10 Q. Was it a sexual relationship?

11 A. No, not a sexual relationship.

12 Q. How long did she stay there?

13 A. I think it was just a few weeks.

14 Q. Okay.

15 A. I mean most of the time she was looking for an
16 apartment of her own anyway.

17 Q. Did she eventually find a place?

18 A. Yes.

19 Q. And she still works for you?

20 A. Yes.

21 Q. She is dating somebody else?

22 A. Yes.

23 Q. And you're dating someone else?

24 A. Yes.

25 Q. But you have maintained a professional relationship

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 through everything that has happened?

2 A. Yes.

3 Q. Let's fast forward to August 5th, 2014, the day that
4 this whole trial is about. Tell me what time if you
5 remember you arrived at the bowling alley.

6 A. It was 9:00, ten o'clock.

7 Q. Okay. In the morning?

8 A. Yeah.

9 Q. And did you find out from Deonna that she was concerned
10 and had gone to the police station?

11 A. Well, there were a series of events that had happened.
12 I am trying -- I had had my tires slashed the day before I
13 believe.

14 Q. Okay.

15 A. And then that evening I observed Gary looking in my
16 windows, and I called the police about that. And then the
17 next morning we called the police about that because he had
18 keyed my car. So ---

19 Q. And you reported that ---

20 A. --- there was some -- we reported that as well. So
21 everything was escalating.

22 Q. And where would those have been reported; was that in
23 Goose Creek, or was that in another city?

24 A. It was in North Charleston. And then the final one was
25 in Goose Creek with me.

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 Q. Okay. And so these events were accumulating. And did
2 you find out that she had gone to the police station that
3 morning?

4 A. I believe she did -- you know, I believe she did
5 because I think she was monitoring his credit card purchases
6 or something ---

7 Q. Okay.

8 A. --- and was concerned.

9 Q. Were you concerned?

10 A. Yeah, I was concerned. For the overall situation I was
11 concerned.

12 Q. And so tell me the first time that you encounter Mr.
13 Fraley on August 5th.

14 A. He walked into my office, closed the door, pointed the
15 gun at me from across my desk and said you are a dead man.

16 Q. And how big is your office?

17 A. Oh, eight by twelve.

18 Q. Okay. And so I'm going to show you some pictures.

19 MS. WILLIAMS: Court's indulgence for just a moment.

20 THE COURT: Take your time.

21 MS. WILLIAMS: Your Honor, I am showing defense counsel
22 State's 9 through 13. May I approach, Your Honor?

23 THE COURT: You may.

24 BY MS. WILLIAMS:

25 Q. Mr. Tsafos, I'm going to hand you five pictures. And

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 just look through those and see if they accurately represent
2 what they are a picture of of your office. Just look
3 through all of them and tell me at the end.

4 A. Yeah, that is definitely my office.

5 Q. Okay.

6 MS. WILLIAMS: Your Honor, we would move 9 through 13
7 into evidence at this point.

8 THE COURT: Any objection?

9 MS. GAY: No objection, Your Honor.

10 THE COURT: Nine through thirteen into evidence without
11 objection. You may publish.

12 (WHEREUPON, State's Exhibits 9 through 13 were admitted into
13 evidence.)

14 MS. WILLIAMS: Thank you, Your Honor.

15 Q. I am going to show some pictures on here. And this
16 little thing is a pointer. So if you push the red thing you
17 can kind of point things out.

18 Okay, so tell us what this is a picture of.

19 A. That is a picture of my entrance to my office ---

20 Q. Okay.

21 A. --- or the floor of the entrance of my office.

22 Q. And is that pretty much how it looked that day --
23 because after you left it things might have changed. So
24 just explain to us if that is how it looked when Mr. Fraley
25 was in there with you.

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 A. I mean it looks like there are some things have been
2 moved around a bit.

3 Q. Okay.

4 MS. WILLIAMS: Can you put ten up, please.

5 Q. And so is this an accurate view of the way it was that
6 day or ---

7 A. Yeah, after the incident.

8 Q. Okay. So those papers and stuff might not have been on
9 the floor?

10 A. No, they were all filed on top of my desk.

11 Q. Okay. But in general if the -- tell us where you were
12 and where he was standing or sitting. You can use that
13 little pointer.

14 A. Yeah. Sure. The pointer is the pointer? Okay. So my
15 desk was facing the doorway.

16 Q. Okay.

17 A. There was a chair in front of my desk. And obviously
18 that is my chair back in the corner there.

19 Q. Okay. So how far away was he from you?

20 A. Well, when he came in he came up to my desk and he
21 pointed the gun from across my desk at me and said I was a
22 dead man.

23 Q. Okay.

24 A. I mean it is about as close as you can get.

25 Q. Right.

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 MS. WILLIAMS: Can you put up State's 11. This is just
2 going to show another view.

3 Q. Now that is kind of a different view of it. So just
4 show us again where he was standing and where you were
5 standing or sitting.

6 A. Sure. If you move the desk back horizontally here
7 there was a desk -- there was a chair in front of it, and he
8 was standing in front of the chair when he first initially
9 got there and reaching across my desk with the gun. And I
10 was still seated at the time. And I think he fully had
11 every intent to kill me.

12 Q. So after he said you were a dead man did he explain to
13 you why he was there and confronting you at any point?

14 A. Yes. Well, he -- I responded to him saying I'm a dead
15 man. And then he -- he went to sit in the chair and the
16 chair kind of gave way from the hydraulics and he grabbed
17 the gun with both hands at that point and pointed it at me.

18 And I mean it was as serious as you can imagine. And
19 then he said he wanted answers.

20 Q. Okay. And what did he want answers about?

21 A. I didn't give him an opportunity to tell me at the time
22 because I said the only answers you are ever going to get
23 are the ones you want to hear. And I said you are an ass
24 hole.

25 Q. And so do you remember what the gun looked like?

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 A. It was a black revolver.

2 Q. Okay. And at some -- how long did this go on, the
3 back-and-forth discussion with him?

4 A. It felt like forever, but I mean it felt like maybe 20
5 minutes.

6 Q. Okay. And what was his -- was he -- what was his
7 emotional state; was he angry, was he calm, was -- how was
8 he?

9 A. He was demonstrative. I mean he made eye contact. He
10 was serious. He was fully intent on having his way and
11 being in control. And I thought he was going to shoot me.

12 Q. And, you know, Mr. Fraley, did he seem like he was
13 psychotic or crazy or, you know ---

14 A. No.

15 Q. Okay. Did he seem angry?

16 A. I -- no, he didn't seem angry. It seemed like it was
17 thought out.

18 Q. Okay. And at some point did he ask you for money?

19 A. Yes.

20 Q. Tell us how that evolved.

21 A. I know at one point he said he couldn't afford to pay
22 his bills. And then later on he demanded that I write him a
23 check.

24 Q. Okay. And so eventually you got out of the office; is
25 that correct?

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 A. Yes.

2 Q. And tell us at some point before you got out of the
3 office the gun went off?

4 A. Yes.

5 Q. Describe that whole scene.

6 A. I was attempting to try to leave and Gary kept blocking
7 my way. Because he had the gun pointed right at me. And he
8 told me I should be afraid. And then I think the gun went
9 off.

10 Q. Okay.

11 A. And at the time I was looking at him. I wasn't looking
12 at the gun being pointed at me. But my arms went up and my
13 stomach went in. I thought he had shot me. I thought I was
14 going to be dead.

15 And then I responded and I said now you have put a hole
16 in my floor. But I honestly believe that, you know, God
17 struck that bullet down. Because I thought I was a dead
18 man.

19 Q. And when he shot at you were you both by the door;
20 where were you?

21 A. Yeah, I was just before the door. Like I had my hand I
22 was reaching for the door. And he was just at the edge of
23 that door.

24 Q. Okay. And is it just in that real tight spot that we
25 just saw ---

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

- 1 A. Yes.
- 2 Q. --- right by the door?
- 3 A. Yes.
- 4 Q. And so he -- the gun goes off right as you are leaving?
- 5 A. Yes.
- 6 MS. WILLIAMS: Could you put up State's 9 again.
- 7 Q. Is it right in this area right here (pointing)?
- 8 A. Yes. I was standing about where those flip-flops are,
- 9 and he was just on the other side of the door.
- 10 Q. Okay. And that is when -- just when you are trying to
- 11 leave is when the gun ---
- 12 A. Yes.
- 13 Q. --- shoots? At some point do you remember if Deonna
- 14 Fraley tried to get in the office?
- 15 A. Yes.
- 16 Q. And what -- tell us what happened there.
- 17 A. Well, I was standing with my hand on the door; and Gary
- 18 was just there. And the door was being pushed open. It
- 19 opened about a foot, 18 inches. I saw her and I pushed the
- 20 door shut. And then -- I forget. I think Gary said after
- 21 that I need your help or something.
- 22 Q. Okay. And that is when maybe the money discussion
- 23 or ...?
- 24 A. I remember saying, you know, I have my foot on the door
- 25 you ass hole. And then after that he asked me for money.

1 Q. And the way you described these events you are behaving
2 in a way that is kind of brave or just sort of, you know, in
3 your face. Do you even know why you reacted the way you
4 did?

5 A. I have no idea. I -- you know, I am laughing about it
6 now; but obviously I don't know where that came from. That
7 is not language that I use on a normal basis.

8 I just felt maybe the accumulation of things that had
9 happened over the past few days or months and, you know, I
10 was just being reactive to somebody having a gun pointed at
11 me and it's either fight or flee and

12 Q. Right. Were you scared that he was going to kill you?

13 A. I was scared to death.

14 MS. WILLIAMS: Court's indulgence for just a second.

15 Q. I am going to show you State's 24.

16 MS. WILLIAMS: May I approach?

17 THE COURT: You may.

18 Q. Can you tell me if you recognize what is in this
19 picture?

20 A. I can recognize the black part of the -- I never saw
21 the handle of the gun, but it was a black revolver.

22 Q. And if you can't say that that is the gun -- because
23 you have never seen this picture before, have you?

24 A. No.

25 Q. And it happened pretty quickly. Then that is okay. So

DIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 do you know or not ---

2 A. I know it was a black revolver.

3 Q. But you don't know that it was this gun?

4 A. No, I wouldn't. I wouldn't know.

5 Q. That's fine. Thank you, Mr. Tsafos. Please answer any
6 questions from the defense.

7 THE COURT: Ms. Gay.

8 MS. GAY: Thank you, Your Honor.

9 **CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS:**

10 Q. There are a couple things I want to ask you about your
11 testimony, sir. You said that this trip that you went on to
12 Florida that Ms. Fraley had taken her best friend and her
13 daughter Alta?

14 A. Yes.

15 Q. So when the trip started it was your understanding --
16 her name is Jennifer, the friend that went with her?

17 A. Yes.

18 Q. Okay. It was your understanding in the beginning of
19 the trip that they were referring to each other -- it was
20 your understanding that they were best friends?

21 A. Yes.

22 Q. And I believe you testified that she, Jennifer, had her
23 child with her and that then you testified a little bit
24 later that you were aware when you came back from Florida
25 that Jennifer and Ms. Fraley were not friends anymore?

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 A. Yes.

2 Q. And that I believe you said that Jennifer when she
3 decided to leave Mr. Fraley had actually moved into
4 Jenni- -- I mean when Ms. -- when Deonna decided to leave
5 Gary that she moved in with Jennifer for a period of time?

6 A. Yes.

7 Q. So before y'all went to Florida she -- her belongings,
8 personal items, were at Jennifer's house?

9 A. Yes.

10 Q. But when you came back from Florida her things got out
11 of Jennifer's house pretty quickly, shortly thereafter?

12 A. There was some police involved and it took some time
13 because Jennifer wasn't cooperating ---

14 Q. I understand.

15 A. --- with the release of her furniture and her personal
16 belongings.

17 Q. And so they -- and are you aware that now Deonna
18 doesn't consider Jennifer a friend of hers anymore?

19 A. I wouldn't know.

20 Q. And I believe that you said that after that -- well,
21 let me ask it this way. Did you -- are you aware that
22 Jennifer told Gary Fraley that after the trip, after being
23 in Florida with y'all, that she thought that y'all were
24 having a sexual affair?

25 A. No, I wasn't aware of that.

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

- 1 Q. Okay. If ---
- 2 A. I don't know how ---
- 3 Q. But you are aware ---
- 4 A. --- it could be.
- 5 Q. --- that they weren't friends anymore after that?
- 6 A. Yeah, because I was directly pulled into the situation.
- 7 Q. I understand. And so after that Ms. Deonna who is
- 8 Gary's wife moved her stuff into your house, at least some
- 9 of her stuff, into your house to seek refuge?
- 10 A. Yes.
- 11 Q. And that you testified that y'all were alternating
- 12 sleeping on the couch and sleeping in bed -- in the bedroom,
- 13 but you did acknowledge that there were two bedrooms in the
- 14 house?
- 15 A. Yes.
- 16 Q. And you -- I believe the solicitor was very clear that
- 17 you said that there was no sexual relationship going on
- 18 between the two of y'all?
- 19 A. I said that, yes.
- 20 Q. And I think she made a specific point to say that she
- 21 is dating someone else and you are dating someone else and
- 22 so -- but at the time that all of this was going on you said
- 23 that you were not aware that Jennifer had actually told Gary
- 24 that y'all were sleeping together?
- 25 A. I couldn't possibly be aware of that.

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 Q. And Deonna was certainly his wife at that period of
2 time?

3 A. Yes.

4 Q. And you were his boss -- her boss?

5 A. Yes.

6 Q. And you said that you -- when Gary came into your
7 office -- Gary's -- you are a pretty big guy, in good shape.
8 And Gary is shorter than you. Isn't he shorter than you?

9 A. I don't know.

10 Q. Okay. Well, so you said that you were scared for your
11 life. But you also said that his -- the things that you
12 testified to that he was doing, you said he sat down in the
13 chair and started a conversation with you about money?

14 A. No, not in that order.

15 Q. I understand. You said that he pointed the gun at you.
16 I understand that.

17 A. We can go through my statement if you would like. I
18 mean that is the order of events.

19 Q. After he pointed the gun at you and said that you were
20 going to die he then sat down in the chair and started
21 talking to you about not having any money?

22 A. No.

23 Q. After -- okay; would you like to tell me what happened,
24 sir?

25 A. Yeah, if I could review my statement I would be happy

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 to review it for you.

2 Q. You don't need to review your statement. Just use your
3 memory.

4 A. He -- okay. So first he came in the office; and I said
5 go ahead and shoot me then, you ass hole. And he proceeded
6 to sit and put both hands on the gun.

7 I attempted to call 911 with my phone, but I am left --
8 extremely left-handed, so I couldn't get it done. So he
9 said give me the phone. And I said give me the gun.

10 And we had -- we had a dispute about, you know, him
11 wanting control of my phone. And then he broke my phone.
12 And then I said, you ass hole you broke my phone.

13 And all the time -- all the while I had the gun pointed
14 at me. And then he said, you are screwing my wife. And I
15 said, you are separated you ass hole.

16 And then he says, Jennifer told me you were alone with
17 her in Room 103. And I said I was never alone with your
18 wife. And

19 Q. Do you recall him telling you that he wanted to commit
20 suicide?

21 A. No, never.

22 Q. After -- this thing about money did he tell you that he
23 didn't have money because Deonna had moved out of his house?

24 A. No.

25 Q. So you have no idea why he was saying that he wanted

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 money?

2 A. No, he -- I said -- he said he couldn't afford to pay
3 his bills. And I said, you are military, you have a
4 military pension, you can pay your bills, ass hole.

5 Q. Did he say anything about the fact that Deonna wasn't
6 living there anymore and it could have been some type of
7 financial hardship?

8 A. No.

9 Q. Okay. So that was very weird that he was talking to
10 you about borrowing money ---

11 A. You might ---

12 Q. --- from you?

13 A. Well, yeah.

14 Q. So when y'all were having this encounter and he pointed
15 at the -- where -- where the shot hit the ground, you said
16 in your testimony that you weren't looking at that gun at
17 that time, you were concentrating on trying to get out?

18 A. Yes.

19 Q. And so you said you heard a shot and then you believed
20 that you may have been shot but in fact you weren't, and
21 that is when you realized that the bullet had hit the
22 ground?

23 A. Yes.

24 Q. And I believe that is when you also got out of the
25 room?

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 A. No.

2 Q. Okay. Do you remember Gary Fraley laying on the floor?

3 A. Yes.

4 Q. Okay. So after -- so it was after he shot the bullet
5 into the ground and then he laid on the floor?

6 A. He's ---

7 Q. Was he talking during that period of time?

8 A. We had an exchange of words again, and I'm trying to
9 recollect here. He

10 Q. Was that exchange of words about his wife again or was
11 that some other -- just expletives?

12 A. If you will give me just a moment. Because he brought
13 up his daughter. And he says my daughter has nothing. And
14 I said she has everything she needs, she is ex-military.
15 And I think I kept talking at that point like where -- how
16 do you see this ending, you are going to jail.

17 And shortly after that I remember -- I mean I heard
18 noises outside and the police arrived. And as I was
19 answering whatever the police were asking me, you know, are
20 you okay, whatever, I was still facing in that same
21 direction.

22 And I had turned my head to answer the police. When I
23 turned back he was gone. He had jumped over my desk and got
24 on the floor. When I turned around he had the gun pointed
25 up at me and said don't you leave. So no to your question.

CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 Q. So that's what he was telling you while he was laying
2 on the ground?

3 A. Yes.

4 Q. And he said that his daughter has -- had nothing. Did
5 he tell you because she wasn't going to have a father
6 anymore?

7 A. No.

8 Q. All right.

9 MS. GAY: I have no further -- I would like to consult
10 with my client.

11 THE COURT: Take your time.

12 (WHEREUPON, Ms. Gay consults with client.)

13 MS. GAY: I have no further questions, Your Honor.

14 THE COURT: Redirect.

15 MS. WILLIAMS: Briefly, Your Honor.

16 **REDIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS:**

17 Q. Mr. Tsafos, would it refresh your memory to review your
18 statement?

19 A. Yes.

20 MS. WILLIAMS: Your Honor, may I approach?

21 THE COURT: You may.

22 BY MS. WILLIAMS:

23 Q. I am going to show you a copy of the statement that you
24 gave. And just look through it silently and then I will ask
25 you some questions.

REDIRECT EXAMINATION BY MS. WILLIAMS OF STEVE TSAFOS

1 (WHEREUPON, witness reviewed statement.)

2 THE COURT: Ms. Williams, should we take a break?

3 MR. TSAFOS: No, I'm fine.

4 MS. WILLIAMS: Could we do that, Your Honor?

5 THE COURT: All right. Ladies and gentlemen, we are
6 going to go ahead and take our comfort break. Do not begin
7 your deliberations. Leave your notepads right where they
8 are or take them with you.

9 Please rise for the jury.

10 Mr. Tsafos, stay seated.

11 (WHEREUPON, the jury exited 7/15/15, 11:39 a.m.)

12 THE COURT: Thank you. Be seated.

13 Mr. Tsafos, please do not discuss your case -- your
14 testimony with anyone. But take the time to review your
15 statement. We will take about ten minutes. Thank you:

16 (WHEREUPON, break was had 7/15/15, 11:49 a.m.)

17 (WHEREUPON, resumed in-camera, 7/15/15, 11:57 a.m.)

18 THE COURT: Hi.

19 MS. VAUSE: Hi.

20 THE COURT: Juror -- you are Juror 173?

21 MS. VAUSE: One seventy-three.

22 THE COURT: It has come to my attention that you teach
23 GED classes at the jail.

24 MS. VAUSE: Yes, ma'am.

25 THE COURT: And so I don't think that I asked a

1 specific question about that that would necessitate you
2 disclosing that, but is there anything about you doing --
3 teaching over there that would affect your ability to be
4 fair and impartial in this case?

5 MS. VAUSE: I don't think so.

6 THE COURT: And I say that same thing. I do that. I
7 need a yes or a no. Is there any -- do you come into
8 contact with any of these officers that will be testifying?

9 MS. VAUSE: Who -- who are they?

10 THE COURT: The names that I read.

11 MS. VAUSE: I don't even remember the names.

12 THE COURT: All right.

13 MS. VAUSE: And I don't even hardly know their names.

14 THE COURT: When is the last -- how often do you go to
15 the jail?

16 MS. VAUSE: I go there on Mondays and Wednesdays.

17 THE COURT: And do you know the defendant?

18 MS. VAUSE: No.

19 THE COURT: And do you know any of the officers that
20 have already been in to testify or around this courtroom?

21 MS. VAUSE: I think I know him (pointing).

22 THE COURT: All right. All right. And he is my court
23 security, so you see him. He is over here making sure I am
24 safe. Is there anything about you knowing him that would
25 affect your ability to be fair and impartial?

State vs. Gary Fraley

1 MS. VAUSE: No.

2 THE COURT: All right. And where do you teach these

3 GED classes; do you go ---

4 MS. VAUSE: I go into the multipurpose room.

5 THE COURT: Okay. And then they bring the ---

6 MS. VAUSE: And then they bring the inmates.

7 THE COURT: Okay. All right.

8 MS. VAUSE: But I only teach the women.

9 THE COURT: Only the women?

10 MS. VAUSE: Yes.

11 THE COURT: All right. And once again, will you be

12 able to listen to the facts that the witness stand, apply

13 the law as I give it, and render a verdict based only upon

14 those things?

15 MS. VAUSE: Yes.

16 THE COURT: All right. Thank you.

17 MS. VAUSE: I thought I recognized him.

18 THE COURT: We are just making sure. Thank you.

19 Anything -- any further requests from the State

20 regarding this matter?

21 MS. WILLIAMS: Not from the State. No, Your Honor.

22 THE COURT: Let's bring them in.

23 THE COURT: Whose is your next witness?

24 MS. WILLIAMS: We are still ---

25 THE COURT: Oh, I'm sorry.

1 I remind you that you are still under oath. Did you
2 comply with my instructions?

3 MR. TSAFOS: Yes.

4 THE COURT: Thank you.

5 (WHEREUPON, discussions regarding scheduling were had.)

6 (WHEREUPON, jury enters 7/15/15, 12:00 p.m.)

7 THE COURT: Thank you. Be seated.

8 Ms. Williams, you may continue.

9 BY MS. WILLIAMS:

10 Q. Mr. Tsafos, have you had time to kind of look through
11 that statement now?

12 A. Yes.

13 Q. And the first thing he does when he walks in, Mr.
14 Fraley, is take the battery out of your phone or try to take
15 the battery out of your phone; that is correct -- or he
16 asked you to take the battery out?

17 A. Yes.

18 Q. Okay. So he is trying to disable your cell phone?

19 A. Yes.

20 Q. And then at some point in your statement he is asking
21 you to turn the phone off. Is he talking about your cell
22 phone or your office phone?

23 A. Cell phone.

24 Q. Okay. And Ms. Gay asked you about this discussion you
25 were having about the money. At some point in your

State vs. Gary Fraley

1 statement you are talking about you are telling him your
2 wife loves you, ---

3 A. Yes.

4 Q. --- you don't need to do this?

5 A. Yes.

6 Q. Are you trying to talk him out of killing you; you're
7 trying an approach where you are just trying to say, you
8 know, this isn't going to end well, don't do this?

9 A. Well, I am telling him because his wife loves him
10 because it was true and, you know, ~~I didn't think~~ all this
11 was necessary. And then the same thing when he was asking
12 for money I didn't feel as though he really, you know,
13 needed the money.

14 Q. Look at Page 5 of your statement. And you are
15 saying -- he is telling you you are not leaving, and then
16 you say to him -- he says I need your help. And then on
17 Page 6 you continue to talk to him. So at some point --
18 and that you are trying to reason with him; is that
19 correct?

20 A. Yes.

21 Q. Okay. And Ms. Gay also asked you or pointed your
22 attention to the fact that at some point Mr. Fraley gets on
23 the ground?

24 A. Yes.

25 Q. Isn't that when the police come?

1 A. Yes.

2 Q. So he is on the ground because he doesn't want to get
3 hit by the police?

4 A. Correct.

5 Q. And do you remember telling the police I can't leave,
6 there is a gun pointed at me?

7 A. Yes.

8 Q. And he wanted answers. You said he said he wanted
9 answers. And that is because he thinks you're cheating with
10 his wife; is that correct?

11 A. Yes. But he had also said that she had been cheating
12 on him for a year-and-a-half.

13 Q. Did he mean the year-and-a-half with you or with other
14 people, or did you know?

15 A. She had only worked for me for about a year.

16 Q. Okay. So he just thinks his wife is cheating?

17 A. Yes.

18 Q. But at this point in time he thinks his wife is
19 cheating with you?

20 A. Yes.

21 Q. And that is why he is coming to kill you?

22 A. I believe so.

23 Q. Thank you.

24 MS. WILLIAMS: Nothing further.

25 THE COURT: Ms. Gay, recross.

RE CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS

1 MS. GAY: Thank you, Your Honor.

2 **RE CROSS-EXAMINATION BY MS. GAY OF STEVE TSAFOS:**

3 Q. You have now reviewed your statement, and that
4 statement was given at a time when all of this information
5 was fresh. I think it was given pretty close in time to the
6 incident itself. Do you recall that?

7 A. Yes.

8 Q. And at that time -- and this is very important. At
9 that time you described in your statement some things about
10 during your conversation with Mr. Fraley that were of note
11 to you, things that you noticed.

12 One of them is that you said, "What is with your hair,
13 you are not even taking care of yourself"?

14 A. Yes.

15 Q. That is in your statement?

16 A. I believe it is.

17 Q. And so and you said that there -- I would point your
18 attention to Page 4. There was Mr. Fraley and you were
19 talking. There are a lot of expletives in this. And I
20 understand that there was a lot of bad words and things
21 going back and forth between -- from the two of y'all.

22 So but at the bottom of this statement it says, "Look
23 at you man, look at how you are undressed, you're not even
24 taking care of yourself, you're messed up in the mind,
25 you're not even rational". That was what you wrote on the

1 day at the time that this happened?

2 A. Yes.

3 MS. GAY: I have no further questions, Your Honor.

4 THE COURT: All right. You may step down. Thank you.
5 You are free to go.

6 MR. TSAFOS: Am I released?

7 THE COURT: Just leave those right there. Thank you.
8 Call your next witness.

9 MR. POULOS: The State calls Officer Moree.

10 THE COURT: Sir, please come forward and be sworn.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: Please have a seat. State your full name
13 for the record and spell your last.

14 MR. MOREE: Chadwick Moree, M-O-R-E-E.

15 **DIRECT EXAMINATION BY MR. POULOS OF OFFICER CHADWICK MOREE:**

16 Q. Good morning, Mr. -- Officer Moree. Where do you work?

17 A. Goose Creek Police Department.

18 Q. How long have you worked there?

19 A. I have been employed approximately three-and-a-half
20 years.

21 Q. What is your current position and responsibilities with
22 the Police Department?

23 A. I am assigned to Patrol Division, Team 3.

24 Q. What do you do in the patrol division?

25 A. I handle daily calls as well as any number of various

DIRECT EXAMINATION BY MR. POULOS GAY OF CHADWICK MOREE

1 calls.

2 Q. Was that your position back in August of 2014?

3 A. I was assigned to the patrol division. I was currently
4 on Team 4 at the time.

5 Q. Were you working on August 5th of 2014?

6 A. I was.

7 Q. What shift were you working if you remember?

8 A. I was on day shift.

9 Q. Did you respond that day to the Royal Lanes in Goose
10 Creek?

11 A. I did.

12 Q. How were you notified to respond?

13 A. It came in over the radio as well as I was in the front
14 room near our dispatch at the time. I heard the call come
15 in over the radio. But I also heard other officers
16 responding from the Police Department and saying what was
17 going on.

18 Q. And so you went to the Royal Lanes?

19 A. That's correct.

20 Q. What did you do initially upon arriving there?

21 A. I pulled in on the right-hand side of the parking lot.
22 I pulled in, if I remember correctly, directly behind
23 Lieutenant Ramirez.

24 I exited my patrol vehicle, deployed my patrol rifle
25 and went to the rear of the building. At the time we had

1 some unknown circumstances. And maintained rear security of
2 the building.

3 Q. Officer, I want to show you a photograph. It is
4 State's Exhibit 107.

5 MR. POULOS: May I approach, Your Honor?

6 THE COURT: You may.

7 MR. POULOS: Thank you.

8 BY MR. POULOS:

9 Q. Do you recognize that photo?

10 A. I do. It is an aerial photograph of 52 down Central
11 Etiwan and showing Royal Lanes.

12 Q. Does it fairly and accurately represent the way the
13 streets, the buildings, that they are laid out in that area
14 of Goose Creek?

15 A. It does.

16 MR. POULOS: Your Honor, I would offer the photo into
17 evidence as State's 107.

18 THE COURT: Any objection?

19 MS. GAY: No, Your Honor.

20 THE COURT: State's 107 into evidence without
21 objection. You may publish.

22 (WHEREUPON, State's Exhibit Number 107 was admitted into
23 evidence.)

24 Q. Officer, there is a laser pointer right here. Can you
25 point out the Royal Lanes Bowling Alley?

DIRECT EXAMINATION BY MR. POULOS GAY OF CHADWICK MOREE

1 A. (Witness complied.)

2 Q. And can you point out for us where the EconoLodge is.

3 A. (Witness complied.)

4 Q. Where did you pull your vehicle in when you first
5 arrived?

6 A. I came down Highway 52, turned turn onto Central
7 Avenue, turned into this entrance, and parked approximately
8 in this area (pointing).

9 Q. And then where did you go after you left the vehicle?

10 A. I am going on foot after getting my patrol rifle, down
11 this alley. And it was back here around some type of
12 electrical box position to the rear of bowling lanes and
13 used that as cover.

14 Q. Thank you. Did there come a time when you entered the
15 bowling alley?

16 A. Yes.

17 Q. When was that?

18 A. If I had to estimate I would say it was probably 15, 20
19 minutes after I responded to the location.

20 Q. And what did you see when you entered?

21 A. I entered. There were several other officers already
22 inside the building kind of huddled together. And there was
23 some dialogue going on.

24 Q. Do you recall who those offices were?

25 A. To the best of my knowledge, Investigator Fogle,

1 Captain Schreurs, Captain Aarons; and those are the only
2 ones I can be certain of at that time.

3 Q. Okay. And what was Aaron -- Captain Aarons doing at
4 that time?

5 A. He was having some conversations with Mr. Fraley.

6 Q. Was that near the office?

7 A. Yes.

8 Q. Did you see Mr. Tsafos at any point?

9 A. I did see Mr. Tsafos. I am unsure of when exactly I
10 saw him throughout this entire ordeal that lasted a little
11 over an hour. But I did see him in the building, but he had
12 already exited from the office room at that point.

13 Q. Officer, I want to throw up State's 115. Do you
14 recognize this diagram?

15 A. Yes, it appears to be a diagram of the inside of Royal
16 Lanes.

17 Q. Take us through where you went as you entered the
18 bowling alley.

19 A. I entered through this side door (pointing). The
20 lockers that you see depicted here (pointing) was the area
21 officers were initially stacked at and repositioned here
22 (pointing).

23 Q. When you say stacked what do you mean?

24 A. In a tactical formation as if things escalated and we
25 needed to make that tactical maneuver we could all deploy

DIRECT EXAMINATION BY MR. POULOS GAY OF CHADWICK MOREE

1 in, one officer right after the other.

2 Q. And what else did you see?

3 A. That was really all I could see at that point because
4 we are right here (pointing) in this locker area.

5 Q. Where was Captain Aarons?

6 A. I would say in this area kind of around the point right
7 here (pointing) before the office initially.

8 Q. Did he initially go inside the office?

9 A. Yes.

10 Q. Enter somewhat into the office?

11 A. Yes.

12 Q. I want to show you another photograph, Officer.

13 MR. POULOS: State's Exhibit 4.

14 MS. GAY: No objection, Your Honor.

15 Q. Do you recognize this photograph?

16 A. Yes, that is a photograph of the inside of the Royal
17 Lanes facing the office.

18 Q. And does it fairly and accurately represent how that
19 area of the bowling alley appeared on the day in question?

20 A. It does.

21 MR. POULOS: I would offer that into evidence as
22 State's 4.

23 THE COURT: State's 4 into evidence without objection.
24 You may publish.

25 (WHEREUPON, State's Exhibit 4 was admitted into evidence.)

1 Q. Officer, can you point out for us where is the office
2 we are talking about here.

3 A. The office door is right here (pointing). And this is
4 a window looking into the office (pointing).

5 Q. Were the blinds closed to that window during the
6 incident?

7 A. I do not recall ---

8 Q. Okay.

9 A. --- if they were closed through the entire.

10 Q. And point out the door you came into, please.

11 A. This door right here where this Coke is (pointing).

12 Q. And are those lockers nearby the lockers you were
13 describing?

14 A. That is correct.

15 Q. Where are the bowling lanes in this photo?

16 A. Just past this area here (pointing). You sat down and
17 those are the bowling lanes that face outward.

18 Q. Thank you. Did you hear any of the conversations
19 between Captain Aarons and the defendant?

20 A. Some of the conversation, yes.

21 Q. During the course of the conversations did the
22 defendant sound rational, aware, knew where he was and what
23 he was doing, what was going on?

24 A. Yes.

25 Q. Officer, were you equipped with an in-car body

DIRECT EXAMINATION BY MR. POULOS GAY OF CHADWICK MOREE

1 microphone at the time?

2 A. I was.

3 Q. How does that work?

4 A. The body mic is not like a body cam as being published
5 in the media right now. It is actually connected to our
6 dash camera from within our patrol vehicle. And that
7 microphone will pick up sounds while the officers are out
8 there conducting a traffic stop or what have you.

9 Q. And is it intended to record the audio when you are
10 near your car?

11 A. Yes, it can -- it can lose connection for any number of
12 reasons, entering different buildings made out of different
13 materials or just distance from the vehicle we can lose
14 connection. We find that often in calls.

15 Q. How far from your vehicle were you at the time you were
16 inside of the bowling alley?

17 A. It would be difficult for me to approximate, but I
18 would say maybe 100 yards.

19 Q. Do you know if your microphone was able to pick up any
20 of the audio from what happened?

21 A. Yes, it was.

22 Q. Did there come a time in the recording where it becomes
23 inaudible?

24 A. Yes, when I reviewed the recording it did come to a
25 point where it would not pick up any sound.

DIRECT EXAMINATION BY MR. POULOS GAY OF CHADWICK MOREE

1 Q. Officer, I am going to show you what has been
2 pre-marked as State's Exhibit 101.

3 MS. GAY: I have no objection, Your Honor.

4 Q. Do you recognize this disk, officer?

5 A. Yes, that is the disk that I reviewed the video and
6 audio of, and that is my signature.

7 Q. Does it fairly and accurately depict what occurred on
8 August 5th, 2014?

9 A. It does.

10 MR. POULOS: I would offer this into evidence, Your
11 Honor, as State's 101.

12 THE COURT: State's 101 into evidence without
13 objection. You may publish.
14 (WHEREUPON, State's Exhibit 101 was admitted into evidence.

15 MR. POULOS:

16 Q. To your knowledge, Officer, the audio that was picked
17 up does that include Captain Aaron's voice?

18 A. Yes.

19 (WHEREUPON, Exhibit 101 played.)

20 Q. Officer, I am going to stop it there. After that point
21 does it sort of cut out?

22 A. It begins to cut out, yes.

23 Q. Okay. Did officers eventually enter the office?

24 A. Yes.

25 Q. And were you present when that occurred?

DIRECT EXAMINATION BY MR. POULOS GAY OF CHADWICK MOREE

1 A. I was present.

2 Q. What did you see?

3 A. Captain Aarons was in a seated position in a chair
4 around the doorway to the office. When entry was made I was
5 directly behind that chair. Captain Aarons made a rush into
6 the office. I removed the chair out of the doorway so that
7 other officers could deploy and take Mr. Fraley into
8 custody.

9 Q. And after he was taken into custody did you observe him
10 to be lucid, aware of his surrounds, what was happening, who
11 he was?

12 A. Yes.

13 MR. POULOS: I have no further questions, Your Honor.
14 Thank you.

15 THE COURT: Ms. Gay.

16 MS. GAY: I have no questions for this witness, Your
17 Honor.

18 THE COURT: You may step down. Thank you.

19 WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MS. WILLIAMS: The State calls Captain David Aarons.

22 (WHEREUPON, the witness was duly sworn.)

23 THE CLERK: Please have a seat. State your full name
24 and spell your last name for the record.

25 CAPTAIN AARONS: My name is David Aarons, A-A-R-O-N-S.

1 DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS:

2 Q. Good morning, Captain Aarons.

3 A. Good morning.

4 Q. Where are you employed?

5 A. The City of Goose Creek Police Department.

6 Q. How long have you worked there?

7 A. Almost 19 years.

8 Q. Were you employed as an officer anywhere before that?

9 A. The City of Charleston.

10 Q. At what are your duties and responsibilities at Goose
11 Creek?

12 A. I am currently captain. My title is special operations
13 division commander. I have a myriad of responsibilities to
14 include the SWAT team commander, agency training, crime
15 prevention, school resource officers, the emergency
16 communications center.

17 Q. And we all hear about SWAT on television, but tell us
18 what is entailed with a SWAT team and what kind of training
19 goes into that.

20 A. The Goose Creek SWAT is essentially was originally as
21 a -- starting as a high-risk warrant team. So essentially
22 we do elevated risk operations, whether that be active
23 shooters, hostage situations, barricades, high-risk warrant
24 service, things that might be a little bit elevated over
25 that of the training over the normal police officer.

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 Q. And what kind of training is involved with someone to
2 be on the SWAT team?

3 A. We have a complete try-out process and then we train
4 monthly. Most of the time it is building-entry training.
5 There's additional time on the firing range. Things like
6 that.

7 Q. Okay. And when you are geared in your SWAT uniform or
8 gear what type of stuff are you wearing?

9 A. The normal SWAT equipment would include a heavy
10 ballistic bullet proof vest with what is called a SAPI plate
11 which is just a metal, heavy plate. And it includes a
12 balaclava which is like a face mask type thing. A helmet, a
13 ballistic helmet. Some operators have elbow and knee pads.

14 And then usually there is the standard police duty
15 weapon which is a thigh setup, so it is a little bit lower
16 than what I'm currently wearing on my belt.

17 And then they are also issued additional equipment like
18 entry weapons, rifles that have shorter barrels; things like
19 that.

20 Q. And these items were for officer's safety?

21 A. Yes.

22 Q. And would you agree that domestic situations are some
23 of the most dangerous calls that you all engage in?

24 A. Yes.

25 Q. And on August 5th, 2014, did you respond to the Royal

1 Lanes bowling alley?

2 A. I did.

3 Q. And did you have any information that you all had been
4 noticed about in terms of a domestic situation?

5 A. Earlier that morning Captain Laffey who is the patrol
6 division commander had told me that his personnel had
7 received some information that a subject -- I didn't know
8 the person's name at that time. It had been determined that
9 he had been making threats against the owner of the bowling
10 alley as well as one of the police officers who regularly
11 worked off-duty there.

12 Q. And what time if you remember about did you respond to
13 Royal Lanes bowling alley?

14 A. Approximately 5:30 in the evening.

15 Q. Describe the scene when you arrived.

16 A. Upon my arrival I noticed a myriad of folks. I assumed
17 them to be employees and customers who were assembled out
18 toward the edge of the parking lot closest to Central
19 Avenue.

20 When I pulled my police car in I was the fourth
21 vehicle. There were three marked patrol cars. We had
22 responded code blue lights and sirens down Highway 52 South.
23 Turned right onto Central Avenue and turned left into the
24 first entrance of the parking lot to the bowling alley.

25 The three police cars in front of me pulled up toward

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 the front of the structure. I pulled out, stopped behind
2 them. They were running toward the front of the building.
3 I deployed out of my vehicle and went to the back, threw on
4 my tactical ballistic vest. I did not fasten the sides. I
5 didn't have time to grab a rifle.

6 I heard Captain Laffey and saw him on the right side of
7 the building. He was -- appeared to on the radio be giving
8 instructions in terms of setting up a perimeter.

9 And I ran to catch up to the three officers who were
10 entering the front of the building. And so I was armed with
11 my side arm. I was wearing this uniform -- or a uniform
12 similar to this.

13 Q. Okay. And when you came into the building did you go
14 through the front door or a different door?

15 A. I went in through the front door.

16 Q. And which way did you turn?

17 A. I entered the front lobby and followed the three
18 officers in front of me. We moved to the right toward the
19 office.

20 Q. Okay.

21 MS. WILLIAMS: Your Honor, I am going to show defense
22 counsel what has been marked as State's 5.

23 May I approach?

24 MS. GAY: No, objection, Your Honor.

25 THE COURT: You may approach.

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 Q. Does this accurately depict the way that that area
2 looked the day that you went in there?

3 A. Yes.

4 MS. WILLIAMS: Your Honor, at this time we would move
5 State's 5 into evidence.

6 THE COURT: State's 5 into evidence without objection.
7 You may publish.

8 (WHEREUPON, State's Exhibit Number 5 was admitted into
9 evidence.)

10 Q. There is going to be a picture -- there it is. And
11 this is a pointer, Captain Aarons. If you could just show
12 us where you position -- where you came in and where you
13 positioned yourself.

14 A. I came in -- I came in from the front entrance which is
15 over here (pointing) and took a right and took a position
16 right here to the left of the door (pointing) which was
17 closed at the time.

18 Q. Okay. And were those blinds closed like they are in
19 the picture?

20 A. Yes, they were.

21 Q. And where are your other officers and about how many
22 officers are in there?

23 A. The other offices were directly behind me. So they
24 were here (pointing). I know that Lieutenant Schreurs was
25 was directly behind me. And the other officers were kind of

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 behind me.

2 There was really just enough room for one person to be
3 at the threshold. The door was closed. So I was -- I was
4 standing by the locker.

5 Q. Okay. And when you got there did you hear anything
6 coming from the office?

7 A. I did. It was clear to me and others there that there
8 were two male voices coming from inside the room. And they
9 were yelling back and forth at one another.

10 What was unclear was, you know, who had the weapon, was
11 anyone injured. None of that information was available.

12 Q. And did you hear any of the words that were said that
13 you remember?

14 A. Initially, no. Initially they were yelling back and
15 forth at one another. It was difficult to determine where
16 they were in that room.

17 I was unfamiliar at that time with the layout of the
18 room. I didn't know that it was as small as it turned out
19 to be. We try to make contact with them through the door.
20 That was relatively unsuccessful. And then at some point
21 this -- all of this took place in approximately five minutes
22 that I can recall.

23 At some point I could hear Mr. Tsafos, the owner of the
24 bowling alley state something to the effect that, you know,
25 if you are going to shoot me go ahead and shoot me but I am

1 leaving.

2 And right before that it was clear that somebody had
3 their hand on the doorknob from the inside. The doorknob
4 appeared to be moving a little bit, but no one came out.

5 Then ultimately I heard what turned out to Mr. Tsafos
6 saying if you are going to shoot me, shoot me, but I'm
7 leaving. And so that -- toward the end of that right before
8 he came out that was the only verbiage that was legible at
9 the time.

10 Q. Okay. And after he came out what happened?

11 A. The door swung open and Mr. Tsafos naturally stormed
12 out and off to his left. And at that point I could hear
13 movement inside, but I couldn't see anyone else inside. I
14 couldn't see Mr. Fraley at that time. And so I was still
15 outside of the room with my gun drawn pointing at the open
16 door.

17 Q. At this point you don't know who is in there, what
18 weapon they have, where in the room they are, or any of
19 that; ---

20 A. Correct.

21 Q. --- correct?

22 A. Correct.

23 Q. And I'm going to ask you some questions about what went
24 on. Overall how long do you spend trying to negotiate Mr.
25 Fraley out of the room?

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 A. An hour and 24 minutes.

2 Q. And during that period of time was he given some type
3 of beverage to try to gain his trust?

4 A. Yes.

5 Q. And so let's just go back to the beginning. So how do
6 you initiate contact with Mr. Fraley?

7 A. I can't see in the room. I don't know exactly where he
8 is, how many weapons he has, if it is in his hand or not. I
9 really have no information to go on at that point.

10 I lie down on the floor on my stomach with the gun
11 facing the room. All that I could see in the room were what
12 appeared to be boxes of papers or files lining the walls.

13 There was a chair that appeared to be on wheels. And
14 then there was a large metal desk that I noted was also on
15 wheels. And the desk was elevated off the floor six, eight
16 inches.

17 So I couldn't see anything in the room. I lied down in
18 the -- on my stomach in the prone position with my gun
19 facing into the room. Again, I was still outside.

20 And at that point I could see Mr. Fraley lying on his
21 back kind of on his side. So his -- he was behind the desk
22 and he was leaning on his left side with his elbow and
23 forearm on the ground. His weight was on that elbow propped
24 up. And there was what appeared to be a black, large barrel
25 revolver in his right hand.

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 Q. Okay. I'm going to show you a couple of pictures so
2 you can illustrate exactly what this was like.

3 MS. WILLIAMS: Could you please put up State's 10. Or
4 actually before that, I'm sorry, State's 9.

5 Q. Okay. So explain what this is, the entrance.

6 A. I was out here lying on the ground with my gun facing
7 in. This appears to be -- it is hard to tell from the
8 picture. But this appears to be the desk on wheels.

9 Q. And so was the door open when you were doing that at
10 some point?

11 A. The door was similar to this position.

12 Q. Okay.

13 A. But there was also a chair right here (pointing).

14 Q. Okay.

15 MS. WILLIAMS: And State's 10.

16 Q. Now based on what you just said I am assuming that
17 things were moved around afterwards. But to the best of
18 your ability kind of explain to us where Mr. Fraley was
19 laying and how far you were from him.

20 A. This -- I don't know if you can hear me. This -- this
21 desk was this way, perpendicular to this wall (pointing).
22 It has clearly been moved.

23 So this desk was here (pointing). And Mr. Fraley was
24 on -- in between the desk and this wall (pointing). This
25 was the door (pointing). So I was out here (pointing). And

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 from the prone position I could see underneath the desk. I
2 noted that it was on wheels. And I could see him lying on
3 his left side with the gun in his right hand behind the
4 desk. And that was pretty much all I could see at that
5 time.

6 Q. Okay. What instructions if any were you giving him?

7 A. At that point I remember telling him that he needed to
8 drop the gun so I didn't have to hurt him.

9 He advised me that he had a gun, that he shot the gun.
10 And so at that point I was trying to open a dialogue with
11 him. He told me that he wanted someone to talk to him. I
12 was trying to reassure him that I was there to talk with him
13 and that I didn't want to hurt him but that, you know, he
14 needed -- the gun -- I knew the gun was in his hand and said
15 that he needed to drop the weapon.

16 Q. Now barricading yourself into an office with a gun or
17 trying to kill someone in an office obviously is not a
18 rational act, but your discussion with him did he understand
19 your instructions; did he give you responses back that made
20 sense; did he know where he was; did he know what he was
21 doing?

22 A. In my opinion he -- well, he was very rational at that
23 point. He wasn't terribly compliant in terms of voluntarily
24 following my instructions; but, you know, our dialogue back
25 and forth was, you know, legible, clear, and he appeared to

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 know what he was talking about.

2 Q. In fact, didn't he start to tell you a little bit about
3 his personal life?

4 A. He did. I lied down a second time and noted that the
5 gun was now on the floor right next to him. He was still in
6 the same position. He was leaning on his left forearm. He
7 was on his left hip.

8 But the gun instead of being in his right hand was
9 right underneath the desk in between he and the desk, and it
10 was on the ground.

11 And once I saw that the gun was on the ground and not
12 in his hand I decided to present myself into the room, which
13 I did. So I was partially inside the room and partially
14 outside the room. My right shoulder might have been at the
15 threshold.

16 And of course I had my service weapon drawn. I
17 presented it right at him. All I could see at that point
18 was his maybe his abdominal area and his chest and shoulders
19 and head.

20 And as soon as I presented the weapon, my weapon, to
21 him his eyes got real big and then he scooted -- he started
22 to scoot his body back behind the desk, which he did.

23 Of course I told him that I needed to see his right
24 hand or -- or he was going to be shot. And he said -- he
25 was pretty emphatic, you know, don't shoot me, I don't want

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 you to hurt me; and he lifted his hand, his right hand.

2 Again he is leaning all of his body weight on his left,
3 so his left hand and forearm were on the ground. He raised
4 his right hand above the desk where I could see, and he
5 scooted his body back so now all I could see was maybe his
6 upper chest and head.

7 And at that point that is where I stayed. I was
8 crouched at that point with my back up against the
9 threshold, the frame of the door. My gun was directed at
10 him. And I made it clear that if he dropped his hand to go
11 to the gun that I was going to have to shoot him and I
12 didn't want to do that. And he complied at that point.

13 Q. In fact, you went through great pains to assure his
14 safety?

15 A. I did.

16 Q. We just listened to a tape in the courtroom; and I
17 believe you have heard this tape where you are telling him
18 drop the gun, drop the gun. What was going on at that
19 point?

20 A. I believe that was before I presented myself into the
21 room. I presented myself into the room once I confirmed
22 from lying down and seeing under the desk that the gun was
23 on the ground right next to him. It was within his reach
24 clearly.

25 But I took that opportunity to get a visual on him and

1 maintain, you know, a site picture really with my weapon.

2 Q. And he -- he said something like I didn't hurt anyone,
3 I didn't hurt anyone, I don't want you to hurt me?

4 A. That sounds correct.

5 Q. And is that during that negotiation?

6 A. Yes.

7 Q. At some point he is apprehended. What changes from --
8 tell us when the transition from negotiation to apprehension
9 occurs.

10 A. I was trying to build rapport with him. Obviously I
11 didn't want -- did not want to hurt him. But the truth of
12 the matter is that he had a gun next to him. And it had
13 already been fired. He had already admitted to me that he
14 shot the weapon but that no one was hurt. And I was trying
15 to reinforce to him that he was correct, that at this point
16 no one was injured and that it didn't have to result in
17 anyone else been injured, specifically him.

18 And he was pretty emphatic that he did not want me to
19 hurt him, so I was trying to reassure him that if he was
20 voluntarily compliant with my instructions and he listened
21 to me that I was not going to injure him.

22 He told me that he -- repeatedly that he wanted someone
23 to listen to him. And I told him that, you know, whatever
24 time he needed, provided that I could maintain a visual on
25 both of his hands, that I would listen to him and I would

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 talk to him.

2 And shortly into this Lieutenant Schreurs asked me if I
3 wanted the SWAT team activated. He was behind me. I did.
4 And then throughout this as this hour and 24 minutes
5 continued the patrol officers started to be rotated out and
6 my SWAT team was filtered in.

7 It was with my SWAT team, the team leader at that time,
8 that I was communicating what my tactical plan was going to
9 be. I wasn't quite sure exactly what it was going to be at
10 that point. But, you know, I had a plan I was going to go
11 with at least I thought.

12 And then at one point he said that he wanted something
13 to drink; and I thought that it would be an opportunity for
14 me to, you know, grant him what he wanted in return for the
15 gun. That didn't fly. He wasn't going to give up the gun.

16 The gun was still next to him, not in his hand. I was
17 still there. I moved the chair that was on wheels out and
18 actually sat on the very edge of it. Because an hour and
19 twenty-four minutes crouching at my age isn't -- wasn't
20 cutting it.

21 And so we got -- we got him a cup of beverage. And we
22 put it -- Officer Davis came around the corner and stuck it
23 inside the door. He refused to retrieve it, so I reassured
24 him. I -- well, I told him what I was going to do if he
25 went for the gun but that I was going to move closer to him

1 to give him the cup of liquid.

2 He was very compliant, so I moved it closer to him. So
3 this negotiation goes on for a while. And an hour ---

4 Q. What did he want; what was the beverage?

5 A. He wanted wine, red wine.

6 Q. Okay. Proceed.

7 A. Giving, you know, a subject with a gun red wine is
8 prob- -- I am confident is -- is frowned upon in the
9 tactical response handbook. I made sure that it was an
10 incredibly small quantity. And truthfully I have the
11 authority to make that decision, and I went with it so.

12 Q. In an effort to save his life? I mean you ---

13 A. Get the gun from him.

14 Q. At this point you are trying to prevent what at this
15 point?

16 A. I just want him to not injure himself or somebody else.
17 We didn't want to injure him and we wanted to take him into
18 custody without further incident.

19 Q. And so what happens where you finally make the decision
20 that he is not going to give up?

21 A. Well, this hour and twenty something minutes had its
22 peaks and valleys in terms of in my mind whether I thought
23 it was actually productive or not productive.

24 At one point I thought it was going well and he might
25 be receptive and listening to reason. And then other times

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 he would say things and it would be one step forward and two
2 steps back. But this kind of went this way for the majority
3 of the dialogue.

4 And then toward the end he stated -- he called me by my
5 first name. Of course I, you know, told him what my name
6 was. But he said Dave, you are doing a good job but this
7 isn't going to work out. And then he said I have nothing
8 more to live for. And then he said all I want to do is
9 finish my drink.

10 And when he said that I was convinced based on the time
11 we had spent pretty much at gunpoint that he was either
12 going to try to shoot me or kill himself. The gun was still
13 within his reach.

14 Numerous times throughout this hour and twenty-four
15 minutes his hand would drop or I would get the impression
16 that he was going to go for the weapon and I had to then
17 reinforce to him what my response was going to be and that
18 it wasn't going to be favorable to him and then he would
19 reinforce that he didn't want me to hurt him and he would
20 put his hand right back up where I could see it.

21 So once he said, you know, you are doing a good job but
22 it is not going to work out and he said I have nothing more
23 to live for, all I want to do it finish my drink, I looked
24 at the cup. There was a tiny little bit of this wine in the
25 cup.

1 So he had a lit -- during this time he asked me if he
2 could smoke. I told him he could. He had a lit cigarette
3 and it was in his left hand in between his two fingers that
4 he was leaning all his weight on.

5 So he put the cigarette in his left forearm that was
6 right by the ground. And with his right hand the gun that
7 he -- the hand that he would have had to reach for the gun
8 he grabbed the cup and he took -- he finished the wine.

9 He put the cup down. And as he was doing this I told
10 him that -- that, you know, we had -- I had appreciated the
11 repore that we had developed and if he was okay I was going
12 to holster my weapon.

13 And I told him that if -- if he was going to go for the
14 gun that I was going to draw my weapon and I was going to
15 kill him. I don't want you to kill me. I didn't want to
16 have to do that.

17 And so but I knew that it was going to be an
18 opportunity -- it was either -- it was the end at that
19 point. And so I wanted my gun holstered and secured for
20 when I physically went into the room.

21 I had already written a note to my team leader,
22 Lieutenant Ramirez, and with my plan. It was the second
23 version of my plan, and it was essentially that on my go I
24 am going to secure the gun, you secure him.

25 I didn't tell them what the go was. I didn't know what

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 my go was at that point. But I figured that they would
2 figure it out.

3 And so I holstered my weapon. He finished the wine.
4 And then he took the cigarette which he had been smoking --
5 you know, numerous cigarettes just normal inhale, exhale
6 kind of thing.

7 Took the cigarette and he leaned all the way back on
8 his back now, not on his left side and took a really long
9 kind of final type drag from this cigarette down to the butt
10 of the cigarette.

11 And at that point I knew that once he leaned fully back
12 that in order for him to get the weapon he was going to have
13 to lean over to his left or kind of sit up.

14 And so at that point I pretty much launched off of the
15 chair that I was kind of perched on, and I hit the desk with
16 my right shoulder pretty much harder than I've hit anything,
17 and I drove the desk and the leg of the desk into his chest.
18 And Mr. Fraley and the desk were then pinned back to the
19 rear wall of the office.

20 And as soon as that took place -- and all of this was
21 fractions of seconds. And all -- as soon as that took place
22 I looked down and then I saw the gun that was kind of
23 pointed in my direction but on the ground. The hammer was
24 cocked back.

25 I bent over and secured the weapon and immediately

1 exited the room. And I know that three of my SWAT team
2 operators as soon as I launched in they were right behind
3 me. I didn't feel them. I knew they -- I knew they were
4 there.

5 And so they went and physically controlled Mr. Fraley
6 by use of Taser and personal weapons, soft empty hand
7 control and essentially grabbing him physically.

8 Q. You secured the weapon?

9 A. I secured the weapon.

10 Q. Now you have been a police officer just in Goose Creek
11 for 19 years?

12 A. Total, yeah.

13 Q. Has this event stayed with you?

14 A. I have been involved in a lot of crazy situations over
15 the years, as all law-enforcement. This is -- this incident
16 has impacted me greatly.

17 Q. Officer -- or Captain, I am going to show you what has
18 been previously marked as State's 88.

19 MS. GAY: No, objection, Your Honor.

20 MS. WILLIAMS: Your Honor, for the record this is the
21 gun marked 88. And there is a lock on it.

22 THE COURT: Thank you.

23 Q. If you could let us know if this is the weapon that you
24 retrieved from the defendant.

25 A. Yeah, it appears as if it is.

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 Q. And you are telling us that when you retrieved this
2 weapon it was in the cocked position?

3 A. The external hammer was cocked back.

4 Q. Thank you.

5 MS. WILLIAMS: Court's indulgence.

6 Thank you, Captain Aarons. Please answer any questions
7 the defense might have.

8 THE COURT: Ms. Gay.

9 MS. GAY: One moment, please. I have no questions for
10 this witness.

11 THE COURT: Thank you. You may step down. You are
12 free to leave. Feel free to stay with us.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you.

15 Ladies and gentlemen, we have reached an appropriate
16 time for us to take our lunch break. Please remember all of
17 my admonitions. Do not discuss this case with anyone. That
18 includes each other or discuss this case in any manner.
19 That also includes any texting, anything of that nature.

20 Please be back prepared to begin at 2:30. At 2:30.
21 Please take your notepads with you. We will lock them up
22 over the lunch hour.

23 Please rise for the jury.

24 (WHEREUPON, the jury exits 7/15/15, 12:56 p.m.)

25 THE COURT: Thank you. Be seated. 2:30.

DIRECT EXAMINATION BY MS. WILLIAMS OF DAVID AARONS

1 (WHEREUPON, lunch break 7/15/15, 12:56 p.m.)

2 (WHEREUPON, resume trial 7/15/15, 2:34 p.m.)

3 THE COURT: Anything before we bring in the jury from
4 the State?

5 MS. WILLIAMS: Not from the State, Your Honor.

6 THE COURT: From the defendant?

7 MS. GAY: No, ma'am.

8 THE COURT: Let's bring in the jury.

9 (WHEREUPON, bench conference was had.)

10 (WHEREUPON, jury enters 7/15/15, 2:35 p.m.)

11 THE COURT: Thank you. Please be seated. Did every
12 member of the jury panel comply with my instructions over
13 the lunch hour; if you did, please raise your right hand.

14 (WHEREUPON, all jurors complied.)

15 THE COURT: All right. Thank you, Mr. Scarborough.
16 You worried me there for just a moment. All 14 jurors have
17 indicated that they complied with the court's instructions.

18 Call your next witness. The State calls Officer
19 Coffey.

20 THE COURT: Right up here and be sworn, sir.

21 WITNESS: Yes, ma'am.

22 (WHEREUPON, the witness was duly sworn.)

23 THE CLERK: State your full name for the record and
24 spell your last name.

25 MR. COFFEY: David Allen Coffey, C-O-F-F-E-Y.

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER COFFEY

1 THE COURT: Ms. Williams.

2 **DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER COFFEY:**

3 Q. Thank you, Officer Coffey. Good afternoon.

4 A. Good morning -- or good afternoon.

5 Q. Where do you work?

6 A. I work for the City of Goose Creek Police Department.

7 Q. And how long have you worked for them?

8 A. Almost ten years.

9 Q. And did you work in law enforcement before that?

10 A. No, ma'am.

11 Q. And did you work in that capacity on August 5th?

12 A. Yes, ma'am.

13 Q. Did you respond to the Royal Lanes bowling alley in
14 Goose Creek?

15 A. Yes, ma'am.

16 Q. And had you ever been there before?

17 A. Yes, ma'am.

18 Q. In a professional capacity or personal, both?

19 A. Both, ma'am.

20 Q. Do you remember about what time you responded?

21 A. Probably about 5:40 I believe.

22 Q. Okay. And what was your role?

23 A. I responded after receiving a call out as a SWAT
24 operator to respond for an active shooter at the bowling
25 alley.

1 Q. Okay. So you are on the SWAT team?

2 A. Yes, ma'am.

3 Q. What was the appearance of the scene when you arrived?

4 A. Upon my arrival the perimeter had already been
5 basically set up. They had officers on the scene in the
6 parking lot. The building had already been evacuated and
7 the command staff was beginning to set up an area on the
8 left side of the parking lot.

9 Q. And where did you go?

10 A. I entered through the front door of the business with
11 Lieutenant Ramirez.

12 Q. Okay. Is Lieutenant Ramirez on the SWAT team too?

13 A. He was, ma'am.

14 Q. And what equipment did you bring in with you?

15 A. I wore my -- my issued SWAT uniform; black -- black
16 police shirt, being the pants and boots as well as my
17 ballistic vest, my SAPI plates, my tactical vest, my
18 tactical helmet, balakalava, my side arm, my AR-15, and my
19 Taser.

20 Q. Okay. So it is serious business that day?

21 A. Yes, ma'am.

22 Q. I'm going to show you a diagram behind you. If you
23 could just briefly show us where you positioned yourself
24 once you entered the building.

25 A. I made a right going -- I was making entrance on the

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER COFFEY

1 right towards the office next to the arcade. I was
2 originally positioned ---

3 Q. Here is a pointer. I'm sorry.

4 A. I was -- when I came in I made entrance to the front
5 entrance here (pointing). Came right, and I positioned
6 myself originally right in this area (pointing) to obtain
7 information on what was going on.

8 Q. And did you hear anything coming from any area of the
9 bowling alley?

10 A. Yes, ma'am, I could hear Captain Aarons speaking to
11 somebody inside the office.

12 Q. Show us what office you are talking about and where
13 Aarons was.

14 A. Right here (pointing). Captain Aarons was positioned
15 already right here at this part of the doorway.

16 Q. Okay. And where were other officers positioned?

17 A. There were some other officers positioned in the area
18 of the lockers right here (pointing) as well as on this side
19 of the window (pointing).

20 Q. Okay. Thank you.

21 A. Yes, ma'am.

22 Q. And what did you hear coming from the office if
23 anything?

24 A. I could not make out what exactly was being said, just
25 talking.

1 Q. At any time did you hear the victim -- let me ask this:
2 Do you know the victim Steven Tsafos?

3 A. Yes, ma'am.

4 Q. Had you been in contact with him before this day?

5 A. Yes, ma'am, on numerous occasions.

6 Q. And so you knew his voice, you observed him before?

7 A. Yes, ma'am.

8 Q. And did you hear him say anything?

9 A. Yes, ma'am, when I made entry into the building prior
10 to turning right to head towards the office I saw Steve
11 coming out. I made contact with him. I said are you okay.
12 And Steve said take his ass to jail was -- came out of his
13 mouth.

14 Q. And describe his appearance if you would.

15 A. Steve was pale white. He was not his normal skin tone
16 color. And he just he looked kind of like he was fixing to
17 go into shock, those beginning steps into shock.

18 Q. Before he came out of the office you are saying you
19 didn't hear the victim or the defendant say anything?

20 A. No, ma'am.

21 Q. Okay. And then were you there the whole time that
22 Captain Aarons was communicating with the defendant?

23 A. From after I made my entry, yes, ma'am.

24 Q. And they were having a conversation?

25 A. Yes, ma'am.

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER COFFEY

1 Q. Okay. So the defendant was responding to Captain
2 Aarons?

3 A. Yes, sir.

4 Q. Okay. And at some point did Captain Aarons indicate
5 that the negotiation was not going well and you all were
6 going to change tactics and go into the room?

7 A. Yes, ma'am. He -- he had advised me to hand off my
8 rifle to another officer and to get my Taser out and prepare
9 to make entry into the room.

10 Q. Okay. Tell us what happened when you made entry into
11 the room.

12 A. Captain Aarons breached the doorway hitting the desk
13 that is in the office striking it against the defendant. I
14 then was immediately then behind him with Lieutenant
15 Ramirez. Lieutenant Ramirez discharged his Taser striking
16 the subject.

17 Q. Why did he discharge his Taser?

18 A. Ma'am?

19 Q. Why did he discharge his Taser?

20 A. I don't know why he discharged his Taser.

21 Q. Okay. Keep going.

22 A. He discharged his Taser. The suspect at the time
23 failed to comply with commands at which time I discharged my
24 Taser as well.

25 Q. What were the commands that he was ---

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER COFFEY

1 A. I was staying (sic) stop, stop resisting, put your
2 hands behind your back.

3 Q. Okay. And he wouldn't do that?

4 A. No, ma'am.

5 Q. And so after you used your Taser I am assuming you
6 eventually got him handcuffed?

7 A. Yes, ma'am.

8 Q. And did the defendant say anything to y'all when he was
9 coming out of the office?

10 A. Not to me, no, ma'am.

11 Q. Okay. Did you hear him say anything?

12 A. No, ma'am.

13 Q. Do you remember saying in your report that he said
14 something like you all did good or ...?

15 A. I did not write that, no, ma'am.

16 Q. All right. Fair enough. Thank you, Officer Coffey.

17 MS. GAY: I have no questions for this witness. Thank
18 you.

19 THE COURT: You may step down. You are free to leave,
20 but feel free to stay with us. Thank you.

21 THE WITNESS: Thank you, ma'am. Yes, ma'am.

22 THE COURT: Call your next witness.

23 MS. WILLIAMS: The State calls Lieutenant Schreurs.

24 (WHEREUPON, witness was duly sworn.)

25 THE CLERK: Please have a seat. State your full name

DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS:

1 and spell your last name for the record.

2 THE WITNESS: My name is William Joseph Schreurs. Last
3 name is S-C-H-R-E-U-R-S.

4 THE COURT: Ms. Williams.

5 **DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS:**

6 Q. Lieutenant Schreurs, where do you work?

7 A. I work at the City of Goose Creek Police Department.

8 Q. And how long have you worked there?

9 A. With the City for 13 years.

10 Q. Okay. And what are your duties?

11 A. Currently I am the lieutenant over the criminal
12 investigations division. I am an assistant to the commander
13 which is Captain Soderberg for the daily operations of that
14 division.

15 Q. Okay. And did you respond to the Royal Lanes bowling
16 alley on August 5th?

17 A. I did.

18 Q. Do you remember about what time that was?

19 A. It was probably about 5:30 in the afternoon.

20 Q. Okay.

21 A. During -- during that time I was a patrol lieutenant.

22 Q. Okay. And where had you been directly before that?

23 A. Prior to that I was working a hit and run collision in
24 the parking lot of the EconoLodge.

25 Q. Okay. And after you left the EconoLodge parking lot

1 and went over to the Royal Lanes bowling alley where did you
2 go first?

3 A. Upon arrival to the bowling alley I went straight to
4 the front doors. I was met by a group of people that were
5 existing at the time.

6 Q. And what was the scene like?

7 A. There was a lot of people, chaotic. We were trying
8 to -- from the information received over our radio I was
9 trying to get everybody out and making sure everybody was
10 safe.

11 Q. And you are talking about civilians exiting?

12 A. Civilians, correct.

13 Q. And do you remember whether they were adults, children,
14 mixture?

15 A. There was a mixture.

16 Q. And if you remember, what officers had already arrived?

17 A. It was myself -- I believe I was the first officer to
18 arrive. And then I want to say it was Investigator Fogle.

19 Q. Okay. And what equipment did you bring in with you?

20 A. During that time I was wearing my standard police
21 uniform along with my vest and duty belt.

22 Q. And did you have any idea what kind of call this was or
23 any information about it before you got there?

24 A. It initially came out as a shots fired call through our
25 dispatch.

DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS

1 Q. And as you took -- you went into the building. Did you
2 say what direction you went?

3 A. As I went into the building I did find out that the
4 confrontation was occurring in the office. I am semi
5 familiar with the building, and I knew that was to the
6 right.

7 Q. Okay.

8 A. So I made that turn to the right.

9 Q. And as you approached the office did you hear anything
10 coming from the office?

11 A. As I approached the office I did hear some sort -- it
12 sounded like two people arguing. It sounded like two males
13 from the office.

14 Q. Okay. Could you make out anything they were saying?

15 A. At that time not really.

16 Q. At any time could you?

17 A. The only time I really heard something clear it was
18 after I challenged the door. I asked whoever it was to open
19 the door. I heard a male voice say I can't open the door.
20 I asked why. And I believe it -- he say something to the
21 effect that because he has a gun.

22 Q. Okay. And how long would you say you were there before
23 the victim exited the office?

24 A. It wasn't long. I don't know an exact timeframe.

25 There was a lot of things going on at that point.

1 Q. And at some point the defendant was apprehended. Were
2 you still there at that time?

3 A. Yes.

4 Q. And did you see him being led out?

5 A. Yes.

6 Q. Did you hear him say anything?

7 A. At the time when he was let out and they were checking
8 him for Taser probes, securing him and to make sure
9 everything was all right, I specifically remember him saying
10 to one of our SWAT guys is that man you guys are good and
11 that was fast.

12 Q. Okay. And what was his demeanor like when you observed
13 him?

14 A. When I observed him it was kind of a matter of fact
15 really. Not overly excited.

16 Q. And you said earlier you had been working a case at the
17 EconoLodge parking lot. What kind of case was that again?

18 A. It was a hit and run case.

19 Q. Okay. And at some point in the bowling alley parking
20 lot did you realize that there was a connection between the
21 two cases?

22 A. Yes, as I -- as I exited the bowling alley I was told
23 that the suspect in the bowling alley case had actually
24 driven here and that we had located his vehicle. I looked
25 at his vehicle and it matched the description, my victim

DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS

1 from the hit and run at the EconoLodge gave.

2 I then took a closer look at the vehicle and I saw that
3 the damage profile matched what the victim at the EconoLodge
4 described to me.

5 Q. And the hit and run at the EconoLodge allegedly took
6 place about when? You don't have to give an exact time, but
7 was it close in time to the ---

8 A. It was close in time. Probably ten minutes prior, if
9 that.

10 Q. Okay. And when you approached the vehicle or noticed
11 the vehicle was it secured?

12 A. It was secured.

13 Q. Who was watching the vehicle?

14 A. I believe it was Patrolman Killiam.

15 Q. Was it taped off?

16 A. Yes.

17 Q. Okay.

18 MS. WILLIAMS: I am going to show the witness what has
19 been previously marked as State's 26.

20 MS. GAY: Without objection, Your Honor.

21 MS. WILLIAMS: May I approach?

22 THE COURT: You may.

23 BY MS. WILLIAMS:

24 Q. Tell me if that is an accurate depiction of what is in
25 that picture.

DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS

1 A. Yes, it is.

2 Q. And what is that a picture of?

3 A. That is the picture of Mr. Fraley's vehicle as it is
4 parked in the bowling alley parking lot.

5 Q. Your Honor, at this time we would offer State's 26.

6 THE COURT: State's 26 into evidence without objection.
7 You may publish.

8 (WHEREUPON, State's Exhibit Number 26 was admitted into
9 evidence.)

10 MS. WILLIAMS: Would you please put up State's 26.

11 Q. Is that the vehicle that you saw?

12 A. Yes, that is the vehicle.

13 Q. And explain to the jury why -- I think we have all seen
14 yellow tape in movies and things. But why do y'all do that?

15 A. That is to preserve evidence and make sure everybody
16 knows that that is evidence and not to go near it.

17 Q. Okay. And, Lieutenant, I am going to show you two
18 other pictures that are already in evidence. For the record
19 this is State's 47 and 48. Can you tell me if those
20 accurately depict what you saw that day?

21 A. Yes, they do.

22 Q. Okay.

23 MS. WILLIAMS: Can you put up State's 47.

24 Q. Kind of point to what -- how you determined that this
25 was the same vehicle in the hit and run. Because it is hard

DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS

1 to see in this picture. There's a little pointer right
2 here ---

3 A. Thank you.

4 Q. --- that I keep forgetting to tell y'all about. And
5 there is a red dot where you can point.

6 A. I know this to be the vehicle due to the scuff marks
7 from the parking lot. Also the color, the make and
8 model ---

9 Q. Okay.

10 A. --- was described to me by the victim.

11 MS. WILLIAMS: And can you put up State's 48. Okay.
12 And can you turn it.

13 Q. This is a little closer picture of ---

14 A. Correct.

15 Q. --- the back of the vehicle. Just explain what that
16 is.

17 A. Okay. This is the driver's side. This is the damage
18 profile I was talking about. The victim in the hit and run,
19 Mr. James Pope, when I initially arrived on the scene and he
20 described as he was driving down the parking lot the suspect
21 vehicle was coming out of the -- his parking space, and at
22 the point of where Mr. Pope was he couldn't do anything; he
23 tried to -- tried to make an evasive maneuver but wasn't
24 able to.

25 And the driver's side rear, as you can see here, which

1 that is, struck and scraped his vehicle. There is paint
2 transfer all around here (pointing).

3 And again, the -- Mr. Pope described the vehicle as a
4 Saturn SUV. He said it was a light and blue in color with a
5 South Carolina plate and a white male driver.

6 Q. Okay. And that vehicle goes back to Gary Fraley; is
7 that correct?

8 A. That is correct.

9 Q. Okay. Thank you, Lieutenant. Please answer any
10 questions from the defense.

11 THE COURT: Ms. Gay.

12 MS. GAY: Thank you, Your Honor.

13 **CROSS-EXAMINATION BY MS. GAY OF LT. WILLIAM SCHREURS:**

14 Q. Hi. how are you?

15 A. Good. How are you.

16 Q. I want to get a little bit more detailed with you about
17 this incident that happened in the EconoLodge parking lot.
18 your -- from what I -- what you are testifying is that your
19 victim's description of the event is that he was pulling
20 into the EconoLodge parking lot off of I think Central is
21 the road right there (pointing)?

22 A. His description to me was he was -- if you look at the
23 EconoLodge the ---

24 MS. GAY: One moment, please.

25 Q. Okay. She is going to show you. And the pointer is

DIRECT EXAMINATION BY MS. WILLIAMS OF LT. WILLIAM SCHREURS

1 right there. This is -- we have previously admitted this
2 into evidence. So this is the location where some of this
3 is going on.

4 A. Correct.

5 Q. Can you describe to the jury what you are talking
6 about, please.

7 A. Sure. If you can see, this is the EconoLodge here
8 (pointing).

9 Q. Yes, sir.

10 A. The victim was driving his vehicle -- I want to say
11 this is eastbound, towards -- this is Highway 52 (pointing).
12 He was driving towards 52.

13 What he described was the vehicle was in one of these
14 parking slots here and was coming out like towards the
15 Central Avenue area and while he was going towards 52 and
16 that at this point in the parking lot (pointing) they
17 collided.

18 Q. So what he said to you was the person was pulling out
19 of his parking space and completely disregarded the fact
20 that he was right behind him and hit him?

21 A. Correct, and it struck his vehicle; correct.

22 Q. So he has described that he as he was traveling, you
23 know, had to slam on brakes or do something and then Mr.
24 Fraley's vehicle just pulled right into him ---

25 A. Well ---

CROSS-EXAMINATION BY MS. GAY OF LT. WILLIAM SCHREURS

1 Q. --- and scraped his car?

2 A. What he was describing was he was as he was traveling
3 forward at the point of collision he said there was nothing
4 he could do. He tried to speed up to move forward and make
5 an evasive maneuver away from that but he wasn't able to do
6 that and was struck.

7 Q. And I believe that Mr. -- the Saturn that ultimately
8 was Mr. Fraley's vehicle didn't stop and kept on going?

9 A. I believe so, yes.

10 Q. There was no acknowledgment on his -- on the driver
11 of the Saturn that they -- that he had even hit the other
12 man; ---

13 A. He ---

14 Q. --- they didn't speak?

15 A. They did not speak, no.

16 Q. So they -- the man -- the car never stopped?

17 A. Correct.

18 MS. GAY: I have no further questions, Your Honor.

19 MS. WILLIAMS: Nothing further.

20 THE COURT: You may step down. Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You are free to go, but feel free to stay
23 with us. Call your next witness.

24 MR. POULOS: The State calls EMS John Lee.

25 (WHEREUPON, the witness was duly sworn.)

DIRECT EXAMINATION BY MR. POULOS OF JOHN LEE:

1 THE CLERK: If you will have a seat. State your full
2 name and spell your last name for the record.

3 MR. LEE: My name is John Lee. Last name is spelled
4 L-E-E.

5 THE COURT: Mr. Poulos.

6 MR. POULOS: Thank you, Your Honor.

7 **DIRECT EXAMINATION BY MR. POULOS OF JOHN LEE:**

8 Q. Good afternoon, Mr. Lee. Where do you work?

9 A. City of Goose Creek Fire Department.

10 Q. What is your position there?

11 A. I am a firefighter EMT.

12 Q. How long have you been a firefighter EMT?

13 A. Ten years.

14 Q. And what are your responsibilities in that position?

15 A. As an EMT I am responsible for driving the ambulance
16 and assisting a paramedic in patient care.

17 Q. Were you working on August 5th of 2014?

18 A. Yes, I was.

19 Q. Who were you working with that day; who was your
20 partner?

21 A. A firefighter paramedic, Paul Clendenning.

22 Q. And what is the difference between your position and
23 his position?

24 A. He has more schooling. He can provide more patient
25 care, more advanced care.

DIRECT EXAMINATION BY MR. POULOS OF JOHN LEE

1 Q. Okay. And during the multiple times that you responded
2 regarding this case was he with you?

3 A. Yes, both time.

4 Q. Okay. Were you dispatched to the Royal Lanes on
5 August 5th, 2014?

6 A. Yes, I was.

7 Q. Why?

8 A. For a possible shooting.

9 Q. Okay. And what did you do when you got there?

10 A. When we -- when we arrived at the bowling alley we met
11 with PD and was escorted to the back of a police car to
12 inspect the subject for Taser probes.

13 Q. And was that Gary Fraley?

14 A. Yes, it was.

15 Q. Did you discover any Taser probes were still in his
16 body?

17 A. No.

18 Q. Did he appear to be otherwise injured?

19 A. No.

20 Q. Describe his demeanor for me as you are examining him.

21 A. Kind of playful, jovial.

22 Q. Did he appear to be lucid, rational, reasonable, aware
23 of what was going on?

24 A. Yes, he was able to answer all the questions we had for
25 him.

DIRECT EXAMINATION BY MR. POULOS OF JOHN LEE

1 Q. Okay. Do you know any -- before he responded did you
2 know anything about who Mr. Fraley was or why you were
3 examining him?

4 A. No.

5 Q. And you eventually left the bowling alley?

6 A. Yes, we did.

7 Q. And were you dispatched again a short time later?

8 A. Yes, we were.

9 Q. Where were you dispatched to?

10 A. We were dispatched to the Police Department at 519
11 North Goose Creek Boulevard.

12 Q. And for who?

13 A. For Mr. Fraley.

14 Q. Okay. When you arrived at the Police Department did
15 you or your partner conduct an examination of the defendant?

16 A. Yes, sir, at this time my partner did.

17 Q. And how was the defendant's demeanor at the Police
18 Department?

19 A. A little more agitated.

20 Q. When you say agitated what do you would mean, ---

21 A. He wasn't ---

22 Q. --- irritated?

23 A. Yeah, irritated. He wasn't playful and jovial, when
24 we -- from when we had first encountered him at the bowling
25 alley.

DIRECT EXAMINATION BY MR. POULOS OF JOHN LEE

1 Q. Did he still same ration- -- rational?

2 A. Yes.

3 Q. Meaning he knew who he was?

4 A. Yes.

5 Q. He knew where he was?

6 A. Yes, he could answer the questions that we had for him.

7 Q. He knew who you were?

8 A. Yes.

9 MR. POULOS: I have nothing further, Your Honor.

10 THE COURT: Ms. Gay.

11 MS. GAY: I have no questions for this witness.

12 THE COURT: You may step down. Feel free to stay with
13 us, but you are also free to go.

14 Call your next witness.

15 MR. POULOS: The State calls Paul Clendenning.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please have a seat. State your full name
18 and spell your last name for the record.

19 MR. CLENNENNING: Paul Clendenning,

20 C-L-E-N-D-E-N-N-I-N-G.

21 THE COURT: Mr. Poulos.

22 MR. POULOS: Thank you, Your Honor. If I could have
23 just one moment. I apologize.

24 THE COURT: Take your time.

25 **DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENNENNING:**

DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENDENNING:

1 Q. Good afternoon, Mr. Clendenning. Where do you work?

2 A. City of Goose Creek Fire Department.

3 Q. What do you do for the Fire Department?

4 A. Fire Department paramedic.

5 Q. What does that entail being a paramedic versus being an
6 EMT?

7 A. Level of care, things that we can do, treatments.

8 Basically a paramedic can give more medications, do more
9 cardiac stuff and just a higher level of patient care.

10 THE COURT: Sir, do you mind speaking into the
11 microphone.

12 MR. POULOS: Pull it a little closer to you.

13 MR. CLENDENNING: Is that good?

14 THE COURT: That is good.

15 THE COURT: Thank you, sir.

16 MR. CLENDENNING: Ah, that is better.

17 BY MR. POULOS:

18 Q. And I'm sorry, what kind of training do you have as a
19 paramedic?

20 A. The training it is an ongoing thing. The initial --
21 you have to be a basic first and then move up to an
22 intermediate and then paramedic. So it is a couple of years
23 of schooling.

24 Q. Okay. And how long have you been a paramedic?

25 A. I have held the paramedic certification four years.

- 1 Q. Were you working on August 5th, 2014?
- 2 A. Yes.
- 3 Q. And who was your partner that day?
- 4 A. John Lee.
- 5 Q. Did there come a time when you were dispatched to the
- 6 Royal Lanes on August 5th of that year?
- 7 A. Yes.
- 8 Q. Why were you dispatched?
- 9 A. We were dispatched to check out a subject that was
- 10 tased.
- 11 Q. Okay. And was that subject Gary Fraley?
- 12 A. Yes.
- 13 Q. Did you discover any Taser probes?
- 14 A. No.
- 15 Q. Did he appear to be otherwise injured to you?
- 16 A. No. No, he refused care.
- 17 Q. Did he appear lucid, aware, reasonable ---
- 18 A. Yes.
- 19 Q. --- at that time? Did you know anything about the
- 20 defendant prior to examining him?
- 21 A. No.
- 22 Q. After leaving the bowling alley did you receive another
- 23 dispatch shortly thereafter?
- 24 A. We did.
- 25 Q. And where was that dispatch to?

DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENDENNING

- 1 A. To City Hall.
- 2 Q. And are City Hall and the Police Department in the same
3 general building?
- 4 A. In the same building, yes, sir.
- 5 Q. Why were you dispatched there?
- 6 A. For chest pains.
- 7 Q. Okay. From whom; chest pains for who?
- 8 A. Same guy.
- 9 Q. Gary Fraley?
- 10 A. Yes.
- 11 Q. Okay. And when you arrived at the Police Department
12 did you conduct an exam of Mr. Fraley?
- 13 A. I did.
- 14 Q. And you said he was complaining of chest pains?
- 15 A. Yes.
- 16 Q. Can you go into detail, a little more detail about
17 that. What did he say to you exactly?
- 18 A. He said he had a heart virus.
- 19 Q. Okay.
- 20 A. I am not quite sure what that is, but said he had chest
21 pain, said it was radiating to his arm and to his back. So
22 we put him on the cardiac monitor, checked all of his
23 vitals. Everything appeared to be normal.
- 24 Q. What all tests did you conduct on Mr. Fraley?
- 25 A. I did a three-lead VCG, twelve-lead EKG.

DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENDENNING

1 Q. What are those first two things you said?

2 A. Basically it just takes the rhythm of the heart ---

3 Q. Okay.

4 A. --- and shows you what it is doing, shows you a
5 pressure, shows you the rhythm, shows you the rate, if
6 there's any abnormalities or not.

7 Q. And what was his heart rate at that time?

8 A. The initial time it was 104.

9 Q. Okay. Is that significant?

10 A. Not really. It is -- it shows us a sinus tach rhythm.
11 Normal rhythm -- normal heart rate is 60 to 100, so it was
12 just slightly elevated. You can get that from walking up
13 the stairs.

14 Q. Okay. Did you give him saline, oxygen, and aspirin as
15 well?

16 A. Gave him -- yes. Yes, started an IV, saline flush,
17 aspirin, and oxygen. He did refuse the nitro.

18 Q. You said he refused the nitro. Are you referring to
19 nitroglycerin?

20 A. Yes.

21 Q. And did you offer him nitroglycerin?

22 A. I did.

23 Q. Why?

24 A. Nitroglycerin is a vasodilator. It helps dilate the
25 coronary arteries to reduce oxygen demand and pain -- chest

DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENDENNING

1 pain.

2 Q. And is that something you would offer to someone
3 complaining of chest pains?

4 A. Yes.

5 Q. And you said he refused the nitroglycerin?

6 A. Correct.

7 Q. Did he sign a form indicating his refusal?

8 A. He did.

9 (WHEREUPON, document shown by Mr. Poulos to Ms. Gay.)

10 MS. GAY: I have no objection.

11 MR. POULOS: May I approach, Your Honor?.

12 THE COURT: You may.

13 MR. POULOS: Thank you.

14 Q. I am going to show you what's been marked as State's
15 Exhibit 108. Do you recognize the document?

16 A. Yes.

17 Q. What do you recognize it to be?

18 A. It is our standard treatment or transport refusal form.

19 Q. And is that the one signed by Mr. Fraley?

20 A. It is.

21 Q. And it is a fair and accurate copy of the original?

22 A. Yes.

23 MR. POULOS: I offer that into evidence, Your Honor.

24 THE COURT: Without objection State's 108.

25 (WHEREUPON, State's Exhibit Number 108 was admitted into

DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENDENNING

1 evidence.)

2 Q. How was his demeanor at the time that you were
3 evaluating him at the Police Department; did he still seem
4 lucid, aware, rational, knew who he was, knew who you were?

5 A. Yes. Yes.

6 Q. You asked him questions?

7 A. Uh-huh.

8 Q. He answered?

9 A. He did.

10 Q. Okay. On Page 2 of your report there is a section
11 titled mental status and you wrote no abnormalities. Is
12 that based on your evaluations and conversations with him at
13 the time?

14 A. Yes.

15 Q. Okay. Was he eventually transported to Trident
16 Hospital?

17 A. Yes, he was.

18 Q. And was that done as a precaution?

19 A. Yes.

20 Q. Okay. Did you have any further interaction with him
21 during that transport?

22 A. Just continue to monitor his vitals and condition on
23 the way to the hospital.

24 Q. And on the way to the hospital doesn't his demeanor
25 continue to be rational, reasonable?

DIRECT EXAMINATION BY MR. POULOS OF PAUL CLENDENNING

1 A. Yes.

2 Q. Okay.

3 MR. POULOS: Nothing from the State, Your Honor.

4 THE COURT: Ms. Gay.

5 MS. GAY: Thank you, Your Honor.

6 **CROSS-EXAMINATION BY MS. GAY OF PAUL CLENDENNING:**

7 Q. You indicated in your testimony that you have been
8 working as a paramedic for four years?

9 A. I have held that certification for four years, yes.

10 Q. And I guess you were a regular EMT before that?

11 A. I was.

12 Q. And during that period of time I'm sure you've seen
13 lots of different people that needed treatment in the course
14 of your employment?

15 A. Yes.

16 Q. And the things that y'all do inside the ambulance that
17 you ride in are limited, they -- there's only a certain
18 number of machines and things that you have in that
19 ambulance?

20 A. Yeah, we are basically a rolling ER.

21 Q. Right. And so one of the things that you said that Mr.
22 Fraley complained of was his heart and he said that he had
23 had a heart viruses so therefore you did some of this heart
24 workup?

25 A. Yes.

CROSS-EXAMINATION BY MS. GAY OF PAUL CLENDENNING

1 Q. And that I believe you said involved taking his heart
2 rate which you said was slightly elevated, and doing other
3 things to determine I guess if he was about to have a heart
4 attack?

5 A. Yes.

6 Q. And you showed the form which they have talked about
7 that he refused nitroglycerin but you did say that you gave
8 him saline and oxygen and other things just to kind of help
9 his heart rate go down; is that a fair assessment of what
10 you did?

11 A. The IV is set up for the medication in case we have to
12 give something. Oxygen helped because his O2 saturations
13 were a little low. ---

14 Q. When you say his O2 saturations are a little low, that
15 is that thing like you put on his finger ---

16 A. Yes.

17 Q. --- and to see?

18 A. Yes.

19 Q. And is it -- just to describe that a little bit can you
20 tell the jury what that -- how that works.

21 A. Basically it sends an infrared light through the finger
22 and it reads what is on the hemoglobin.

23 Q. What is on the hemoglobin meaning whether or not the
24 blood has enough oxygen in it?

25 A. Correct.

CROSS-EXAMINATION BY MS. GAY OF PAUL CLENDENNING

1 Q. And so you're -- during the time that y'all were in the
2 EMS you -- your testing had a result that the blood had a
3 little less oxygen in it than it needed or should have had?

4 A. Yes, it was a little low.

5 Q. And I believe that is why you said you gave him the
6 oxygen. And the thing ---

7 A. Yes, because the heart is very greedy for oxygen, so
8 the more that you give it to help relieve the pain it is
9 good.

10 Q. The more you give oxygen to the heart the better it is
11 to calm the heart down?

12 A. Yes.

13 Q. Okay. And the types of things that you did that you
14 weren't able to do or don't normally do in the hos- -- in
15 the EMS is things like CT scans of the brain or anything
16 like that; I mean you are not equipped to do those types of
17 things?

18 A. No, I wouldn't do that.

19 Q. Right. And so the hospital would do that if that
20 needed to be done?

21 A. Uh-huh.

22 Q. So when you were evaluating the mental status of Mr.
23 Fraley what you had to work with was your own personal
24 observations?

25 A. Right.

CROSS-EXAMINATION BY MS. GAY OF PAUL CLENDENNING

1 Q. And the fact that you also said that the oxygen
2 saturation was low and his heart rate was high?

3 A. It was slightly elevated, yes.

4 Q. But nothing -- so if when the solicitor asks you did --
5 what was your impression of his mental status you could only
6 see the exterior parts of Mr. Fraley; you couldn't see what
7 was going on inside his -- you know, inside his body?

8 A. No, but he was conscious and alert and was able to
9 answer every question without delay.

10 Q. I understand. So as I said ---

11 A. So he knew where he was. He knew what time of day it
12 was. He knew what was going on. He knew his name, Social
13 Security number, address. You know, he knew everything
14 about him and what was going on around him, yes.

15 Q. Right. And ---

16 A. So according to my assessment his mental evaluation was
17 normal.

18 Q. All right. I have no further questions. Thank you.

19 A. Thank you.

20 MR. POULOS: Nothing from the State, Your Honor.

21 THE COURT: You may step down. Feel free to stay with
22 us, but you are also free to leave. Thank you.

23 Call your next witness.

24 MS. WILLIAMS: The State calls Officer Wegner.

25 (WHEREUPON, the witness was duly sworn.)

CROSS-EXAMINATION BY MS. GAY OF PAUL CLENDENNING

1 THE CLERK: State your full name for the record and
2 spell your last.

3 OFFICER WEGNER: My full name is Shaun Richard Wegner,
4 W-E-G-N-E-R.

5 **DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER:**

6 Q. Good afternoon, Officer Wegner. Where do you work?

7 A. I work for the City of Goose Creek Police Department.

8 Q. How long have you worked there?

9 A. A total of eight years.

10 Q. And did you respond to the Royal Lanes bowling alley in
11 Goose Creek on August 5th?

12 A. Yes, I did.

13 Q. And at the time that you responded what case had you
14 been working on early in the day?

15 A. I was working on a suspicious activity case involving
16 the defendant Mr. Fraley that was reported by his estranged
17 wife, Deonna Fraley.

18 Q. And what kinds of things were you doing to work that
19 case?

20 A. When Ms. Fraley had come in to report the suspicious
21 activity she was reporting some suspicious Facebook posts
22 and information she had gathered from their neighbor.

23 And basically in the Facebook post there was a -- Mr.
24 Fraley had indicated that he needed to take care some
25 people, one of them being one of the officers, Sergeant

1 Ramirez that worked at the Goose Creek Police Department; a
2 friend of theirs, I believe his name was David; Deonna, and
3 Mr. Tsafos.

4 And during Ms. Fraley's gathering of information with
5 regards to that she ran across a transaction at Traders
6 World, Traders World Gun Store in North Charleston. And she
7 was curious about that also.

8 So during that -- during my investigation I actually
9 contacted Traders World by telephone to see if they could
10 provide the information with regards to what Mr. Fraley had
11 purchased on that transaction. They did not want to provide
12 the information without a search warrant.

13 So at about five o'clock in the afternoon after we came
14 off the road I was actually sitting down at the computer
15 typing a search warrant to get a search warrant for the
16 records from Traders World to determine what he had
17 purchased that day.

18 Q. Okay. And with regard to -- was it Sergeant or
19 Lieutenant Ramirez?

20 A. It was sergeant at the time. He had since been -- he
21 has since been promoted to lieutenant.

22 Q. Okay. With regard to Sergeant Ramirez were you aware
23 of his helping Deonna Fraley in the past?

24 A. Captain Laffey who is the patrol commander had advised
25 me that Sergeant Ramirez had given Ms. Fraley a ride to a

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 hotel to -- I guess there was an ongoing dispute and she was
2 concerned about her safety so Sergeant Ramirez had given her
3 a ride to the hotel as a safety precaution.

4 Q. And Mr. Fraley had a problem with that?

5 A. I believe so. Based on what we could garner from the
6 posts on Facebook.

7 Q. And Mr. -- Reagin, is it; was another person that was
8 threatened; he gave a statement in this case, did he not?

9 A. I never got a chance to talk to him.

10 Q. Okay.

11 A. The incident at the bowling alley had occurred before I
12 was even able to come close to finishing this case.

13 Q. Okay. Did you ever find how out why he was threatened;
14 did Ms. Fraley ever tell you about the allegations Mr.
15 Fraley made about him?

16 A. No, I didn't -- I don't recall any of that so.

17 Q. Okay. All right. So you were working that case and
18 you stopped working that case and went to the bowling alley?

19 A. Right. That is correct.

20 Q. And what was your role generally at the bowling alley?

21 A. The call had just gone out. I had gotten there fairly
22 early with regards to the number of officers that responded.

23 Part of our training when we have incidents like this
24 that evolve really quickly you can't always have the
25 tactical team on the scene immediately so we -- part of our

1 training is we train to group up with the first three or
2 four guys and make a quick entry to secure a scene.

3 Upon arrival at the scene I approached the front door
4 of the bowling alley. Lieutenant Schreurs was already on
5 the scene. There was a couple of other officers there.
6 Officer Hammonds was another officer that was already on the
7 scene.

8 Just due to the chaos I didn't catch the faces of the
9 other officers that were there. But once we had four of us
10 on at the front door we immediately made entry into the
11 bowling alley. And at that point we began to secure the
12 bowling alley looking for any injured parties, any parties
13 involved, anybody that was still trapped in the bowling
14 alley.

15 Q. Okay. And did you observe the victim Mr. Tsafos coming
16 out of the office at some point during this whole escapade?

17 A. Yes, I'm not sure about how long. I don't wear a
18 watch, so I am not sure what the time was, timeframe. But
19 once we went into the bowling alley we basically isolated
20 the incident scene to the manager's office next to the
21 arcade.

22 I could observe from my position -- I was down by the
23 bowling ball rack taking up a position of concealment. I
24 could see the windows to the manager's office. And I could
25 see a shadow moving back and forth behind the venetian

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 blinds. I wasn't sure who that was at that time. I called
2 it out to the other guys that were standing -- the other
3 officers that were standing by the door.

4 A short time later, maybe 30 or 40 minutes -- I don't
5 know the exact time -- Mr. Tsafos emerged from the manager's
6 office at which point I moved up, took Mr. Tsafos away from
7 the immediate scene back to the basically to the main
8 counter at the bowling alley and held him there in case
9 Captain Laffey or Captain Aarons needed to speak with him to
10 gather information about the individual that was inside of
11 the office.

12 Once they came up, got the information they needed, I
13 took Mr. Tsafos out of the building back out to the command
14 post where Captain Grainger and Chief Becker were at.

15 Q. Okay. And at some point did you have some contact with
16 the defendant; what was your role after the whole thing was
17 contained?

18 A. After I had escorted Mr. Tsafos out of the building I
19 was on the outer perimeter. Not too long after that a call
20 came out over the radio that the suspect was in custody, Mr.
21 Fraley. At which point I was next to my patrol vehicle.

22 I moved my patrol vehicle from the side of the building
23 to the front doors in anticipation of transporting Mr.
24 Fraley back to the police station.

25 I then exited my vehicle, grabbed our leg -- my leg

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 shackles, went into the building. As I come into the
2 building Mr. Fraley was being seated in a chair outside the
3 manager's office. He had been tased at that point.

4 At that point I placed leg shackles on him, escorted
5 Mr. Fraley, who was already handcuffed behind his back,
6 escorted him out to my patrol car. Had him sit in the back
7 seat of my patrol car with the door open.

8 Medics responded and checked on Mr. Fraley to the point
9 where -- to check out his Taser points to see if there was
10 any probes still in him or if there was any injuries as a
11 result of the probes being in him.

12 Q. Okay.

13 A. Medics cleared him from that point and then I
14 transported him back to the Goose Creek Police Department.

15 Q. And did he say anything while you had any contact with
16 him that you remember?

17 MS. GAY: Your Honor, I have a matter of law that I
18 would like ---

19 THE COURT: All right. Y'all may approach.

20 (WHEREUPON, bench conference was had 7/15/15, 3:18 p.m.)

21 THE COURT: You may continue. Do you need her to ask
22 the question again?

23 THE WITNESS: Yeah, just one more time real quick.

24 THE COURT: Thank you.

25 BY MS. WILLIAMS:

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 Q. If you remember what he was saying.

2 A. He really wasn't saying a whole lot at that point in
3 time. He didn't -- he wasn't complaining of any medical
4 issues or anything like that. So he transport -- I
5 transported him back to the Goose Creek Police Department in
6 the back of my patrol car. Once we arrived into the sally
7 port area of the Goose Creek Police Department I opened the
8 back seat of my car, had him step out.

9 By policy we don't bring detainees into our detention
10 area, our temporary detention area, without two officers
11 being present. I didn't have a second officer at the time.

12 Mr. Fraley was wearing a heavy coat at the time and he
13 was complaining about being a little bit hot. I believe it
14 was Investigator McWilliams and Officer Moree arrived in the
15 sally port area at which point we escorted Mr. Fraley into
16 the temporary detention center where we removed his jacket
17 and his shoes from him.

18 A secondary search was conducted and then he was placed
19 into a temporary holding cell; Holding Cell Number 2, I
20 believe. And -- yes, Cell Number 2.

21 A short time -- I began the booking paperwork on Mr.
22 Fraley. And as I was completing that booking paper Mr.
23 Fraley started complaining of pains, at which point medics
24 were dispatched -- or were requested to come check on Mr.
25 Fraley.

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 He was complaining of severe chest pains. When medics
2 arrived they went into the cell and Mr. Fraley was
3 complaining of a heart virus. Which I never heard of a
4 heart virus before, so it kind of took me a little bit by
5 surprise.

6 The medics conducted an initial evaluation based on
7 what they were saying. His vital signs appeared to be
8 normal. They said his heart rate was slightly elevated.
9 But he was transported to the Trident Hospital as a
10 precaution.

11 At that time I accompanied Mr. Fraley to Trident
12 Hospital in the medic unit. Just prior to us leave the
13 station I was advised by one of the investigators that we
14 needed to collect his clothing as evidence.

15 Once we arrived at the hospital and we were in the
16 examination room Officer Mitchum arrived on the scene as a
17 secondary officer.

18 At that point we removed Mr. Fraley's clothing.
19 Actually Mr. Fraley was allowed to remove his clothing on
20 his own. His clothing was bagged in a red biohazard bag
21 just due to the bodily fluids that was on his clothing.

22 Then I turned custody of Mr. Fraley over to Officer
23 Mitchum. Investigator McWilliams responded to Trident
24 Hospital, collected me. I retained possession of the
25 clothing in the biohazard bag, returned to the Goose Creek

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 Police Department. At which time I transferred the clothing
2 which was his pants and his shirt at that point. He wasn't
3 wearing any underwear. I transferred those items into a
4 paper evidence bag and secured that into a temporary
5 evidence locker along with his shoes and his jacket. And
6 those were placed in a separate bag.

7 Q. Did he have any underwear with his clothes?

8 A. No, he was not wearing any underwear. The only things
9 he was wearing was his heavy jacket, a shirt, a pair of blue
10 jean pants and a pair of shoes.

11 Q. How did he seem; did he know what was going on; was he
12 coherent?

13 A. He seemed fine up until the point where he started
14 complaining of ailments, his chest pains. And but at
15 that -- you know, other than that he seemed acting normal.
16 You know, obviously a little bit stressed being tased. It
17 is -- that's ---

18 Q. Did he say anything about being tased that you were
19 aware of?

20 A. He said it was -- I think he said it was pretty much --
21 it was impressive, it was -- I don't think he said shocking.
22 But he said it was impressive so.

23 Q. Okay. Thank you, Officer Williams.

24 A. Uh-huh.

25 Q. Where did you bring his clothes after you were done

1 with them?

2 A. I brought them back to the Goose Creek Police
3 Department and I transferred them to a paper evidence bag
4 because you don't want to have anything with bodily fluids
5 in a plastic bag because it can actually destroy the
6 evidence on it. So it was placed into a paper bag.

7 And those bags with his -- the clothes I gathered from
8 the hospital were placed into one evidence bag and secured
9 in the temporary evidence locker.

10 And his jacket and shoes that were removed prior to him
11 going to the hospital since those were recovered at a
12 separate location a separate evidence form was conducted.
13 Those items were placed in a separate paper bag and those
14 were secured in a temporary evidence locker ---

15 Q. And ---

16 A. --- at the police station.

17 Q. Okay. Thank you. And the person that has access to
18 that evidence locker is who; who is your evidence custodian?

19 A. Evidence custodian is Wendy Myers. And basically the
20 way the evidence lockers work on the detention center side
21 of the evidence lockers we have they basically kind of look
22 like bowling alley lockers essentially. They are small,
23 square. We have a couple of long ones for long items and
24 everything like that.

25 But the lockers open from one side. We have a little

DIRECT EXAMINATION BY MS. WILLIAMS OF OFFICER SHAUN WEGNER

1 golf tee in the lock essentially that prevents the lockers
2 from locking when there's nothing in them. And what happens
3 is we open the door, we place the evidence in, we place the
4 evidence control form on top of the evidence, we remove that
5 golf tee, place it inside the locker, and then we close the
6 locker door and then there is no key to open it.

7 The back side of the lockers actually open into the
8 evidence vault, and the only person that has access to that
9 is the investigative --- or the evidence techs.

10 And they can open it from the back side and retrieve
11 the evidence out. And then they actually have to reset the
12 locks to the locker so we can access them from their side.

13 Q. I see. Okay. Thank you. Please answer any questions
14 from the defense.

15 A. Okay.

16 **CROSS-EXAMINATION BY MS. GAY OF OFFICER SHAUN WEGNER:**

17 Q. Okay. I just have one line of questioning that I want
18 to ask you. You said that in your investigation of the
19 suspicious activity that you became aware that - at that
20 time Sergeant, who is now Lieutenant - Ramirez had given his
21 wife Deonna a ride to a hotel.

22 A. That's correct.

23 Q. Are you aware that that hotel is the EconoLodge?

24 A. No, I was not aware that the hotel was the EconoLodge.
25 I don't even know what day it happened so.

DIRECT EXAMINATION BY MS. WILLIAMS OFFICER DAVID MITCHUM

1 MR. POULOS: I have no further questions, Your Honor.

2 THE COURT: All right. Redirect?

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: You may step down. Feel free to stay with
5 us, but you are also free to go.

6 (WHEREUPON, the court addressing the jury as follows:)

7 THE COURT: Do y'all need a break; do you need a
8 comfort break? You need a pencil sharpener.

9 (WHEREUPON, bailiff assisted the jury.)

10 THE COURT: Call your next witness.

11 MS. GAY: Your Honor, I have run out of paper. Could
12 we have just a few minutes break. I need to get another
13 pad.

14 MS. WILLIAMS: Here, I can give you some.

15 (WHEREUPON, paper supplied to Ms. Gay.)

16 THE COURT: Who is your next witness?

17 MS. WILLIAMS: Officer Mitchum.

18 (WHEREUPON, the witness was duly sworn.)

19 THE CLERK: Have a seat. State your full name and
20 spell your last name for the record.

21 THE WITNESS: David Mitchum, M-I-T-C-H-U-M.

22 **DIRECT EXAMINATION BY MS. WILLIAMS OFFICER DAVID MITCHUM:**

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Where do you work?

DIRECT EXAMINATION BY MS. WILLIAMS OFFICER DAVID MITCHUM

1 A. Goose Creek Police Department.

2 Q. We knew the answer to that. How long have you worked
3 there?

4 A. Going on three years now.

5 Q. And did you work anywhere before in law enforcement?

6 A. I worked for Berkeley County Sheriff's Department for
7 five-and-a-half years and also Goose Creek before that for
8 two years.

9 Q. Okay. And what are your duties and responsibilities
10 under your present capacity?

11 A. Presently I am a member of the strategically assigned
12 officers, for SAO. We have a three-man unit that hit high
13 crime areas located within the city. And I am also a member
14 of the SWAT team.

15 Q. Okay. Did you respond to Royal Lanes bowling alley on
16 August 5th?

17 A. Yes, ma'am.

18 Q. And were you -- did you respond as part of SWAT?

19 A. Yes, ma'am.

20 Q. Okay. And by the time you got there had the defendant
21 already been apprehended?

22 A. No, ma'am.

23 Q. Had the victim already come out?

24 A. Yes, ma'am.

25 Q. And did you play a role in his apprehension?

1 A. Yes, ma'am, I was the fourth person in line in stack
2 that I should have went into the room. There was three in
3 front of me. Two of them were actually apprehending him. And
4 it was such a small enclosed area that instead of getting in
5 with that I just cleared the room so they could apprehend
6 him safely.

7 Q. And when you say stack you mean sort of line single
8 file?

9 A. Yes, ma'am.

10 Q. And after that took place were you given any
11 instructions with regard to the defendant as far as what to
12 do next?

13 A. At that time, no. Further after the incident I was
14 tasked with going down to the hospital to watch him since he
15 was in custody because he had to go to the hospital.

16 And at that time I was instructed not to talk to him or
17 say anything to him, just go down there and watch him and
18 when he was clear to bring him back.

19 Q. You were instructed not to talk to him?

20 A. Yes, ma'am.

21 Q. Not to ask him any questions?

22 A. Correct.

23 Q. Not to mirandize him because he's -- you're not to ask
24 him any questions?

25 A. Yes, ma'am.

DIRECT EXAMINATION BY MS. WILLIAMS OFFICER DAVID MITCHUM

1 Q. When you got to the hospital where was he?

2 A. He was at an emergency room on -- on a bed, handcuffed
3 to the bed.

4 Q. And if you know, about how long did Mr. Fraley stay at
5 the hospital?

6 A. I would say at least an hour, if not an hour-and-a-
7 half. It was a pretty good ways.

8 Q. Okay. And where did you position yourself in relation
9 to him while he was on the ---

10 A. I was on the opposite side of the bed with my back
11 against the wall sitting in a chair.

12 Q. Did he say anything to you?

13 A. Yes, ma'am, he -- he had told me that, you know,
14 certain things throughout the day. He told me that was --
15 had went and picked up a friend of his daughters and said
16 that he was supposed to be taking her to a birthday party at
17 the bowling alley. And he had said that talking to an
18 innocent child he thought that, you know, talking to her
19 might talk him out of killing himself.

20 Q. Okay.

21 A. He said on the way to the bowling alley that he stopped
22 by a hotel room, which was his hotel room, because he
23 wanted to get some cigarettes. And he said the girl had to
24 go poo-poo.

25 And then he said while at the hotel room he said he

DIRECT EXAMINATION BY MS. WILLIAMS OFFICER DAVID MITCHUM

1 opened up a beer and took a swallow of it but didn't like
2 the taste of it.

3 And then he said from there he went to the bowling
4 alley and he said he gave -- well, I guess he left the girl
5 in the car is what he said and gave her the keys to his cell
6 phone and told the girl that he probably wouldn't see her
7 again.

8 Q. Did he say what hotel it was?

9 A. No, ma'am.

10 Q. Would it refresh your memory to look at your report?

11 A. Sure.

12 MS. WILLIAMS: May I approach, Your Honor?

13 THE COURT: You may.

14 A. I think he said EconoLodge or not.

15 Q. Whatever you put in your report.

16 (WHEREUPON, report provided to witness.)

17 Q. I think it is like toward the bottom.

18 A. Yeah, he said EconoLodge.

19 Q. Okay. And when did you do that report?

20 A. It would have been when I got back to the police
21 department. The day after.

22 Q. So after you did this report it probably would have
23 been fresher in your mind?

24 A. Yes, ma'am.

25 Q. I don't have any other questions, Officer Mitchum.

State vs. Gary Fraley

1 THE COURT: Ms. Williams, your witness.

2 MS. WILLIAMS: Thank you.

3 **DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD:**

4 Q. Ms. Drozd, where do you work?

5 A. I work for MUSC physicians child abuse pediatrics
6 division. I worked ---

7 Q. And how long have you worked as a nurse?

8 A. Since January 2011.

9 Q. And what type of training is required to become a
10 registered nurse?

11 A. You need to complete a certified program and then take
12 your boards. It is an examination in South Carolina. It's
13 you have to pass the South Carolina board certification
14 exam.

15 Q. And do you have to have continuing education as well?

16 A. Yes, you need to maintain 30 -- for South Carolina to
17 maintain your license 30 continuing education credits within
18 a two-year period.

19 Q. And you said you work for the child abuse pediatric
20 unit?

21 A. Child abuse pediatric division, the sexual assault
22 team.

23 Q. So you are considered a SANE nurse?

24 A. Yes.

25 Q. When we said SANE we don't mean like insane sane?

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 A. No.

2 Q. What does SANE stand for?

3 A. Sexual assault nurse examiner.

4 Q. Okay. And are there additional requirements in order
5 to become a SANE nurse?

6 A. Well, there's two kinds of SANE nurses. There's
7 pediatric and there's adults. Pediatric includes child and
8 adolescent. So preadolescent and adolescent.

9 And in order to maintain -- to obtain a certification
10 or those qualifications in South Carolina you have to take
11 a -- we do a 40-hour didactic training course online with
12 assignments and lectures and that kind of stuff.

13 We do five clinical days with -- at the child advocacy
14 centers where we see patients and learn the process that
15 they go through the entire -- you know, the entire process
16 from examination to finish.

17 Q. Okay.

18 A. We also do a pelvic clinic where we have a live model
19 do demonstrate how to perform cervical exams, speculum
20 exams. We also have a solicitor's -- a session with the
21 solicitor to learn the legal -- the legal aspects. And then
22 we also meet with South Carolina Law-Enforcement Division,
23 the forensic. We do a tour of the forensic facility.

24 In addition to that you need to have two prepubescent
25 and two adolescent exams. And then every year to maintain

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 that certification you have to do 12 hours of continuing
2 education credits. Eight of those have to be with sexual
3 assault of child and adolescent. And in addition to that,
4 maintain 10 exams per year.

5 Q. Okay. And the reason that you have to have additional
6 training with a solicitor's office and South Carolina Law-
7 Enforcement Division is because you are collecting evidence?

8 A. Yes.

9 Q. Okay. And were you working in this capacity on August
10 5th, 2014?

11 A. Yes.

12 Q. And did you have an opportunity to treat a patient
13 named Minor 1

14 A. Yes.

15 Q. And did you obtain some general information concerning
16 the patient and medical issues specific to her?

17 A. Yes.

18 Q. And what is that called?

19 A. We do a full medical history on all patients that come
20 through the door.

21 Q. And when you do a medical history does that involve
22 talking to other people besides the patient to try to figure
23 what happened and why they are there?

24 A. Yes.

25 Q. And is that done routinely?

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 A. Yes.

2 Q. Why is that important?

3 A. So the medical history, number one, determines if there
4 are any acute medical issues or prevalent medical issues
5 that need to be treated immediately. There also, a complete
6 history helps to guide our exam. It helps to determine if
7 there's any previous medical conditions or possible injuries
8 that have healed that would affect the results of an
9 examination.

10 It also helps to guide your examination so that you
11 know where you're going to -- whether or not you are going
12 to test for infections, where you would collect evidence
13 from. And it also helps guide your -- the diagnosis and
14 medical treatment afterwards like medicines and that kind of
15 stuff.

16 Q. So there are specific things you have to get to find
17 out what medical treatment and diagnosis to engage in?

18 A. Yes.

19 Q. So would it be important to know when a sexual assault
20 occurred?

21 A. Yes.

22 Q. Would it be important to know if ejaculation occurred?

23 A. Yes.

24 Q. Penetration?

25 A. Yes.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 Q. In this case were you informed by the patient that she
2 was raped?

3 A. Yes.

4 Q. Did she tell you when?

5 A. Yes.

6 Q. And when was that?

7 A. Earlier that day. In the afternoon. And I saw her in
8 the evening.

9 Q. Did she say where?

10 A. A hotel in Goose Creek, EconoLodge.

11 Q. Okay. And was she able to tell you if ejaculation had
12 occurred?

13 A. She was not aware of that.

14 Q. Okay. Do you think -- she didn't know?

15 A. She didn't know. It's also a very large concept for a
16 young person ---

17 Q. Right.

18 A. --- to understand.

19 Q. So her age -- she doesn't understand that?

20 A. Yeah.

21 Q. And did she tell you if penetration occurred?

22 A. Yes.

23 Q. And where did she say that penetration occurred?

24 A. Mouth, vagina, and anus.

25 Q. Okay. And knowing that information does that determine

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 whether or not you're going to do a certain kind of exam?

2 A. Absolutely.

3 Q. So with this child having been raped within -- what
4 period of time would you then do an acute exam?

5 A. Well, because she was prepubescent, has not -- did not
6 at that time have her period yet, it has to be within three
7 days. Adolescents are five days. But she fell within that
8 three-day period.

9 Q. Okay. And is it your -- in your experience as a SANE
10 nurse do children always tell right away; do you sometimes
11 examine ---

12 A. No, they do not.

13 Q. Okay. So you determined that you were going to do an
14 examination of this child. And so tell us a little bit
15 about what that examination entails.

16 A. Well, there's -- there are a couple of different
17 aspects of our examination. First of all we want to
18 determine that a child is medically stable. This is the
19 most important part.

20 If they need any further assistance or help from any of
21 services in the hospital we have to determine that first; is
22 there bleeding, is there pain, we address that first.

23 Then you look at, you know, what kind of treating them
24 medically further out what kind of infections could they
25 have been exposed to.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 You swab for infections. Sample -- send samples off to
2 our own lab. You also do the complete evidence collection
3 kit for the investigation.

4 Q. And would it be important to determine whether or not
5 this child was given any drugs or alcohol?

6 A. Yes, that is part of our questioning.

7 Q. And what she?

8 A. She told me she had NyQuil and alcohol.

9 Q. Okay. And did she say she took those voluntarily or
10 they were given to her?

11 A. They were given to her. Forced.

12 Q. Okay.

13 A. She told me forced.

14 Q. And so not to be too graphic, but when you do an
15 examination of the child are they just on a table or are
16 they in stirrups; how is that accomplished?

17 A. No, it is not too graphic. So it is a full -- a full
18 body exam. They have to strip down. In some cases we take
19 their clothing and have -- they had to -- in some cases they
20 have to strip down in front of us, leave their clothing on a
21 sheet, put on a gown. They are in a bed that the bottom
22 half of the bed drops away and stirrups come up.

23 This is a full -- full skin evaluation, first with the
24 naked eye and then using a Wood's light which it is kind of
25 like a black light where you shut the lights out, wear

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 glasses and use a special flashlight that would illuminate
2 any fluid on the body.

3 Then it is a full, you know, genital exam where you
4 take photographs. We take photographs to document any
5 trauma and then, you know, to monitor the healing process
6 later on.

7 And that exam will include swabs both for the kit and
8 for sexually transmitted infections. Depending on what
9 happened, depending on whether or not there is -- was bodily
10 fluid exposure, depending on whether or not there is a break
11 in the skin, some kind of trauma where either vaginal or
12 rectal tissue has been torn where the fluid can be exposed,
13 then at that point we do further testing.

14 Q. Okay.

15 A. So HIV testing. That requires drawing blood. We also
16 draw blood for toxicology in our own hospital and that we
17 send off in a kit. We take urine that goes in the kit and
18 gets tested in our own hospital.

19 I am trying to think if I left anything out.

20 Q. Do you use a speculum?

21 A. We only use speculum for those that have already gotten
22 their period.

23 Q. So she was too young?

24 A. And -- and we also determine if they have too much
25 trauma. This child was too young.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 Q. Okay.

2 A. And I probably wouldn't have done it anyway.

3 Q. Because of the trauma?

4 A. Yeah.

5 Q. As so as far as your examination of this child how
6 long -- how long was this family at the hospital, generally?

7 A. Well, I am not called until they are there and ready
8 for me. So they -- I don't know how long they were there
9 before I got there.

10 From the time I got there around six o'clock -- around
11 six o'clock -- sorry, that's my report. And I signed off on
12 the kit -- it would be on the back of the kit -- somewhere
13 around 3:00 a.m.

14 Q. Okay. And did you fill out a form; like do you have
15 some kind of form you use as a protocol to sort of record
16 your observations?

17 A. Yes.

18 Q. And is there a section on physical findings?

19 A. Yes, and I brought a blank one too if you need it.

20 Q. Okay. And what physical findings did this child have?

21 A. So the way we document we look at kind of superimposing
22 or placing on top an imaginary clock face. And if you could
23 imagine a person lying down with their stomach facing the
24 ceiling and you are looking directly at the vagina twelve
25 o'clock would be on the top where the clitoris would be, and

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 six o'clock would be on the bottom more toward the anus.

2 So in this case at six o'clock there is a tender -- a
3 think piece of skin where the two, the inner labia, the
4 inner folds of the vagina and the outer folds of the vagina
5 have at one point met. That is called the posterior
6 fourchette. There was a laceration through the posterior
7 fourchette. And there is a superficial layer of skin. This
8 went through the superficial layer down into the deeper
9 tissue.

10 There -- it was oozing blood. There was also -- and
11 that was directly at six o'clock. From four o'clock to
12 eight o'clock was a -- that entire area had what we call
13 erythema or redness.

14 And then for the same position and the same clock face
15 looking at the anus was an 11 o'clock there was what we call
16 a fissure which is tear. And eleven o'clock and eight
17 o'clock both had fissures. And then that's within the anal
18 folds. But then sort of beyond that was more erythema or
19 redness around throughout the anus.

20 Q. Okay. So you're saying she had a vaginal laceration,
21 deep, past the first layer?

22 A. Past the superficial layer.

23 Q. And she had two anal fissures or lacerations or tears?

24 A. Uh-huh.

25 Q. And you noted the presence of oozing blood?

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 A. Yes.

2 Q. And what -- what does the presence of blood in an exam
3 mean in terms of treatment?

4 A. First of all there's -- it means that we have broken
5 through the initial layer of skin and more vascular or blood
6 flowing tissue is exposed, which means that if you have been
7 exposed to an infection once you have a break in skin there
8 that gives it a pathway to get into the body.

9 So when we see a break in the skin in this way and we
10 know that there has been exposure to bodily fluids we then
11 take that testing to the next level which would have HIV
12 testing and syphilis ---

13 Q. Okay.

14 A. --- which we did ---

15 Q. Okay. So the fact that she had blood means she would
16 have to get -- now she had to have HIV testing?

17 A. And in addition to that you progress to the meds. And
18 a lot of decisions have to be made at that point because she
19 is prepubescent before having her period.

20 We -- it is extremely rare for us to give these meds to
21 these little -- littler ones. In addition to that there are
22 a lot of implications when you give HIV meds that have to be
23 considered.

24 You want to make sure -- I mean obviously the break in
25 skin and the exposure to fluids increases the risk of

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 transmission of such an infection if it is present. But the
2 whole -- in taking that -- those HIV meds it could eliminate
3 the possibility down the road if this child needs those meds
4 if she is exposed later on in life to HIV it could mean not
5 only can't she get the two component meds that are within
6 this - Truvada is what the med is called - but in addition
7 to that it could possibly eliminate an entire class of HIV
8 and AIDS meds that they could take down the road.

9 So we really have to very strongly consider whether or
10 not these meds should be given. And in this case it did
11 warrant it.

12 Q. It did warrant?

13 A. Yeah.

14 Q. So she got the HIV meds. Did she tell you if a condom
15 was used in her rape?

16 A. She said no condom was used.

17 Q. After you get all of these swabs done and everything,
18 what do you do with them?

19 A. For the -- well, so the swabs for our -- that get
20 tested for sexually transmitted infection go into specific
21 tubes that are labeled and they go off to our labs within
22 MUSC.

23 The kit itself has -- it is very meticulous evidence
24 collection. We follow very strong procedures. I do
25 everything -- lay everything out and everything is -- when a

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 swab is taken I put on a label identifying where that came
2 from, and it goes into a special tray so nothing can be --
3 no -- there is no contamination.

4 When you are done with the exam and all of those swabs
5 are collected they go into a dryer. They never --
6 nothing -- once the kit is opened it doesn't leave my
7 sight. And the components don't leave my sight except for
8 the swabs to go in the dryer which is under lock and key,
9 and then I have the key.

10 Q. Okay.

11 A. And then we process the kit. Everything dries.
12 Complete the report. That goes within the kit which is --
13 includes our findings and everything. And a copy of that
14 report goes in the kit.

15 The kit then gets sealed with evidence tape. And I
16 sign those after everything inside has been labeled. When I
17 open the kit I sign the outside of it. The case number goes
18 on it. That stays with me until either the Law Enforcement
19 Division that is running this case comes to get it or Public
20 Safety through MUSC.

21 Q. Okay.

22 A. And then they sign off on it and they take custody.

23 Q. So you do a careful chain of custody. In this case did
24 you collect the child's clothing in addition to the kit?

25 A. Yes. Can I look at that? This is my actual report.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 Q. Yes.

2 A. So we took I believe underwear -- I want to say it was
3 underwear, shirt and pants.

4 (WHEREUPON, pause for review of documents.)

5 A. Shirt, pants, and underwear were collected.

6 Q. Okay. One moment.

7 MS. WILLIAMS: Your Honor, I am going to show defense
8 counsel what has been previously marked ---

9 MS. GAY: I have seen them. I am good.

10 MS. WILLIAMS: --- as State's 90 and 91. May I
11 approach?

12 THE COURT: You may.

13 BY MS. WILLIAMS:

14 Q. So we are going to open this item, but before we do
15 explain what this is and how you know that that is the
16 packaging that you put those items in.

17 A. So this is added later by -- this is added later by --
18 by a separate entity.

19 Q. Oh, okay.

20 A. I don't fill this out (pointing). I fill this out
21 (pointing).

22 Q. Okay.

23 A. And I attached these evidence -- this evidence tape and
24 sign them. That is my initials right there (pointing).

25 Q. Okay. And I'm going to open what is in 90, and can you

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 tell us if this is the child's clothing?

2 A. Yes, that was her shirt.

3 Q. Okay. And these are the shorts you were talking about?

4 A. Yes.

5 MS. WILLIAMS: Your Honor, at this time we would offer
6 State's 90 into evidence.

7 THE COURT: State's 90 into evidence without objection?

8 MS. GAY: No objection.

9 (WHEREUPON, State's Exhibit Number 90 was admitted into
10 evidence.

11 Q. And I am showing you State's 90. And you keep talking
12 about a kit. Are you talking about a sexual assault
13 evidence collection kit?

14 A. Yes.

15 Q. And how do you know that this is the kit that you put
16 all of the swabs and the underwear and all that stuff in?

17 A. So when I initially open the kit I date and time it and
18 I sign it.

19 Q. Okay.

20 A. And from that point on it doesn't leave my hands until
21 it is sealed and it gets signed again by whoever is picking
22 it up from me.

23 And this initial -- these initials (pointing) I do four
24 of them; and they all have my initials on them, the seal
25 tape.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 Q. Okay.

2 MS. WILLIAMS: At this time, Your Honor, we would move
3 State's 91 into evidence.

4 THE COURT: Any objection?

5 MS. GAY: No, ma'am.

6 THE COURT: State's 91 into evidence without objection.
7 (WHEREUPON, State's Exhibit Number 91 admitted into
8 evidence.

9 MS. WILLIAMS: Court's indulgence.

10 THE COURT: Take your time.

11 BY MS. WILLIAMS:

12 Q. Was a blood-draw a part of the examination?

13 A. Yes, ---

14 Q. Okay.

15 A. --- for the H-I- -- both for HIV, also for toxicology
16 looking for alcohol and the contents of the NyQuil that I
17 was told that she took.

18 That went to our lab and then it also went in the kit
19 to be sent off for toxicology from the SLED team.

20 MS. WILLIAMS: I am going to show defense counsel what
21 has been marked as 116.

22 THE COURT: One, one, six?

23 MS. WILLIAMS: Yes, Your Honor. And I am approaching
24 the witness if that is okay.

25 THE COURT: You may.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 Q. Do you see a blood vial in there?

2 A. Yes, and it has got my initials on it. And it has the
3 patient's label from our hospital and the time of
4 collection.

5 Q. And you collected this; you secured it; and it went
6 through the same kind of process that you are talking about
7 before where you make sure that it is always in your
8 possession until it is signed off by someone else?

9 A. Yes. The blood draw was done by one of the EG nurses
10 while I was present and then I took it from her to label it
11 and put it in the kit.

12 MS. WILLIAMS: Your Honor, at this time we would move
13 State's 91 into evidence.

14 MS. GAY: Without objection, Your Honor.

15 THE COURT: State's 91 or ---

16 MS. WILLIAMS: Oh, I'm sorry. State's one ---

17 THE COURT: ... sixteen.

18 MS. WILLIAMS: One sixteen. Thank you.

19 THE COURT: Ninety-one is in. One sixteen, no
20 objection, Ms. Gay?

21 MS. GAY: No, ma'am.

22 THE COURT: One sixteen into evidence without
23 objection.

24 (WHEREUPON, State's Exhibit Number 116 was admitted into
25 evidence.

DIRECT EXAMINATION BY MS. WILLIAMS OF KAREN DROZD

1 MS. WILLIAMS: Thank you. I have no more questions,
2 Ms. Drozd.

3 THE COURT: Ms. Gay.

4 MS. GAY: I have no questions for this witness.

5 THE COURT: You may step down. Feel free to stay with
6 us, but you are also free to leave. Thank you.

7 Call your next witness.

8 MR. POULOS: The State calls Tracy McKinnon.

9 THE COURT: Go ahead and swear Ms. McKinnon.
10 Counsel approach for just a moment.

11 (WHEREUPON, bench conference was had.)

12 (WHEREUPON, the witness was duly sworn.)

13 THE CLERK: Have a seat. State your full name and
14 spell your last name for the record.

15 THE WITNESS: Tracy Allen McKinnon, M-C-K-I-N-N-O-N.

16 THE COURT: All right, Ms. Poulos, your witness.

17 MR. POULOS: Thank you, Your Honor.

18 **DIRECT EXAMINATION BY MR. POULOS OF TRACY MCKINNON:**

19 Q. Good afternoon, Mr. McKinnon. Please tell us where you
20 work.

21 A. I work for the South Carolina State Law Enforcement
22 Division. And it is more commonly referred to as SLED.

23 Q. And what is your position there?

24 A. I am a forensic toxicologist.

25 Q. What does that entail?

DIRECT EXAMINATION BY MR. POULOS OF TRACY MCKINNON

1 A. A forensic toxicologist is a scientist who examines
2 biological specimens such as blood or urine, really anything
3 that can come from the body, for the presence or absence of
4 drugs, alcohols or other poisons.

5 Q. Can you describe for the jury your training, background
6 and education, please.

7 A. Yes. I have got a bachelor of science with a chemistry
8 major from the University of North Carolina in Charlotte. I
9 have got a master's of science in forensic science with a
10 forensic toxicology degree from Arcadia University.

11 I went through the SLED in-house training program which
12 lasted roughly nine months. And since then I have been a
13 board certified toxicologist with the American Board of
14 Forensic Toxicology for the last nine years.

15 Q. Thank you. I want to show you what is already in
16 evidence as State's 116. I just have to find it. I show
17 that to you. Do you recognize the blood sample contained
18 within that bag?

19 A. Yes, I do.

20 Q. What is it?

21 A. It appears to be a small, gray-topped tube of blood
22 labeled Vick, Minor1 And there is also a urine collection
23 container in here with a -- that contains urine.

24 Q. Did SLED conduct tests on that blood specimen?

25 A. Yes, we did. I have got my initials are on one of the

DIRECT EXAMINATION BY MR. POULOS OF TRACY MCKINNON

1 seals of the bag and as well as the initials of other
2 analysts in the lab that would have conducted preliminary
3 examinations on the sample.

4 Q. Thank you. Mr. McKinnon, when did you receive -- when
5 did SLED receive this blood sample? And if you need to
6 refer to your report, that is fine.

7 A. SLED received this October 17th, 2014.

8 Q. And who was at SLED that logged this specimen in?

9 A. It would be Amy Stevens.

10 Q. Okay. And according to your report what did Ms.
11 Stevens do with it?

12 A. Amy Stevens is our -- is one our evidence log-in
13 technicians, and her primary function is to take evidence
14 that comes in either by actual personal conventions from
15 police agencies or coroner office -- coroner's offices
16 throughout the state or are actually mailed into SLED from
17 jurisdictions that are it makes more sense for them to
18 actually mail those samples.

19 But it is her job to take the samples and place them in
20 the sealed bag to establish the chain of custody at SLED.

21 Q. And what did Ms. Stevens do specifically with this
22 blood sample?

23 A. After it was received she then placed it in a
24 refrigerator that is specifically labeled for toxicology --
25 for the toxicology department.

DIRECT EXAMINATION BY MR. POULOS OF TRACY MCKINNON

1 Q. Okay. Who was the next person at SLED to take the
2 sample from the refrigerator?

3 A. Doris Yarborough.

4 Q. What did she do with it?

5 A. She merely would have taken the evidence out of the --
6 out of our intake storage unit and actually handed it to one
7 of our analyst, Kevin Selinsky.

8 Q. Could you please tell the jury what Mr. Selinsky did
9 with the sample.

10 A. Mr. Selinsky would have transferred that evidence up
11 into the toxicology department, photographed the evidence,
12 and inventoried the contents of the evidence that was
13 received.

14 Q. And who was the next person to examine the blood
15 sample?

16 A. That would be another analyst, Stacey Mathew.

17 Q. What did Ms. Mathew do with it?

18 A. Ms. Mathew would have done the very first test that we
19 perform on any -- any samples that we receive. And that
20 would be a blood-alcohol volatiles analysis.

21 Q. What were the results of Ms. Mathews' test?

22 A. We screened specifically for ethanol and three other
23 volatile compounds, and in this case it was negative for
24 ethanol.

25 Q. And who was the next person after Ms. Mathew to again

1 examine the blood sample?

2 A. That would have been Kevin Selinsky once again.

3 Q. What did he do with the sample at that point?

4 A. He would have done a basically a broad-based drugs of
5 abuse screen looking for drugs that are commonly abused such
6 as cocaine, marijuana, methamphetamine, drug classes such as
7 that.

8 Q. What were the results of his test?

9 A. For that 11-panel test it was completely negative.

10 Q. And lastly, Mr. McKinnon, did you eventually take
11 possession of the blood sample and the urine test?

12 A. Yes, once the preliminary screens were completed then I
13 would have taken custody of the evidence and then completed
14 testing at that point.

15 Q. And what test was it that you conducted?

16 A. We do a basic comprehensive screen looking for drugs
17 that don't necessarily fall into the classes for which we
18 are specifically screening. And it's basically over-the-
19 counter medications, other drugs that just don't fit nicely
20 into -- into certain drug classes.

21 And that analysis is completed by a technology called
22 gas-cromatography mass spectrometry and then also a targeted
23 analysis which encompasses liquid chromatography and tandem
24 mass spectrometry.

25 Q. Mr. McKinnon, what were the results of the tests that

DIRECT EXAMINATION BY MR. POULOS OF TRACY MCKINNON

1 you conducted?

2 A. By gas-cromatography mass spectrometry the following
3 compounds were identified: Doxylamine, Methorphan,
4 Methorphanam, and Acetaminophen.

5 Q. So those ingredients you just listed, I guess we will
6 call them, were in her blood -- were in the blood sample
7 that you tested?

8 A. Yes, they were.

9 Q. Are you familiar with the ingredients of NyQuil?

10 A. Yes, I am.

11 Q. Are they consistent with the results of your test what
12 was found in the blood sample?

13 A. The Doxylamine, the Methorphan which is basically
14 generic for Dextromethorphan and the Acetaminophen are
15 ingredients of NyQuil. The Methorphanan is actually a
16 biproduct or metablite, as we refer to them, of the
17 Methorphan. So that is something that the body would have
18 converted over once -- once the drug was ingested.

19 MR. POULOS: No further questions from the State, Your
20 Honor. Thank you.

21 MS. GAY: I have no question for this witness.

22 THE COURT: You may step down. You are free to go.
23 Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

DIRECT EXAMINATION BY MR. POULOS OF TRACY MCKINNON

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: Have a seat. State your full name and
3 spell your last name for the record.

4 THE WITNESS: Kendra Kamera Ham, H-A-M.

5 **DIRECT EXAMINATION BY MS. WILLIAMS OF KENDRA HAM:**

6 Q. Ms. Ham, where do you work?

7 A. I work at the Medical University of South Carolina,
8 MUSC.

9 Q. And are you a licensed physician?

10 A. Yes.

11 Q. In what states?

12 A. In South Carolina.

13 Q. And do you specialize in a particular branch of
14 medicine?

15 A. I do. In both general pediatrics and then I am a
16 fellow in child abuse pediatrics.

17 Q. What is your educational background?

18 A. I graduated from the College of Charleston in 2005 with
19 a bachelor of science in biology and a bachelor of arts in
20 Spanish. And then I graduated from MUSC, Medical University
21 of South Carolina, in 2010 with a medical degree.

22 Q. And where did you receive your training?

23 A. I went to the Medical College of Georgia now called
24 Georgia Regents University in Augusta, Georgia, where I
25 completed my general pediatrics residency.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 Q. And what does child abuse pediatric involve, just
2 generally briefly?

3 A. So child abuse pediatrics is a subspecialty of general
4 pediatrics where we complete medical evaluations and
5 assessments on children who have been referred for abuse.
6 And that abuse could entail sexual abuse, physical abuse, or
7 neglect.

8 Q. And does your work involve performing or participating
9 in child abuse cases?

10 A. Yes.

11 Q. What about sexual assault examinations?

12 A. Yes.

13 Q. And are you a member of any specialized medical or
14 scientific group or associations?

15 A. I am. I am a part of the American Academy of
16 Pediatrics which is a national organization for general
17 pediatricians. Also within that umbrella I am in the
18 section on child abuse and neglect where I held an office
19 for two years during residency. And I was the only resident
20 in the country to be part of that organization. Also part
21 of the Ray E. Helper Society which is a honorary society for
22 physicians who specialize in child abuse pediatrics.

23 Q. And are there special examinations required for
24 certification as a -- for a pediatric specialty?

25 A. Yes.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 Q. And you have taken those?

2 A. Yes.

3 Q. And how many cases would you say you have been involved
4 with that involve sexual assault?

5 A. For sexual assault, acute sexual assault so those
6 within seventy-two hours or so, I have completed eighteen of
7 those since I have been in fellowship and then two of those
8 in residency.

9 Q. Okay. As a doctor?

10 A. Yes.

11 MS. WILLIAMS: At this time, Your Honor, the State
12 would offer Kayla (sic) Hamm as an expert in pediatric
13 sexual assault examination and child abuse pediatrics.

14 THE COURT: Any objection?

15 MS. GAY: No, ma'am.

16 THE COURT: She will be so qualified. You may
17 continue.

18 BY MS. WILLIAMS:

19 Q. Now you are here to testify as an expert on the case
20 involving Minor 1 What records did you review to prepare
21 for that testimony?

22 A. I reviewed all of the SLED documentation by our ped
23 SANE nurse, also all the photos that were taken that night
24 as well as the follow-up notes and lab results and
25 medications that were administered.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 Q. And did you notice that on the SLED protocol form after
2 the examination was done that Minor 1 disclosed that she
3 had defecated after the sexual assault?

4 A. Yes.

5 Q. And is that common when someone is raped anally?

6 A. I don't know that it is common, but it is definitely
7 possible.

8 Q. Okay. And tell us why it is important for a medical
9 history to be done.

10 A. So it is really important. It helps us determine
11 exactly what parts of the exam that we need to complete,
12 what labs need to be ordered, and also what medications need
13 to be given, as well as any follow-up they need with us or
14 either other specialists.

15 Q. And in this case you learned what about Minor 1
16 case that would necessitate an acute examination?

17 A. So basically based on the timeframe that the alleged
18 event occurred as well as injuries that occurred.

19 Q. Okay. And are injuries to the vaginal or anal area
20 common in children that are sexually assaulted?

21 A. No, they are not.

22 Q. In fact isn't it uncommon?

23 A. It is uncommon. In fact, about 95 percent of the cases
24 do not have physical findings.

25 Q. Would it be consistent with forced penetration if there

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 were injuries to the genital area and the anal area?

2 A. Yes, it would.

3 Q. I am going to have you explain to the jury why that is.

4 MS. WILLIAMS: If we could just have the easel that we
5 had brought in. If you would just briefly step down and --
6 I previously showed Ms. Gay this diagram.

7 THE COURT: All right.

8 MS. WILLIAMS: And I am showing her a large diagram
9 of ---

10 THE COURT: All right, Dr. Ham, I am going to need you
11 to speak very loudly.

12 THE WITNESS: Okay.

13 THE COURT: We were having trouble even with the
14 microphone.

15 THE WITNESS: Sorry.

16 THE COURT: And so now your back is going to be to my
17 court reporter.

18 THE WITNESS: Okay.

19 THE COURT: So please even if you feel like you are
20 yelling I need you to speak loudly. Thank you.

21 BY MS. WILLIAMS:

22 Q. So explain to the jury why there's not usually injuries
23 even if there is sexual assault.

24 A. So there aren't usually injuries on these exams that we
25 see just because a lot of the tissues are easily

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 stretchable. And then a lot of times if there is
2 lubrication involved then there is probably not going to be
3 an injury.

4 Q. And so what about the anatomy of this child, like where
5 were the injuries and what would that indicate and why is
6 that uncommon?

7 A. So as you heard earlier to kind of look at this like it
8 is the face of the clock. So with twelve o'clock being up
9 here at the top, six o'clock being here at the bottom, three
10 over here on this side, nine o'clock on this side.

11 And so she had a laceration in this area right here
12 (pointing) which is the posterior fourchette. So you have
13 got the labia majora which are the outer skin layers that
14 help protect all the internal structures. Then you have the
15 labia minora right beneath the labia majora.

16 This is the clitoral hood. That is what protects the
17 clitoris. And this is the hymen, this kind of circular
18 structure here. This is the urethra where you urinate from.
19 And then the anus is down here (pointing).

20 So posterior fourchette is the area between sort of
21 between the hymen and the anus. So she had a deep
22 laceration that was right here right at six o'clock.

23 And then also the anus she had a laceration or fissure
24 that was at eleven o'clock. And it is difficult to
25 appreciate the laceration that was seen on exam in those

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 photos at eight o'clock, but I could see another fissure
2 that was at six o'clock.

3 Q. Okay. And that would be consistent -- would that be
4 consistent with forced penetration?

5 A. Yes.

6 Q. And did you review the pictures of her injuries --
7 please -- you can go right back.

8 (WHEREUPON, witness returned to witness stand.)

9 Q. --- of the child's injuries from the examination?

10 A. Yes, I did.

11 Q. And was blood present?

12 A. Yes, it was oozing from the laceration of the posterior
13 forchette.

14 Q. And are you familiar with the HIV medications that she
15 was given as a result of the blood, oozing blood?

16 A. Yes.

17 Q. And what kind of implications does that have for Minor
18 long-term? 1

19 A. Unfortunately it is one of those things you have to
20 think of really carefully when we prescribe that medication.
21 If the patient is not able to tolerate the medication, if
22 they are not compliant, sometimes it can actually end up
23 causing drug resistance in the future so that we might not
24 be able to use that medication if she were exposed to HIV.

25 MS. WILLIAMS: Court's indulgence for just a second.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. KENDRA HAM

1 THE COURT: Take your time.

2 MS. WILLIAMS: Thank you, Dr. Ham. Please answer any
3 questions from the defense.

4 THE COURT: Ms. Gay, any questions?

5 MS. GAY: No, ma'am, I have no questions.

6 THE COURT: Dr. Ham, you may step down. Feel free to
7 stay with us, but you are also free to leave. Thank you so
8 much.

9 Call your next witness.

10 MS. WILLIAMS: The State calls Dr. Daniel Demers from
11 Intelligenitics.

12 (WHEREUPON, witness was duly sworn.)

13 THE CLERK: If you will have a seat. State your full
14 name and spell your last name for the record.

15 THE WITNESS: My name is Daniel Bruce Demers. My last
16 name is spelled D-E-M-E-R-S.

17 **DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS:**

18 Q. I apologize for pronouncing your name incorrectly.

19 A. That's okay. Everybody does.

20 Q. Okay. And where do you work, Dr. Demers?

21 A. At this time that this case was processed I worked at
22 the Intelligenetics Laboratory.

23 Q. And were you the primary scientist or analyst for that
24 lab?

25 A. Yes, I was the director of the overall laboratory, the

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS:

1 technical leader of the forensic unit and also worked as a
2 forensic analyst.

3 Q. Okay. And tell us a little bit about your educational
4 background.

5 A. I have a bachelor of science degree in cell biology
6 from Eastern Connecticut State University, and I have a PhD
7 in molecular pathology from the Medical College of Virginia.

8 Q. And have you testified as an expert in the field of
9 forensic science or DNA analysis before?

10 A. Yes, I have.

11 Q. How many times would you say?

12 A. Oh, I would estimate approximately 50 times over the
13 years.

14 Q. And you have qualified as an expert in general sessions
15 court before?

16 A. I have been qualified here twice before.

17 Q. Okay. And as part of your duties you analyze pieces of
18 evidence to determine if DNA is present?

19 A. Yes, that is correct.

20 MS. WILLIAMS: At this time, Your Honor, the State
21 would move Dr. Demers to be qualified as an expert in the
22 field of forensic science, specifically DNA analysis.

23 THE COURT: Any objection?

24 MS. GAY: No, ma'am.

25 THE COURT: He will be so qualified.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 BY MS. WILLIAMS:

2 Q. In the course of your work as a forensic scientist did
3 you receive items of evidence from the Vick case?

4 A. Yes, I did.

5 Q. And would it refresh your memory to review your report
6 to tell us which items of evidence that you received?

7 A. Would you like me to go through the list?

8 Q. Please.

9 A. We received a reference swab from the suspect, Gary
10 Fraley; a pillowcase designated as Case 1, a second
11 pillowcase designated as Case 2; a sexual assault kit. And
12 do you want me to go through the individual items within the
13 kit?

14 Q. I think just telling us a sexual assault kit is fine
15 for now.

16 A. Okay.

17 Q. What else?

18 A. A cup from the nightstand, apparently from the hotel;
19 men's underwear, victim's outer clothing, towel from a
20 bathroom, a NyQuil bottle with a dosage cup, a washcloth,
21 swabs from the passenger side of a vehicle, two bed
22 sheets, a towel from a chair, a handgun. And there were
23 also five unspent rounds with the handgun and one shell
24 casing.

25 Q. Okay.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 A. And also a men's shirt.

2 Q. Okay. And out of those items what items was blood
3 detected on?

4 A. Some items we didn't test, but of the items that we did
5 test there was blood on the victim's underwear, the vaginal
6 swab from the victim, the rectal swab from the victim, and
7 the men's underwear.

8 Q. Okay. And what items of evidence was semen detected
9 on?

10 A. Semen was detected on Pillowcase 2. It was negative on
11 Pillowcase 1. Semen was detected on the girl's underwear,
12 the swab from the sexual assault kit, the rectal swab from
13 the sexual assault kit. The men's underwear was positive
14 for semen. That's it.

15 Q. Okay. And re after you do that test to determine what
16 these fluids are and what items of evidence they are on do
17 you then conduct DNA analysis?

18 A. Yes.

19 Q. And so just briefly for us laypeople explain what --
20 how you determine if someone's DNA is on something.

21 A. Well, the first step in the process of doing a DNA test
22 is to collect the biological evidence or collect what could
23 be biological evidence.

24 In this case that was done by the Goose Creek Police
25 Department as well as the forensic nurse. Once those items

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 are submitted to our laboratory we do a visual examination
2 of the evidence to look for anything that we might be able
3 to see visually, photograph it, and then once a plan is put
4 together as to what items we are going to test and what
5 order we are going to test them then we will begin the
6 actual process of testing.

7 So the first step in doing a DNA test is actually to
8 collect the cellular material from the evidence that was
9 submitted. So if it is something like for instance a
10 handgun, that might involve us actually going over the
11 handgun with swabs, cotton swabs, to collect any cellular
12 material that might be present on the gun.

13 In the case of the sexual assault kit the forensics
14 nurse had collected swabs herself; so those were processed
15 directly.

16 And other items such as the pillowcases, the clothing
17 items, those were done by a combination of cutting out
18 pieces of the article or swabbing it directly ourselves.

19 That gives us the material we need to actually process.
20 The next step in that process is to do what we call a DNA
21 extraction. So that is basically some fancy words for
22 getting the DNA out of the sample.

23 So that's what it all comes down to. If there's
24 biological material we need to get the DNA out of it. So we
25 go through a process that pulls that DNA out of the sample.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 Once we have the DNA removed from the sample then we
2 have a couple of preliminary tests that we do to evaluate
3 the overall quality of the DNA.

4 So we want to know how much DNA do we have and what is
5 the overall quality so we know which tests we will be able
6 to in the laboratory.

7 Once that part of the test is done then we carry out
8 some sequential tests with the ultimate objective being that
9 the DNA sample of interest from the evidence item is put on
10 a special instrument that runs in real time and allows us to
11 collect data points that correspond to the individual's
12 profile.

13 So just to boil that all down to something easier to
14 understand, everybody's DNA is unique. So every single
15 person in here, unless you have an identical twin, no one
16 else in the world shares your DNA.

17 But what you may not be aware of and I think catches a
18 lot of people by surprise is mostly the DNA that we all have
19 in common is actually in common to all of us. So we are
20 probably 99.9 percent the similar to one another; and it is
21 that small amount of differences within our DNA that
22 determines how tall we were going to be, what color hair we
23 are going to have, how -- skin tone, things of that nature.

24 In a DNA laboratory for identification purposes what we
25 do is look at areas of the DNA that are really unique to an

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 individual; and so the test that we perform after we extract
2 the DNA and process it to get it on the instrument the test
3 that we perform generates what we call it is a DNA profile,
4 and our test zeros in on regions of the DNA that are highly
5 different from person to person.

6 And by collecting this data from multiple places
7 throughout the DNA, which we refer to as the geno - you may
8 have heard that term - we get a unique DNA profile for the
9 individual.

10 So once we have all of our profiles from the evidence
11 and from the reference samples then we are able to do our
12 side-by-side comparisons to see who matched what.

13 Q. And when you say reference sample you have all this
14 evidence that you got in and you got that from Wendy Myers
15 from the Goose Creek Police Department?

16 A. Wendy Myers delivered that to the laboratory, yes.

17 Q. Okay. And then you have a standard to compare it to,
18 correct?

19 A. Well, I'm not sure what you're ---

20 Q. Or a buccal swab from ---

21 A. Okay, ---

22 Q. --- the victim and the defendant?

23 A. --- yes. Sometimes that is referred to as a standard.
24 We more commonly refer to it as a reference sample. And,
25 yes, so we have a reference or standard from the individuals

1 individual; and so the test that we perform after we extract
2 the DNA and process it to get it on the instrument the test
3 that we perform generates what we call it is a DNA profile,
4 and our test zeros in on regions of the DNA that are highly
5 different from person to person.

6 And by collecting this data from multiple places
7 throughout the DNA, which we refer to ask the geno - you may
8 have heard that term - we get a unique DNA profile for the
9 individual.

10 So once we have all of our profiles from the evidence
11 and from the reference samples then we are able to do our
12 side-by-side comparisons to see who matched what.

13 Q. And when you say reference sample you have all this
14 evidence that you got in and you got that from Wendy Myers
15 from the Goose Creek Police Department?

16 A. Wendy Myers delivered that to the laboratory, yes.

17 Q. Okay. And then you have a standard to compare it to,
18 correct?

19 A. Well, I'm not sure what you're ---

20 Q. Or a buccal swab from ---

21 A. Okay, ---

22 Q. --- the victim and the defendant?

23 A. --- yes. Sometimes that is referred to as a standard.
24 We more commonly refer to it as a reference sample. And,
25 yes, so we have a reference or standard from the individuals

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 involved in the case. In this situation it would be one
2 from the victim Minor1 and one from the suspect Gary
3 Fraley.

4 Q. So you would say take a piece of evidence, figure out
5 the DNA and then figure out if it matches hers or if it
6 matches his?

7 A. Correct.

8 Q. Okay. And let's talk about each piece of evidence.
9 Let's first look at the dosage cup from the NyQuil bottle.
10 You tested that item, and what type of DNA comparison did
11 you do on that item? I think that is your Number 2014-0079.

12 A. You said the dosage cup?

13 Q. The dosage cup, yes.

14 A. Well, the -- we tested the dosage cup in two ways. We
15 collected the evidence in two ways. We swabbed to collect
16 the DNA off of the rim of the cup.

17 Which if -- that's where you are going to put the cup
18 to your mouth. So whenever you take a drink out of
19 something, whether it is a glass or a cup, even a little
20 straw, some DNA transfers from your lips as well as saliva
21 from your mouth transfers to the cup.

22 So the police department was interested in obtaining a
23 DNA profile from the lip of the cup if we could and then
24 also from the sides of the cup because if the individual
25 carrying the cup is different than the individual drinking

1 from it then you might get a different DNA profile. So
2 tested the sides of the cup as well as the lip of the cup.

3 Q. And what were the results of the -- from either, the
4 sides or the lip of the cup?

5 A. The lip of the cup matched the victim Minor1 so it
6 was just her DNA was on the lip of cup.

7 Q. Okay. Did you do any testing on the bottle cap of the
8 bottle of NyQuil?

9 A. The bottlecap we tested separately as well. Again
10 because the person who takes the cap off it's -- especially
11 the cap on a NyQuil has kind of ridged sides and so it's a
12 great collector of DNA basically when the person unscrews
13 those caps. And they're not always easy to get off. You
14 have to push down. So there is rough surface on the top.
15 There is rough surface on the sides. And it is a great tool
16 for collecting DNA on the individual's hand. And so again,
17 we tested that separately.

18 That provided a mixture of DNA. The suspect Gary
19 Fraley could not be excluded. So most of the DNA was from
20 one person, which matched Gary Fraley.

21 There was also a minor -- what we call a minor second
22 contributor. The second contributor was not present at a
23 sufficient level -- oh, no, excuse me; actually the second
24 person was not -- it was not a sufficient level to give us a
25 full DNA profile so the major contributor being Gary Fraley

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 had enough of the DNA transfer there to get a complete DNA
2 profile.

3 The second individual was what we call minor
4 contributor. We were not able to exclude the victim. So in
5 other words, it was a mixture of DNA that could be accounted
6 for by the victim Minor1 as well as the suspect Gary
7 Fraley.

8 Q. And I am going to show you what has been marked as
9 State's 97. Just look at the marks on this packaging and
10 see -- you may need to open it, and you may not. But can
11 you tell us what that is based on any initials, identifying
12 marks?

13 A. It still has my seal on it. So when I was finished I
14 sealed it with evidence tape and initialed and dated it. So
15 I can see that no one has been in this since I sealed it.

16 And it's -- the bag is labeled as NyQuil bottle. And
17 the number 791 corresponds to my numbering system. So this
18 is the NyQuil bottle.

19 Q. Okay. Thank -- and the dosage cup?

20 A. And the dosage cup, yes.

21 MS. WILLIAMS: Your Honor, at this time we move State's
22 97 into evidence.

23 THE COURT: Any objection?

24 MS. GAY: No, ma'am.

25 THE COURT: State's 97 into evidence without objection.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 (WHEREUPON, State's Exhibit Number 97 was admitted into
2 evidence.)

3 Q. And did you do any testing on the Rossi handgun?

4 A. We did.

5 Q. And what were the results?

6 A. The handgun had at least three contributors. So at
7 least three different individuals handled the handgun. When
8 we collect the evidence from a handgun we are swabbing the
9 textured surfaces that somebody would handle in firing the
10 gun, so the handle itself, the trigger. If there is a
11 safety on it, you know, we will swab that as well.

12 So in this case after collecting that DNA and then
13 processing it it was a mixture of three -- at least three
14 people. Most of the DNA was from Gary Fraley, and then
15 there was DNA from two other individuals; but that was a
16 lower level of DNA probably indicating they had either
17 had handled the gun less or had handled it sometime in the
18 past.

19 Q. And who -- who were the other people, or is there
20 anybody that can't be excluded from the swabs of the
21 handgun?

22 A. The victim Minor 1 could not be excluded as a minor
23 contributor to the DNA mixture on the handgun.

24 Q. And what is your evidence number on that item?

25 A. That would be 2014-00797.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 Q. Okay. And is that the same item number that you see
2 here in this box?

3 A. It is.

4 Q. Okay. And that is the Rossi handgun.

5 MS. WILLIAMS: Your Honor, I believe at this time we
6 would move the handgun into evidence. It is State's 88. It
7 is marked for identification and showed to Captain Aarons
8 but we did not move it into evidence at that time.

9 MS. GAY: Your Honor, may we approach?

10 THE COURT: You may.

11 (WHEREUPON, bench conference was had 7/15/15, 5:09 p.m.)

12 THE COURT: State's 88 into evidence noting the
13 stipulation for the chain, Ms. Gay.

14 (WHEREUPON, State's Exhibit Numbers 88, 88A, 88B, 88C, and
15 88D were admitted into evidence.)

16 BY MS. WILLIAMS:

17 Q. And did you test pillowcases from Room 127 at the
18 EconoLodge?

19 A. I tested two pillowcases. I don't know what room they
20 were taken from. They were just provided by the Goose Creek
21 Police Department and identified separately.

22 Q. Okay. And those were submitted to you by Wendy Myers?

23 A. Yes.

24 Q. Okay. And what is -- what were the results from your
25 test on the pillowcases? First remind us what was found on

1 them, what substance, blood or sperm or what body fluids
2 were found on them and then what your DNA test concluded.

3 A. Pillowcase 1 was negative for semen. And we did not do
4 any test for blood on the pillowcase. Pillowcase 2 was
5 positive for semen. And again there was no blood test done
6 on the pillowcase.

7 Q. Okay. And what the DNA analysis?

8 A. On Pillowcase 1 we obtained a mixture of two people.
9 The major -- the primary contributor, so most of the DNA,
10 was from Gary Fraley.

11 Q. And is that from the semen?

12 A. It tested positive for semen, so I would say it mostly
13 was because there was a good amount of DNA present it was
14 probably mostly semen.

15 So we collected a small material -- amount of material
16 from the pillowcase. It tested positive for semen. We
17 obtained a good amount of DNA from it. We got a DNA
18 profile. That would indicate that it was semen.

19 There could also be other DNA from Mr. Fraley. You
20 know, it could be saliva on there as well. It could be
21 perspiration on there. But primarily it was semen.

22 Q. And could you exclude Minor 1 from that piece of
23 evidence?

24 A. Minor 1 was excluded from Pillowcase 1.

25 Q. What about Pillowcase 2?

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 A. And the minor contributor I just should note was a very
2 very low level amount of DNA.

3 Q. Okay.

4 A. Pillowcase 2 we actually separated into two components.
5 So I would have to go a little bit deeper in the explanation
6 of DNA extraction.

7 If you recall I said explain that. We collect the
8 biological material from the item of interest and we do a
9 DNA extraction to remove the DNA from the evidence item.

10 In certain pieces of evidence if they test positive for
11 semen then we will do a special type of DNA extraction. It
12 is referred to as a differential. And basically it is a way
13 for us to separate out the two different kinds of cells
14 within the sample.

15 So if we have a sample that tests positive for semen,
16 we know there is semen there, we know there is seminal fluid
17 there; what we don't know, is there DNA from some other
18 source such as saliva. If it was blood we would know that
19 because we would have done a test for blood.

20 But it is even though we can't see anything we know
21 that there may be DNA from either saliva or just skin cells
22 that have come off or somebody's perspiration. So we have a
23 method of separating out those two cells.

24 Also in a sexual assault case where semen is deposited
25 depending on the type of sample if it's, for example, a

1 vaginal swab but if it is an article of -- from a bed sheet
2 from the bed, whether it is a sheet or a pillowcase or a
3 blanket or a towel or something like that, very often we are
4 also going to get DNA from the victim.

5 So what you end up with is a mixture of cells from
6 potentially from the victim, from the perpetrator. And then
7 you have different types of cells. You could have certainly
8 cells from the seminal fluid, from the semen. And seminal
9 fluid is complex. It contains cells, and it also contains
10 sperm cells. And sperm cells are very specialized.

11 But cells come from many sources. And you are probably
12 are all aware, but, you know, our skin, these are cells.
13 They fall off on us.

14 As we talk about skin on our lips, in our mouth, these
15 are what they call epithelial cells. And I am just going to
16 refer to them as epi cells just to make it simple.

17 But epi cells are throughout your body. So they cover
18 your body. That's your -- makes up your skin. And these
19 epi cells are in your mouth and they line your throat and
20 they line your stomach and they line your intestines. They
21 line all of the tubes -- blood vessels and tubes of your
22 body. You know, where urine passes out. Even the bladder
23 is lined by these special cells. So they are a little bit
24 different from place to place, but in general they are still
25 called epi cells.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 And epi cells are -- think of them as kind of light,
2 fluffy. Now remember they are microscopic. They are cells
3 so they are microscopic. You can't see them without
4 magnification. But think of them as kind of large, flat,
5 fluffy cells. That's going to be in our sample.

6 Those cells could be from the skin. They could be from
7 the mouth. They could be from the sweat. But also in a
8 sample that has tested positive for semen there are going to
9 be sperm cells if the man is fertile or if at least he is
10 producing sperm cells.

11 So the sperm cells -- remember, we said the epi cells
12 are kind of light and fluffy. And the sperm cells are very
13 small, very compact, and very dense. And so we can exploit
14 that difference, and hence the term differential extraction.
15 We can exploit that to separate out the epithelial cells
16 from the sperm cells.

17 So you can imagine that this is a very useful technique
18 in the laboratory because if we can separate those out we
19 can end up with one DNA sample that is primarily from the
20 man, primarily semen; and we can end up with a second DNA
21 extraction too that could be a mixture of the two people.
22 Because both the female victim and the male perpetrator are
23 generating epithelial or epi cells.

24 So in this particular case on Pillowcase Number 2 we
25 separated out those components, so we were able to get a

1 male specific profile that matched Gary Fraley. And then
2 the epi fraction, the epi part of the DNA extract, was a
3 mixture of Fraley and Vick. It was approximately one-third
4 Gary Fraley and two-thirds Minor 1

5 So if you were to take DNA from these two people and
6 mix it together, that is what the mixture would look like,
7 you know, what we attained.

8 Q. And remind us what that is from, which -- which piece
9 of evidence that is from.

10 A. Pillowcase Number 2.

11 Q. Pillowcase Number 2. Okay.

12 A. And do you want my number or Goose Creek number?

13 Q. No, no. That is fine. So ---

14 A. It's ---

15 Q. And Pillowcase Number 2 did have some results on it.
16 You are saying that it is just not conclusive or ...?

17 A. The results were conclusive. Pillowcase Number 1
18 although negative for semen did produce a DNA profile which
19 matched Gary Fraley.

20 Q. Okay. Now turning to the sexual assault kit. I am
21 going to show you what has already been admitted as State's
22 91. And in five there's certain items you tested and
23 certain that you didn't. And just tell us -- I am going to
24 show you State's 91C. What item is that based on your
25 testing and your own numbers?

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 A. Based on my number this is the victim's underwear.

2 Q. Okay.

3 A. And it is also labeled accordingly on the back.

4 MS. WILLIAMS: Your Honor, we would move 91C into
5 evidence at this point.

6 MS. GAY: No objection, Your Honor.

7 (WHEREUPON, clarification of Exhibit 91, 91A, 91B, 91C, and
8 91C with court reporter.)

9 (WHEREUPON, State's Exhibit 91C was admitted into evidence.)

10 MS. WILLIAMS: Ninety-one is the rape kit with all the
11 documentation on the outside; "A" is the vaginal swabs; "B"
12 are the rectal swabs; and "C" the child's underwear; and "D"
13 are the buccal swabs.

14 THE COURT: Madam Court Reporter, is that sufficient
15 for you?

16 THE COURT REPORTER: That is fine.

17 THE COURT: Thank you. Which one -- you want to only
18 move in "A" at this time?

19 MS. WILLIAMS: So far we have entered "C".

20 THE COURT: "C".

21 MS. WILLIAMS: Which is the child's underwear.

22 THE COURT: No objection?

23 MS. GAY: No, Your Honor.

24 BY MS. WILLIAMS:

25 Q. And if you could tell us what is in there based on your

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 number. And I think you might need to open it because there
2 are some things marked in there.

3 A. It looks like this -- this is my number 786.2, and it
4 looks like it contains a number of things including
5 microscope slides, fingernail scrapings, the victim
6 standard, vaginal swabs, rectal swabs, and oral swabs.

7 Q. Okay. And if you could just pull out the things that
8 you tested. They should be marked.

9 A. Yes. The items that I tested are those there.
10 Essentially the -- within this envelope the vaginal swab,
11 the rectal swab, the oral swab, the reference from Minor
12 Vick.

13 Fingernail scrapings I did not test. Microscope slides
14 I did not examine.

15 Q. So let's look at 91A. Just take it one at a time.
16 Tell us what that is. This is 91A.

17 A. This is a vaginal swab.

18 Q. Okay. Let's look at 91B.

19 A. Rectal swab.

20 Q. Ninety-one "D".

21 A. This is a reference swab from the victim Minor 1

22 Q. And 91E.

23 A. This is an oral swab from the victim.

24 Q. Okay. And tell us what the results were from 91C which
25 is the child's underwear.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 MS. WILLIAMS: Your Honor, at this point we would move
2 91A through 91E into evidence.

3 THE COURT: Any objection, Ms. Gay?

4 MS. GAY: No, ma'am.

5 THE COURT: Ninety-one A, B, C, D, and E into evidence
6 without objection.

7 (WHEREUPON, State's Exhibit 91A, 91B, 91C, 91D, and 91E were
8 admitted into evidence.)

9 Q. And tell us from your testing tell us about the child's
10 underwear first. That would be 91C.

11 A. The child's underwear tested positive for semen and
12 positive for blood.

13 Q. Any DNA recovered from those fluids?

14 A. Again because we had an evidence item that's known to
15 have semen present we did that special kind of DNA
16 extraction, that differential extraction, so we ended up
17 with two extracts, one containing male DNA, one containing
18 usually a mixture of the victim and perpetrator. The part
19 that is from the semen matched Gary Fraley.

20 Q. Okay. And what about the vaginal swabs, which would be
21 91A?

22 A. Also the -- just haven't finished actually the
23 underwear.

24 Q. Oh, I'm sorry.

25 A. The part of the underwear as I explained, you know, is

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 usually a mixture of the victim and the perpetrator
2 contained a mixture Mr. Fraley and Minor Vic. It was
3 approximately one-third Gary Fraley and approximately two-
4 thirds of the DNA was from Minor 1

5 Q. And what about the vaginal swabs?

6 A. Again we did that differential DNA extraction to get a
7 male specific component and the epi component. The male
8 specific component we tested using a special kind of DNA
9 test.

10 And we didn't talk about this yet, but we used a Y-
11 chromosome test. All of the testing that we have been
12 talking about so far is -- zeros in on various regions of
13 our DNA that is common to all of us whether regardless of
14 our gender.

15 There is also a test of that zeros in on the man's Y-
16 chromosome. So you know that we have -- all have
17 chromosomes that we share in common. And then there are
18 what we call sex chromosomes. And you may or may not know
19 that females have two X-chromosomes and men have one X-
20 chromosome and one Y-chromosome. So you have actually a DNA
21 test that ignores all of the other DNA and it zeros in on
22 the man's Y-chromosome. So this is a very very useful test
23 when you have a mixture of DNA that you believe to be from a
24 man and a woman, or in this case a child and a man. But the
25 important factor is one is female and one is male.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 And if we did a standard DNA test we actually might
2 not -- if the man is a minor contributor we might not be
3 able to pick him up. So by using this Y-chromosome test the
4 Y-chromosome test ignores the abundance of female cells and
5 just zeros in on the man's DNA.

6 And so in the case of the vaginal swab the male
7 component was very very small, so we didn't get a lot of the
8 male component. And for that reason I went on and did the
9 Y-chromosome test.

10 Q. Okay.

11 A. On the epi fraction - so that is the epithelial cells -
12 that was a profile that matched the victim Minor 1 So we
13 had Minor 1 in the epi fraction, and we have a Y-
14 chromosome profile that matches the suspect Gary Fraley on
15 the sperm fraction.

16 Q. What about the rectal swabs?

17 A. We proceeded with a similar type of analysis on the
18 rectal swab, again for the same reasons. And on the -- we
19 had again positive for semen, positive for blood.

20 In the male component we did the Y-chromosome test and
21 that matched Gary Fraley. On the epi fraction we obtained a
22 DNA profile that matched the victim Minor 1

23 Q. Now we have been talking about the standards. So you
24 collect the DNA and then you compare it to Minor 1 DNA
25 and the defendant.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 MS. WILLIAMS: Your Honor, we have marked 94A and B
2 which is the defendant's buccal swab; and 94A is the
3 original package, and 94B is the dried DNA extract. That is
4 how they were separated from the lab.

5 MS. GAY: I have no objection.

6 BY MS. WILLIAMS:

7 Q. If you could just look at these and see if those are
8 your identifying marks, initials, whatever, for the DNA
9 buccal swab for Mr. Fraley and the dried DNA extract.

10 A. There's two boxes within inside that are buccal swab
11 boxes. And then the 783 number corresponds to Gary
12 Fraley ---

13 Q. Okay.

14 A. --- in my record.

15 Q. And what about this item?

16 A. These are the dried DNA extracts. So when we extract
17 the DNA on a case we frequently do not use all of the DNA.
18 We get more DNA than we need. So whatever DNA is remaining
19 we return to the police department in case some future
20 analysis needs to be done.

21 Q. Okay. So those are both from the DNA from Gary Fraley?

22 A. Correct.

23 Q. And that is what you used to compare to all of these
24 pieces of evidence?

25 A. That is correct.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 MS. WILLIAMS: Your Honor, at this time we would like
2 to move 94A and B into evidence.

3 THE COURT: No objection?

4 MS. GAY: No objection.

5 MS. WILLIAMS: Ninety-four A and B into evidence
6 without objection.

7 (WHEREUPON, State's Exhibit Number 91A and 94B were admitted
8 into evidence.)

9 Q. And the last piece of evidence I want to talk about,
10 Dr. Demers, is the men's underwear. What did you find on
11 there in terms of substances?

12 A. The men's underwear was positive for semen and positive
13 for blood.

14 Q. And if somebody sexually assaulted someone and got
15 blood on their penis would it hypothetically be plausible
16 that that is how the blood got into their underwear,
17 transferred into their underwear afterwards?

18 A. Yes, it is common when a man -- whether it is
19 consensual or not when a man has intercourse with a woman
20 and he immediately gets dressed he will carry some of his
21 cellular material on his body, carry it with him when he
22 puts on his underwear, that his skin is now making contact
23 with the inside of his underwear, so it not only leaves his
24 DNA, it leaves her DNA as well. It doesn't always do it,
25 but it frequently does.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 MS. WILLIAMS: Court's indulgence for just ---

2 THE COURT: Yes, ma'am.

3 MS. WILLIAMS: I don't have any further questions for
4 you, Dr. Demers. Thanks you for testifying. Please answer
5 any questions from defense counsel.

6 THE WITNESS: Certainly.

7 THE COURT: Ms. Gay.

8 MS. GAY: I have not questions.

9 THE COURT: Thank you. You may step down. Thank you.
10 I haven't inquired as to -- are we done for the day?

11 MS. WILLIAMS: Yes, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, we have
13 reached the appropriate time for us to stop for the evening.
14 Please remember all of my admonition. Do not discuss this
15 case amongst yourself or with anyone in any fashion.

16 Do not do any independent research regarding this case.
17 Do no read, watch, listen to any news accounts regarding
18 this case should there be any.

19 Ladies and gentlemen, please be back and ready to begin
20 at 9:30 in the morning. 9:30 in the morning. Please take
21 your notepads with you so that we can lock them up over the
22 evening hour. You are excused for the evening. Thank you
23 so much.

24 (WHEREUPON, jury exits the courtroom 7/15/15, 5:29 p.m.)

25 THE COURT: Thank you. Please be seated. Anything

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. DANIEL DEMERS

1 before we break for the evening from the State?

2 MS. WILLIAMS: Nothing from the State, Your Honor.

3 MS. GAY: No, ma'am.

4 THE COURT: All right. Thank you. 9:30.

5 (WHEREUPON, adjourned for the day 7/15/15, 5:29 p.m.)

6 (WHEREUPON, resume trial 7/16/15, 9:39 a.m.)

7 THE COURT: Ms. Williams, you have a request?

8 MS. WILLIAMS: Yes, Your Honor. Today I realized when
9 Ms. Gay told me that she is going to be asking for
10 instruction from the court not just for sanity -- insanity
11 but for guilty but mentally ill, and that is a completely
12 different issues. That has to do with conformity.

13 The doctor said one sentence about it because it was
14 part of her report. But there is a very specific thing that
15 Mr. Fraley told Minor¹ about the consequences of his
16 actions and how he understood he could go to jail, and I
17 think it is relevant to that.

18 Ms. Gay has graciously agreed after I showed her the
19 case that she is not going to object if we call Minor¹
20 just to ask her that one question.

21 Her father is bringing her back. We will seamlessly
22 work her in and out.

23 THE COURT: Is she ready now?

24 MS. WILLIAMS: She is on her way literally back. But
25 we have several witnesses.

DIRECT EXAMINATION BY MR. POULOS OF LT. JOSHUA BATTISTA

1 Honor. Thank you.

2 THE COURT: Ms. Gay.

3 MS. GAY: I have no questions for this witness.

4 THE COURT: You may step down. Feel free to stay with
5 us, but you are also free to leave.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you very much.

8 MS. WILLIAMS: The State calls Wendy Myers.

9 (WHEREUPON, the witness was duly sworn.)

10 THE CLERK: Have a seat. State your full name and
11 spell your last name for the record.

12 MS. MYERS: It's Wendy Krystal Myers, M-Y-E-R-S.

13 THE COURT: Ms. Williams.

14 MS. WILLIAMS: Thank you, Your Honor.

15 May I inquire of the court reporter is State's 82 and
16 83 are in.

17 THE COURT REPORTER: They are not.

18 MS. WILLIAMS: Okay. Thank you.

19 **DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS:**

20 Q. Ms. Myers, where do you work?

21 A. Goose Creek Police Department.

22 Q. And what is your role there?

23 A. The crime scene investigator and evidence technician.

24 Q. Okay. Tell us how you maintain the integrity of the
25 evidence that is collected by the Goose Creek Police

DIRECT EXAMINATION BY MR. POULOS OF LT. JOSHUA BATTISTA

1 Department.

2 A. We have pass-through lockers on the side of the room.
3 When an officer drops something in it locks. Once they have
4 dropped it they drop the little key. It locks the locker.
5 When we go into the evidence room we take it out from that
6 direction. So once it is locked in there by the officer
7 nobody has access to it besides the evidence custodians.

8 Q. And when you log it in explain how you put a bar code
9 and you log each piece of evidence and how you correlate the
10 number that is on the piece of evidence that shows where the
11 officer collected it with your records and your log sheet.

12 A. Sure. When the evidence comes in it goes into the
13 computerized system log book, and then each evidence form is
14 also stored separately.

15 So we have three ways to track the items. And each
16 item gets its own number which it can also be tracked that
17 way. We apply barcodes to the side packaging and so
18 everything can be bar code labeled and checked that way.

19 Q. And in this case did you follow that procedure?

20 A. Yes, we did.

21 Q. And are there certain items of evidence that have to be
22 refrigerated?

23 A. There are.

24 Q. And what are those?

25 A. Any whole blood, tubes of blood, hold urine in

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 containers.

2 Q. And in this case was there such a piece of evidence?

3 A. There was. There were both.

4 Q. And did you maintain it in that fashion?

5 A. Yes, I did.

6 Q. And tell us when you go collect evidence at a scene and
7 then you have to go to another scene what do you do with it
8 in between?

9 A. Each item is packaged in its own packaging. So let's
10 say a bed sheet or a towel would be put inside its own paper
11 bag, secured in the crime scene vehicle and then I would
12 respond to another.

13 We have locking vaults in the back of the crime scene
14 vehicle where those things can be locked down. And then the
15 vehicle is locked as well.

16 Q. And also as part of your duties do you sometimes take
17 pieces of evidence and photograph them and record that piece
18 of evidence and then keep the photograph?

19 A. Correct.

20 Q. Okay.

21 MS. WILLIAMS: I am going to show her 82 and 83.

22 MS. GAY: Without objection.

23 MS. WILLIAMS: May I approach, Your Honor?

24 THE COURT: You may.

25 BY MS. WILLIAMS:

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 Q. Ms. Myers, I am showing you State's 82 and 83. Can you
2 tell us if these came from the defendant's phone.

3 A. Yes, they did.

4 Q. And did you photograph these pieces of evidence?

5 A. Yes, I did.

6 Q. And is that how it looked when you looked at the phone,
7 did these photographs accurately depict what they are?

8 A. Yes, they do.

9 MS. WILLIAMS: Your Honor, at this time we would move
10 82 and 83 in.

11 THE COURT: No objection?

12 MS. GAY: No, ma'am.

13 THE COURT: State's 82 and 83 into evidence without
14 objection. You may publish.

15 (WHEREUPON, State's 82 and 83 were admitted into evidence.)

16 MS. WILLIAMS: Thank you. Can you put 82 up, please.

17 Q. If you could just turn around. There is a laser
18 pointer here. And tell us -- this is the defendant's phone,
19 you testified. Who is it he is giving this message to?

20 A. That is Steven Tsafos.

21 Q. And what is -- it is hard to see here, so just tell us
22 what that says.

23 A. It says "tick", "evil", and "tick".

24 Q. Okay.

25 MS. WILLIAMS: And then could you put up 83.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 Q. And what does this say -- oh, sorry. Tell us. This is
2 the defendant's phone; is that correct?

3 A. That is correct.

4 Q. And where is he posting this?

5 A. It is on Facebook, and it says Royal Lanes.

6 Q. Okay. And what does that say?

7 A. "I always say it is all about Alta and I always find a
8 way." And the next messages says "boom".

9 Q. And what date is "boom"?

10 A. That is August 2nd at 9:15 p.m.

11 Q. Okay. Thank you.

12 MS. WILLIAMS: You can take that down.

13 Q. Okay. So in this case did you respond to any crime
14 scenes?

15 A. Yes, I did. I responded to the EconoLodge.

16 Q. Okay. Is that the first crime scene that you responded
17 to?

18 A. That is the first crime scene.

19 Q. Okay. And after responding to that crime scene what
20 did you -- when you got there what was going on?

21 A. Investigator Powell was outside of the room maintaining
22 scene security while he waited for a search warrant.

23 Q. Okay. And did you wait for the search warrant?

24 A. We did. We waited for the search warrant.

25 Q. And how long did you have to wait?

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 A. I believe it was probably about 20 or 30 minutes.

2 Q. Okay. And then what did you do?

3 A. We entered the room. I did an initial walk-through.

4 Whenever I respond to a scene I do it basically the same way
5 every time so that there is that same sequence is followed.

6 I did a walk-through of the room, got a glimpse of
7 where all the items of evidence that were most important
8 were, and then did photography and then evidence collection.

9 Q. And at the time that you processed this room did you
10 have any idea what had happened there or did you have any
11 idea of the crime that was been alleged?

12 A. Not when I first responded, no.

13 Q. Okay. So you just took anything you thought might be
14 important?

15 A. That's correct.

16 Q. And we have already seen a lot of pictures from this
17 hotel room, so I am not going to go into each picture. But
18 if you could just list the items that you collected from the
19 hotel room.

20 A. Sure. I have the photographs. A white fitted sheet
21 and a flatbed sheet, two pillowcases, a pair of gray men's
22 underwear, five plastic shopping bags, an unopened box of
23 Marlboro cigarettes, a white bath towel from a chair, a
24 white bath towel from the floor, a white washcloth from the
25 shower, a white -- excuse me, blue and white striped men's

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 long-sleeved shirt, a purple hairbrush, a Colgate
2 toothbrush, five unopened Natural Light beer bottles in a
3 case, one unopened bottle of baby oil, five Marlboro
4 cigarette butts, a Five Oaks cork on a corkscrew, a black
5 nylon multi-tool case, a deck of playing cards, an open and
6 empty bottle of NyQuil from the dresser top, an open and
7 empty Natural Light beer bottle, one open Bella wine case,
8 pink liquid recovered from a clear plastic cup and the clear
9 plastic cup, empty Five Oaks wine bottle, four empty Five
10 Oaks wine bottles, two empty NyQuil bottles, two empty
11 Marlboro cigarette boxes, and one bag with multiple
12 cigarette butts.

13 Q. Okay. And after you -- tell us when you collect the
14 evidence what steps you take to make sure that you are not
15 contaminating it?

16 A. I change my clothes between the collection of those
17 items, and they are all put into their own paper bags
18 separately.

19 Q. Okay. And after you collected those items what did you
20 do with them?

21 A. They were closed and put into the crime scene vehicle.

22 Q. And did you put them in the safe or the thing that you
23 were discussing before ---

24 A. The vault?

25 Q. The vault.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 A. The smaller pieces, yes. Anything that would fit in
2 the vault went into the vault.

3 Q. So it is locked into the vault?

4 A. It is.

5 Q. Okay. And after you processed that scene where did you
6 go?

7 A. I then went across the street to the bowling alley to
8 the Royal Lanes.

9 Q. And when you got there what was the scene like; had it
10 been cleared, was everything over?

11 A. It was clear and over. The defendant had already been
12 transported and investigators were outside of the building
13 waiting for my arrival.

14 Q. And so when you got in there what did you collect?

15 A. I did the photographs again. I collected a Rossi
16 revolver -- a Rossi 357 magnum revolver, five CVC 357 magnum
17 cartridges, one CVC 357 magnum cartridge case, two pieces of
18 spent cartridge, and two pieces of brass from the spent
19 cartridge.

20 Q. And where was the handgun when you got it?

21 A. It was on a table directly across from the office.

22 Q. Okay. And how was that piece of evidence integrity
23 being monitored?

24 A. There was an officer inside the building.

25 Q. Okay. Do you happen to remember which officer it was?

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

- 1 A. It was Officer Davis.
- 2 Q. Okay. And he was sitting with that piece of evidence?
- 3 A. He was standing just very near it.
- 4 Q. Okay.
- 5 A. Within about six feet.
- 6 Q. And did he stay there until you picked it up?
- 7 A. I believe he did. Investigators came in after me.
- 8 Q. But that piece of evidence was never alone?
- 9 A. That's correct.
- 10 Q. Never left alone?
- 11 A. That's correct.
- 12 Q. And then after you collected it what did you do with
- 13 it?
- 14 A. It was placed in the crime scene vehicle and
- 15 transported to the station.
- 16 Q. Okay. Did you collect anything else from the bowling
- 17 alley?
- 18 A. No, I didn't.
- 19 Q. Okay. Tell us about any other pieces of evidence or
- 20 crime scenes that you processed.
- 21 A. I processed the vehicle the defendant drove to the
- 22 bowling alley.
- 23 Q. Okay. And when you processed it where was it?
- 24 A. It was secured in the rollup storage area that we have
- 25 set aside for vehicle processing.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 Q. And how is that protecting the integrity of that piece
2 of evidence?

3 A. It is locked inside that area and the key is dropped
4 into one of those pass-through evidence lockers. So once
5 that door is locked nobody can access but me.

6 Q. Do you happen to know who brought that piece of
7 evidence -- or followed that car in?

8 A. I believe that was Officer Killian. Let me double
9 check. That was Officer Killian.

10 Q. Okay. And so what is the practice; they drive behind
11 it and make sure that it gets -- that someone has eyes on it
12 the whole time?

13 A. That is correct.

14 Q. Okay. And what did you collect from the vehicle?

15 A. From the vehicle was a digital video recording, digital
16 photographs, ten swabs from the passenger compartment of the
17 vehicle, one roll of duct tape, forty-four CVC 357 magnum
18 cartridges and an ammunition box, one Wal-Mart receipt dated
19 August 1st, 2014; and two Trader World receipts dated August
20 4th, 2014.

21 Q. Do you remember a Taco Bell receipt in there?

22 A. There was a Taco Bell receipt in there, but it was not
23 collected.

24 Q. Okay. Did you photograph it?

25 A. Yes, ma'am, I did.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 Q. Okay. And those pieces of evidence were all placed
2 into the evidence system that you described to the jury?

3 A. That's correct.

4 Q. I am going to show you some photographs.

5 MS. WILLIAMS: I am going to show her State's 54,
6 State's 37, 46, 42, 36, 23, 22, 21, 19, 17, 16, 15, and 14.

7 I'm sorry; I kind of went backwards, Your Honor.

8 MS. GAY: No objection, Your Honor.

9 MS. WILLIAMS: We would ask that all of those exhibits
10 be admitted.

11 THE COURT: One more time the numbers.

12 MS. WILLIAMS: Fourteen, fifteen, sixteen, seventeen,
13 nineteen, twenty-one, twenty-two, twenty-three, thirty-six,
14 forty-two, forty-six, thirty-seven, and fifty-four.

15 THE COURT: No objection, Ms. Gay?

16 MS. GAY: No objection, Your Honor.

17 MS. WILLIAMS: Into evidence without objection. You
18 may publish as needed.

19 (WHEREUPON, State's Exhibit Numbers 14, 15, 16, 17, 19, 21,
20 22, 23, 36, 37, 42, 46, and 54, were admitted into evidence

21 MS. WILLIAMS: Could you please put 54.

22 BY MS. WILLIAMS:

23 Q. And if you could just use the pointer. I don't know
24 that we will really need it. We are going to go through
25 these kind of quickly.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 Tell us what is in that picture.

2 A. That is the -- right outside of Room 125 which is the
3 scene of the sexual assault.

4 Q. Okay. And that is the crime scene tape and that is how
5 it was when you got there?

6 A. That is correct.

7 Q. Okay.

8 MS. WILLIAMS: And if you could put up 23 -- I'm sorry,
9 twenty -- that's fine.

10 Q. Is that the revolver that you retrieved?

11 A. Yes, it is.

12 MS. WILLIAMS: Twenty-two.

13 Q. And is that the table it was on when you got it?

14 A. Yes, it is.

15 Q. Okay.

16 MS. WILLIAMS: Forty-six.

17 Q. Is that the evidence garage that you were taking about
18 where you -- where the vehicle was kept when you processed
19 it?

20 A. Yes, it is.

21 MS. WILLIAMS: And 36.

22 Q. And is that what you found in the car?

23 A. Yes, it is.

24 Q. And what type of gun does that go in, those bullets?

25 A. It would fit the revolver that was recovered from the

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 EconoLodge.

2 Q. Okay.

3 A. I'm sorry, from the bowling alley.

4 Q. Okay.

5 MS. WILLIAMS: Thirty-seven, please.

6 Q. Okay. Tell us what this picture is.

7 A. That is what was recovered from the vehicle. And
8 that's six missing rounds.

9 Q. And what is the significance of the fact that there are
10 six missing rounds?

11 A. There were six missing rounds recovered inside of the
12 firearm.

13 Q. How many does it take to fill the revolver?

14 A. It takes six.

15 Q. So it was fully loaded from those bullets?

16 A. Correct.

17 Q. Okay.

18 MS. WILLIAMS: If you could just put up State's 14.

19 Q. Tell us what that is. It is kind of hard to see.

20 A. That's actually -- it's actually two small pieces.

21 There is this larger piece here (pointing), and there is a
22 smaller piece on the side. And that is a piece of brass
23 from the projectile (pointing).

24 Q. Okay.

25 MS. WILLIAMS: Nineteen, please.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 A. That is one of the pieces of the projectile. And that
2 is actually beyond a piece of plywood that is against the
3 wall when you walk into the office.

4 MS. WILLIAMS: And lastly, 16.

5 Q. Is that just a closer shot?

6 A. Yeah, that is just a closer version.

7 Q. And I can show you a picture if you don't remember, but
8 what part of the office are these projectiles found in?

9 A. When you walk into the door of the office immediately
10 to the right is a wall where there are pieces of plywood and
11 a dartboard stacked against the wall.

12 That piece that you see there was behind that piece of
13 plywood, about probably eight inches from the edge of the
14 plywood. The other piece of projectile was located behind
15 the door. When you swing the door open that piece of
16 projectile was beyond the door.

17 Q. Is it fair to say that the projectiles were found close
18 to where the entrance to the office was?

19 A. That's correct.

20 Q. Okay. I am going to ask you if you remembered getting
21 any clothing of the defendants from Officer -- I can't
22 pronounce his name. From an officer in Goose Creek. And
23 you can tell us his name. Sceviour?

24 A. I believe Officer Sceviour is who submitted Minor 1
25 clothing. I believe Wegner -- I can confirm that for

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 you ---

2 Q. Okay.

3 A. --- in just a second. I believe Wegner is the officer
4 who -- yes, Officer Wegner submitted the clothing.

5 (WHEREUPON, exhibit shown to defense counsel.)

6 MS. GAY: No objection, and no objection to the
7 admission, Your Honor.

8 MS. WILLIAMS: Okay. We would offer then 96 in, which
9 is defendant's jacket.

10 THE COURT: State's 96 into evidence without objection.
11 (WHEREUPON, State's Exhibit Number 96 was admitted into
12 evidence.)

13 MS. WILLIAMS: I want to show them what this jacket
14 looks like. It is the defendant jacket and shoes.

15 MS. WILLIAMS: Black jacket.

16 (WHEREUPON, exhibit displayed.)

17 MS. WILLIAMS: Shoes.

18 (WHEREUPON, exhibit displayed.)

19 Q. Okay, Ms. Myers, I want to show you several pieces of
20 evidence. I have already shown Ms. Gay. State's 95 which
21 is a receipt. Tell us what that is.

22 A. That is the Wal-Mart receipt that was recovered from
23 the vehicle.

24 Q. Okay. And is that the one that you took from the
25 vehicle?

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 A. Yes, it is.

2 Q. Okay. And 92, tell us what that is. Is it a Publix
3 receipt?

4 A. It appears to be a Publix receipt, yes.

5 Q. Okay. And 111.

6 A. This is the second pillowcase that was taken,
7 Pillowcase Number 2.

8 Q. Okay, 110.

9 A. This is the first pillow case, Pillowcase Number 1.

10 Q. Okay.

11 MS. WILLIAMS: Your Honor, we would move 110, 111, 92,
12 and 95 into evidence.

13 THE COURT: Any objection?

14 MS. GAY: No objection, Your Honor.

15 MS. WILLIAMS: One ten, one eleven, ninety-two, and
16 nine-five into evidence without objection.

17 (WHEREUPON, State's Exhibit Numbers 92, 95, 110, and 111,
18 admitted into evidence.)

19 Q. And there's just two more. Ninety-three, tell us what
20 that is.

21 A. That is the two copies of the Trader World receipt.

22 Q. Okay. What is Trader World; is that the gun place?

23 A. It is a gun range and gun store.

24 Q. Okay. And lastly, 112. You don't have to open it.

25 But if you can identify what that is.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 A. It is the ten swabs that were taken from the passenger
2 compartment of the vehicle.

3 Q. Okay.

4 MS. WILLIAMS: And we would move 112 in, Your Honor.

5 THE COURT: Any objection?

6 MS. GAY: No objection, Your Honor.

7 THE COURT: One twelve and ninety-three, Ms. Williams?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: Into evidence without objection.

10 MS. WILLIAMS: Court's indulgence.

11 (WHEREUPON, State's 93 and State's 112 was admitted into
12 evidence.)

13 Q. I am showing you what has been previously marked and
14 published as State's 88. And tell us what that is. And if
15 you wouldn't mind telling us what 88A, B, C, and D are.

16 A. Sure. May I get another pair of gloves?

17 Q. Yes.

18 (WHEREUPON, witness adorns gloves.)

19 A. Eighty-eight A is the brass and pieces of cartridge
20 that were recovered from the bowling alley.

21 Q. Okay.

22 A. Eighty-eight B is the shell casing that was still
23 inside of the revolver at the bowling alley.

24 Q. Okay.

25 A. Eighty-eight C is an unfired projectile.

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 Q. Okay.

2 A. There appears to be a strike on the ---

3 Q. Okay, what does that mean that there is a strike on it?

4 A. The firing pin, when it -- when you pull the trigger of
5 a firearm the firing pin goes forward and strikes the primer
6 that is in the end of the projectile -- or, I'm sorry,
7 inside the end of the bullet. That's what causes the round
8 itself to come out of the casing. And there does appear to
9 be a strike on this one.

10 And 88D is the four remaining unfired -- or the
11 remaining unfired rounds.

12 Q. Okay. And those were taken from the gun?

13 A. That's correct.

14 Q. And I want to show you State's 89 and offer it into
15 evidence. If you could just tell us if the rounds that came
16 out of the gun match what you found in the car in that box
17 if it is the same type of the bullet.

18 A. Yes, it is.

19 Q. And lastly, Ms. Myers, subject to the chain of
20 evidence -- I will let you put all of that back together.
21 Thank you.

22 A. You are welcome.

23 Q. I am showing you State's 91 which appears to be the
24 rape kit; is that correct?

25 A. That is correct.

1 Q. And if you would just go through very briefly and read
2 into the record, there is A, B, C, D, and E.

3 A. Okay.

4 Q. And just tell us -- you can start with "A". And just,
5 you know, tell us that -- that what it is and that you got
6 it and where you brought it.

7 A. This is 91A, and it appears -- it is the vaginal swabs
8 from Minor 1 Ninety-one C is the underwear from Minor
9 Vick. Ninety-one B are the rectal swabs from Minor 1
10 Ninety-one D is the known DNA standard of Minor 1 And
11 91E are the oral swabs of Minor 1

12 Q. And those if you look on the bottom of the box you can
13 tell us who you got them from and just let us know that
14 those were kept with the same integrity that you just
15 described to the jury in terms of your evidence collection
16 procedures.

17 A. Yes, Officer Sceviour picked these up from the hospital
18 on August 6th, 2014, and he turned them into evidence to me.

19 Q. And you delivered them where?

20 A. They were taken to Intelligenetics in Hilton Head
21 Island.

22 Q. And really lastly, just tell us what that is and if you
23 handled that and took that anywhere.

24 A. These are the dried DNA extracts that were obtained by
25 Dr. Demers at Intelligenitics from the items that we sent

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 for testing. So I recovered them from him.

2 Q. Okay. And did you take the buccal swab from the
3 defendant up there?

4 A. Yes, I did.

5 Q. Okay. And what is a buccal swab briefly?

6 A. That is the known standard. We take a swab and swab
7 the inside of the cheek area to get skin cells, and that is
8 the easiest way for us to get the DNA.

9 Q. And that is how the DNA scientist figures out if the
10 DNA matches the defendant?

11 A. That is correct.

12 Q. Okay. Nothing further. Thank you.

13 THE COURT: Ms. Gay.

14 MS. GAY: I have no questions. And I have no objection
15 to the entering of the evidence.

16 THE COURT: All right. You may step down. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MR. POULOS: The State calls Investigator McWilliams.

20 THE COURT REPORTER: Can I just clarify the
21 exhibits ---

22 THE COURT: Hold on one second.

23 THE COURT REPORTER: --- the exhibits that she is not
24 objecting to to being admitted are they the ones we just
25 discussed?

DIRECT EXAMINATION BY MS. WILLIAMS OF WENDY MYERS

1 THE COURT: There is nothing on ---

2 THE COURT REPORTER: Okay.

3 THE COURT: No motion for anything to be admitted so.

4 THE COURT REPORTER: Okay.

5 MS. WILLIAMS: Well, Your Honor, 94A, B, C, and D has
6 already been admitted. Ms. Gay had asked us to sure up the
7 chain with Ms. Meyers.

8 THE COURT: If it has already been admitted, it has
9 been admitted.

10 THE COURT REPORTER: That's 91, not 94.

11 THE COURT: So just because she is now not objecting,
12 it is already on the record.

13 MS. WILLIAMS: Well ---

14 MS. GAY: One moment, Your Honor.

15 MS. WILLIAMS: --- out of an abundance of caution we
16 would ask 91A, B, C, and D and E to be admitted. If there
17 is any confusion ---

18 THE COURT: It has already been admitted. Thank you.

19 MS. GAY: Your Honor, I have a witness that is
20 arriving that should be arriving now and I was wondering if
21 we could ---

22 THE COURT: Do you need to approach the bench?

23 MS. GAY: Yes.

24 (WHEREUPON, bench conference was had.)

25 (WHEREUPON, witness was duly sworn.)

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS:

1 THE CLERK: Have a seat. State your full name and
2 spell your last name for the record.

3 MR. MCWILLIAMS: Sean Michael McWilliams,
4 M-C-W-I-L-L-I-A-M-S.

5 THE COURT: Mr. Poulos, your witness.

6 MR. POULOS: Thank you, Your Honor.

7 **DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS:**

8 Q. Good morning, Officer. Where do you work?

9 A. The Goose Creek Police Department.

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

11 A. Since February of 2006.

12 Q. What are your current duties at the Police Department?

13 A. I am an investigator.

14 Q. And what do you do as an investigator generally?

15 A. Follow-up on cases.

16 Q. Were you employed in your present capacity in August of
17 2014?

18 A. Yes.

19 Q. Did you assist in the investigations into Gary Fraley
20 on August 5th, 2014?

21 A. Yes.

22 Q. Were you involved in the investigation before the
23 incident at the bowling alley?

24 A. Yes.

25 Q. What was the nature of that investigation?

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 A. Before the bowling alley?

2 Q. Before the bowling alley.

3 A. Officer Wegner had approached me earlier that day later
4 in the afternoon, and he in general was asking me if I knew
5 of a way to check and see if a background check had been
6 done.

7 Apparently there had been a complaint that he may --
8 someone may have -- he may have purchased a gun. And he --
9 Officer Wagner asked me if I knew of a way to check and see
10 if a background check had been done.

11 Q. A background check would be done if someone had
12 purchased a gun?

13 A. Yes, through the NICS system.

14 Q. And when you say he are you referring to the defendant
15 Mr. Fraley?

16 A. Yes.

17 Q. Okay. Did you contact Trader World?

18 A. I did. I contacted them via telephone.

19 Q. And what kind of response did you get?

20 A. They would not tell me anything.

21 Q. Did you eventually later that day respond to Royal
22 Lanes in Goose Creek?

23 A. I did.

24 Q. And how were you dispatched there?

25 A. I was called there I believe by my lieutenant who

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 advised me to respond and assist.

2 Q. What did you do once you arrived?

3 A. As I arrived I believe the situation had just been
4 resolved before I arrive there. And I stood by for
5 directions. The suspect was being put into the car.

6 Q. Later that day did you collect an oral swab or a buccal
7 swab from Mr. Fraley?

8 A. I did.

9 Q. And did you give that -- did you give those swabs to
10 Crime Scene Investigator Wendy Myers?

11 A. Yes.

12 Q. Okay. Investigator, did there come a time when you
13 examined a firearm and casings and rounds recovered from the
14 defendant at the bowling alley?

15 A. Yes.

16 Q. I am going to show you States 88; 88A, 88B, 88C, and
17 88D.

18 A. Do you mind if I put gloves on?

19 Q. Absolutely.

20 (WHEREUPON, witness adorned gloves.)

21 Q. I want to first direct your attention to the actual
22 firearm itself. Is that the firearm you examined?

23 A. It appears to be, yes.

24 Q. Okay. And I am going to direct your attention before
25 we get into details of that to 88B. There should be an

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 envelope in that box.

2 A. Okay.

3 Q. Could you open that and look inside, please. What is
4 that?

5 A. This is a spent 357 Magnum shell casing.

6 Q. And when you say spent what does that mean?

7 A. The bullet has been fired.

8 Q. And is that the type of bullet that goes to that
9 firearm?

10 A. Yes.

11 Q. Okay. You can you put 88B back. I want to turn your
12 attention back to the firearm itself. What type of gun is
13 this?

14 A. This is a Rossi revolver chambered in 357 Magnum.

15 Q. Okay. Is it double action or single action?

16 A. This is -- this is single action ---

17 Q. When -- go ahead.

18 A. Which means that -- may I briefly explain ---

19 Q. Absolutely.

20 A. --- how a firearm works? This is a revolver. You load
21 your ammunition here. It holds three -- three bullets. You
22 close this. This is the cylinder. In order to fire a round
23 you need to pull the trigger. And the trigger has to travel
24 all the way back. As the trigger travels back the cylinder
25 rotates the next round in sequence and the hammer also

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 concurrently travels back. This is the hammer here
2 (pointing). It travels backwards.

3 It is hard to do this with the weapon. And I am trying
4 to keep it pointed in a safe direction. Pardon me, it is
5 engrained in me so I point it in a safe direction.

6 As you pull the trigger back the hammer comes back, the
7 cylinder rotates the next round. Once the hammer gets to
8 its furthest rear point the trigger will release the hammer.
9 The hammer will fall. And there is a spur on the hammer
10 which will strike what is called the primer on the bullet,
11 on the ammunition.

12 The primer contains a small charge which ignites the
13 powder inside the bullet. It builds up pressure and expels
14 the projectile out the front, the muzzle of the revolver.

15 It is a double action in that you can pull the trigger
16 and make the hammer come back and then fall. A single
17 action would require that you cock the hammer back with your
18 thumb manually before pulling the trigger.

19 Q. So it is a double action?

20 A. It is a double action.

21 Q. So the hammer can come to the cocked position in two
22 ways, by pulling the trigger or by pulling the hammer back
23 manually; is that correct?

24 A. It won't cock per se ---

25 Q. Right.

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 A. --- when you pull the trigger. The trigger will only
2 pull it back and then release it.

3 Q. Okay.

4 A. It will only stay cocked if you pull it back manually
5 with your thumb.

6 Q. Okay. Does it automatically revert to a cocked
7 position after being fired?

8 A. No, once you pull the trigger all the way back the
9 hammer travels all the way back and drops. It fires a
10 round. The hammer stays dropped and the cylinder remains
11 where it is. The trigger remains in its most forward
12 position.

13 In order to fire another round you have to pull the
14 trigger again or take your thumb and cock the hammer all the
15 way back.

16 Q. So if the hammer is in a cocked position it is safe to
17 say the handler of the weapon put it in that position?

18 A. Yes.

19 Q. What would be the purpose of putting the hammer in the
20 cocked position manually before firing it?

21 A. It requires tremendously less trigger pull. It is
22 measured in weight, in foot pounds. And it requires just a
23 little bit of pressure to pull the trigger to drop the
24 hammer. It is -- it is much quicker and it requires less --
25 less pressure.

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 Q. So if you pull the trigger back -- I'm sorry, if you
2 pull the hammer back and you cock it manually it is much
3 easier to pull a trigger?

4 A. Much much easier.

5 Q. Okay. You can put the firearm back in the box. And I
6 want to direct your attention to Exhibit 88C.

7 A. Okay.

8 Q. Do you recognize that?

9 A. Yes.

10 Q. What is it?

11 A. This is a 357 Magnum cartridge that is unfired.
12 However, the primer is dented indicating that at some point
13 the hammer impacted the primer.

14 May I go back to 88B ---

15 Q. Sure.

16 A. --- and look at that? It is what we refer to as a
17 light strike. It is lightly struck. The hammer did not
18 strike -- the hammer spur did not strike the primer with
19 sufficient force to ignite the primer, thus the powder, thus
20 firing a round.

21 Q. So the light strike is indicative of the hammer
22 striking the back of the cartridge?

23 A. Yes, the hammer definitely struck the back of the
24 cartridge.

25 Q. And is that indicative of the firearm being fired?

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 A. An attempt to do so.

2 Q. And attempt to do so. But a failure by the cartridge
3 to discharge?

4 A. Yes.

5 MS. POULOS: I have no additional questions, Your
6 Honor. Thank you.

7 THE COURT: Ms. Gay.

8 MS. GAY: One moment, Your Honor. I have no questions
9 for this witness, Your Honor.

10 THE COURT: You may step down. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Ladies and gentlemen, we are going to take
13 our mid morning break. Please do not begin your
14 deliberations. Do not discuss this case amongst yourselves.

15 Please rise for the jury.

16 (WHEREUPON, jury exits 7/16/15, 10:27 a.m.)

17 THE COURT: Thank you. Please be seated. Ms. Gay, you
18 had asked for some time in a break. And I need to take that
19 plea. If you will let Mr. McNeely know I am ready. Thank
20 you. That will take about 15 minutes.

21 (WHEREUPON, bench conference was had for scheduling and
22 break for another court matter.)

23 (WHEREUPON, resume 7/16/15, 10:50 a.m.)

24 THE COURT: Anything before we bring them back in?

25 MS. WILLIAMS: Not from the State.

DIRECT EXAMINATION BY MR. POULOS OF SEAN MCWILLIAMS

1 MS. GAY: No, Your Honor.

2 THE COURT: You have had enough time to handle your
3 matter?

4 MS. GAY: Yes, they are going with what they need to
5 do.

6 THE COURT: Thank you.

7 (WHEREUPON, court discusses remaining witnesses with Ms.
8 Williams.)

9 (WHEREUPON, jury enters 7/16/15, 10:49 a.m.)

10 THE COURT: Thank you. Be seated. Call your next
11 witness.

12 MS. WILLIAMS: The State would recall Minor 1

13 THE COURT: Christie, she has already been sworn.

14 Minor 1 you are still under oath. Do you remember taking
15 the oath?

16 MISS Minor 1 Uh-huh.

17 THE COURT: All right. You are still under that same
18 oath. Please have a seat.

19 Ms. Williams.

20 MS. WILLIAMS: Thank you, Your Honor.

21 **DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1** (RECALLED):

22 Q. Minor 1 when you testified last time there was something
23 that you had said in your statement that I forgot to ask you
24 and that is why you came back.

25 Did Ms. Frayer ever say anything to you while you were

DIRECT EXAMINATION BY MS. WILLIAMS OF Minor 1

1 in the hotel room about what would happen to him after he
2 raped you?

3 A. He said that he would most likely go to jail because it
4 was rape.

5 Q. Okay. Thank you. Nothing further, Your Honor.

6 MS. GAY: I have no witnesses -- no questions for this
7 witness.

8 THE COURT: Minor you may step down. Thank you so
9 much.

10 Call your next witness.

11 MR. POULOS: The State calls Jim Bongalis.

12 THE COURT: Sir, please come forward and be sworn.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: If you will have a seat. State your full
15 name and spell your last name for the record.

16 THE WITNESS: I am James Nichols Bongalis. The last
17 name is spelled B-O-N-G-A-L-I-S.

18 THE COURT: Mr. Poulos.

19 MR. POULOS: Thank you, Your Honor.

20 **DIRECT EXAMINATION BY MR. POULOS OF JAMES BONGALIS:**

21 Q. Good morning, Mr. Bongalis.

22 A. Good morning.

23 Q. Where do you work?

24 A. I work at Publix Supermarkets on Saint James Avenue.

25 Q. What is the address?

DIRECT EXAMINATION BY MR. POULOS OF JAMES BONGALIS

1 A. 208-C Saint James Avenue, Goose Creek, South Carolina.

2 Q. Approximately how far is that from the Royal Lanes
3 bowling alley?

4 A. It is three- to four-tenths of a mile.

5 Q. What is your position there?

6 A. I am the store manager of the store.

7 Q. What do those responsibilities include?

8 A. Just overall day-to-day operations, anything involved
9 in the -- in the property.

10 Q. Are you familiar with the video recording system at
11 your store?

12 A. I am, sir.

13 Q. How is video surveillance recorded and stored?

14 A. It is digitally -- well, it is cameras, and it is
15 digitally stored on three DVR's that put it on the hard
16 drive.

17 Q. Okay. Is there any way for an employee to edit or
18 corrupt the video surveillance system?

19 A. No, sir.

20 Q. I am going to show you State's Exhibit 99 and 100.

21 MR. POULOS: Ms. Gay.

22 MS. GAY: I have no objection.

23 Q. Do you recognize these two disks?

24 A. Yes, sir, I viewed those and I initialed them and put
25 the date on them that I initialed them.

DIRECT EXAMINATION BY MR. POULOS OF JAMES BONGALIS

1 Q. And you viewed the disks did you say?

2 A. Yes, ma'am.

3 Q. Do they contain surveillance video taken from your
4 store?

5 A. Yes, ma'am.

6 Q. Does the date and time appear on those videos?

7 A. Yes, ma'am.

8 Q. And is the date and timestamp in your video system
9 accurate?

10 A. Yes, sir.

11 Q. Was the video August 5th, 2014?

12 A. Yes, it was.

13 Q. And do those videos appear to be edited or corrupted in
14 any way?

15 A. Not in any manner.

16 MR. POULOS: I would offer those into evidence, Your
17 Honor, as State's 99 and 100.

18 THE COURT: Any objection?

19 MS. GAY: No, ma'am.

20 THE COURT: Ninety-nine and one hundred into evidence
21 without objection. You may publish.

22 (WHEREUPON, State's Exhibit 99 and 100 were admitted into
23 evidence.)

24 BY MR. POULOS:

25 Q. What areas of the store -- well, first of all were

DIRECT EXAMINATION BY MR. POULOS OF JAMES BONGALIS

1 these videos provided to law enforcement?

2 A. Yes, they were.

3 Q. And do you recall what areas of the store did these
4 particular videos cover?

5 A. The videos have the front doors, entrance and exit; the
6 register number eight, and the health and beauty care
7 section of our store.

8 Q. Does it also show the beer isle?

9 A. Yes, it did.

10 Q. Okay. I am going to show you State's Exhibit 92 that
11 is already in evidence.

12 MS. GAY: I have no objection, Your Honor.

13 Q. Do you recognize that document?

14 A. I do.

15 Q. What is it?

16 A. It is an electronic receipt from a transaction that
17 happened in our store.

18 Q. And these receipts are created and kept in the regular
19 course of business at your store?

20 A. Yes, they are.

21 Q. And is it your store's regular practice to keep those
22 records?

23 A. Yes, sir.

24 Q. Okay. What items are listed on the receipt?

25 A. Johnson and Johnsons baby oil for 3.79; NyQuil cherry

DIRECT EXAMINATION BY MR. POULOS OF JAMES BONGALIS

1 liquid eight ounce, 7.29; and Natural Light long-neck
2 nonreturnable bottles 5.79.

3 Q. Is the date present on that receipt?

4 A. Yes, sir, it is.

5 Q. And what is the date?

6 A. 8/5/2014 at 15:01.

7 Q. Thank you, Mr. Bongalis.

8 MR. POULOS: The State has no further questions, Your
9 Honor.

10 THE COURT: Ms. Gay.

11 MS. GAY: I have no questions, Your Honor.

12 THE COURT: You may step down. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: You are free to go.

15 THE WITNESS: All right. Thank you.

16 THE COURT: Call your next witness.

17 MR. POULOS: The State calls Acock Patel.

18 (WHEREUPON, witness was duly sworn.)

19 THE CLERK: Have a seat. State your full name and
20 spell your last name for the record.

21 THE WITNESS: My name is Acock Patel; P-A-T-E-L, Patel.

22 **DIRECT EXAMINATION BY MR. POULOS OF ACOCK PATEL:**

23 Q. Good morning, Mr. Patel.

24 A. Good morning.

25 Q. Where do you work?

DIRECT EXAMINATION BY MR. POULOS OF ACOCK PATEL

- 1 A. I work at the EconoLodge, Goose Creek.
- 2 Q. What is the address?
- 3 A. 401 North Goose Creek Boulevard.
- 4 Q. And what is your position there?
- 5 A. I am a owner and manager over there.
- 6 Q. Okay. And is that the EconoLodge in close proximity to
- 7 Royal Lanes?
- 8 A. Yes, sir.
- 9 Q. Okay. Are you familiar with the video recording system
- 10 at your motel?
- 11 A. Yes, sir.
- 12 Q. How is the surveillance video recorded and stored?
- 13 A. It is PC-based surveillance, and it is set on the
- 14 motion detections. It just records what we -- you know,
- 15 several days or so.
- 16 Q. Is there any way to edit or corrupt the video that you
- 17 pulled from your system?
- 18 A. No, sir.
- 19 Q. Okay. Did you turn video surveillance over to law-
- 20 enforcement?
- 21 A. Yes.
- 22 Q. Okay. I am going to show you a disk marked State's
- 23 Exhibit 98. Do you recognize that disk?
- 24 A. Yes, sir.
- 25 Q. What is it?

1 A. It is my initial on it, and I think I have made this.

2 Q. And did you watch that video?

3 A. Yes.

4 Q. And does it depict surveillance taken from your motel
5 on August 5th, 2014?

6 A. That is correct.

7 Q. And does it appear to be edited or corrupted in any
8 way?

9 A. No, sir.

10 Q. I would offer that as State's Exhibit 98, Your Honor.

11 THE COURT: Any objection?

12 MS. GAY: No, ma'am.

13 THE COURT: State's 98 into evidence without objection.

14 (WHEREUPON, State's Exhibit Number 98 was admitted into
15 evidence.)

16 Q. Mr. Patel, can you tell me before coming today did you
17 look in your system and see what dates Mr. Gary Fraley had
18 reservations at your motel?

19 A. He had checked in on the 3rd, August of 2014.

20 Q. And how many days did he have reservations for?

21 A. He stayed for three nights. That's all.

22 Q. So August 3rd to August 6th were his reservation dates?

23 A. It was -- yeah.

24 Q. Okay. Did you ever encounter Mr. Fraley during his
25 stay at the motel?

DIRECT EXAMINATION BY MR. POULOS OF ACOCK PATEL

1 A. Yes, I do remember. We were doing actually air-
2 conditioning cleaning, you know, I think is the next day.
3 And we were swapping -- we were cleaning and then put the
4 clean unit and then take the old one out and fixing up.

5 So he was in the room and he was really impatient that
6 he was -- he did not like the way we were doing it. And I
7 explained to him, sir, it will take just only two minutes to
8 just swap it out. And we were washing them out.

9 Q. He wanted you out of his room quickly?

10 A. Yes.

11 MR. POULOS: I have no further questions, Your Honor.

12 THE COURT: Ms. Gay.

13 MS. GAY: Just for clarification.

14 **CROSS-EXAMINATION BY MS. GAY OF ACOCK PATEL:**

15 Q. I'm sorry I was -- did you say that that time when he
16 wanted you out of the room was on August 5th or was it --
17 what day did you say you encountered him?

18 A. He checked in on I think it was on the third. So maybe
19 fourth or fifth. I'm not sure, but I remember that, you
20 know ---

21 Q. So you don't remember what day you saw him?

22 A. It was on the fifth. Because the third was the
23 check-in time. And then the fourth we were doing the
24 upstairs. And the fifth was the downstairs rooms.

25 Q. And did you ever remember that he may have had a dog

DIRECT EXAMINATION BY MR. POULOS OF ACOCK PATEL

1 with him when he checked in?

2 A. I don't recall that.

3 MS. GAY: No further questions, Your Honor.

4 THE COURT: Mr. Poulos, redirect.

5 MR. POULOS: Nothing from the State, Your Honor.

6 THE COURT: You may step down. Thank you, Mr. Patel.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MR. POULOS: The State calls Officer Investigator Micah
10 Fogle.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: Have a seat. State your full name for the
13 record and spell your last name.

14 THE WITNESS: My name is Micah John Fogle. It is
15 F-O-G-L-E.

16 **DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE:**

17 Q. Good morning, Mr. Fogle. Where do you work?

18 A. The Goose Creek Police Department.

19 Q. And how long have you worked there?

20 A. A total of 12 years.

21 Q. What is your current position?

22 A. I am an investigator.

23 Q. What does that entail?

24 A. When cases are assigned I investigate them.

25 Q. August 5th, 2014, did you respond to the Royal Lanes

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 bowling alley?

2 A. I did.

3 Q. Okay. At that time did you take photographs of the
4 suspect's vehicle?

5 A. Yes, I did.

6 Q. Okay. Did you eventually assist Ms. Myers in searching
7 that vehicle?

8 A. Yes.

9 Q. Did there come a time when you looked at the phone
10 recovered from the defendant?

11 A. Yes, I did.

12 Q. Did you have an opportunity to look at the search
13 history conducted on that phone through the Internet?

14 A. Yes.

15 Q. And what did that search history reveal?

16 A. It had searches for one of the victims, Steven Tsafos.
17 It had searches for private investigators as well as some
18 type of GPS tracking devices.

19 Q. Did you collect any video surveillance in this case?

20 A. Yes.

21 Q. Where did you collect that from?

22 A. From Publix and the EconoLodge.

23 Q. I am going to show you what is already in evidence as
24 State's 98, 99, and 100. Are these the videos you
25 collected?

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 A. Yes, they are.

2 Q. Okay. How do you know?

3 A. I have viewed them completely, and I have also
4 initialed them.

5 Q. You have viewed all of the videos and you are familiar
6 with them?

7 A. Yes, I am.

8 Q. Thank you.

9 MR. POULOS: At this time, Your Honor, I would like to
10 publish State's 99.

11 (WHEREUPON, State's 99 played while the following questions
12 were asked by Mr. Poulos.)

13 Q. Are these the videos that you observed, Mr. Fogle?

14 A. Yes, they are.

15 Q. What is this location?

16 A. This is the Publix in Goose Creek.

17 Q. I may skip around a bit. I am going to pause it there
18 and direct your attention to what is indicated as Camera 2.
19 Do you recognize the individual in that shot?

20 A. Yes, I do.

21 Q. Who is that?

22 A. That is the defendant Gary Fraley.

23 Q. Is that what he was wearing during his apprehension?

24 A. Yes, it was.

25 Q. I am going to skip ahead slightly, Investigator. I

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 would direct your attention to Camera 11. Do you recognize
2 the person depicted in that shot?

3 A. Yes, sir, it is also again the defendant Gary Fraley.

4 Q. What does he appear to be holding in his left hand?

5 A. That would be beer I believe.

6 Q. What about his right hand?

7 A. I think that would be the NyQuil and baby oil.

8 Q. Does he appear to use some sort of debit or credit card
9 there at the register?

10 A. He does.

11 MR. POULOS: At this time I would like to publish
12 State's Exhibit 100.

13 Q. Investigator, what is depicted in Camera 4 there?

14 A. That would be the beer isle in Publix.

15 Q. And who do you see depicted in Camera 4 at this point
16 in the black jacket?

17 A. Gary Fraley.

18 Q. What was he carrying in his hand there, Mr. Fogle?

19 A. That is a pack of I think it was Natural Light beer.

20 Q. I am directing your attention to Camera 9. Who do you
21 see depicted in that shot?

22 A. Gary Fraley.

23 Q. And do you know what section of the store that is?

24 A. It is the health and beauty section.

25 Q. Does he appear to be searching for a specific item?

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 A. He does.

2 MR. POULOS: At this time the State would like to
3 publish Exhibit 98.

4 Q. Where is this location?

5 A. This is the EconoLodge in Goose Creek.

6 Q. This is a video we are just going to have to play all
7 the way through. It is a little lengthy.

8 Is this the side of the EconoLodge that would be facing
9 Central Avenue?

10 A. Yes, it is.

11 Q. Where would Room 125 be in this shot if you remember?

12 A. I believe it would be down on the end.

13 Q. The vehicle that just drove by, Mr. Fogle, do you
14 recognize that?

15 A. I did.

16 Q. Whose vehicle is that?

17 A. The Saturn owned by Gary Fraley.

18 Q. Does that appear to be Mr. Fraley who just walked
19 through the screen?

20 A. It does.

21 Q. There about the end of the hall is that where Room 125
22 is located?

23 A. It should have been, yes.

24 Q. Well, this shot, is this the other side of the
25 EconoLodge?

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 A. It is.

2 Q. I am going to try to skip forward a little bit on this
3 one and save us some time.

4 The vehicle that just drove by, whose vehicle does that
5 turn out to be?

6 A. Gary Fraley's.

7 Q. What is the date on this particular video?

8 A. August the 5th, 2014.

9 Q. Who does that appear to be depicted there in that shot?

10 A. It would be Gary Fraley and the victim Minor 1

11 Q. What is the time?

12 A. It is 15:05. 3:05.

13 Q. Mr. Fogle, is this just a different angle of what we
14 just saw?

15 A. It is. Just above.

16 Q. And again, who is this that appears to be depicted in
17 the video?

18 A. Gary Fraley and again Minor 1

19 Q. What time is it in this shot, Investigator?

20 A. 17:08 or 5:08.

21 Q. Is this a different angle at the same time that we just
22 saw?

23 A. Yes, it is.

24 Q. Investigator, after Mr. Fraley was arrested and taken
25 into custody did you regularly listen to phone calls he was

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 making from the jail?

2 A. Yes.

3 Q. Have you had an opportunity to hear the manner of his
4 discussions?

5 A. Yes.

6 Q. Did he sound lucid, reasonable, and rational?

7 A. Yes.

8 Q. Did he discuss business matters, power of attorney,
9 property transfer, finances; things like that?

10 A. A lot, yes.

11 Q. Did he discuss hiding any property from Deonna?

12 A. He did.

13 MS. WILLIAMS: I have no further questions, Your Honor.

14 THE COURT: Ms. Gay.

15 MS. GAY: I have no questions for this witness, Your
16 Honor.

17 THE COURT: You may step down. Thank you.

18 Call your next witness.

19 MS. WILLIAMS: At this time, Your Honor, the State
20 rests.

21 THE COURT: Ladies and gentlemen, that indicates to the
22 court there is a matter of law that I must take up outside
23 of the your presence.

24 It typically takes a few moments for me to address
25 those issues, so I am going to go ahead and release you for

DIRECT EXAMINATION BY MR. POULOS OF MICAH FOGLE

1 lunch.

2 Ladies and gentlemen, there are some other matters
3 unrelated to this case that I will also be taking up. So
4 please be back prepared to begin at 1:30. At 1:30.

5 Please take your notepads with you so that we can lock
6 them up. But please and always remember all of my
7 admonitions. I will see you back at 1:30.

8 Please rise for the jury.

9 (WHEREUPON, jury exits the courtroom 7/16/15, 11:24 a.m.)

10 THE COURT: Thank you. Please be seated. Any motions
11 or matters?

12 MS. GAY: Yes, ma'am. On behalf of Mr. Fraley I would
13 make a motion for directed verdict at this time, Your Honor.
14 I believe that the evidence presented even in the light most
15 favorable to the State cannot rise to the level of the
16 evidence required to meet every element in all the charges
17 that he has been charged with.

18 Specifically, Your Honor, I would renew my motions that
19 I made in limine before the case started and that I objected
20 to the rulings, Your Honor. Specifically the situation with
21 the fact that I was not able to bring in the -- the
22 videotaped interview of Mr. Fraley and that if we look with
23 regard to the attempted murder there is no specific intent
24 to kill in this case.

25 He does -- he said that he didn't -- he didn't get

1 shot, he heard a shot, the shot hit the ground. There was
2 no indication that he was at that point in time pointed a
3 gun to actually hit Mr. Tsafos.

4 With regard to the other chargers, Your Honor, we
5 believe that there is information that was not sufficient to
6 meet all of the elements.

7 And we will leave it of course -- we realize that you
8 will make the final decision.

9 THE COURT: Well, tell me what you believe was not
10 sufficient.

11 MS. GAY: Your Honor, if I had been able to bring in
12 the questioning about the -- as we all know that this case
13 he has asserted an affirmative defense having to do with
14 mental illness and/or mental impairment. And I believe that
15 that -- the statement that was recorded that he made would
16 have indicated that he had diminished capacity at the time
17 and would not have had the requisite intent to commit the
18 offenses.

19 THE COURT: All right. Whose is arguing the motion?

20 MS. WILLIAMS: I am, Your Honor. Your Honor, would you
21 like me to go through each statute?

22 THE COURT: Yes.

23 MS. WILLIAMS: Okay. With regard to kidnapping, Your
24 Honor, the State has met its burden. The elements of
25 kidnapping are seize, confine, inveigle, decoy kidnap,

State vs. Fraley

1 abduct or carry away another person by any means necessary
2 whatsoever without the authority of law.

3 With this case we have abundant evidence. Mr. Fraley
4 went to the home of the Vick's and he tricked the family
5 into letting the child come with him, which would be
6 inveigle. Put her in his car, went to the hotel and
7 confined her there. Did not let her out until he was
8 finished raping her. Then put her back in the car and drove
9 her to the EconoLodge at which point he finally left her
10 alone.

11 With regard to attempted murder the elements of
12 attempted murder are a person with the intent to kill --
13 attempts to kill another person with malice of forethought
14 either expressed or implied.

15 In this case he brings a loaded weapon to the office of
16 Mr. Steven Tsafos. After telling lots and lots of people
17 that he wants to harm him he goes in there, points a gun at
18 him and says you are a dead man. I don't know how much more
19 expressed the intent could be.

20 In addition to that, as Mr. Tsafos is leaving the
21 office he fires a round. We don't know why it didn't hit
22 Mr. Tsafos. We are just grateful it didn't.

23 In addition to that the gun is then found cocked, still
24 loaded; and we had testimony from Investigator McWilliams
25 about the fact that in order for that gun to be cocked.

1 something purposeful had to happen by the defendant. He
2 either had to pull the trigger again or pull the hammer
3 back. So he was ready to shoot again. We think all of that
4 evidence shows not only the intent to kill put a wicked
5 heart.

6 With regard to the possession of a firearm during the
7 commission of a violent crime there are two counts. In one
8 count it is CSC second with a minor which is a violent
9 crime. He brought a loaded weapon to the hotel room. He
10 showed it to Minor1 and he said don't test me.

11 With regard to the other count the underlying crime is
12 kidnapping which is a violent offense. And he kept Mr.
13 Tsafos inside the office. A couple of times Mr. Tsafos
14 wanted to leave. In fact when the police came they said to
15 come out and he said I can't come out, he's got a gun and it
16 is pointed at me.

17 So he keeps Mr. Tsafos in the office, confines him in
18 there. That is the count of kidnapping. And then that
19 kidnapping is the underlying violent offense for possession
20 of a weapon during the commission of a violent crime. And
21 obviously the weapon there is the loaded pistol.

22 With regard to the three counts of criminal sexual
23 conduct with a minor in the second degree the statute
24 requires that we prove that Minor1 was at least 11 but
25 under the age of 14. We did prove that.

State vs. Fraley

1 We also asked -- we asked multiple witnesses how old
2 she was. We asked her how old she was. We asked Deonna
3 Fraley how old the defendant was. He was 43. The other
4 parts of the statute required the State to prove that a
5 sexual battery took place.

6 Sexual battery is defined as fellatio, cunnilingus,
7 vaginal -- anything going into the vagina that isn't some
8 procedure by an obstetrician.

9 In this case Mr. Fraley forced fellatio. So that is
10 one of the counts. He penetrated her anally. That is
11 another count. And he penetrated her vaginally, and that is
12 the third count.

13 With regard to the criminal sexual conduct with a minor
14 in the third-degree that is the former lewd act statute, and
15 that statute just requires that the State prove that the
16 defendant touched the victim for some purpose of sexual
17 gratification either for the child or for himself.

18 Minor 1 testified that he touched down there,
19 pointing to her vaginal area, and rubbed on it before he put
20 his penis in there. And she also testified that he touched
21 her chest and rubbed her chest. And that would satisfy the
22 elements of criminal sexual conduct with a minor in the
23 third-degree.

24 With regard to unlawful conduct towards a child in that
25 case, Your Honor, we have to prove that the defendant placed

State vs. Fraley

1 Minor 1 in unreasonable risk of harm affecting the child's
2 physical, mental health or safety and did cause her unlawful
3 or malicious bodily harm or - and these are all or's -
4 abandon her. In this case he did all three.

5 THE COURT: Any response to the State's depiction of
6 the evidence, recitation of the facts as presented in their
7 case in chief?

8 MS. GAY: No, ma'am.

9 MS. WILLIAMS: Your Honor, do you want us to address
10 the -- she mentioned sanity, and I think we can ---

11 THE COURT: Hold on. I just -- she did not -- I just
12 needed the motion for directed verdict. I am going to allow
13 her to articulate the other because assuming I would grant
14 her motion for direct verdict the rest of her motions ---

15 MS. WILLIAMS: I understand.

16 THE COURT: --- may be moot.

17 Anything further?

18 MS. GAY: No, ma'am.

19 THE COURT: Ruling on your motion for directed verdict
20 I rely on Rule 19 and the rules of criminal procedure. I am
21 concerned only with the existence or nonexistence of the
22 evidence, not as to the weight.

23 I am relying primarily on the testimony of the two
24 victims of the kidnapping and attempted murder, the CSC, Ms.
25 Vick, and Mr. Tsafos.

State vs. Fraley

1 The State has met its burden on all ten indictments,
2 the two counts of kidnapping, the one count of attempted
3 murder, two counts of possession of a weapon during a
4 violent crime, unlawful conduct towards a child, criminal
5 sexual conduct with a minor second-degree three counts, as
6 well as the final count of criminal sexual conduct with a
7 minor in the third-degree.

8 I note your exception to my ruling.

9 Thank you, Ms. Williams for articulating the facts as
10 has been presented over the last four days.

11 THE COURT: Now as to your other motions.

12 MS. GAY: My motion to move forward with my case on
13 insanity or what other motions at this time?

14 THE COURT: I was only dealing with the motion for
15 directed verdict.

16 MS. GAY: Yes, ma'am.

17 THE COURT: And so now what are the other motions you
18 wish for me to address at this time?

19 MS. GAY: Well, Your Honor, my client has to decide
20 whether or not he is going to testify. And I am going to --
21 I have a witness that I would like to present to establish
22 whether or not my client could rationally have made
23 decisions and differentiate between right and wrong.

24 And I didn't know I need to make a motion to that, Your
25 Honor, because I am going to present that in my case so.

State vs. Fraley

1 THE COURT: Mr. Fraley, to the stand. I remind you you
2 are still under oath. Have you had enough opportunity to
3 speak with your attorney to discuss the fact that you are
4 about to testify?

5 MR. FRALEY: Yes, ma'am.

6 THE COURT: Are you pleading -- are you testifying
7 freely and voluntarily?

8 MR. FRALEY: Yes, ma'am.

9 THE COURT: All right. Let's bring back in the jury.
10 (WHEREUPON, jury enters 7/16/15, 1:51 p.m.)

11 THE COURT: Thank you. Please be seated.

12 Mr. Fraley, if you will come please be sworn in. Thank
13 you so much.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: Have a seat. State your full name and
16 spell your last name for the record.

17 MR. FRALEY: My name is Gary Fraley, F-R-A-L-E-Y.

18 THE COURT: Ms. Gay.

19 MS. GAY: Thank you, Your Honor.

20 **DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY:**

21 Q. Mr. Fraley, this -- the jury and we're -- so we are
22 here today for your trial. And I would like to start
23 probably the summer -- well, tell -- tell us a little bit
24 about yourself. You were in the military?

25 A. Yes, ma'am.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

- 1 Q. And you lived in Goose Creek?
- 2 A. Yes, ma'am.
- 3 Q. And you were married?
- 4 A. Yes.
- 5 Q. And you have a child?
- 6 A. Yes.
- 7 Q. Who I believe is 14?
- 8 A. Today, yes.
- 9 Q. And what did you say?
- 10 A. Today.
- 11 Q. Today, yes, sir. And in the summer of 2014 there --
- 12 the events that led to this incident can you explain to the
- 13 jury what was going on in your life in June, 2014? One more
- 14 question. You are on disability, correct?
- 15 A. Yes.
- 16 Q. And what is the reason that you are on disability?
- 17 A. The majority of my disability is mental from the
- 18 military. That ---
- 19 Q. That is a military disability?
- 20 A. Yes, ma'am.
- 21 Q. Okay. Go ahead.
- 22 A. In the summer of 2014 June -- is that where we are
- 23 starting?
- 24 Q. Yes, sir.
- 25 A. In the past that I have had to deal with -- with all of

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 my psychological stuff in the military and what not I had to
2 deal with issues -- (gaining composure) excuse me.

3 Q. Did you have a substance abuse problem in June of 2014?

4 A. Oh, yeah, I did.

5 Q. And when you say you had ---

6 A. I used -- I would -- this is medically use it. Because
7 most of the time I would use it just, you know, to try to
8 get to sleep. I was functional throughout the day. And I
9 really didn't drink throughout the day.

10 It was towards the afternoon and evening when I was
11 trying to settle down and I knew I was going to have to
12 get a good night's rest that I ended up drinking probably
13 about -- I don't know, honestly probably about -- the little
14 bottles hold three glasses, so I would drink maybe two of
15 those at night, the little cheap ones, five dollars. And I
16 would use that to go to sleep at night along with my
17 medicine the doctor would give me too.

18 Q. And in the summer of 2014 do you recall some of the
19 prescription medications that you were taking at that time
20 that the doctors had given you?

21 A. That is a myriad. A lot of -- a lot of stomach
22 medicines. I had a lot of stomach issues. I have had since
23 I was a kid though.

24 Q. So when you say that medicines for your stomach tell
25 the jury a little bit about your stomach issues that you

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 said you have had since you were a kid.

2 A. Since I was probably about nine I started having real
3 bad acid reflux and they kept scoping me and found I have
4 some sort of birth defects going on everywhere. I mean in
5 my stomach, and later on I found in my pancreas I did too.

6 Q. So in your stomach and in your pancreas you were
7 having -- you needed medicine to ---

8 A. Yes.

9 Q. --- help the food digest?

10 A. I had to take enzymes. I had to take -- which they
11 were questionable whether or not they work. It is all
12 experimental they say. So I still take them.

13 I take for my acid reflux I have Barrett's esophagus
14 which is cancer, pre-cancer. They didn't tell me if it was
15 cancer or anything that I remember.

16 Q. So you been told by ---

17 A. I was constantly getting checked for cancer, yeah.
18 Yes.

19 Q. Okay. So you've been told by some medical professional
20 that Barrett's esophagus, which is down in here (pointing),
21 is some type of pre-cancer?

22 A. Yes.

23 Q. All right. So and at some point in time you said that
24 these issues have been present in your life for a long time?

25 A. Correct. Yes, ulcerative colitis also.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. what kind of colitis?

2 A. Ulcerative colitis.

3 Q. Ulcerative colitis. And so does that mean your colon
4 is messed up?

5 A. My intestines are. It has a hard time getting my food
6 through and it causes a lot of loose stool and discomfort
7 and blood sometimes.

8 Q. All right. And so -- and also about -- how about your
9 liver, have you been told along the way in your history that
10 there are some issues going on with your liver?

11 A. Yeah, last year.

12 Q. 2014?

13 A. Yes. Yes, ma'am. I went to MUSC and they said that I
14 had high ammonia levels in my liver. Which they tried to
15 give me medicine for in jail too. The ammonia levels cause
16 your brain to malfunction.

17 Q. All right. That is what you have been told by the
18 doctors?

19 A. Yes, ma'am.

20 Q. And that was last year?

21 A. That was MUSC, yes, ma'am.

22 Q. Do you remember what month that was in?

23 A. That was in March 2014 ---

24 Q. All right.

25 A. --- at MUSC.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. So back to the time last year, and let's back it up
2 just a little bit even. So in March of last year you went
3 to MUSC for some kind of problems related to your stomach
4 and your organs?

5 A. Well, I went there because I was trying to get off of
6 the drinking habit at night and, you know, go through some
7 sort of rehab and depression and whatnot.

8 Because I did have VA; and my psychiatrist at, you
9 know, at the time was telling me about my PTSD.

10 Q. Okay. Now when you say PTSD -- and you sat through
11 this trial, and that you know that Dr. Gomez said that she
12 didn't see any indication ---

13 A. Right.

14 Q. --- in your medical records that you had PTSD. But
15 have you been, you yourself, the patient, Mr. Fraley, have
16 you met with, spoken to and been told by doctors that you
17 have some type of PTSD?

18 A. VA and Dr. Kestner.

19 Q. Dr. Kestner is a local psychiatrist?

20 A. Yes. He has been my psychiatrist since 2002. When I
21 heard the heart virus thing brought up it was called -- it
22 is some sort of -- it is where your heart squeezes so hard
23 and swells up. We all caught it in the military and from
24 being overseas and we almost died from it.

25 Q. And that is a virus that gets into your ---

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. It is -- it's - it's viral. It squeezes your heart
2 until it squeezes and then your heart won't pump.
3 Myocardial something or another. I don't know how to say
4 it.

5 Q. So ---

6 A. Carditis. Something carditis.

7 Q. So it is your understanding that something related to
8 that heart virus that has been mentioned in this case has to
9 do with your active service?

10 A. Oh, yes, it is. That's -- that's -- that was the first
11 thing. And then I started going for that and then I ended
12 up on a lot of mental meds right after that. That was in
13 2002.

14 Q. I understand. So ---

15 A. And I didn't mean to interrupt. But I heard that
16 prosecutor or somebody was saying that -- or Ms. Gomez said
17 that I retired in '96. Well, I was hired back into the
18 military as an art to teach people about jet engines. And
19 so I mean so I was still in the military and civil service
20 at the same time.

21 Q. And that ended in 2002?

22 A. No, I kept going and then I ended up on something
23 called temporary disability retirement list up until 2009.

24 Q. I understand.

25 A. The military TRO.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. All right. Well, let's focus again in 2014. So in
2 2014 you said that you had some issues at the Medical
3 University and that
4 you were there overnight?

5 A. I was there for I think a week.

6 Q. Okay. And during that period of time your medical
7 functioning and different things that were going on were
8 being discussed with you about ---

9 A. The ---

10 Q. Right?

11 A. Yeah, they were trying to get all of my medicines
12 together, all of my digestive medicines. And they were
13 giving me the Lactulose which is for my liver for the
14 ammonia levels.

15 Q. Lactulose?

16 A. Lactulose.

17 Q. Okay. And so coming after that time at MUSC you then
18 in June decided that you were having some more substance
19 abuse issues and you needed to seek additional medical
20 treatment?

21 A. Yeah, that and depression. But ---

22 Q. So where did you go?

23 A. I ended up going to my primary care manager, my PCM Dr.
24 Rhodes.

25 Q. And what did Dr. Rhodes recommend?

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. Recommended that I went to Wilmington in North
2 Carolina.

3 Q. And you were going to Wilmington in North Carolina
4 where?

5 A. Wilmington Treatment Center.

6 Q. And the treatment center in Wilmington was for
7 depression and for substance issues?

8 A. Yes, ma'am.

9 Q. Because you drink wine?

10 A. Yes, ma'am.

11 Q. Not because you take opiates or do ---

12 A. I don't do drugs.

13 Q. --- cocaine or ---

14 A. I have never done drugs. I have been in the military
15 too long. I was raised military. It is out of my world to
16 understand that.

17 Q. So and then you get up to Wilmington. Do you recall
18 when you got to Wilmington how long you were there?

19 A. I was there 25 days.

20 Q. Do you recall the day you left?

21 A. Twenty-third.

22 Q. June 23rd was the day you left?

23 A. Yes, ma'am.

24 Q. All right. So you actually got there maybe right at
25 the tail end of May. And during that period of time do you

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 recall them talking to you about your bodily functions like
2 different things going on with you?

3 A. Right. Well, I started receiving -- they got the
4 message that -- they had a retired Marine lady there. Her
5 name was Mary. And she was doing the hypnosis on me and
6 EMDR.

7 Q. That had something to do with your eyes?

8 A. Yes.

9 Q. EMDR?

10 A. Yeah, but it is supposed to be some -- for my PTSD. So
11 she had researched it through VA and found out that's --
12 that is where she got the information from. Or Dr. Kestner.
13 I don't know. But they are treating me for it up there.

14 Q. So while you were there did they make a recommendation
15 to you that you should try a medicine called Vivitrol?

16 A. Yes.

17 Q. And I know that you're not a pharmacist or anything
18 like that; you're just a lay person; but can you tell the
19 jury a little bit about what your understanding is of what
20 Vivitrol either was or did or was supposed to do for you.

21 MR. POULOS: Objection.

22 THE COURT: What is the basis?

23 MR. POULOS: There is no personal knowledge. He is not
24 a doctor. He is not a pharmacist. And to testify ---

25 THE COURT: Rephrase your question, Ms. Gay.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Sustained. Rephrase your question.

2 BY MS. GAY:

3 Q. What was your understanding of what this medicine was
4 going to do for you?

5 A. Well, I was told that the -- the medicine would not
6 allow -- it blocks the sensor in your brain. It messes with
7 your brain to where you don't have a pleasure. If you do
8 drink or people that do drugs they don't -- they don't have
9 the pleasure or feel the pleasure of drinking or doing
10 drugs.

11 So even if you did drink you are not going to get
12 drunk -- I mean you are not going to feel.

13 Q. Or you are not going to feel the pleasure of drunk?

14 A. You are not going to feel the pleasure of being drunk
15 either or get like sedated in other words like I would have
16 been.

17 Q. I understand. And when you say blocks was there any
18 discussion of it being an opiate blocker?

19 A. They didn't tell me anything like that. Before
20 this ---

21 Q. Do you even know what that would mean?

22 A. No, not really. I mean ---

23 Q. That's fine. So when you were there and -- were you
24 given a choice to take this particular medication?

25 A. Yeah, but everybody -- not everybody. It seemed like

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

RECEIVED

AUG 26 2016

SC Court of Appeals

Appeal from Berkeley County
Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

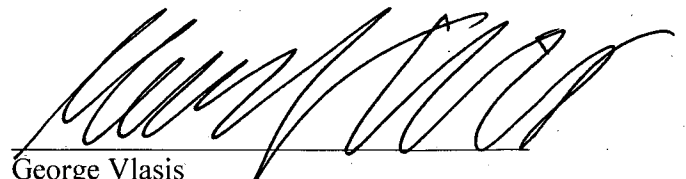
V.

GARY CURTIS FRALEY,

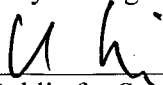
APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of August, 2016.


George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of August, 2016.

 (L.S.)

Notary Public for South Carolina

My Commission Expires 5/12/2025.