

ORIGINAL

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARY CURTIS FRALEY,

APPELLANT

APPELLATE CASE NO 2015-001737

RECORD ON APPEAL

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DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 the people that were on drugs took it.

2 Q. So why did you take it?

3 A. I was on alcohol. And I figured, you know, why -- you
4 know, I need to do something to get off of drinking wine at
5 night so I need to do the best I can. So I didn't think it
6 was going to be any -- anything bad. I've never had huge
7 reactions I mean other than with anthrax I had a problem.

8 But I mean they -- they said it would just cause severe
9 depression. They didn't give me a list like I ended up
10 finding out of all the things that happened to me.

11 Q. So when they discussed it with you I think what you are
12 trying to say is that they told you a minimal amount of side
13 effects but is it your testimony that you have since
14 discovered on your own that there are a lot of other side
15 effects that they didn't share with you?

16 A. Yes, ma'am.

17 Q. And we can talk about that in a minute. But so when
18 you took this medicine how was it administered to you?

19 A. Gave it to me in a shot in my butt.

20 Q. So it was injectable?

21 A. Yes.

22 Q. And did they tell you how long the effects of this
23 particular medicine would be -- how often would you need to
24 have it again is maybe the way to say it.

25 A. They said once a month, but it could -- but if you show

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 up two or three weeks later or something, that's fine; you
2 just get another shot or whatever.

3 But it gives you a good month-and-a-half, two months to
4 get with your doctor, your PCM, so they can order it so when
5 you get back home you will have it handy.

6 Q. So is was your understanding that as a patient you
7 could chose to have monthly injections of this medicine?

8 A. Yes.

9 Q. And so was it your understanding that this medicine was
10 supposed to last or have an effect in your body for some
11 amount of time, close to a month?

12 A. Weeks, yeah.

13 Q. Weeks. Okay. Now after you left the facility - and
14 that was in Wilmington, North Carolina - did you come back
15 to this area, to Moncks Corner, Berkeley County?

16 A. I went back home to Dor- -- to ---

17 Q. Goose Creek?

18 A. --- my home in Goose Creek. Yes.

19 Q. All right. Goose Creek. And when you came back
20 home ---

21 A. Well, they gave me the shot the day I left. They
22 always do. Any time -- the day people leave is when they
23 get the shot.

24 Q. I understand. And you believe that you left on the
25 23rd?

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. I did.

2 Q. Now you drove yourself there?

3 A. No, they drove me here. The hospital drove me up
4 there. And then I rented a car and I drove back.

5 Q. Okay. Now from the minute you started -- left that
6 facility tell the jury a little bit about what was going on
7 with you after you left the facility.

8 A. Well, I came -- personal? I don't understand ---

9 Q. Well ---

10 A. --- the question.

11 Q. --- let me rephrase. If you -- did you come back to a
12 tumultuous situation in your personal life?

13 A. Yes.

14 Q. And had Jennifer told you that she believed that your
15 wife was having an affair with Steve at this time?

16 A. No -- okay, I know where you are leading up to. No,
17 what happened in the first -- the first thing that happened
18 was it was just like one day when I was back. And then
19 because I missed Father's Day. And my daughter had made all
20 of these things for me; and I was trying to enjoy them, but
21 my wife and I argued about her drug use all the time. So I
22 was watching her be real weird to me on my right. She
23 didn't want to give me anything for Father's Day, which is
24 totally different.

25 And then I am trying to enjoy what my daughter is

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 doing, but my wife is making all of these jumpy and -- I
2 couldn't explain it to you. It looked like she was doing
3 drugs. I've seen her on drugs before.

4 Q. I understand. So shortly after this with all this
5 tumultuousness going on in your personal life you ended back
6 up in North Carolina in an emergency room?

7 A. Right.

8 Q. Can you tell the jury how that happened. I think it
9 was New Hanover Emergency Room?

10 A. Right. The -- this is when things start getting to
11 where ---

12 Q. Well, let's ask it this way.

13 A. --- I have a hard time remembering. I remember a
14 little bit where you are coming from. But this -- it was
15 like a couple of days had gone by.

16 They had gone down to Florida and they took my
17 daughter. And I didn't want my daughter to go. Because I
18 wasn't allowed to go. They said I was -- she was going to
19 call the cops on me if I went. I said why; it is my
20 daughter, you know. Well, I already promised it to Alta.

21 I said but -- but I -- anyways ---

22 Q. So personal things weren't making much sense?

23 A. No, they weren't. I mean plus why would the cops be
24 calling me. I have never, you know, had ---

25 Q. Understood.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. --- an issue with that. So the day they left I get
2 a -- something -- some cop comes to the door and he hands me
3 a - what do you call it - where I am not allowed at the
4 bowling alley. The day they left.

5 And I said what is this about. And he goes I am just a
6 messenger; you're not allowed back at the bowling alley.
7 And I was wondering what that all was about because this guy
8 just took my wife and my child down to Florida.

9 So a couple of days had gone by. They had gotten back.
10 And that is when I don't -- I barely remember getting back
11 to Wilmington.

12 I was going I need to get back. There was so much --
13 there was so much going on with my -- I didn't understand.
14 I was sick. My stomach was hurting. I didn't know if I was
15 depressed.

16 I wasn't drinking. So but I didn't understand what was
17 happening. You can't understand what is happening. You
18 just don't know.

19 Q. Okay. Well, let's back up just a minute. When you
20 said that by that time you were -- you barely remember and
21 so and lots of decisions are being made at that time. Your
22 testimony is that you don't remember a lot of the things
23 that were going on?

24 A. I kept calling Wilmington. They kept calling me, are
25 you coming back. And I said but I am not drinking. And

1 they said well you can't come back unless you are drinking.

2 And I was confused about it. I felt so bad. I said
3 but I feel terrible, something is wrong.

4 Q. Okay. Time out. So when you said that you were
5 calling Wilmington to tell them that you were having some
6 kind of adverse effects ---

7 A. Issues.

8 Q. --- or issues ---

9 A. Yes. But I didn't know it was from the shot.

10 Q. I understand. That they were telling you that you
11 couldn't come back to them unless you were actively
12 drinking?

13 A. Right. They will give you a breathalyzer or blood test
14 or something when you first get there to make sure that you
15 are drunk -- or somebody had done that.

16 Q. That you have alcohol in your system?

17 A. Right. Right.

18 Q. And so ---

19 A. And so I couldn't lie about it, ---

20 Q. I understand.

21 A. --- unless I drank.

22 Q. So when you went -- and you said at that time your
23 stomach was hurting and you were very sick. Can you
24 describe some of that feeling to the jury.

25 A. Well, I have had a lot of stomach issues all the time

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1 just growing up. But I have never felt -- I have had
2 pancreatic pains to where I don't know if anybody has had
3 pancreatic pains but I think it is -- I have broken bones.
4 It is worse than anything I've ever felt in my life. You
5 know, you -- it is worse -- it is terrible.

6 But this was like in your core. And it was an ache.
7 And it was almost like a pancreatic pain, but it wasn't. It
8 was like it started here (pointing) and it radiated out and
9 then my brain felt -- I couldn't -- I couldn't think. My
10 brain was swollen. My eyes were like this (motioning). I
11 couldn't see. I had a hard time just concentrating.

12 And I kept fighting so hard on the phone trying to get
13 Wilmington to take me back. You have got to -- something is
14 wrong; you have got to come get me here like you did last
15 time or something. And they said you are going to have to
16 drive here.

17 Q. So they told you that you needed to drive up there to
18 talk with them. Did you go there; did you go back to
19 Wilmington?

20 A. I don't remember how I got there. I do remember I
21 drove there, but I mean I only remember that I drove there
22 because I had my car there. But I don't remember driving
23 there. If you understand what I mean by that.

24 Q. I do. And approximately how many days after you left
25 Wilmington did this really awful stomach stuff start

1 happening?

2 A. Well, I think by the second day after the shot when I
3 was still here in Charleston -- I mean Goose Creek.

4 Q. Okay, let me ask you a question, sir. When you were
5 having all of this stuff going on with your stomach what --
6 were you eating?

7 A. No. I couldn't eat.

8 Q. When you say no, describe ---

9 A. Well, I mean I might have had -- like I knew that I was
10 supposed to eat or I might have felt like I wanted to eat,
11 but I couldn't. It just -- nothing would -- there was
12 nothing that -- palatable I guess you could say.

13 Because there -- I mean if I took like one little bite
14 of cookie I'm like oh my gosh and I would throw it away or
15 turn it down or something. I couldn't do it.

16 Q. Now you couldn't do it because the pain was so bad?

17 A. Yeah, if I ate -- if I put anything in my stomach it
18 just got worse.

19 Q. All right. So when you went back up to the Wilmington
20 area you didn't go back to the treatment center, you
21 actually went to the New Hanover Emergency Room. Do you
22 recall that?

23 A. Yes.

24 Q. So the emergency room that you went to, I believe that
25 was approximately the 29th of June -- or was it the 1st of

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1 July; do you remember?

2 A. I don't remember. It was towards the end of June.

3 Q. Right.

4 A. A few days after my shot.

5 Q. And so at that emergency room visit describe to the
6 jury what kind of complaints you have to the doctors and how
7 you got there and what you remember, if anything.

8 A. Well, I tried to remember how to get in there. And I
9 actually drove to where I finally found the emergency room
10 inside of the hospital.

11 And then it was raining and I got out of the car. And
12 then I fell over. And then it took two or three crawls and
13 then somebody had pulled up with a wheelchair and brought me
14 in.

15 Q. So it is your position and testimony that you were
16 actually crawling ---

17 A. Yeah, ---.

18 Q. --- while trying to get there ---

19 A. --- I was -- I remember. I was on the ground. I was
20 crawling.

21 Q. And when they put you in there and examined you what
22 was your chief complaint?

23 A. Well, I started wondering about that Barrett's
24 esophagus that I had, being precancerous and stuff. And
25 then I told them -- you know, the pain in my stomach was

1 terrible too.

2 And I didn't know what was going on. I didn't know if
3 it had blown up into cancer or what was going on. And
4 everything was confusing anyways to me so -- I mean that's
5 what it was. I mean that is what I was complaining about.

6 Q. Stomach problems?

7 A. That -- yeah, that -- and they gave me something for my
8 headache when I was there too. Some sort of sedative or
9 whatever ---

10 Q. A shot?

11 A. A shot that was for my head that helped out ---

12 Q. During ---

13 A. --- for a little while.

14 Q. During this period of time do you take a lot of other
15 prescription medication routinely?

16 A. Yes.

17 Q. Do you -- what -- do you know whether or not you were
18 taking your other prescriptions during this period of time?

19 A. Yes, I was.

20 Q. Okay. Now you heard Dr. Gomez say that when she
21 interviewed you that you said that you were not -- you were
22 medicine noncompliant. But what is your testimony? You are
23 the one that was doing it.

24 A. No, I -- and I remember telling -- talking to her about
25 that. I said no, it is habitual. I said that I take it. I

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1 said like it is not like I can remember taking my medicine;
2 I don't remember taking my medicine, I just know I do.

3 Q. And that is from years of taking the medicine?

4 A. Years of taking it, yes.

5 Q. Okay. So whatever prescriptions you may have been
6 under at the time it is probable that you were taking them
7 based on your recollection?

8 A. Yes.

9 Q. And so when you went into this hospital ---

10 A. I had a pill tray and I would fill it up.

11 Q. I understand. Do you remember the doctor telling you
12 that you had thrown up coffee grounds looking stuff?

13 A. He told me a bunch of stuff about my insides. I don't
14 remember everything. But the coffee ground thing does ring
15 a bell, yes.

16 Q. Okay. In your -- with your medical conditions is there
17 a significance to throwing up coffee ground looking stuff?

18 A. Yeah, that is -- it is not good, first off. It is
19 kind of like curdled blood. It is the -- your insides kind
20 of maybe failing and some of it crumbling up and you are
21 throwing it up and it is coming backwards. It is not
22 getting through your system; it is coming back.

23 Something ---

24 Q. And your life ---

25 A. Something ---

1 Q. And your life ---

2 A. Something is amiss. Something is wrong.

3 Q. Right. In your lifetime have you as you have been
4 discussing your medical stomach problem all from childhood
5 on have you had other occasions in your life where you have
6 thrown up coffee groundish stuff and had these conversations
7 with doctors?

8 A. Never. Not coffee grounds. No, not like that. I mean
9 I taught first-aid, medic care in the military, on the side
10 to help -- flight line stuff. And I mean I know what that
11 is, but I have never had that situation happen to me until
12 just recently. Last year.

13 Q. So you don't have any personal knowledge as to whether
14 or not your medical records say on that day that you had
15 that going on?

16 A. I'm not sure if they -- if it's in my records about
17 that. I am sure, you know, that that is what was in -- you
18 know, when I was ---

19 Q. So ---

20 A. --- in there that's ---

21 Q. So it was in your records?

22 A. Yes. I mean it has to be, yes.

23 Q. Okay. And after you left the New Hanover Hospital you
24 then -- where did you go next?

25 A. I went to -- there was another friend of mine that I

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1 had met up there in Wilmington Treatment Center that they
2 live in Wilmington, and I still felt so bad when I got out
3 of the hospital even though -- I was on IV's for I guess in
4 a whole day I was on IV's.

5 Because I mean I started feeling a little bit more
6 energy from that so I decided to visit them. And he had
7 taken the shot. But he took it for drugs. And his name was
8 Lee Sarb (ph). And his wife's name was Megan.

9 So I stayed at their house because I felt so terrible.
10 And he couldn't eat either. He said that was the worst
11 decision he ever made, that he is never going to take that
12 shot again. And I ---

13 Q. Okay. Let me ask you a question.

14 A. Yes.

15 Q. You said that you were staying there. Did you -- what
16 was -- what did you tell the doctors -- one last question on
17 that. What did you tell the doctors in the New Hanover
18 Hospital about your ability to eat?

19 A. I told them I couldn't eat. I ---

20 Q. Do you remember how long you told them you hadn't
21 eaten?

22 A. Yeah, it was probably days.

23 Q. Do you remember how many days?

24 A. Probably -- probably since the day probably that I took
25 the shot.

1 Q. So if you had been out of the treatment center from the
2 23rd to the 1st of July, that is about 11 days.

3 A. Yeah, if I sit down I -- no, I am talking about like if
4 you -- one nibble on a cookie or something and it is done.

5 Q. And were you drinking ---

6 A. There is no eating ---

7 Q. --- anything at that time like, you know, wine or
8 anything?

9 A. No, I was not drinking. That is why they wouldn't let
10 me back in Wilmington.

11 Q. I understand. So you stayed with your friend in North
12 Carolina for a period of time and then -- so we are now into
13 the first part of July. What happened after that, sir? And
14 could you tell the jury a little bit about how you were
15 feeling.

16 A. Well, I left -- I left Lee and Megan's house. And
17 that is where -- that is when her friend called and told me
18 about ---

19 Q. Jennifer called you and told you that your wife ---

20 A. That is when ---

21 Q. --- and Steve ---

22 A. --- I was up there.

23 Q. --- were having ---

24 A. Right.

25 Q. --- an affair?

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1 A. Right. And I had it on speaker phone. And Lee and
2 Megan heard that. And I -- you know, they looked at me
3 funny. I said well I guess I have got to get back home, you
4 know, so.

5 Q. And so what happened; did you come straight back to
6 Goose Creek?

7 A. I ended up back here. I don't -- don't remember the
8 drive. That is what was so confusing. I -- I ended up with
9 my dog. And I threw a bunch of stuff in the car. I don't
10 know why I did. I just by the time I got to Pennsylvania --
11 which I know I am jumping. I looked in my car and I am
12 doing what am I doing with all of this stuff in here. I
13 don't know.

14 Q. So sometime between the first of July and some time
15 near the end of July they -- you were in your car with the
16 dog and you think you were headed to your mother's house in
17 Pennsylvania?

18 A. Yeah.

19 Q. And can you tell the jury a little bit about how --
20 what was your thought processes like; I mean were you ---

21 A. Well --

22 Q. Describe it.

23 A. It takes me 13 to 15 I guess going by myself or with
24 somebody, you know, and we drive straight through to get to
25 my mom's house in Southwestern, PA.

1 So she is like -- right down southwest of PA is like
2 below Pittsburg all the way in the far left-hand corner.
3 And it is right under Monongahela River, Fredericktown.

4 So somehow -- I don't know where I was at. Somehow I
5 ended up in North Carolina, and it took me -- it took days.
6 I remember a couple of days had gone by and my uncle called
7 me, my Uncle Doug. And he said where are you; how come you
8 are not up here yet.

9 And I struggled with him trying to stay -- you know, I
10 don't know. I said I can't find a map. And I remember I
11 couldn't use my GPS on my phone. I didn't know what I was
12 doing. I didn't know where I was at. So I said I guess I
13 am going to have to follow the sun. Because I started
14 following the sun on these country roads. I didn't know
15 where I was at or what I was doing.

16 Q. Okay. And when you say that you couldn't use your GPS
17 was there difficulty that you had in using a motor vehicle?

18 A. Yeah, I ended up on one of the country roads and they
19 had -- a policeman had pulled up, and I was sitting on the
20 side. And, like I said, there was a little tiny two-lane
21 country road. And he said are you okay.

22 And that is when I kind of -- you don't remember
23 slipping into a situation. It is almost like -- maybe if
24 anybody has had a concussion you feel -- you get a little
25 bit of when you are coming back out of it. You are like

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 okay where am I, what is going on kind of deal. And I guess
2 the shock of seeing the policeman or whatever right there
3 asking me if everything was okay.

4 And I looked down and I saw my little dog running
5 around in the grass. I said yeah I am just letting my dog
6 out for a while.

7 Q. So ---

8 A. And he looked at me and he goes are you sure. And I
9 said yeah. And I said I am okay. Then but I sat there for
10 a long time. I don't know, maybe a couple of hours.

11 And the people across the street came and asked me if I
12 was okay. There was one little house across the street.
13 And I told them I was, but what it was was I forgot how to
14 drive a car.

15 Q. And how about your stomach; what was going on during
16 this period of time?

17 A. Oh, it felt terrible.

18 Q. Were you eating?

19 A. No. I sat at the -- I sat at the end of my SUV. I was
20 drinking water and giving it to my dog. And then the people
21 across the street came and said are you okay.

22 And I said no. I said -- first I said yeah; and then I
23 said can you take me to a hospital, I think I am having an
24 anxiety attack or a panic attack or something like that.

25 Because I didn't want to tell them I forgot how to

1 drive a car. I didn't know what to say. I was so confused
2 I didn't know what to say.

3 Q. So you just -- you have just -- you have testified that
4 you were confused and disoriented and making decisions that
5 make no sense. How did you actually get to your mother's?

6 A. Well, first off they took me to a hospital.

7 Q. But you don't remember which one that is?

8 A. I don't remember which hospital it was. I remember --
9 if I had my phone -- I had to call them back. Because they
10 are the ones that told me where the interstate was. And if
11 it wasn't for them telling me where the interstate was --
12 which it was right behind me.

13 And I had to watch them drive my car at the hospital.
14 And I practiced after I unhooked myself and walked out of
15 the hospital before they got there and brought my dog back
16 to me.

17 And then they told me where the interstate was, and
18 then it took me I guess another couple of days. I think it
19 took me four days. It probably took me four days to get to
20 my mom's house in Pennsylvania. And that is just I got lost
21 in North Carolina. I couldn't make it out of North
22 Carolina.

23 Q. Okay. And during this period of time do you remember
24 about what date you arrived at your mother's house in
25 Pennsylvania?

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1 A. I don't remember the exact date.

2 Q. Okay. Do you remember getting sick in Pennsylvania and
3 needing to go to the hospital there?

4 A. Well, I was feeling bad right when I first got there.
5 And I kept laying on the floor at my mom's house. Well, she
6 has got this little, tiny apartment. A little, tiny
7 apartment.

8 And I kept laying on her floor because she didn't have
9 a loveseat big enough for me to lay on. And I laid there
10 for days. And I couldn't eat. And I was hurting so bad.
11 My head was hurting. I couldn't think. And I had passed
12 out and bused my nose right here (pointing).

13 And she had -- my mom, my little tiny mom, 70 years
14 old, she didn't know what to do. She didn't know to take
15 care of me. I couldn't explain anything because I didn't
16 understand what was happening. I am at a loss for words
17 about what this does, what it is.

18 Q. So when you were really really sick at that point and
19 couldn't eat and your stomach was still messed up ---

20 A. I had gone ---

21 Q. --- what were -- what was ---

22 A. I had gone to Centerville Clinic first to see if I
23 could see a doctor about something I didn't know what I was
24 suppose to tell him when I got there other than my stomach
25 was messed up. When I went to Centerville.

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1 Q. And that was mentioned in Dr. Gomez that she had
2 reviewed some Centerville Clinic records. And you just told
3 them you were sick?

4 A. Yeah, I told them I didn't feel good. I felt like
5 crap. I didn't know what to say to them. I had just enough
6 concentration to tell them that.

7 And then I ended up back in my mom's apartment still
8 laying on the floor not doing nothing. Drinking -- drinking
9 water at that time still -- or I had some coffee and stuff.

10 Q. Were you drinking wine and things like that at this
11 point?

12 A. Eventually my mom went and got some wine because I
13 wasn't sleeping. And she said maybe this will help you get
14 to sleep. So I drank some wine, and then I am back on wine
15 again trying to get to sleep. But it didn't work.

16 And then I ended up still I still was throwing up
17 blood. I was throwing up blood long before I was drinking
18 wine. I kept covering my mouth -- I drank water and it -- I
19 could just feel my stomach filling up and I would run to the
20 bathroom and it would just be nothing but red. And then you
21 would see the little black -- all the spots, the coffee
22 grounds.

23 Q. I understand. So at some point in July your mother
24 decided to take you to the hospital?

25 A. She took me to the emergency room.

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1 Q. So you go back to the emergency room. And I think that
2 hospital is called Southwest Hospital?

3 A. Yeah, and come to find out -- I also had a hard time
4 figuring this out. It is Waynesburg.

5 Q. In Waynesburg, Pennsylvania?

6 A. Waynesburg, Southwestern, PA.

7 Q. And so the Southwestern Hospital in Waynesburg is where
8 she took you. How long were you there; do you remember?

9 A. I remember when I first got there -- this is how I
10 remember this. Because everything is like -- I have got to
11 tell -- I have got to tell people how I remember things like
12 this. Because this is the only way I can remember it.

13 If you are watching a -- if you are watching -- I have
14 got to use analogies because I have no other way of
15 explaining this. If you are watching a preview of a movie
16 and they show you a five-second clip, you know, and it is a
17 30-second commercial and then you see a clip from half way
18 through the movie and then at the end of the movie and then
19 that is the commercial, well, that was my life. That is how
20 I remembered things.

21 So I remembered getting to the hospital and talking to
22 the doctor. And I looked up at her and I said I am
23 emaciated. And I was crying.

24 Q. Did you also remember being intoxicated?

25 A. Pardon?

1 Q. Did you also remember being intoxicated?

2 A. No, I don't remember that at all.

3 Q. Have you reviewed your medical records to know that it
4 said that you were intoxicated?

5 A. I think Dr. Gomez had said that. But I think it is
6 because I was -- I might have told them that I had drunken
7 some wine trying to get to sleep. And but I was feeling
8 terrible anyways. Before I got there I had my mom put her
9 hand on my back and I said -- I mean because I thought I was
10 dead. And I said mom -- and I don't know how long she had
11 her hand there, but I said mom -- and that's when -- and
12 that's when I said I need to go to the hospital. And that's
13 when she took me to the emergency room.

14 Because I said I think I am dead. Because I thought I
15 was dead. I -- I felt this was the worst I have ever felt
16 in my life. And I had had ---

17 Q. So ---

18 A. --- all kinds of illnesses.

19 Q. So mentally I think what you describe in these five-
20 second clips is that you're thinking was not linear; it was
21 not start and finish; it was popping in and out at that
22 time?

23 A. Yeah. I had no straight memory. It is a picture here
24 and there.

25 Q. And in terms of your mind you said also there was

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1 things that you had said that your -- you believed that your
2 head was swollen?

3 A. Oh, that's -- I looked in a mirror one day, and I --
4 whenever after I was wiping -- sorry about being graphic. I
5 was wiping a lot of blood and stuff from -- I had a beard.
6 And I usually keep this real trim, small goatee or
7 something; but it was all matted up in my beard and I was
8 trying to wash it off.

9 And I looked in the mirror and I could see my head
10 being so swollen. And my eyes were almost -- they looked
11 like little beady balls. And then just I was like, man,
12 what is going on; what is happening with me.

13 Then that is when I was in I said I was emaciated in
14 the hospital. And then a few days later I think my mom told
15 me I was in there four days. That I was in Waynesburg. And
16 they were cauterizing all the wounds in my stomach and
17 cleaning out my system.

18 Q. Wait. Let's hold up. Let's slow down on that. Wounds
19 in your stomach. Okay. Before we get there I want to ask
20 you just another question.

21 During that period of time you were suffering from some
22 disease process in your stomach that ultimately lead to an
23 ulcer, like your stomach organs were diseased and you
24 created an ulcer?

25 A. I guess.

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1 Q. And the process of having that going on in your
2 body ---

3 MR. POULOS: Objection.

4 THE COURT: What is the basis?

5 MR. POULOS: Speculation.

6 THE COURT: Overruled. He may answer.

7 Q. So while you were having all this go on with your
8 stomach and it was all diseased up and you had this ulcer
9 what about your rational thoughts; I mean it is your mind,
10 tell us what was going on there.

11 A. I had no thoughts. I didn't know what to think. I
12 didn't know what was going on.

13 Q. So -- so ---

14 A. I -- I don't ---

15 Q. --- you didn't have ---

16 A. --- know how to explain.

17 Q. --- rational thoughts?

18 A. I didn't have any thoughts. I had no -- no rational
19 thoughts, no. I had enough thought process of saying I need
20 to go to the hospital once in a while. There was just
21 enough time for me to get that out. I don't know how I did.
22 I don't know what it was.

23 Once I get to the hospital and they juice me up a
24 little bit I feel a little bit better. But I didn't feel
25 better when I left Waynesburg. Not at all.

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1 Q. Okay. So when you left are you aware also before you
2 left that the doctors at the Waynesboro (sic) Hospital
3 recommended that you stay longer for psychiatric reasons?

4 A. Somebody had said that they wanted me to stay 30 days
5 on the fourth floor. And I ---

6 Q. And the fourth floor is?

7 A. I don't know. I think it was for psychiatric.

8 Q. Did they tell you why they thought that?

9 A. They did not tell me why. They said they -- they would
10 recommend that I did. But I didn't understand why. They
11 didn't give me really a reasoning why.

12 I just -- my mom was there and she was ready to take me
13 back to her house. And I was feeling so terrible anyways.
14 I don't think I could have -- I wasn't comfortable. Nothing
15 was making me comfortable other than when they knocked me
16 out for four days and I was in the hospital.

17 Q. So you were -- did they feed you intravenously during
18 that time?

19 A. Yeah, the whole time.

20 Q. Did you tell them when you went there that you had not
21 eaten?

22 A. Yeah, they knew that. That is why I said I was
23 emaciated.

24 Q. And then did you tell them how long it had been since
25 you had eaten at that point -- now we have gotten all the

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1 way from the first of July when you were in the New Hanover
2 all the way to the end of July when you're in the Waynesboro
3 Hospital. How long had you not eaten in that time or eaten
4 healthy in any way?

5 A. No healthy. I remember my mom had some cheesecake
6 and -- that she had gotten down at the hotel at the bottom
7 of the hill. And I had a couple of bites of that.

8 She wanted to split it with me, but I just had like a
9 couple of bites and that was it. I think that was all I
10 could stomach after that.

11 Q. Now when you were in Waynesboro Hospital they diagnosed
12 you with an ulcer?

13 A. Yes.

14 Q. Have you ever had an ulcer before?

15 A. Not one -- not one, no ---

16 Q. What?

17 A. Not a bleeding ulcer, no.

18 Q. Not a bleeding ulcer before?

19 A. No.

20 Q. So they diagnosed you with a bleeding ulcer. And they
21 did some procedures to it. Do you know what they did to do
22 that inside your body?

23 A. Only afterwards I found out. I know as soon as --
24 pretty much when I said I was emaciated every -- all kinds
25 of stuff was happening. They started throwing a scope down

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1 my throat because I told them I was throwing up blood. I
2 told them I wasn't eating. I mean everything happened like
3 that fast. Or in my mind it did.

4 And what was the question again? How did she say that?

5 Q. Well, I asked if they told you with a bleeding ulcer if
6 you knew what they were going to be doing to fix your ---

7 A. Oh. Not until afterwards. They put the scope in me,
8 and then they had cauterized all the wounds and everything.

9 Q. When you say wounds that is what I would like for you
10 to describe to the jury a little bit more. I mean I am not
11 a doctor so I ---

12 A. There's -- there's -- from my knowledge of how it
13 works. And like I said, I have got limited from Buddycare
14 in the military.

15 And you have got ulcerations, and because your stomach
16 is so vascular that when you have just a small opening and
17 everything -- or a small wear away of your material inside
18 your stomach you can start bleeding. And because it won't
19 coagulate that well in your stomach you can start bleeding
20 profusely and you won't stop and you just keep throwing up
21 blood or passing blood, either way.

22 Q. Okay. So something in the time ---

23 A. They had to stop it because it wouldn't stop.

24 Q. I understand. Something from the time when you left
25 the Wilmington Treatment Center until the time when you were

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1 having an ulcer and you were cauterize- -- cauterizing ---

2 A. Cauterized.

3 Q. --- these -- they were cauterizing these ulcers in your
4 stomach, during that whole period of time, nothing in your
5 body, the organs that you had in your body, were working
6 well?

7 A. No. Nothing was working.

8 Q. So like do you recall the doctor talking to you about
9 your pancreas or your liver or intestines or any of those
10 things?

11 A. They were just vaguely making sure that I -- they had
12 me on all my meds.

13 Q. To try to keep your organs working the right way?

14 A. Right. They were trying.

15 Q. Right. And I believe even in one of these they said
16 that you had pancreatitis, which is when your pancreas gets
17 all swollen up and messed up?

18 A. Yes. Yeah. And it hurts. It does. You can actually
19 feel is sticking out of your stomach sometimes it gets so
20 swollen.

21 Q. Okay. And so after you left the Waynesboro Hospital in
22 Pennsylvania that was at the end of July. Where did you go
23 next?

24 A. After I left Waynesboro Hospital?

25 Q. Yes.

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1 A. I started -- I started thinking -- it is kind of hard.
2 Mom -- mom took me back to her apartment and I laid on the
3 floor, and then mom wanted me to go get her a pack of
4 cigarettes or something.

5 And I thought I was okay to drive. And I wrecked my
6 car on the way back; and I tore up my tire, my front right
7 tire I think it was. And then -- so I wasn't okay to drive.
8 So I figured I would sit around for a while longer.

9 Q. So when you say you weren't okay to drive so in your
10 own mind that was going on at that time would you -- was
11 there a conflict going on about what you thought you could
12 do and what you really couldn't do?

13 A. Yeah. I---

14 Q. Can you describe that to the jury, please.

15 A. I was afraid to -- mom had talked to me for a couple of
16 days she said. But I wouldn't -- I wouldn't understand, you
17 know, where she was at with things or that days had gone by.

18 And then when I say -- I went out and looked at my car,
19 and I didn't know I had like torn up my front, right side of
20 my car. And I went oh man you know it torn off the side of
21 my tire.

22 Q. So you didn't remember doing it?

23 A. I didn't -- no, I thought I just bumped something. I
24 didn't know I had a bad accident. Because I drove right
25 back to my mom's house and there it was all leaned over and

1 everything.

2 Q. Well, the testimony in this case is that you got a
3 handgun, the handgun that is in evidence, from your mother's
4 house. Did you obtain that handgun before or after you went
5 to the Waynesboro Hospital?

6 A. Well, I knew I basically had to get back to here to --
7 I just had to get back. I was -- I had -- I was missing my
8 daughter and I was thinking maybe I could get back and get
9 with my daughter.

10 I was missing out on things. I think her birthday was
11 real important to me. I was trying to ---

12 Q. What date is her birthday again?

13 A. Today, the 16th.

14 Q. No, last year. So it would have been July 16th. Okay.
15 So this -- we are before July 16th of 2014 when we are
16 having these conversations. And you entered into the
17 hospital in Waynesboro at the end of July. So we're -- you
18 are saying that something about the gun came ---

19 A. Well ---

20 Q. --- to mind because of your ---

21 A. No.

22 Q. --- daughter's birthday?

23 A. No. I knew I had to get back. And you've got to bear
24 with me because my thoughts are so bad right around this,
25 and it is segmented.

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1 My mom wanted to come back with me initially. Because
2 of a previous thing that had happened she was concerned that
3 I was going to get back and I was going to have to protect
4 myself because I got an offer -- that -- to stay away notice
5 or whatever.

6 So my mom wanted to bring a gun, initially. That was
7 my mom's idea. And she had a little 357. So she decided on
8 well am I going to bring the little or the big one.

9 And I went -- I said, well, are there any bullets in
10 it. And she said something about no but we will get some
11 when we get down there. And I went okay mom, whatever,
12 whatever.

13 Well, I went to go -- finally -- this is -- this is how
14 it come from me leaving with this gun that I can remember.
15 Whatever -- whatever day it was that I left I had let my car
16 sit there and mom did all the driving. Because I was not
17 driving. I couldn't drive for however many days it was.

18 So the day I got out of Waynesburg until the time I
19 left Pennsylvania I did not drive anymore or would I. I
20 couldn't.

21 Q. Okay. Let's focus again on the gun.

22 A. I am trying to get ---

23 Q. So when you get in the car to head down to this area
24 and the gun is in the car tell us how that happened.

25 A. I made a rash decision on leaving Pennsylvania when

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1 mom -- mom went to go get a tire. And my uncle got mad that
2 my mom was lifting a tire up. And I felt so bad. You know,
3 I physically felt bad, mentally felt bad. It is
4 indescribable.

5 I struggled to go out there and I changed that tire.
6 And my uncle was so mad at me that he said your mom is 70
7 years old what is she doing hauling that tire around.

8 And I was like well, you know, I have been laying
9 around on this -- on the floor. I know I haven't been
10 eating nothing or taking -- I have just been taking up
11 space.

12 And so I finally said -- I said, mom I think I wore out
13 my welcome. And I said: I don't want to put you out or
14 anything like that. I know you are supposed to come along,
15 but I don't know how you are going to get back. I don't
16 feel too good. I don't know if I am going to have to fly
17 you back or what because I don't know -- you know, we get
18 down there I know I am going to have to help you dr- -- you
19 are going to have to help me drive and that was the whole
20 plan but.

21 So I remember all that happening. It was like a real
22 quick moment that I had to just leave right after I changed
23 that tire. And I left.

24 And mom packed my bags. Well, mom packed a gun. And I
25 didn't know mom packed a gun. And I can tell you to this

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1 day I know my mom packed that gun because my mom packed my
2 bags. Because my mom was supposed to come with me.

3 Well, I didn't know I had the gun until I got to South
4 Carolina and I was on the border with the dog and I went to
5 go feed him.

6 But I couldn't tell you, between that time and by the
7 time I got down to South Carolina four or five days had gone
8 by. And I don't even remember that.

9 Q. Okay. So during that period of time that you were
10 traveling back from Pennsylvania to South Carolina and you
11 said you had your dog in the car and you said you don't
12 remember that, tell us is there anything that you would like
13 to tell the jury about that period of time and how you felt?

14 A. I was still feeling terrible. I had pulled over -- and
15 I don't -- I don't know how many times I could have pulled
16 over and sat on the side of road. I couldn't tell you.

17 I know somebody brought me gas. And then one time I
18 was brought gas at the exit sign that that is where I stayed
19 at the hotel. And if you look at my debit cards you can see
20 that I probably stayed at that hotel probably two or three
21 days. Because the first day I paid cash. And I remember
22 doing that.

23 Q. So ---

24 A. And then -- and then I went to go check out and they
25 said you owe for two more days. And I went what.

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1 Q. So is it fair to say that you -- it was as if you were
2 losing time?

3 A. I was losing time. I was losing days.

4 Q. And so when you would wake up would you have memory of
5 what you had done shortly before that?

6 A. No, I mean I -- I was stopping because I was on the
7 road. And I had my little dog with me. I was stopping and
8 getting him little bites of fast-food for him because -- I
9 mean I had a bag of dog food in the car, a little small bag;
10 but I was getting him like, you know -- he is a little tiny
11 dog. Nibbles. I mean he is just ---

12 Q. I believe when the testimony was about a Taco Bell
13 receipt you said you liked to feed your -- you said ---

14 A. Yeah, he likes Taco Bell. I will get him a MexiMelt.
15 I will throw him a MexiMelt. And that is what he eats, and
16 he is good.

17 Q. Okay. And so you get back into this area. And tell
18 the jury a little bit about what you remember if -- the
19 parts that you remember and how we ended up sort of into the
20 August 5th time.

21 A. As far as when I first go back?

22 Q. Yeah, what do you remember about when you first got
23 back and what was -- more that that how do you feel when you
24 first got back?

25 A. Terrible. It was just ---

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1 Q. Can you describe that?

2 A. It is all the same. It is the same as I should be
3 in the hospital. I have no way of thinking right now. I
4 mean I am walking and talking and doing and saying and
5 trying to -- trying to be as ---

6 Q. So you were ---

7 A. --- functional ---

8 Q. Yeah. So I was going to say so you were trying to be
9 functional.

10 A. You know and because I was always being in the military
11 I am always worried about my -- you know, making sure I
12 present myself properly and I am talking properly and I am
13 not offending anybody. Yada, yada, yada. So I am trying to
14 be functional that way. But it was a struggle.

15 Q. Just the aside -- you are doing pretty good today.
16 Obviously you are sitting here, you are clean cut, you
17 are -- you know, things are -- you are being lucid.

18 Do you -- tell the jury why you are -- you are making
19 sense today and, you know, that you weren't making sense
20 then. I think they might want to know why you seem very
21 functional today but you might not have been then.

22 A. Because I don't have that medicine in me. I have none
23 of the medicine that I was taking. None of the digestive
24 medicine am I getting in jail. None of it.

25 I am not getting any of my mental meds in jail. I am

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1 getting like a suitable sub here and there. I mean I get
2 like a small version of a -- and I don't even get my blood
3 pressure medicine. I don't get anything for my digestive
4 system. I get like a -- not even a Nexium. It is
5 Protonix (ph) or whatever you call it for my acid reflux.

6 Q. So since you have been -- since ---

7 A. No shot. No nothing.

8 Q. Since August 5th you have come off of all of those
9 kinds of medicines that may have been in your system last
10 summer; you are not having any of that in your system right
11 now?

12 A. Yeah, I have really -- I really honestly couldn't tell
13 you that I remember anything until -- I think I started
14 remembering -- October is when I started actually thinking
15 hey it is October, you know; ---

16 Q. Like your body ---

17 A. --- where did August and September go.

18 Q. So your body started feeling better enough to kind of
19 make sense again in October of 2014, about two months after
20 your arrest?

21 A. Yeah, because it was -- I -- I thought -- I will tell
22 you that in a little bit. I don't want to jump past.

23 Q. I don't know what you are saying.

24 A. I don't want to jump around. I will wait for your
25 questions.

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1 Q. Okay. Well, I am going to take you back to the time
2 when you came back to Goose Creek after you came in from
3 Pennsylvania. And tell me a little bit about what was going
4 on in your personal world, what you remember.

5 A. That Deonna had moved out of the house but she had
6 turned the electricity off. And because I was a PA for a
7 while. But I didn't know how to turn it back on. I didn't
8 know what to do. I knew it was out, but I didn't know what
9 to do to get it back on. I didn't -- I could not
10 understand. It was not a habitual thing that I could do.

11 Q. So in other words how to fix that problem seemed to be
12 beyond your grasp?

13 A. Yes.

14 Q. And Deonna had moved out. Was it at that point when
15 Deonna was living with Jennifer, or had Deonna moved in with
16 Steve at that point?

17 A. I think -- yeah, she had moved in with Steve. Because
18 Jennifer and her got in a fight when Jennifer told me that
19 she saw her cheating down there and she -- Deonna punched
20 Jennifer in her face and had to press charges against
21 Deonna.

22 And my daughter was down there too. And I had to -- I
23 didn't know what to say. I felt bad. My daughter was -- I
24 even married a person like that.

25 Q. I understand.

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1 A. She -- it was terrible.

2 Q. And so the domestic situation ---

3 A. I thought ---

4 Q. --- had deteriorated and now Deonna was living with
5 Steve or staying at her -- his house?

6 A. Yes.

7 Q. Now you heard them testify, both of them testify, that
8 you -- that they were not sleeping together and not having
9 an affair. At the time of this happening in August of 2014
10 what was your understanding of whether or not they were
11 having an affair?

12 A. They were having an affair.

13 Q. Based on?

14 A. Based on what I've seen. What -- based on I saw them
15 at the hotel together.

16 Q. Describe that for the jury, please.

17 A. It was during a little thing called Food Truck Rodeo.
18 And my wife was working late. And she gets drunk real easy.
19 And she likes to get drunk a lot. Me, I am a functional
20 drunk. You can give me a breathalyzer and I will still
21 pass.

22 Her, she's drunk, she binge drinks. And that was one
23 of the little firecrackers I had to worry about with her.
24 You know, she would embarrass me.

25 Q. So moving on to the night of Food Truck Rodeo ---

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1 A. So that is what happened. She worked late that night.
2 I told her to get home. She got drunk like that, she would
3 turn into a firecracker. She wanted to stay at a hotel.
4 Why? I don't know why she wanted to get mad at me that day,
5 but she did.

6 Q. Is that the night that Sergeant -- who is now
7 Lieutenant Ramirez, gave her a ride to the EconoLodge?

8 A. He didn't. That is the thing.

9 Q. He didn't, and you believe that he -- that he said that
10 he did?

11 A. Well, what happened -- what happened was Steve and
12 Captain Laffey are known good friends. I am just saying
13 this is where it goes. I watched ---

14 Q. Well, let me ask it this way ---

15 A. I watched -- I watched -- I watched my wife leave with
16 Steve and go to the EconoLodge.

17 Q. All right.

18 A. I watched them do it.

19 Q. I understand. And that was the night of the Food Truck
20 Rodeo ---

21 A. But then ---

22 Q. --- and nobody ---

23 A. But then she is saying that Ramirez took her there.
24 But he didn't.

25 Q. I understand. So during that period of time you have

1 already described the fact that you were disoriented, that
2 you weren't making good decisions, that were having ---

3 A. No.

4 Q. --- memories coming in and out; and all of this about
5 you seeing with your own eyes that Steve and Deonna had gone
6 into the EconoLodge together, how did that make you feel?

7 A. It made me feel terrible. They spent the whole night
8 together.

9 Q. Okay.

10 A. I had to go get her car. Me and my -- me and my next
11 door neighbor, Tom, went and got her car and brought it back
12 home and saw this.

13 Q. And so all of this was happening. Do you remember if
14 this -- okay, this incident we are here for today happened
15 on August 5th. Can you remember a time, a date a few days
16 before, or two days, three, before the time on August 5th
17 that this stuff happened with the EconoLodge?

18 A. I don't -- I don't know what day I got back. I
19 remember going to my house. And it was hot; and I was
20 thinking, well, I can't stay here.

21 Q. Well, you checked into the EconoLodge on August 3rd, so
22 this situation with the Food Truck Rodeo and seeing ---

23 A. That was long before.

24 Q. Oh, it was before that?

25 A. Yeah.

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1 Q. Okay. So ---

2 A. That's where I figured you were talking about.

3 Q. Do you recall any other place you may have stayed other
4 than the EconoLodge once you got back from Pennsylvania?

5 A. I think I sat around in my vehicle for a few hours
6 because I didn't know what to do. And it was running. It
7 was hot. And I had my dog.

8 Q. Okay. And you eventually took your dog somewhere else?

9 A. Somebody at the EconoLodge I think - because it is a
10 flash - said I can't have a dog.

11 And I dropped my dog off. Come to find out it was Liz.
12 But I thought it was somebody else. Liz is one of my
13 neighbors. But I thought I had dropped it off with another
14 neighbor, I think -- I thought. Until I read something that
15 said Liz.

16 Q. So later on you determined that you had taken your
17 dog -- after this arrest you determined that you had taken
18 your dog safely to some neighbor's house?

19 A. Right.

20 Q. And on -- okay, so in August 3rd when you are staying
21 at the EconoLodge tell the jury a little bit about what your
22 thought processes were and whether or not you -- you know,
23 describe what you thought was going on with you.

24 A. I -- I was there twiddling time. I didn't know what I
25 was doing there. I was just sitting there. I was waiting

1 for my electricity to get turned back on.

2 Q. How about ---

3 A. That's what I thought.

4 Q. --- your medical issues?

5 A. Medical issues? What do you mean?

6 Q. Was your -- were things ---

7 A. I felt terrible.

8 Q. --- better in your stomach; ---

9 A. No.

10 Q. --- or what was going on?

11 A. No. I felt terrible. I couldn't -- I couldn't even
12 think at all.

13 Q. And when you say you couldn't think at all do you
14 remember going and getting food and coming back and things
15 like that?

16 A. No, I don't remember.

17 Q. Do you remember drinking wine? I mean in the pictures
18 we see there is some wine bottles ---

19 A. I saw that.

20 Q. Do you remember drinking the wine?

21 A. Maybe out of habit I might have seen a picture in my
22 brain where I might have poured myself a cup of wine. But
23 in the hotel I wouldn't say whether I did or not. I don't
24 know. It's -- it's a thought. It's -- it's -- it's -- it's
25 a flash. It is a picture to whether I did it. It's --

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1 whether it is memory or not, I don't know.

2 Q. Okay. Now there is -- we have heard testimony in this
3 case that a few days before this incident that you were out
4 in the neighborhood where your family lived talking to a
5 child, not Ms. Vick but a different child. Do you --
6 describe to the jury what if anything you remember about
7 that.

8 A. I -- I saw what y'all saw. And it was all -- this was
9 all brand new to me. Everything was new. I was in awe. I
10 had no clue that any of this was like this.

11 A have a friend of mine named Suzie that I didn't
12 even -- I didn't even know about this stuff for months until
13 she was feeding me in little bits and pieces. I -- that is
14 the only way I kind of knew about this.

15 Q. Well, let me back track. You have been given the
16 police reports and all the discovery material in this case.

17 A. Right.

18 Q. And that is documents ---

19 A. Yeah.

20 Q. --- that you would have in your -- with you?

21 A. It -- you kind of skim through. There is so much. You
22 skim through it. You are not going to see everything or ---

23 Q. So is it your testimony that the knowledge of what
24 happened on that day that what you're -- the information
25 that you believe you may remember is actually stuff that may

1 have come from reading the material in your discovery?

2 A. Yeah.

3 Q. Okay.

4 A. And what I've seen here.

5 Q. Okay, well, I am talking about before today.

6 A. Yeah, I -- yes, ma'am.

7 Q. All right. So when they said that you were going
8 around talking to people, making sense, acting like you, you
9 know, were knowing what you were doing with these rocks and
10 talking about fossils and birthday parties at the bowling
11 alley do you recall that?

12 A. No.

13 Q. And when you -- do you recall anything about it; do you
14 recall maybe even after we have had this whole trial, you
15 know, some memory as to being in the neighborhood driving
16 around with the dog in your car ---

17 A. I know I had the rocks with me because I was showing
18 them to my mom when I went up there and her brother. I know
19 I had the rocks with me. Like I said, I piled the car full
20 of stuff that I had no clue what it was all about.

21 I had a painting that I wanted to show that I did for
22 my daughter. I had all of my clothes. I had -- I just I
23 don't know why I took all these things or remind me of my
24 daughter. She loves rocks. I took all of those -- not all
25 of them. I took a bunch of things that reminded me of her

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1 while I was away.

2 Like I said, the pictures and fossils or whatever the
3 heck it was that y'all were showing on there, I mean yeah I
4 took all that stuff; but it stayed in my car and I took it
5 to Pennsylvania.

6 Q. Okay. Now this is -- when you were talking to that
7 first child who is a 14-year-old girl, did you have -- could
8 you tell the jury whether or not you had any idea about ---

9 A. Who ---

10 Q. --- doing something sexual with that child?

11 A. I don't even know who you are talking about right now.

12 Q. The Woltz child. The -- when the -- in this testimony
13 the -- not Miss Vick. Not Minor But the other child. The
14 other ---

15 A. I don't ---

16 Q. --- family.

17 A. --- remember any of them or talking to anybody about
18 this.

19 Q. So do you remember having any kind of ideas in your
20 head that you wanted to go spend some time with a young
21 girl?

22 A. No.

23 Q. Okay. So that was a few days before this incident.
24 Now on August 5th, the day that this happened, you are in
25 the EconoLodge and you -- and all of this starts happening

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1 throughout the course of the day.

2 And tell us if what if anything you may remember about
3 how you got from the EconoLodge to the neighborhood with the
4 rocks that day to talk to Miss Vick's family.

5 A. I don't know. I -- the only thing I remember about
6 that day is when I told Steve that I would rather -- I was
7 trying to kill myself, I was trying to hurt myself and not
8 him. That is what I remember about that day. And he walked
9 out.

10 Q. So let's jump ---

11 A. I mean ---

12 Q. Really far.

13 A. I mean -- I mean ---

14 Q. So ---

15 A. That is what I remember about the day.

16 Q. So what your testimony is to the jury is that as the
17 things progressed through the date your first real memory is
18 when you were telling Steve you wanted to kill yourself?

19 A. Yes.

20 Q. And were you aware you had a gun in your hand at that
21 time?

22 A. As -- yeah, I did. And I remember looking at it and I
23 was thinking well -- I saw --- the first thing I saw was the
24 flash of light. And I ---

25 Q. Where were you when you saw this flash of light?

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1 A. I don't -- I don't know if it was when I opened the
2 door, his door that I heard -- if you smack two boards
3 together like flat boards and you go wack (motioning) I hear
4 that. I hear -- I see a flash of white light. Everything
5 looks foggy. Like I had been walking in a fog anyways. I
6 mean visually fog.

7 I thought I heard Steve, but I wasn't sure I heard
8 Steve. Because I couldn't make out what was going on. He
9 said something like -- well, at first it was just somebody
10 saying Gary what are you doing in here.

11 And then I was next to a wall by the door, and that's
12 when I recognized it was Steve because he got closer and he
13 was like right here (motioning).

14 And he was reaching for the gun across my body. And I
15 was holding the gun down like this. And I said I am here to
16 hurt myself, I ain't here to hurt you.

17 And he kept like pawing at it like playfully not
18 realizing it was real. And it looked -- I thought he had
19 pulled the hammer back on it, because the gun went off.

20 Q. Okay. So your testimony would be that you did not say
21 to him you are a dead man?

22 A. No, I didn't say that. Not that I know of. I mean I
23 walked in there and the next thing I know he was right there
24 on me.

25 Q. And as far as ---

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1 A. It was that fast; boom, boom.

2 Q. And as far as -- do you remember having any
3 conversations with him about being needing help and telling
4 him you had financial problems; does that make any sense to
5 you?

6 A. No, that doesn't make sense to me. And I went and laid
7 down and I was going to commit suicide right there. That is
8 how fast it was for me.

9 And then I heard the cop saying he was sitting on his
10 knees for an hour-and-a-half. That seemed like one minute.

11 Q. I understand. And so on that day when you -- when the
12 gun went off you say that the gun was not pointed in the
13 direction of Steve?

14 A. No, because I thought -- because it was right here
15 (motioning). I was wondering that it didn't shoot my foot
16 or something. Because it went straight down on the floor,
17 and I thought I had -- he had shot my foot because he was
18 reaching across my body.

19 The wall was here (motioning). The door is here
20 (motioning). And I am facing the wall. And he come from
21 around the desk up against the wall and was reaching between
22 the wall and me for the gun. And it shot the floor. And it
23 kind of woke me up a little bit of what I was doing. And I
24 said I am not here to hurt you, I am here to hurt myself.

25 And I got by him somehow. Because I have got a bad leg

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1 I guess. I have got a replaced hip and stuff, so I had
2 walked and laid down on the floor.

3 And when I laid down on the floor behind the desk I
4 looked up and he said are you ready to do what you are going
5 to do now. And I was thinking to myself -- I saw
6 (WHEREUPON, pause for witness to regain composure.)

7 Q. There was discussion in that room about your daughter
8 and him ---

9 A. I saw my daughter's face crying. And then I was
10 thinking nobody cares if I go ahead and die right now. And
11 I was thinking she was going to miss her best friend.
12 Because I raised her all by myself.

13 Q. So during that period of time after you told him that
14 you wanted to kill yourself were you thinking about what
15 would happen to Alta if you were dead?

16 A. I just saw her picture in my -- in my -- in my eyes.
17 Crying.

18 Q. One ---

19 A. Because I thought I was going to die right then and
20 there.

21 Q. One of the things that you mentioned is that you saw a
22 bright light, and then you said I was having eye problems.
23 That was something that we didn't discuss earlier. I would
24 just like for you to explain to the jury what was going on
25 with your vision during this period of time.

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1 A. I couldn't see.

2 Q. Why not?

3 A. I couldn't see. I was walking around in a fog. I
4 couldn't see where I was going. I couldn't see.

5 Q. Now this was just ---

6 A. It was like I was walking through milk all the time.

7 Q. Was this just August 5th or it was just this period of
8 time in your life?

9 A. The period of time. It was like I was almost used to
10 it.

11 Q. So did you intend to kill Mr. Tsafos that day?

12 A. Tsafos?

13 Q. Tsafos (clarifying pronunciation).

14 A. I don't think so. I was -- I was -- I know I was
15 there to kill myself. I think -- I think I had that feeling
16 that -- knowing those two -- they had used my daughter.
17 That -- that made be upset too. They used my daughter for
18 their cover-up. I've seen it. But that my daughter was
19 being used, that they played me like they did, I just wanted
20 to lay down and then have to come to work every day knowing
21 I killed myself right there.

22 Because that's -- that's what -- that's what --
23 seriously. That is what -- that is what I was thinking.

24 Q. That if you were dead in the bowling alley that they
25 would have to come to work and think about that every day?

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1 A. I believe that's -- that was a thought in my head. I
2 know it was. Afterwards especially. Because I was thinking
3 is that why I was trying to do that, is that why I was
4 trying to kill myself.

5 It was more so after the -- the afterthought more than
6 it was that thought right then and there. Because I don't
7 think I thought that right then and there. I thought about
8 it later, you know, like October or whenever when I started
9 thinking again.

10 Q. At the time that you had the gun and all this was going
11 on with Steve and all these mental problems and issues you
12 were discussing did you appreciate the right and wrongness
13 of having that gun in that room with him?

14 A. No. I didn't under- -- no. I -- as far as what was
15 right and what was wrong? Nothing was right and nothing was
16 wrong. I can tell you that. It was just -- it was a
17 struggle just to walk.

18 There was no -- there is no other thought. Just get to
19 the next step, whatever it may be. And my next step was I
20 was trying to kill myself because the pain was unbearable.

21 Q. And when you say the pain do you mean the pain in your
22 stomach?

23 A. Physical and mental pain. It was terrible. I ---

24 Q. And then the pain in your head?

25 A. There is no -- there's no word for what I was feeling.

1 That shot did me in.

2 Q. I understand. So we missed over a large section of
3 what happened that day. And so we talked about the fact
4 that you know -- you think that you were there to kill
5 yourself, that you didn't believe that you intended or
6 you -- to kill him, that you were planning to kill yourself.
7 And I believe you said that you told him that you weren't
8 there to hurt him.

9 Now let's go backwards to the whole area that we
10 skipped over that had to do with Nicole Vick -- Minor 1
11 You picked up a child out of the neighbor that you lived in,
12 and during that period of time you had conversations with
13 her brother, you had conversations with her mother. And
14 these people especially her mother allowed you, based on
15 your knowledge, to take her child. Do you remember having
16 those conversations?

17 A. No.

18 Q. Okay.

19 A. That's terrible. I saw her up here.

20 Q. I understand. So it is your position and your
21 testimony that you don't recall having those conversations
22 even though you may have looked like you knew what you were
23 talking about?

24 A. I looked at her. I looked at her. When she was
25 sitting up here I looked at her.

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1 Q. Yes, sir. Did you ---

2 A. If she was ---

3 Q. --- recognize her?

4 A. Oh, I know who she is. But she was sitting up here and
5 I looked at her, and I was trying to remember that day. And
6 I don't remember that day. I remember trying to kill myself
7 about that day.

8 Q. Okay. So if you are telling me that you don't remember
9 that day ---

10 A. I mean I saw her crying.

11 Q. --- and that you have tried to remember that day and
12 that you tried to remember that day at the time of your
13 arrest or that time -- the incident at the time of your
14 arrest during the period of time from the arrest to today
15 and in this trial.

16 Has there been any point that you have in fact had
17 memories that do come back to you regarding that situation?
18 Putting her in the car with you. I haven't gotten to what
19 happened in the room. Putting her in the car with you.

20 A. No. I mean I can imagine any -- anybody that was in
21 the car with me that -- but as far as that day I don't
22 remember that day. I remember killing -- committing suicide
23 that day.

24 Q. Thinking that's what you wanted to do?

25 A. That is what I remember that day.

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1 Q. Okay. Based on where your thoughts were and what was
2 going on in your body ---

3 A. And that day lasted five minutes.

4 Q. To you it lasted five minutes. Okay. Based on what
5 was going on in your body of the illnesses that you were
6 having at that time did you appreciate that it was wrong to
7 put an 11-year-old child in the car with you with -- you
8 know, and not go to the bowling alley like you told her
9 mother that you would do?

10 A. Do I think it was wrong? I think it was wrong.

11 Q. But did you appreciate that at the time that it was
12 wrong?

13 A. I don't remember that time. I don't understand what
14 you're saying.

15 Q. No, I understand what you are saying. You are saying
16 that you don't know if you appreciate it because you can't
17 even remember doing it; is that what you are saying?

18 A. Right.

19 Q. Okay. And with regard to the situation where y'all
20 went to Publix we have watched videos in this trial of you
21 walking into Publix, buying goods, buying beer, checking
22 out. Do you remember any of that after even we watched the
23 video?

24 A. No. I apparently had gone to -- to doing things on
25 the way down that I don't remember. Because I saw like a

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1 Wal-Mart bag or something, you know, ---

2 Q. All right. So that ---

3 A. --- by my dog food.

4 Q. On August 5th on that day, you don't remember going
5 into Publix?

6 A. No.

7 Q. Do you remember dressing in a dark black coat that day?

8 A. No.

9 Q. Okay. Do you remember anything about the weather that
10 had happened on that day, whether it was hot or cold? It
11 was August in South Carolina.

12 A. No.

13 Q. No memory of that? Okay. Do you remember after you
14 went to the Publix - and we watched the videos of the
15 EconoLodge so we know that it happened and we know we -- you
16 saw yourself on there. Do you remember being in a car and
17 bringing Minor1 into the EconoLodge parking lot?

18 A. No.

19 Q. Okay. Do you have any recollection of what your
20 thoughts were at the time to determine whether or not you
21 knew that what you were doing was wrong?

22 A. I don't remember anything about that, no.

23 Q. So what about your thought process?

24 A. Do I remember Minor1 no. Because I didn't even
25 remember -- I didn't understand that I had taken anybody

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1 when everybody was talking about it.

2 Q. So what you were doing at the time taking the child
3 into the EconoLodge ---

4 MR. POULOS: Objection. Leading.

5 THE COURT: Sustained.

6 Q. So when you went into the EconoLodge and you and the
7 child were there do you have anything that you could share
8 with this jury that was any memory or any information about
9 what happened inside the EconoLodge?

10 A. There's nothing I can remember about anything that has
11 to do other than me trying to kill myself that day.

12 Q. I understand. And so based on the fact that you don't
13 have memories of this, do you -- can you tell me a little
14 bit about what was going on in your physical body, in your
15 mind, at the time to let the jury understand a little bit
16 more about who you were that day..

17 A. I don't know if I remember being in pain that day. But
18 I remember being in pain when -- when I was laying down on
19 the floor. I remember that. I don't remember that pain --
20 I remember being in pain so often and all the time that I
21 had to kill myself. I didn't know what I was supposed to do
22 other than kill myself.

23 Q. Okay. But do you remember having sex with this 11-
24 year-old Vick ---

25 A. No.

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1 Q. --- child? Okay. So do you remember buying the NyQuil
2 and doing the other things ---

3 A. No.

4 Q. --- that it took to -- sir?

5 A. No.

6 Q. Okay.

7 A. It was terrible. It was ---

8 Q. So ---

9 A. --- terrible to watch.

10 Q. So at that time you believe that you weren't making
11 rational decisions?

12 A. No, I was not making any kind of rational decisions.

13 Q. And would you have known at that time, if you
14 recall - it is your life - whether it was wrong to have sex
15 with an 11-year-old child on that day?

16 A. I would not know -- I would not -- I would not know
17 anything that day.

18 Q. Okay. And would you have known that it would have been
19 wrong to have this child brought there ---

20 A. Or any other day. For a long time.

21 Q. I understand. Would you have known that it was wrong
22 for to bring this child from your car and keep her in the
23 room against her will?

24 A. No, I would not have known that.

25 Q. And would you have not known that you were endangering

1 her in any way based on your mind at that day?

2 A. No, I would not have known that.

3 Q. Okay. Ms. Fraley, do you remember sticking your penis
4 in this girl's mouth?

5 A. No, I -- that's terrible.

6 Q. Do you remember sticking your penis in this girl's
7 vagina?

8 A. No, ma'am.

9 Q. Do you remember forcible sticking your penis in this
10 girl's anus?

11 A. No, ma'am.

12 Q. Okay. Is there anything about that -- do you remember
13 fondling her body parts up and down?

14 A. I don't remember her. I don't remember this.

15 Q. Would you -- do you recall in what was going on in your
16 head whether you knew that it was wrong to fondle and/or
17 have sex in every orifice possible with a child on that day?
18 I can't hear you.

19 A. I -- no, I don't -- you are saying do I remember that?
20 No, I don't remember this.

21 Q. Well, do you know that it -- do you remember it --
22 whether or not it would have been wrong to ---

23 A. Yeah, it would have been wrong. But I don't remember
24 anything. That's what I am getting at.

25 Q. So do you -- you don't remember making the decisions to

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1 do that?

2 A. No.

3 Q. So after you went to the bowling alley with her you
4 were driving your car and you -- we saw it on video. Your
5 car backed into another car. Do you recall backing in and
6 hitting that car?

7 A. No.

8 Q. So not at all?

9 A. No.

10 Q. And that ---

11 A. I saw that too.

12 Q. Yeah. And so that fender bender, the one that they
13 referred to as the hit and run, is -- even the bump that
14 would have resulted from that, did it cause any -- you any
15 movement in your brain for you to understand what was going
16 on?

17 A. I don't remember anything. I don't remember it. No, I
18 don't remember the car accident either.

19 Q. And you certainly didn't stop to talk with the man
20 about it after you hit his car?

21 A. Apparently not. It looks like I drove away.

22 Q. Okay. And so back when we were -- when you got to the
23 bowling alley you said that you were on trespass notice.
24 And that was part of this case. And the trespass notice
25 meant that you were not supposed to be there, right?

1 A. Yes.

2 Q. Okay. In this case there is this concept that you have
3 these rocks and that were trying to tell everybody that you
4 were having a birthday party for your daughter at the
5 bowling alley.

6 Do you have any idea why you would have made that up;
7 because it wasn't her birthday and you weren't -- you were
8 on trespass notice from the bowling alley.

9 A. I have no idea why I would have made that up. I mean
10 all I know is -- and I have put a lot of thought to it, you
11 know, sitting in jail sitting there trying to figure it out
12 myself.

13 We would take -- I mean I would go around picking up
14 the kids and we would take my daughter to the bowling alley
15 too a couple of times. Not just me. But or other people
16 would meet us there to have her birthday party.

17 Well, that was first and foremost on my mind was having
18 my daughter back. She -- I -- something was going on to
19 where I wanted my daughter with me. She was my lifeblood.
20 She is my lifeblood. I have got to have her with me.
21 She -- maybe she can come help me get better. I don't know
22 what was going on.

23 Q. So ---

24 A. So I don't know if it was something about I missed her
25 birthday or I was supposed to make it up or whatnot. I

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1 don't know, ---

2 Q. So ---

3 A. --- but it is a flash -- it is a flash thought. I
4 don't know if that is why you guys might have thought that I
5 had asked people for a birthday or I used rocks or whatever.

6 Q. So a flash thought for you would be that something
7 about these rocks might have had something to do with your
8 desire or something to communicate with your child?

9 A. With a child?

10 Q. No, with your child.

11 A. My daughter. That is my daughter. Those are my
12 daughter's.

13 Q. Okay. So the rocks belonged to your daughter and
14 so ---

15 A. From the ones I saw it looked like it.

16 Q. Okay. And so this concept of coming up with a birthday
17 party for your daughter is because she likes rocks?

18 A. I don't know.

19 Q. Maybe?

20 A. Maybe. I don't know.

21 Q. Do you have any idea why you made that up or why that
22 came out of your mouth?

23 A. No. I only ---

24 Q. So ---

25 A. I don't know -- I don't even know that I did do that.

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1 It is, you know, somebody saying I did. I mean ---

2 Q. Well ---

3 A. --- did I do it? I mean there's witnesses saying I did
4 it.

5 Q. So you don't remember making that up intentionally ---

6 A. No.

7 Q. --- is my point. And in the thought process of
8 making -- to planning it out do you remember any of those
9 thoughts of planning out what you were going to do all the
10 way to the point where you get Minor 1 in the EconoLodge?

11 A. No, I don't.

12 Q. There was no plan?

13 A. There was no plan.

14 Q. Okay. And I -- with regard to what happened, again, in
15 the bowling alley there was -- the last thing I want to ask
16 you is that you and Steve had had ongoing issues about
17 your -- about fidelity and con- -- strife with regard to
18 your wife, right?

19 A. I never let him know that.

20 Q. Okay.

21 A. I never did.

22 Q. So these -- this problem that you had with Steve, he
23 testified you were in there saying I want answers, I want
24 answers about my wife and if she is sleeping with you. And
25 do you recall those types of situations?

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. I remember -- as best as I've told you, that's what I
2 remember, how I remembered it.

3 Q. Okay. So you -- your testimony today is that on August
4 5th what you really remember about the day is after this
5 bright light or large noise came in the bowling alley while
6 you were in the room with Steve with a gun and that you
7 believe after that you that you went I am armed because I
8 want to kill myself and not I am armed because I want to
9 kill Steve?

10 A. I was there to kill myself. I felt bad.

11 Q. I understand. And so other than those -- those moments
12 in time and then you went off to be arrested; and when you
13 got arrested all that arrest stuff started, right? I mean
14 they arrested you, they took you to the hospital, they took
15 you -- they took you to Trident, and then they took you back
16 to the jail?

17 A. I guess. I don't remember ---

18 Q. Do you remember ---

19 A. I don't remember hospital trips.

20 Q. So you don't ---

21 A. So ---

22 Q. Go ahead.

23 A. I thought somebody -- I thought y'all were saying
24 they took me twice or I had two EMS or something like that
25 and ---

1 Q. Well, I think that EM- ---

2 A. --- I was wondering -- that is what I was confused
3 about, two EMS.

4 Q. Well, the EMT came and checked you out at the bowling
5 alley and then they took you to the jail in Goose Creek.
6 And then they took you to the -- the paramedic took you to
7 Trident Hospital.

8 A. Trident Hospital, okay.

9 Q. So there was really one time you were in the EMS and
10 one time at Trident. Do you remember any of that?

11 A. No.

12 Q. Okay. And you said that after you were in the jail
13 for a while it took you until October to remember stuff or
14 have -- be clear on some of this?

15 A. No, it is like I could start thinking again in October
16 I think -- or the end of September; somewhere in there. It
17 is -- you don't feel -- you don't feel that headache pain.
18 You don't feel that nausea in your stomach.

19 Q. So you felt like your body was -- body functionality
20 had sort of returned?

21 A. A little bit, yeah.

22 Q. Okay. I am going to talk to you ---

23 A. I mean I still felt foggy.

24 Q. Okay.

25 A. I couldn't think. I'm sorry.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. Okay. I want to talk to you about Brian Lee. Brian
2 Lee came and testified that you told him things about
3 your -- what you did and claimed that you told him that that
4 is what you did. And I believe he said that he had told the
5 State this in either November or December of 2014.

6 You knew Brian Lee?

7 A. Yes.

8 Q. And Brian Lee was I think either -- a roommate of
9 yours?

10 A. We were all in one cell. There's about 20 of us in
11 there. It is in one cell.

12 Q. Okay. And was there an occasion where -- can you
13 explain to the jury why ---

14 A. No, when I --- the first few months I was there I
15 mean -- I don't remember the first few weeks it seems like,
16 really, that I was in jail.

17 But after a while -- he didn't like me. He was --
18 nobody -- I mean he -- nobody really liked him. He was --
19 he was a jerk. Everybody thought he was a jerk.

20 He was always up in everybody's business. He was --
21 they would leave the room; he was over there scrounging
22 through their box trying to read stuff about them.

23 Q. One moment. When you say scrounging through their
24 box ---

25 A. We have got ---

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. --- trying to read stuff about them do you mean like
2 just police reports, discovery material and ---

3 A. Oh, yeah. He was always on the phone. He would even
4 ask me for a phone call so he could call somebody or to find
5 out about them.

6 He knew somebody that would type something up on the
7 Internet or look up a story. And he was always trying to
8 figure out some way to lower his charges.

9 Q. To help himself?

10 A. To help himself.

11 Q. And I think that interestingly you said one thing when
12 you said the first few weeks. And ---

13 A. He had big-boy charges, he said.

14 Q. What?

15 A. He said he had big-boy charges, big drug charges; he
16 was going to go away for a long time.

17 Q. But I think that I understand that -- what you are
18 saying, he was looking up stuff and scrounging through
19 people's police reports.

20 When you were first in jail describe to the jury how
21 that -- what was going on in your head, because you are now
22 of the street and in the -- and confined and possibly even
23 have medical treatment at this point, so tell them ---

24 A. I was ---

25 Q. --- how it went for that.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. And I have got -- I have got a couple of guards that
2 probably remember all of this. They saw that I was out.
3 They saw me phasing out. They saw where they were talking
4 to me -- and Ross was one of them. His last name is Ross.
5 He still works here. Samuels, he is a corporal who is
6 another one. They saw it. They were helping me.

7 I was laying on the floor for many many days. And I
8 still wasn't eating. And I didn't know to eat. I'd know I
9 was laying on the floor, and I remember just trying to stay
10 warm. And they had given me like a mat or something to lay
11 on.

12 And then Corporeal Samuels came in and there must have
13 been -- I don't know why they didn't take my other room. I
14 was in a room all by myself; but there was, I don't know, 20
15 lunch bags on the ground. And they all had food in them,
16 but I didn't know to eat them.

17 And then one day -- but I didn't know what they were.
18 I mean I was laying there. And they would take me up, and
19 I -- they'd said I was going somewhere. And I'd get in a
20 hot police car and then I would be back in my room.

21 The next thing I know I am looking at all of these bags
22 and I am laying down again. I didn't even know what the
23 bags were for. Corporeal Samuel said -- one day he sat one
24 down and he goes Fraley, he said are you going to eat any of
25 this or am I going to have to take it out of there. And

1 that is when I started realizing it was food.

2 Q. And so for several days after you went to the jail you
3 never even ate any food?

4 A. No.

5 Q. And that would not have been that different for you
6 because you weren't eating food ---

7 A. I wasn't eating anyways, ---

8 Q. --- on the street?

9 A. --- no. I was drinking a little bit of water, but then
10 I was -- I kept throwing up. I kept throwing up stomach
11 acid. I would drink some water and I told them that it was
12 like I kept throwing up nothing but acid. I kept trying
13 to -- I was thirsty though.

14 Q. I understand.

15 MS. GAY: Your Honor, I would like to take one
16 moment ---

17 THE COURT: Take your time.

18 MS. GAY: --- and talk to people in my group.

19 (WHEREUPON, pause 7/16/15, 3:26 p.m. for defense counsel.)

20 MS. GAY: Your Honor, can we take a short break?

21 THE COURT: Well, I only want to break once, and I am
22 going to break after you are done with this witness. So I
23 only want to let the jury out one -- one time.

24 MS. GAY: I understand. I just would like an
25 opportunity to talk to my expert about just a few things

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 before I close.

2 THE COURT: Why don't you take -- take a few moments.
3 Because I just want to let the jury take ---

4 MS. WILLIAMS: Your Honor, could we approach very
5 briefly?

6 THE COURT: You may.

7 (WHEREUPON, bench conference was had 7/26/15, 3:27 p.m.)

8 (WHEREUPON, resumed pause for defense counsel.)

9 MS. GAY: I am ready to proceed, Your Honor.

10 THE COURT: Yes.

11 MS. GAY: Just a few more questions.

12 BY MS. GAY:

13 Q. Mr. Fraley, on August 5th, 2014, when this -- all this
14 was going down, do you recall or what it would be your
15 testimony about whether you were taking prescribed
16 medication for your medical history on that date?

17 A. I can't see myself doing it, but I am sure I did. I
18 always did. I was to never miss it. It just ---

19 Q. When you say you always did - and I think you have
20 testified to it as being habitual - can you describe -- can
21 you give a little bit more detail to the jury on what that
22 means to you.

23 A. Well, I -- anybody who takes medicine every day they
24 know when they get up or something -- certain point in the
25 day you are going to take your medicine. So I take my

1 medicine.

2 Q. And you were taking medicine for a bunch of different
3 stuff, primarily with regard to the pancreatitis and the
4 things like that?

5 A. Yes, ma'am.

6 Q. Is that -- sir?

7 A. Yes, ma'am.

8 Q. And today, now, when you said that you are in the jail
9 and you are I guess not taking as many medicines do you feel
10 better?

11 A. My insides feel better. I feel clearheaded, more
12 clearheaded, even though there is a lot more anxiety being
13 in jail obviously.

14 Q. So I think your comment was your insides feel better so
15 you are feeling clearheaded; is that ---

16 A. Yeah.

17 Q. Okay. Thank you.

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

19 THE COURT: Ladies and gentlemen, it is an appropriate
20 time for us to take our mid afternoon break. Do not begin
21 your deliberations. Do not discuss this case amongst
22 yourself. Leave your notepads right where they are or take
23 them with you.

24 Please rise for the jury.

25 Stay seated, Mr. Fraley.

DIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 (WHEREUPON, jury exits 7/16/15, 3:36 p.m.)

2 THE COURT: Thank you. Be seated. Mr. Fraley, you may
3 step down.

4 Counsel, just for scheduling, we will be down for 15
5 minutes. Just for scheduling.

6 Please let me see you for scheduling. I'm sorry.

7 (WHEREUPON, bench conference for scheduling 7/16/15,
8 3:36 p.m. followed by a break.)

9 (WHEREUPON, trial resumed 7/16/15, 3:59 p.m.)

10 THE COURT: Mr. Fraley, again I remind you that you are
11 still under oath.

12 Let's bring in the jury.

13 MS. GAY: I just wanted to tell my doctor what time to
14 come back.

15 THE COURT: You tell him to be back here at 8:30.
16 Thank you.

17 MS. GAY: 8:30. Yes, ma'am.

18 (WHEREUPON, jury enters 7/16/15, 3:59 a.m.)

19 THE COURT: Thank you. Please be seated. Mr. Poulos,
20 your witness.

21 MR. POULOS: Thank you, Your Honor.

22 **CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY:**

23 Q. Ms. Fraley, you are not psychotic today, correct?

24 A. I don't believe so, sir.

25 Q. Okay. You have understood all the questions that Ms.

1 Gay has asked you; yes?

2 A. To the best of my ability.

3 Q. And you have understood what is happening around you?

4 A. Yes.

5 Q. Okay. And you understand what I am asking you right
6 now?

7 A. Yes.

8 Q. Okay. During your testimony there was a moment where
9 you said that Deonna would drink and become a firecracker
10 and embarrass you. Tell us about that.

11 A. That was just her mannerisms.

12 Q. How did she embarrass you?

13 A. She just -- she just would. If she was in public she
14 would embarrass me, just her mannerisms.

15 Q. What kind of mannerisms; what do you mean?

16 A. Just her drunkenness.

17 Q. Her drunkenness?

18 A. Yeah. She couldn't hold together. She -- sloppy
19 drunk.

20 Q. She couldn't hold her liquor like you could?

21 A. I wouldn't say I -- I wouldn't say I could hold my
22 liquor, but I wouldn't go out drinking.

23 Q. You refer to yourself as a functional drunk?

24 A. I think that is a term that I learned to use about
25 myself because that is what somebody would call that. You

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 know, for rehab centers they would call you a functional
2 drunk.

3 Q. So you could hold your liquor?

4 A. At home. I wouldn't go out personally and do that.

5 Q. Do you blame Deonna for your marriage's failure?

6 A. Do I blame her?

7 Q. Uh-huh. Is it her fault your marriage failed?

8 A. No, I think we had a difference in the way -- she liked
9 to use drugs; I didn't. I wasn't a drug person. I don't
10 like drugs. I don't want them in my home. That is just the
11 way it -- don't like them. Her ---

12 Q. So you are saying Deonna was a drunk and she used
13 drugs?

14 A. Oh, yeah. But as far as -- as far as me it was -- she
15 could go three or four days without drinking or doing drugs
16 or whatnot. Where I would use it to go to sleep at night.
17 And she didn't -- she didn't like that aspect.

18 So I mean that was standoffish to her just as much as
19 what she did was standoffish to me.

20 Q. So you think she is at least partly to blame for the
21 failure of your marriage? Or is it your fault?

22 A. I would say, you know, it is a little bit of both. You
23 know, it doesn't take one side. It is both of us.

24 Q. You said that your mom packed your gun in your luggage.

25 A. I wouldn't say that 100 percent. I ---

1 Q. Well, you just said it.

2 A. Oh, yeah, I understand what I said. I said I really
3 felt like she did.

4 Q. Do you remember what you just said a few minutes ago?

5 A. I thought she packed it. Because I thought she packed
6 my bag.

7 Q. I believe you said I know my mom packed my bag, I know
8 my mom packed that gun ---

9 A. Yeah.

10 Q. --- because she packed ---

11 A. Yeah, yeah, yeah.

12 Q. --- my bag.

13 A. She had to have.

14 Q. She had to have. So it is your mom's fault the gun was
15 in your bag?

16 A. It would be terrible to say that.

17 Q. Is it?

18 A. I wouldn't want to blame something on my mom.

19 Q. The medicine made you foggy-headed; is that your
20 testimony, the medicine the doctors gave you made you foggy-
21 headed?

22 A. Yes.

23 Q. The Vivitrol for your alcohol addiction?

24 A. That was more than foggy-headed; that was numb. You
25 don't -- you don't know anything.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 Q. So would you say it is your doctor's fault that you
2 became foggy-headed and forgetful?

3 A. I wish they would have told me about the medicine.

4 Q. So is it your doctor's fault ---

5 A. Yes.

6 Q. --- that you became foggy-headed?

7 A. Well, is it, yeah. I mean no, it is the medicine's
8 fault. I don't know -- I don't know what semantic you are
9 trying to get out of that, but the medicine was in my system
10 and that's when I got sick.

11 Q. Mr. Fraley, can you here today acknowledge your own
12 fault in any of this?

13 A. I feel bad that this all has occurred. I watched this
14 up on the screen.

15 Q. You feel bad?

16 A. I feel bad that this all occurred. Because I saw what
17 happened up on the screen that you were pointing out. Did I
18 remember it, no.

19 That is a terrible thing for anybody to have to go
20 through.

21 Q. You had a similar story with a previous marriage,
22 correct?

23 A. As far as what?

24 Q. Do you recall in 2012 going to the Medical University
25 of South Carolina and they asked you why are you here; and

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 you said daily drinking, it started in 2005 shortly after
2 retirement from the military coinciding with divorce and
3 health complications, i.e. heart virus. Do you recall
4 saying that?

5 A. In 2012?

6 Q. Yes.

7 A. Where was I? I don't understand what you ---

8 Q. So you don't recall saying that?

9 A. At MUSC?

10 Q. Yes.

11 A. If that is what it was, yeah. I mean parts of that
12 sound correct.

13 Q. So you do recall saying it?

14 A. I mean if I recall saying that word for word, no. But
15 I mean does it sound somewhat correct, yes.

16 Q. There's a lot of testimony, Mr. Fraley, about fading in
17 and out, remembering certain things and not remembering
18 certain other things.

19 So what I want to do with you, Ms. Fraley, is go
20 through the time between the date you received the Vivitrol
21 and the date you were arrested and let's find out which
22 things you do remember and which things you don't remember.
23 I want to clarify some of that.

24 Wilmington Treatment Center, do you recall when you
25 checked in?

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

- 1 A. Yes.
- 2 Q. When was that?
- 3 A. That was the 28th of May I think.
- 4 Q. Do you recall when you checked out?
- 5 A. The 23rd of June.
- 6 Q. Ms. Fraley, what day was Father's Day?
- 7 A. It was on a Sunday. I don't know exactly what day it
- 8 was.
- 9 Q. June 15th ring a bell?
- 10 A. If that is what day it fell on I guess.
- 11 Q. So on Father's Day you were in Wilmington Treatment
- 12 Center in North Carolina?
- 13 A. Uh-huh.
- 14 Q. Do you recall on your direct testimony when you were
- 15 speaking to Ms. Gay you said Father's Day you went to see
- 16 your daughter Alta in Goose Creek?
- 17 A. No, she gave -- she had made Father's Day stuff for me
- 18 to look at because I missed Father's Day with her.
- 19 Q. It is your testimony that you did not say that you went
- 20 to visit Alta on Father's Day?
- 21 A. No, I did not visit my daughter on Father's Day. I was
- 22 in -- I was in Wilmington Treatment Center on Father's Day.
- 23 Q. Exactly.
- 24 A. That's why ---
- 25 Q. Exactly.

1 A. Right. That's why she -- that is why she brought --
2 she had made me stuff for when I first got back that first
3 day ---

4 Q. So you did not ---

5 A. I was looking at it.

6 Q. You did not see Alta on June 15th, 2014, on Father's
7 Day?

8 A. Not on Father's Day, no.

9 Q. Thank you. While in Wilmington Treatment Center do you
10 recall the doctors noting need for increased amounts of
11 alcohol to achieve intoxication; do you recall that? In
12 other words you have a high alcohol tolerance?

13 A. I don't recall how they were -- how they were doing
14 things.

15 Q. Does that ring a bell?

16 A. No.

17 Q. And this was before the Vivitrol shot, correct?

18 A. I didn't get the Vivitrol shot -- they don't give you
19 the Vivitrol shot until after everybody leaves on their last
20 day is when they get the shot.

21 Q. Right.

22 A. Why, because they have already gone through their full
23 thing of rehab.

24 Q. Correct. So you don't recall discussing with the
25 doctors your heightened level of alcohol tolerance before

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 the Vivitrol shot?

2 A. I was being forthcoming with them to -- for them to
3 help me out as much as possible.

4 Q. So you do remember?

5 A. I don't remember exactly how I said it at that time.

6 Q. Do you recall telling the doctors you had difficulty
7 focusing on yourself and your addiction because you were
8 focused on the fear that your wife might be unfaithful to
9 you throughout the treatment; do you recall saying that?

10 A. It might be. I am not sure exactly. But I mean ---

11 Q. And again this ---

12 A. --- I already had the thought -- I already had the
13 thought in my head -- I mean to answer your question, I
14 already had the thought in my head that, you know, we were
15 going to marriage counseling like my wife stated because she
16 thought -- I thought she was unfaithful because she kept
17 coming home talking about Steve all day.

18 Q. So before the Vivitrol shot you were concerned that
19 there was an affair?

20 A. Yeah, but I was handling it.

21 Q. So it's fair to say the Vivitrol certainly didn't
22 create some sort of delusion in your head about what was
23 going on?

24 A. I felt that anything like that was -- I don't know if
25 you -- everything, everything was amplified and troublesome;

1 and my brain hurt and my stomach hurt and I couldn't think
2 and everything in the world was wrong.

3 Q. So the answer to the question is ---

4 A. I couldn't think.

5 Q. --- you suspected the affair before you got the
6 Vivitrol?

7 A. Especially afterwards because that is when Jennifer
8 told me.

9 Q. You suspected the affair before you got the Vivitrol?

10 A. I suspected it, but I was living with it.

11 Q. Okay. So the Vivitrol did not create this affair of
12 dilution in your mind, correct?

13 A. I wouldn't say that the -- an affair created an
14 illusion. I am saying the Vivitrol amplified all emotions
15 and feelings and sickness.

16 Q. You were discharged from Wilmington on June 21st?

17 A. Twenty-third.

18 Q. When did the memory loss start?

19 A. I would say ---

20 Q. If you remember.

21 A. I would say when I -- when I was going back to trying
22 to remember how things had transpired or happened I had a
23 hard time understanding how I got to Wilmington to get back
24 to the hospital.

25 Q. So that would be after your June 21st release?

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. Twenty-third release.

2 Q. And you were readmitted to New Haven Regional Medical
3 Center in Wilmington on June 29th. Does that sound
4 familiar?

5 A. That was the emergency room. I'm not sure if that is
6 the exact date, but that is the emergency room.

7 Q. Do you recall being admitted at 6:30 in the morning and
8 being discharged at 1:45 in the afternoon that same day?

9 A. I don't know the times.

10 Q. You spent less than a day at the ER?

11 A. I don't know how long I spent at the day -- a day in
12 the ER. I spent hours in the ER it seemed like. Or a day.

13 Q. Do you recall ---

14 A. I felt a little bit ---

15 Q. --- telling the doctors there --- go ahead.

16 A. I'm sorry. I felt a little like I had a little bit of
17 thoughts where I could -- after they fed me. They fed me
18 intravenously. I felt a little better after that.

19 Q. So you do remember some things about it?

20 A. Just getting there and on my way out. And then ---

21 Q. And being fed intravenously while there, as you just
22 testified?

23 A. I don't -- right, but I don't remember the whole stay.
24 I don't know how long I was there until you just told me.
25 Because I thought I was there a lot longer.

1 Q. Do you recall denying depression, anxiety, suicidal
2 ideation, and homicidal ideation?

3 A. While I was there?

4 Q. Yes.

5 A. No, I don't remember all that.

6 Q. You don't recall denying that? Do you recall saying
7 that you felt better, you wished to go home back to
8 Charleston, South Carolina?

9 A. Huh-uh.

10 Q. You don't recall saying that?

11 A. No.

12 Q. But you recall going to New Hanover, receiving
13 intravenous feedings. Anything from that stay that you do
14 remember?

15 A. No, I remember hardly even being able to get there.
16 But I don't remember much about the visit itself.

17 Q. On direct you testified you remembered going to the ER,
18 you remembered it was raining, you remembered you fell on
19 the ground, you were crawling; you remember staying at a
20 friend's house, Lee and David, you remember Jennifer
21 Moultrie called you ---

22 A. Lee ---

23 Q. --- and told you about an affair, ---

24 A. Lee and Megan.

25 Q. --- and you remember you had a dog.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. Lee and Megan. I didn't have the dog.

2 Q. You remember all of those other things?

3 A. No, you know what I remember? I remember that when I
4 got out of the hospital that I ended up somehow over at Lee
5 and Megan's and I stayed there. And it is a flash. How
6 long I stayed there, I don't know. I could have stayed
7 there two or three days. I don't know.

8 Somehow -- because obviously I didn't have my dog. I
9 ended up back here to get my dog because my dog was with me
10 when I went to take a trip to Pennsylvania. That is the
11 only reason -- that is the only way I knew -- I know that I
12 came back is because I had my dog. I didn't have my dog
13 when I went to the emergency room.

14 Q. Mr. Fraley, my question was this, and it pertains to
15 what you just testified on direct: Do you remember going to
16 the ER; do you remember being fed intravenously do you
17 remember it was raining the day you got there; do you
18 remember you were crawling; do you remember staying at your
19 friend's house; do you remember Jennifer Moultrie called; do
20 you remember all of those things?

21 A. Short little flashes.

22 Q. Short little flashes. This is eight days after your
23 Vivitrol shot, correct?

24 A. I don't know how long it was.

25 Q. June 29th is eight days ---

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. I know once I got fed I felt a little bit better.

2 Q. You had a tendency not to eat?

3 A. Uh-huh.

4 Q. You told the doctors in New Haven you hadn't eaten in
5 11 days. Do you remember telling Jennifer Moultire you ate
6 half a sandwich in eight days, you told police you had half
7 a sandwich in ten days; ---

8 A. No.

9 Q. --- it is a recurring story, correct, that you tell,
10 you tell folks?

11 A. I don't know if it was a recurring story or not. I
12 know I had a hard time eating.

13 Q. There came a time when ---

14 A. I thought it was weird.

15 Q. I'm sorry?

16 A. I thought it was a little weird that I couldn't eat.

17 Q. There came a time when you drove to Pennsylvania?

18 A. Yes, sir.

19 Q. Do you remember driving to Pennsylvania; do you
20 remember talking to your Uncle Doug; you remembered you
21 followed the sun, you got lost in North Carolina, you forgot
22 how to drive; do you remember all of these things that you
23 just testified about moments ago?

24 A. I remember them happening to me or being in a situation
25 like that.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 Q. You remembered your mom had cheesecake, she thought you
2 were okay to drive, she sent you to the store once you
3 arrived to Pennsylvania?

4 A. No, that is not how -- you wrote it down there
5 incorrectly.

6 Q. Your mother didn't send you to the store for
7 cigarettes?

8 A. She sent me to the store for cigarettes, but she ---

9 Q. You remember that?

10 A. Yeah. You are talking about one week here and another
11 week here in a timeframe.

12 Q. I am talking about on your way to Pennsylvania and once
13 you arrive in Pennsylvania. I am talking about the
14 Pennsylvania trip, Mr. Fraley. I am trying to figure out
15 what you remember from the Pennsylvania trip.

16 A. Hardly anything. I remember getting -- it seemed
17 like -- when I got that phone call from my uncle and he was
18 wondering why I wasn't up there yet is when I realized I was
19 gone for days and I haven't made it out of North Carolina.
20 Because that's what he told me.

21 Q. You said you remembered you weren't rational?

22 A. Yeah, I couldn't make sense of anything.

23 Q. You remembered you weren't rational?

24 A. Yeah.

25 Q. You were rational enough to know that you weren't

1 rational?

2 A. Yeah.

3 Q. Is that your testimony?

4 A. Anybody can see that. You're going -- you're thinking
5 to yourself why is this -- everything is so confusing, why
6 is everything so confusing. I don't know if that is the
7 word you want me to use or not, but -- or ---

8 Q. So you ---

9 A. --- or to the semantics or whatever ---

10 Q. You are saying things were confusing?

11 A. Everything was confusing, yes.

12 Q. On your direct you said you were rational enough to
13 understand that you weren't rational, and I am just trying
14 to understand how you can be rational but not rational or
15 else it is something that you are just saying.

16 A. You are -- you are just mixing words just trying to
17 make me fumble up on them.

18 Q. I am using your words, Mr. Fraley.

19 A. No, listen. This is the way it is. You can't
20 understand this drug. This drug has you. This medicine
21 when it is in you you have no idea what you're doing. There
22 is no rational. I mean you can only be so far with this.
23 This is terrible. This -- nobody -- this shouldn't even be
24 allowed, this shot.

25 Q. This shot that is given routinely to numerous patients

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 every year suffering from drug and alcohol addiction?

2 A. Yeah. It is terrible. It did me in.

3 Q. People who don't go out and rape eleven-year-old girls
4 and try to shot men in bowling alleys.

5 A. Listen, that is not what that drug -- that drug made me
6 to where I don't remember ---

7 Q. That is not what that drug ---

8 A. That drug made me to where ---

9 Q. Go ahead.

10 A. --- I don't understand life. I didn't -- I don't
11 remember things. That is the way it is. That is what
12 happened. You can look at all -- the only thing I can do
13 was when I had a thought was I needed to get medical
14 attention. That is all I could try to do. And it wasn't
15 helping me. And I kept trying.

16 But I had no idea in my lapses of memory that I am
17 supposed to remember something. I only remember it when it
18 does pop up. And that is what I am telling you about.

19 Q. You only remember it when you remember it?

20 A. I thought -- well, how are you supposed to remember
21 things when it is seems out of the norm? This is out of the
22 norm. So I am trying to remember every little piece that I
23 can to make the puzzle pieces fit. Because I am remembering
24 little frames of time. And I have got to put it together.

25 Q. You are trying to remember everything you can to make

1 your puzzle pieces fit?

2 A. It didn't make sense. I had plenty of times sitting
3 for a year in jail to make this stuff get together. I am
4 sitting here trying to remember all of this stuff.

5 Q. You have had a year in jail to get your story straight,
6 Ms. Fraley; right?

7 A. No, I didn't have no story straight at all. I didn't
8 even know I had a story until, what, two or three months
9 after I was incarcerated. And by that time I still thought
10 I had killed two people ---

11 Q. I want to talk to you ---

12 A. --- because of what -- the way the words were being
13 spread around jail.

14 Q. I want to talk to you about Southwest Regional Medical
15 Center in Pennsylvania. You checked in there July 22nd;
16 discharged the same day, July 23rd; correct?

17 A. The Southwest Regional Center in Waynesburg?

18 Q. Yes.

19 A. I don't remember the exact dates.

20 Q. You do recall spending one day there, correct?

21 A. I don't recall spending any days there. I remember
22 somebody telling me I spent four days there I think. And I
23 think that was my mom that told me that on the phone.

24 Q. You don't remember going there with a chief complaint
25 of chest pain? It says diagnosis of intoxicated.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. No, I was -- I went there throwing up blood.

2 Q. Because you were drunk.

3 A. Because I was drunk I was throwing up blood, no.

4 Q. Isn't it true that when you're in Pennsylvania your
5 wife tried to serve you with the divorce papers and the
6 Sheriff's Department said you were at the bar every night?

7 A. No.

8 Q. That is not true?

9 A. How did they get me -- how did -- I don't understand
10 where I got divorce papers and I was at a bar. Where did I
11 get divorce papers?

12 Q. The attempt to serve you with divorce papers, Mr.
13 Fraley.

14 A. Well, did I see them?

15 Q. Did you?

16 A. No. I don't remember seeing anybody with divorce
17 papers.

18 Q. You don't recall presenting to the emergency department
19 with chest pain and found to be intoxicated; that doesn't
20 ring a bell?

21 A. I remember going there and saying I was emaciated. And
22 then I am getting a tube stuck down my throat.

23 Q. So you do remember some things?

24 A. I had enough fortitude to tell the doctor what was
25 wrong when I first got there, and then I remember the time

1 when I was trying to leave.

2 Q. So it is coming back to you?

3 A. Coming back to me? It came back to me that -- that
4 week what was happening. I lost a whole week it seemed
5 like.

6 Q. Mr. Fraley, you just said that you don't remember
7 anything about being -- being there. And now you are saying
8 you do remember.

9 A. No, when I first got there. And then when I left.
10 Just like I stated before. You are telling me things I
11 said, and I didn't say it that way. Because I know what I
12 remember.

13 Q. Do you remember being circumstantial, alert, and
14 oriented?

15 A. When? At the hospital?

16 Q. At the ER, yes, sir.

17 A. No, I don't remember that.

18 Q. Do you remember telling doctors you are going through a
19 divorce, feeling very depressed and anxious and you
20 discontinued taking all of your medication?

21 A. No, I don't remember that.

22 Q. Would you like to see this ---

23 A. Sure.

24 Q. --- paperwork?

25 A. Sure.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 MR. POULOS: May I approach, Your Honor?

2 THE COURT: You may.

3 (WHEREUPON, document was reviewed by witness.)

4 A. No -- just like -- just like when you get things wrong
5 when you were writing them down a little bit ago, they got
6 that wrong.

7 Q. So the doctors got this wrong?

8 A. Oh, yeah. Because you know how they got that wrong?

9 Q. Tell me, please.

10 A. Because they had to rewrite all of my prescriptions
11 because I already had the bottles with me. That is what
12 they told me and that is what they did when I left. That is
13 the day I left. That is how I know that. They -- what date
14 is that? Is that the day I left?

15 Q. Mr. Fraley, these medical records are dated July 22nd,
16 2014.

17 A. When did I leave?

18 Q. You tell me.

19 A. I don't know when I left. I am asking you.

20 Q. I am not testifying here, Mr. Fraley.

21 A. Okay, then how am I supposed to know if you don't give
22 me the date.

23 Q. I am telling you the date is July ---

24 A. What date did I leave; because that is the date that
25 they got my medications correct.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 Q. Mr. Fraley, it says he discontinued taking all his
2 medicines. The date on the top is July 22nd, 2014.

3 A. I took my medicines. I did not discontinue taking my
4 medicines. They had to rewrite all of my prescriptions.
5 And they gave them to me on the day I left. And what day
6 was that? Because I don't know.

7 MS. GAY: Could you please show me what page number
8 that they are referring to.

9 (WHEREUPON, counselors conferred.)

10 Q. Do you recall in the ER saying you had no
11 hallucinations or delusions, denying suicidal or homicidal
12 ideations; and at this time we are talking about not the
13 previous hospital but now we have moved on ---

14 A. What hospital?

15 Q. We are at Southwest still.

16 A. That is in Waynesburg?

17 Q. Yes.

18 A. Okay. I remember saying I was emaciated and then
19 getting the scope down my throat. That fast. I don't
20 remember anything else. I don't understand anything else.
21 And I remember leaving. And that is the second part of what
22 I remember about that place.

23 Q. Do you remember telling police officers that - we are
24 going to jump ahead just a little bit because we are on the
25 topic - that Deonna is the one that set your pills out for

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 you and since she wasn't around you weren't taking your
2 medicine?

3 A. No, I don't recall telling the police officers that.

4 Q. The doctors and the police officers both got it wrong?

5 A. No, I -- she did do that in the past. But I had to
6 start doing it. And I was doing it mainly because I carried
7 a bag of my pills around. And I would occasionally set my
8 tray out when I got a chance.

9 She is the one who filled my pill tray 99.9 percent of
10 the time.

11 Q. All right. So we are up to July 22nd. You are still
12 in Pennsylvania. When do you leave Pennsylvania?

13 A. I'm not sure what the date was when I left.

14 Q. When was the trip to Florida that Deonna, Steve, and
15 Jennifer took?

16 A. That was -- that was right when I had got out of -- I
17 mean out of Wilmington.

18 Q. So late June, early July?

19 A. I guess somewhere in there. I am not sure exact time.

20 Q. Now you testified that Deonna and Jennifer got into a
21 fight because Jennifer accused them of cheating and Deonna
22 punched her in the face?

23 A. That's what she told me.

24 Q. That is what who told you?

25 A. That is what Jennifer told me.

1 Q. That is what Jennifer told you. So you are not aware
2 then that ---

3 A. And she said that -- she said that Deonna seemed like
4 she was doing drugs or something.

5 Q. You are not aware that the fight, the disagreement,
6 occurred because Jennifer Moultrie let Alta get sunburned
7 and get sun poisoning when she was supposed to be watching
8 her at the pool; does that sound familiar ---

9 A. That is not what they -- no.

10 Q. --- and that is why Deonna was upset?

11 A. No. They said something about Steve watching my
12 daughter at the pool and sunburned, I think. And I don't --
13 I'm not sure exactly. But I mean I am just going back to
14 when Jennifer was telling me that one day when I first got
15 out of the hospital when I was at Lee and Megan's.

16 Q. All right. So we are going from July into August. I
17 will talk to you about August 1st. You have a Facebook
18 account -- or you did at the time?

19 A. Yeah.

20 Q. Okay. I want to read your status to you on August 1st
21 and tell me if it rings a bell: If my wife, a hole to go,
22 or Kevin tells me they have a gun at the bowling alley at
23 3:00 a.m. in the morning I am going to use my fucking
24 Leatherman to where I am going to be in the news again.
25 Shut up. I can kick your ass with my toenail. Can't wait

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 to prove that. Phone off. Notes guys. Third time in a
2 least eight months, folks. I don't know who Steve is. Once
3 my wife Deonna when she started to amp up her game.

4 A. Who wrote that? Are you saying I wrote that?

5 Q. Sound familiar?

6 A. No.

7 Q. From your Facebook account?

8 A. I mean are you saying that I wrote that?

9 Q. Yes.

10 A. No, I don't recall writing that.

11 Q. You don't recall writing it. You -- you ---

12 A. I knew ---

13 Q. --- wear a Leatherman, correct?

14 A. Huh?

15 Q. You have a Leatherman?

16 A. I always carry -- ever since I was 18 years old I have
17 always had a Leatherman on me.

18 Q. You always carry a Leatherman. What is a Leatherman?

19 A. It is -- not all the time, but a majority of the time I
20 have one with me. It was just -- it is just a multi-tool.

21 It has got pliers on it. Everybody knows what a Leatherman
22 is. It's pliers, screwdriver.

23 Q. Let's go to August 2nd, the next day. At this point we
24 are -- let's see, you got Vivitrol on June 21st. We are now
25 at August ---

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. June ---

2 Q. --- 2nd.

3 A. June 23rd I got Vivitrol.

4 Q. I think it was the 21st, Mr. Fraley. And I can show
5 you ---

6 A. The 23rd. Yeah, it is the day I left. The 23rd.

7 Q. I can show you the documentation if you would like.

8 A. They probably signed it. But I got it on the 23rd. It
9 is the day you leave, and that is the day I left.

10 You can verify a date by calling Wilmington. Anytime
11 anybody leaves there they have to -- that is when they get
12 the shot. It doesn't matter if it is ---

13 Q. Mr. Fraley, ---

14 A. --- the day before ---

15 Q. --- it is not ---

16 A. --- or day after.

17 Q. The 21st or the 23rd is not really important. But I
18 will just so this to you. Just towards at the top, you tell
19 me.

20 A. So when was my discharge date?

21 Q. It is at the top. You tell me. What does it say?

22 A. Well, if my discharge date says the 21st then that is
23 my discharge date.

24 Q. Like I said, not very important; but I just wanted to
25 be clear.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. Okay. Well, I couldn't remember. That was a year ago.
2 But I was pretty sure it is the 23rd because I was up there
3 25 days. And if I went on the 28th -- 29th I checked in,
4 that is 25 days the 23rd.

5 Q. So August 2nd, 2014, that is about 34 days, at least 34
6 days after your Vivitrol shot?

7 A. August what?

8 Q. August 2nd.

9 A. Okay.

10 Q. Do you recall calling Kim Tompkins and having a
11 coherent conversation about Alta needing help with school
12 project involving fossils, offering to pay Janie W. \$20
13 to help?

14 A. No.

15 Q. Do you know who Janie W. is?

16 A. I didn't know her last name until the trial, but I know
17 who Janie is.

18 Q. You know who Janie is; she is a friend of Alta's?

19 A. Yes.

20 Q. You know where she lives?

21 A. Yes.

22 Q. You know her family; you recognize them?

23 A. Yes.

24 Q. You have no recollection of a conversation on August
25 2nd with Kim Tomkins on the phone?

1 A. No.

2 Q. Let's go to August 3rd. Do you recall driving to the
3 EconoLodge, talking to the desk clerk, making reservations
4 from the 3rd to the 6th, paying with your debit card,
5 recalling your pin number; all that stuff?

6 A. I don't know -- I don't remember how I got to the
7 EconoLodge. I don't remember signing in to the EconoLodge.

8 Q. Well, it is fair to say at the time you were conscious
9 and coherent enough to carry on a conversation with a person
10 at a motel, explain that you want reservations and pay for
11 them.

12 A. Okay, well then that is what he said I did. But that
13 doesn't mean I remember it.

14 Q. Do you recall driving to the Woltz house with your dog
15 and having another conversation with Kim Tompkins asking
16 again if Janie could tutor Alta and again offering money?

17 A. No.

18 Q. No recollection of a conversation with Kim Tompkins?

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

20 Q. August 4th going to Janie W. house at 10:30 in the
21 morning having a third conversation with Kim Tompkins, a
22 conversation with Matthew Tompkins, and showing fossils and
23 talking about a surprise party? Nothing? No recollection?

24 A. No. I don't -- I don't understand none of this.

25 Q. But you knew you have the fossils with you, correct?

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. Only in Pennsylvania. I had them when I was in
2 Pennsylvania. So they had to have been in the car because I
3 saw the pictures of them.

4 Q. Do you recall going back to the Woltz' house that
5 afternoon and offering to pay for Janie's haircut, saying
6 you are scheduling the party around Janie's schedule; do you
7 remember that?

8 A. No.

9 Q. No recollection. Well, let's talk about August 5th
10 then, the day of the incident. Do you recall going to the
11 Woltz' house around 2:30 that day and no one being home?

12 A. No.

13 Q. Do you recall going to the Vick house around three
14 o'clock asking for Madison and then leaving with Minor?

15 A. No.

16 Q. You have no recollection of going into the Publix
17 supermarket, searching the beer isle, selecting a case of
18 beer, going to the health and beauty isle, searching out and
19 selecting some baby oil, pulling out your debit card, going
20 to the register, swiping it, entering your pin number,
21 walked back to the car, driving to the EconoLodge; ---

22 A. Terribly. No.

23 Q. --- you have no recollection because you are in a white
24 fog?

25 A. I drove 300 miles and not knew I drove 300 miles.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 Q. No recollection of telling Minor at the EconoLodge to
2 take a shower, giving her NyQuil, having sex with her,
3 telling her about Steve and Deonna?

4 A. Nope.

5 Q. Driving to Royal Lanes with Minor in your car, ---

6 A. No.

7 Q. --- no recollection of that?

8 A. No, ma'am.

9 Q. You are certain?

10 A. I am sitting here telling you no.

11 Q. Have you ever had a recollection of that from the time
12 you were arrested until today?

13 A. From the time I was arrested? What are you talking
14 about?

15 Q. From the day you were arrested, August 5th, to today
16 have you ever remembered having Minor in your car?

17 A. No, I don't remember Minor in my car.

18 Q. Have you ever told anyone else that you remembered
19 having her in your car?

20 A. I don't remember telling anybody.

21 Q. You remember nothing about Minor¹ but you remember an
22 awful lot about Steven's office; right?

23 A. Not a lot.

24 Q. I believe you testified for about five minutes about
25 what happened in Steve's office.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. Of about a 30-second thing maybe.

2 Q. You remember taking a gun to the office? Yes?

3 A. I don't remember taking it. I remember being there
4 with it.

5 Q. Okay. So you remember that.

6 A. That is a one-second thing.

7 Q. And you say that Mr. Tsafos is the one that pulled the
8 hammer on the gun as you were standing there causing the gun
9 to go off; he grabbed the gun, hit the hammer of the gun ---

10 A. Well, if you want me to reiterate what I remember I can
11 do that.

12 Q. Go ahead. What do you remember detail by detail what
13 happened in Steve Tsafos' office?

14 A. This is how I remember it, just like I was trying to
15 tell you before: I saw a flash of light. I heard a loud
16 clap. I've heard those loud claps before in the past when I
17 first -- like when I first wake up. And my daughter and
18 Deonna have seen this happen.

19 And when I opened the door and I see all the light and
20 everything I hear Steve say -- but I didn't know it was
21 Steve at the time. He said what are you doing here. And
22 then the next thing I know he is that quick on me. And he
23 was reaching for the gun, and the gun went off. And I told
24 him I wasn't there to hurt him, I was there to hurt myself.
25 And I laid down on the floor that quick.

1 I mean it took faster for that to happen than it did
2 for me to say it. And then I tried to commit suicide, I
3 think.

4 Q. Isn't it true you told Captain Aaron's you didn't want
5 anyone to hurt you?

6 A. I don't -- I don't recall being -- talking to the
7 gentleman. I might have remembered one ---

8 Q. You heard the recording that we played, right?

9 A. Just when I was in here.

10 Q. Yes.

11 A. It doesn't mean I remember that day. You are asking me
12 if I remember something that day.

13 Q. So that day you said I don't want anyone to hurt me,
14 don't hurt me?

15 A. No, I don't remember that. I had a gun.

16 Q. You heard the recording. It is on the recording, yes?

17 A. Are you talking about ---

18 Q. Do you remember the recording ---

19 A. Are you talking about ---

20 Q. --- that we played yesterday?

21 A. --- my own voice? Are you talking about if I can hear
22 my own voice?

23 Q. Yes.

24 A. In the office when the guy had the little tape recorder
25 thing? I couldn't hear every word I was saying; but no, I

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 didn't hear myself say that.

2 Q. I am going to back up for just a moment, Mr. Fraley,
3 back to the EconoLodge. You have no memory at the
4 EconoLodge? Or what do you remember about the EconoLodge?

5 A. I think -- I think what I remember about the EconoLodge
6 is that I was hiding my dog and somebody -- and I remember
7 he is always first and foremost on my mind as much as
8 possible, I thought - but I forgot about him quite a few
9 times apparently - that I had to get him out of there.

10 And I dropped him off somewhere around my house. And I
11 didn't know who I dropped him off to until I got with my
12 friend Suzie. She told me I dropped it off with my neighbor
13 Liz.

14 Q. So you do have some memory of the EconoLodge?

15 A. A frame.

16 Q. Just not the frame where you are raping Minor 1

17 A. No.

18 Q. Let's go back to the bowling alley.

19 A. I don't even know what day that would be that I -- if
20 you could one more time for me so I could answer as honestly
21 as I can tell me what day I actually signed into the
22 EconoLodge and what day was my last day. And that way I
23 could probably frame by frame or whatever you want a little
24 bit better.

25 Q. Let me ask you this Mr. Fraley.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 A. Okay.

2 Q. Do you recall checking into the EconoLodge on August
3 3rd and making reservations for three days?

4 A. No.

5 Q. But you recall being at the EconoLodge with your dog?

6 A. I remember me having to get rid of my dog for some
7 reason. It's a feeling. It's not so much of a picture.
8 It's a feeling that I had to get rid of my dog.

9 Q. You love you dog? Mr. Nibbles?

10 A. Oh, yeah.

11 Q. Do you recall being taken into custody, being tased,
12 officers entering the office, telling them they did a good
13 job?

14 A. I don't remember when they said I said good job. I
15 thought it was a little in a bad situation and I saw him
16 smile when I said -- when he said that and he said that I
17 said that. But I -- I wouldn't say that it's funny.
18 But ---

19 Q. Do you know ---

20 A. --- begin tased I feel like yeah I remember that.

21 Q. You remember being tased?

22 A. I remember -- I remember being tased. I remember ---

23 Q. It is a memorable thing to have happen to you.

24 A. It was brief. They said it was a lot longer than it
25 was. But that I was resisting. I don't remember anything

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 like that. I just -- I remember having a burn mark back
2 here in my back.

3 Q. So you remember being at the EconoLodge and Mr. Nibbles
4 your dog, you remember being at the bowling alley in Steve's
5 office ---

6 A. I don't remember -- I don't remember my dog being in
7 the EconoLodge. I remember it felt like somebody told me
8 that I had to get rid of him. That's why I think that I had
9 to take him to a neighbor's house.

10 Do you understand what I am saying by that -- how I
11 mean by that?

12 Q. And you don't remember ---

13 A. It's a feeling. It's -- that is what I am trying to
14 tell you what part -- what part of the EconoLodge I
15 remember, and that is the part I remember.

16 Q. You remember being at the EconoLodge - we can establish
17 that - because you felt like you have to put your dog
18 somewhere else?

19 A. In a second, if -- if that.

20 Q. Okay. You remember being in the bowling alley talking
21 to Steven Tsafos? That is a yes or no, Mr. Fraley. That is
22 pretty simple.

23 A. Just ---

24 Q. We just talked about it.

25 A. Yeah, but I am talking about talking to him. Just it

1 wasn't like a discussion, no.

2 Q. Do you remember laying down in the office at some
3 point? Laying down.

4 A. Yeah, it was all within like a five-second time span.

5 Q. You remember being tased by the police?

6 A. Barely.

7 Q. Any recollection of the coherent conversations you had
8 with the medics afterwards at the bowling alley?

9 A. I don't -- I don't remember the medics.

10 Q. Officer Wegner taking you to the police department, you
11 talked to him; any recollection?

12 A. No, I don't remember any of that.

13 Q. No recollection of talking to the medics, the police
14 department where you answered all sorts of their questions,
15 complained of chest pains, refused nitro glycerin?

16 A. No, I don't recall any of that. I know you are going
17 to show me a form where it said I denied nitro or whatever,
18 because I saw that earlier. But I don't even recall that.

19 Q. Okay. No recollection of riding to Trident Hospital?

20 No?

21 A. No.

22 Q. No recollection of talking to Officer Mitchum at the
23 hospital, didn't give him details about what happened in the
24 hotel room and the bowling alley?

25 A. No. I don't remember any of the officers actually.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 Q. You don't remember any of the crimes you committed, but
2 you remember little pieces here and there around the crime
3 scene; that is fair to say?

4 A. No. I remember being in the office. That is a crime.
5 I had a gun. I tried to commit suicide; that is a crime. I
6 remember that. I thought I was going to die. It was a
7 flash.

8 Q. Mr. Fraley do you recall on August 6th sitting down
9 with Investigator McWilliams and Investigator Powell and
10 having a conversation with them?

11 A. No.

12 Q. You don't remember telling them largely the same thing
13 you're saying here today; you don't remember telling them
14 you don't remember?

15 A. No, I don't remember them at all ---

16 Q. Okay.

17 A. --- until I think if you guys could refresh my memory
18 on the gentleman that was here a little bit ago, a bigger
19 guy; I was told that he was one of the guys that interviewed
20 me or whatever you want to say.

21 Q. You don't remember telling Officer McWilliams regarding
22 Steven Tsafos, McWilliams asked you what did Steve say. You
23 said I don't remember because he was yelling. He said why
24 didn't you go to Florida. That's where they took my
25 daughter on a week trip without me. He got mad so I laid

1 down. I accidentally shot the gun because I was sitting there
2 playing with the trigger. It went off.

3 A. No.

4 Q. You don't recall saying that?

5 A. No.

6 Q. You agree that that is different than what you just
7 said here?

8 A. Oh, I agree; yeah.

9 Q. Okay.

10 A. I mean I could have changed my story. I know you were
11 reading. But I'm not going to change my story. I'm telling
12 you what I remember and what I don't remember.

13 I've seen that before. I could have changed my story
14 to where I said I said that. But I didn't. I am telling
15 you what I remember.

16 Q. You told them I don't know where Minor is; I saw her at
17 her brother's walking the dog. When you first pulled up to
18 the house. Do you recall saying that to Investigator
19 McWilliams?

20 A. No, I don't recall. I don't even recall the interview
21 you are talking about.

22 Q. Do you remember telling Investigator McWilliams I
23 remember hitting a car yesterday?

24 A. No.

25 Q. Do you remember telling Investigator Powell, after he

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 asked you, who gave you the keys, Gary; and you said it
2 looked like Minor to me?

3 A. No, I don't remember.

4 Q. Do you remember telling Investigator Powell that you
5 told Minor in the parking lot of the bowling alley the cops
6 will be here soon, I'm going to go inside, I won't be in
7 there long; any recollection of that?

8 A. You're saying I said that?

9 Q. Yes.

10 A. No, I didn't say. Or I don't remember saying that.

11 Q. Do you remember saying that you knew it was her in the
12 car because you handed her your dag-gone keys and phone?

13 A. No.

14 Q. Do you recall saying I'm -- I honestly believe and I
15 hate to say it, I handed my phone and car keys to Minor and
16 told her to sit there and wait in the parking lot at the
17 bowling alley and I went inside and got in trouble with
18 Steve; do you remember saying that?

19 A. No.

20 Q. Do you remember when Investigator McWilliams asked you
21 what did you do in Publix; you said I bought some beer, I
22 think?

23 A. I don't even -- I don't even know the people you are
24 talking about right now that I even spoke to them unless you
25 guys are telling me I did.

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 Q. You said the Taco Bell receipt in your car was for your
2 dog, Mr. Nibbles?

3 A. I don't know if there was a tacos receipt in my car for
4 Mr. Nibbles or not.

5 Q. You testified that you bought Taco Bell for your dog?

6 A. That I bought Taco Bell? I bought him fast food. If I
7 was -- at this moment I -- couldn't feed him. I was just
8 buying him quick stuff. But yeah, I mean I would feed him
9 like a MexiMelt here and there or a taco. He would eat the
10 meat off of it. I would throw it on the floor and he'd eat
11 it.

12 Q. But you were not eating is your testimony?

13 A. Me, no, I can't eat that. I've got heartburn.

14 Q. So it would surprise you that the doctors at Technical
15 Technical Hospital that you were taken to on August 5th
16 classified you as well-nourished?

17 A. On what day?

18 Q. The day you went to the hospital after the shooting.

19 A. Okay.

20 Q. Does that surprise you?

21 A. Yeah, it does.

22 Q. Is that wrong?

23 A. Yeah, I know I hadn't been eating.

24 Q. So this doctor is wrong too?

25 A. Could be. Did he do blood work on me, did he -- I

CROSS-EXAMINATION BY MR. POULOS OF GARY FRALEY

1 don't know, did he check ---

2 Q. Mr. Fraley, August 5th is your birthday; right?

3 A. Yeah, it is.

4 Q. Mr. Fraley, can you not recognize here today that you
5 seem to have an excuse for every single thing that you did
6 in this case?

7 A. No.

8 Q. You do not acknowledge that? The doctors are wrong,
9 Deonna is wrong ---

10 A. No, I am not saying the doctors are wrong about that
11 last thing. I am just saying that I know what I was eating
12 and what I wasn't eating. I mean I -- is Deonna wrong about
13 what?

14 Q. Is everyone wrong but you, Mr. Fraley?

15 A. I didn't say I was wrong. I said ---

16 Q. Thank you.

17 A. I said Deonna was wrong and I am wrong at the same
18 time.

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

20 THE COURT: Ms. Gay.

21 MS. GAY: Thank you, Your Honor.

22 THE COURT: I didn't mean to rush you, Mr. Poulos.

23 Ms. Gay.

24 MS. GAY: Thank you, Your Honor.

25 **REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY:**

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY:

1 Q. Mr. Fraley, there is a couple of things that I want to
2 ask you about. Initially the solicitor asked you about
3 talking to one of the officers after this -- after your
4 arrest and saying different things to him.

5 And I believe your testimony under it was that you
6 don't remember having that conversation. But I am going to
7 ask you this: Do you remember telling them that you hadn't
8 eaten in days and that you were disoriented and that you --
9 things weren't making any sense?

10 A. I don't know the people. I didn't know if it was at
11 the jail here or where it was at. I know I was yelling and
12 screaming about me not eating.

13 Q. Okay. And you said that it took until at least October
14 for some of these while you have been in the jail in a more
15 stable situation for a lot of the events of you life between
16 June and August to come back to you?

17 A. For the thoughts of what happened to come back to me?

18 Q. Or just for you to feel better.

19 A. I mean physically I feel better -- not I guess if you
20 want to say the Vivitrol is out of my system, I mean yeah I
21 mean I felt better that that's -- that that had gone. But I
22 didn't know that that was the case for the longest time.

23 Q. You didn't know that that medicine may have caused ---

24 A. No, I didn't know that.

25 Q. --- your body to act badly?

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. No, and you don't know. You just don't know. It's you
2 are a dead person.

3 Q. So after you -- time passed, you put it together in
4 your head that it was at the time that you got the shot that
5 everything started going downhill?

6 A. It took a lot of thinking. But that is the only way I
7 could do it.

8 Q. And then ---

9 A. That and a lot of searching and talking with people
10 trying to figure out what happened.

11 Q. And that is when you started relating all these
12 different medical places that you had been and what was
13 going on?

14 A. Yeah, it is not like I remember all that stuff. I had
15 to remember what I read about certain situations.

16 Q. And the solicitor was asking you about your time at
17 Southwest Regional Medical Center. I am going to ---

18 MS. GAY: Your Honor, I just need to show something.

19 Q. So when you were at the Southwest Regional Medical
20 Center, which is also the Waynesboro Hospital, you were
21 there for at least one overnight?

22 A. At Waynesburg?

23 Q. Yes.

24 A. My mom told me I was there four days.

25 Q. All right. Well, a couple of nights. At least maybe

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 not just -- not just one but maybe a few.

2 A. Okay.

3 Q. And did you recall that they did surgery on your ulcer
4 at that time; do you remember that?

5 A. I don't remember them doing it. I remember being told
6 that, that they had to cauterize the wounds. Or I read it.
7 One or the other.

8 Q. And you have reviewed these medical ---

9 A. No, I read it. That is what it was.

10 Q. You reviewed the medical records that I got a copy of
11 for you and gave it to you?

12 A. Right. I read the -- that is how I found out that they
13 had cauterized it.

14 Q. They had done something to fix your ulcer?

15 A. Yes.

16 Q. And if you need to see these records to refresh your
17 recollection I can give them to you so we can talk about
18 that.

19 A. Sure.

20 Q. But do you recall reading that you had coffee ground
21 emesis in your medical records?

22 A. Yes.

23 Q. And that you were suffering from depression and
24 anxiety; do you recall reading that?

25 A. Yes.

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. And do you recall reading in your medical records --
2 and if you don't -- if you don't have an independent
3 record -- of having suicidal ideations in these medical
4 records at this time?

5 A. At that time I don't recall that.

6 Q. If I show you the medical records can it refresh your
7 recollection?

8 (WHEREUPON, record was reviewed by witness.)

9 A. Yeah.

10 Q. Okay. So can you tell me what you recall from looking
11 at this medical records as you refresh your recollection,
12 that you don't want to what?

13 A. Didn't want to wake up.

14 Q. That you didn't want to wake up. And I believe that
15 this is the hospital stay that we've talked about in this
16 case that they had recommended that you stay for psychiatric
17 reasons ---

18 A. Yes.

19 Q. --- but you chose not to?

20 A. Yes.

21 Q. And in these records there is also occasions where they
22 said that your electrolytes were depleted?

23 A. Okay.

24 Q. If you need to refresh. And do you recall them talking
25 to you about your liver enzymes?

1 A. I don't recall the stay.

2 Q. If you don't mind I am going to refresh your
3 recollection with this as I talk. I just am not going to
4 walk away from you. We are going to do this up here.

5 So having reviewed these records do you recall that
6 these were things going on with you? You can read that if
7 you like.

8 A. It says liver enzymes are elevated most likely
9 secondary to alcohol liver disease.

10 Q. And that there was also -- let me see the next ones I
11 have. And you -- there has been discussion about -- oh,
12 here is another one. That in these medical records it
13 indicated that you have what?

14 MR. POULOS: Objection, Your Honor. It's reading the
15 medical record.

16 Q. Well, do you remember ---

17 THE COURT: Sustained. Sustained.

18 MS. GAY: Okay. Thank you.

19 Q. Do you have a recollection of any other diseases in
20 your organs?

21 MR. POULOS: Objection. Outside the scope.

22 THE COURT: Overruled.

23 A. They were talking about the kidney situation with me.

24 Q. Okay. When you say kidney situation. Now we have
25 talked about your liver. We have talked about your

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 pancreas. Now we are talking about your kidneys. Had you
2 had a history of chronic kidney disease?

3 A. Not disease where I have had like -- what do you call
4 it, where your kidneys chill. They get achy and it seems
5 like you have got to drink a lot of water for a few days.

6 Q. Okay. So problems?

7 A. Yes.

8 Q. And also do you recall as you said that you do recall
9 that you had this emesis which was the dried blood coming
10 up?

11 A. Yes.

12 Q. And that you recall -- do you recall telling them that
13 when you threw up there was also red blood?

14 A. Yes.

15 Q. And your testimony was when we did this earlier, that
16 the dried blood was organ blood; is that your understanding?

17 A. Yes.

18 Q. Okay. And in -- do you recall also that they back to
19 the thing about you had suicidal ideations do you recall ---

20 A. I don't recall -- I just recall when I -- as far as --
21 I remember telling him I was throwing up blood.

22 Q. I understand. Well, I am going to direct your
23 attention to Page 1 of 3 in this medical report and ask you
24 if they -- did they say that you had passive death thoughts?

25 A. Reading the report that I did when I was in -- I

1 remember reading this stuff.

2 Q. And there was a time where the solicitor talked with
3 you about -- and again, these are the people who wanted you
4 to stay for psychiatric reasons; correct?

5 MR. POULOS: Objection. Leading, Your Honor.

6 THE COURT: Sustained.

7 Q. And there was a lot of medicine that you were taking
8 or were prescribed to you at that time ---

9 MR. POULOS: Objection. Leading.

10 THE COURT: Sustained.

11 Q. Okay. Can you recall some of the names of the medicine
12 you were prescribed at that time?

13 A. I cannot recall the names of the medicines. I would
14 never know the names of all my medicines.

15 Q. And would it refresh ---

16 A. Asacol, Nexium -- I mean, yeah, I mean if I looked at
17 the list I would say yeah. I know I took about 30 some
18 pills a day.

19 Q. I understand. And I am going to -- would it refresh
20 your recollection to look at the list that is in your
21 medical records of things that you had been prescribed?

22 (WHEREUPON, document provided to witness.)

23 A. Yeah, these ---

24 Q. With that ---

25 A. These are the meds.

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 Q. Can you describe to the jury what had been prescribed
2 to you at times. Not whether or not you were taking it that
3 minute but what had been prescribed to you for the
4 conditions that you had. It starts on this page (pointing).
5 And I will take this hook off.

6 A. I am trying to remember.

7 Q. What is on the page?

8 A. Yeah, but I'm trying to remember what each one of them
9 is for. Neurontin is for I have neurological situations.
10 They did a pin test all over my body where I have the nerve
11 issues going on from head to toe where my nerves aren't
12 working well anymore -- or I have a lot of numbness and
13 pain.

14 Asacol; it helps me digest my food because I cannot
15 digest my food or get the proper nutrients out of my food.
16 Something like that.

17 Q. Okay. Those are these. Now this one.

18 A. What is that?

19 Q. Oh, that's ---

20 A. That's Neurontin.

21 Q. And it has a different name called what?

22 A. Gabapentin. I

23 And Campral. Campral has something to do with I
24 think -- that was -- what was Campral, something to do with
25 not drinking kind of medicine or something like that. It

1 helps you try to stay off of drinking.

2 Zanaflex is like for all my muscle issues. And like I
3 said, the nerve and the muscle issues all kind of stemmed
4 all together. Naproxen was for the same kind of deal. It
5 kind of helped all together with that.

6 Silenor. What was Silenor for? Silenor was for I had
7 high anxiety and sleep issues. And that is where the PTSD
8 came in and that's when they started giving me I think
9 Silenor and -- what was another one -- Prazosin for my --
10 that's because -- that was the PTSD stuff.

11 And then -- let's see. These are all the ones I was
12 taking mostly prior. It was just these two here before I
13 left Wilmington that they started really hammering me with.
14 But some of these I took before, but they really hammered me
15 when I got to Wilmington. And all of this was like at full
16 kilt.

17 Q. I understand. So after Wilmington some of your
18 prescriptions had been altered to focus a lot on the --

19 A. Everything.

20 Q. Okay.

21 A. Full health.

22 Q. And it's your testimony -- I know there have been some
23 different answers, but do you recall whether you were taking
24 the medicines, even the ones that you were prescribed, after
25 Wilmington as you were directed at the time of August 5th?

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 A. Yeah, I always took my medicine. To the best of my
2 recollection I would always try to take my medicine. It was
3 just like a stumbling upon like you would stumble to the
4 toilet in a way you don't remember actually peeing in the
5 toilet but you remember taking your meds. You see the pill
6 tray. It's up, down.

7 Q. So it would have been ---

8 A. Is isn't like I would remember that every day all day
9 or anything, but it was -- it's a learned behavior.

10 Q. I understand. And so ---

11 MS. GAY: One moment, Your Honor.

12 I have no further questions for Mr. Fraley.

13 THE COURT: Mr. Poulos.

14 MR. POULOS: Nothing from the State.

15 THE COURT: Ladies and gentlemen, due to the scheduling
16 issues we are done for the afternoon. Please remember all
17 my admonitions. Do not discuss this case amongst
18 yourselves. Do not begin any deliberations. Please do not
19 read, watch, listen to any news accounts regarding this
20 case. Please be back in your jury room at 9:30 in the
21 morning. 9:30 in the morning. Please take your notepads
22 with you so we can lock them up.

23 Please rise for the jury.

24 Stay seated, Mr. Fraley.

25 (WHEREUPON, jury exits the courtroom 7/16/15, 5:09 p.m.)

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 THE COURT: Mr. Fraley, you may step down.

2 All right. Anything further from the State?

3 MS. WILLIAMS: Nothing from the State.

4 THE COURT: From the defendant?

5 MS. GAY: No, ma'am.

6 THE COURT: All right. I am going to take my pleas.

7 We are in recess in this matter until 9:30 in the morning.

8 But we are going to have a charge and a verdict form

9 conference. So take your comfort break.

10 (WHEREUPON, recess for the evening 7/16/15, 5:11 p.m.)

11 (WHEREUPON, resumed trial 7/17/15, 9:33 a.m.)

12 THE COURT: All right. Let's bring in the jury.

13 Please have your next witness in the courtroom. Ms.

14 Gay, your next witness is in the courtroom?

15 (WHEREUPON, jury enters courtroom 7/17/15 9:36 a.m.)

16 MS. GAY: May we approach?

17 THE COURT: Thank you. Please be seated. Good
18 morning, ladies and gentlemen. Did every member of the jury

19 comply with my instructions over the evening hour; if you
20 did not follow my instructions, please stand.

21 Thank you. All fourteen jurors have indicated that
22 they followed the court's instructions.

23 You may approach.

24 (WHEREUPON, bench conference was had 7/17/15, 9:36 a.m.)

25 THE COURT: Call your next witness.

REDIRECT EXAMINATION BY MS. GAY OF GARY FRALEY

1 MS. GAY: Thank you, Your Honor. I would like to call
2 Dr. Robert Bennett.

3 (WHEREUPON, the witness was duly sworn.)

4 THE CLERK: State your full name for the record and
5 spell your last name.

6 DR. BENNETT: Robert Bennett, B-E-N-N-E-T-T.

7 **DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT:**

8 Q. Dr. Bennett, you are -- can you tell the jury a little
9 bit about what your background is and the type of education
10 that you may have.

11 A. Sure. I obtained two medical degrees from the Medical
12 University. The first was a pharmacy degree in 1980. And
13 practiced as a pharmacist for a number of years mostly doing
14 research in a major pharmaceutical company.

15 Went back to school to the Medical University and got
16 my doctorate degree there, a Ph.D degree in pharmaceutical
17 science, drug science, toxicology, and had been getting
18 continuing education and continuing my expertise in those
19 fields since 1990 when I graduated.

20 Q. Now are you a practicing pharmacist?

21 A. No. I do not fill prescription. I stopped that a long
22 time ago. Basically stopped that after I got my doctorate
23 degree. No reason to fill prescriptions once you become a
24 doctorate.

25 Q. So are you a licensed pharmacist?

1 A. I do have a license in pharmacy. It is a license that
2 is in good standing with the South Carolina Board. I passed
3 my pharmacy boards first time. And my license is in good
4 standing with the Department of Labor and Licensing and
5 Regulations.

6 It is currently in an inactive state for filling
7 prescriptions because I don't fill prescriptions.

8 Q. So when you say an inactive state it is not -- you
9 couldn't go out and all of a sudden just become a
10 pharmacist?

11 A. I couldn't fill prescriptions.

12 Q. I understand. And with regard to toxicology can you
13 describe to the jury what that means.

14 A. Toxicology is the science that studies the effect of
15 drugs, chemicals, and other substances on the human body.
16 Now whether those chemicals are pharmaceutical type products
17 or any other type of chemicals it is the study of their
18 effects on the human body focusing mainly on the toxicity of
19 those substances.

20 Q. And other types of classes that you may have had did
21 you study the other parts of the -- you know, how the human
22 body works?

23 A. Absolutely. I took anatomy, physiology, pharmacology,
24 biochemistry. I went to school with the medical students.
25 We took the same class as far as all of the basic sciences.

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 I had significantly more pharmacology than the medical
2 students because that is the area of science that focuses on
3 how drugs affect the body and what conditions in the body
4 are related to the effects of the drugs.

5 And that is where a pharmacist gets his skill as a drug
6 expert. And a physician relies on the pharmacist for all
7 information that they don't know with their pharmacology
8 class.

9 Because, see, a physician has a lot of classes to take.
10 The pharmacist focuses specifically on the drugs and drug
11 therapy and how it affects the body and what the body does
12 to the drugs.

13 So we take significantly more pharmacology classes than
14 the medical students. But all the other classes are the
15 same as what the medical students take as far as anatomy and
16 physiology and biochemistry and those types of classes --
17 science classes.

18 Q. And when you were taking the anatomy classes did you
19 learn about how the body functions?

20 A. Absolutely. From one end to the other.

21 Q. And have you ever been -- have you ever testified in a
22 court before?

23 A. Many times.

24 Q. How many?

25 A. Dozens if not a hundred.

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 Q. And how long -- how many years have you been ---

2 A. Over 20 years.

3 Q. Now and I believe that part of your -- what part of

4 your situation is that you refer to it as forensic

5 toxicology or forensic pharmacology. What does that mean?

6 A. That is the application of the science to legal cases.

7 Q. And do you have any specific training with regard to

8 that?

9 A. Yes, I have taken many continuing education courses

10 over the years that's focusing in the area of forensics and

11 have a number of certificates in those areas that are

12 outlined in my CV.

13 Q. And what is a CV?

14 A. Curriculum Vitae. It is a resume for professionals.

15 So it is a conglomeration of all of the training and

16 education and experience that a person gets as they continue

17 with their practice. And my practice is full-time in

18 forensic science.

19 Q. And when you say forensic being legal it means that --

20 would that mean that you come to court and participate in

21 court proceedings?

22 A. As a routine part of my profession, yeah. I have

23 testified in civil court, criminal court, family court,

24 federal court. Just about any type of court proceedings

25 that exists, I have testified in.

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 Q. And have you ever been qualified as an expert witness
2 in either pharmacology or toxicology?

3 A. Yes, many times.

4 Q. Which one and how many?

5 A. Toxicology routinely. Pharmacology is such an overlap
6 that it is actually included as a part of the toxicology.
7 Because you can't be an expert in toxicology unless you're
8 also an expert in pharmacology. It is the first tier as far
9 as becoming an expert in toxicology, an understanding in
10 pharmacology.

11 Q. Do you remember how many times you may have been
12 qualified as an expert?

13 A. I have never kept a track or an account of it. Because
14 I just do it routinely. It is just dozens and dozens of
15 times. I maybe over a hundred as far as I know. It is just
16 part of my routine practice as a forensic scientist.

17 MS. GAY: Your Honor, at this time I would offer Mr. --
18 Dr. Bennett as an expert in pharmacology and toxicology.

19 MS. WILLIAMS: Your Honor, may I voir dire the witness?

20 THE COURT: You may.

21 **VOIR DIRE EXAMINATION BY MS. WILLIAMS OF DR. BENNETT:**

22 Q. Good morning, Dr. Bennett.

23 A. Good morning, Ms. Williams.

24 Q. You are actually not a doctor though?

25 A. Yes, I am a doctor. I have a doctorate degree.

VOIR DIRE EXAMINATION BY MS. WILLIAMS OF DR. BENNETT

1 Q. But you are not a medical doctor.

2 A. I am not a physician.

3 Q. You are not a medical doctor?

4 A. Correct.

5 Q. But you have billed yourself as a medical doctor?

6 A. No, ma'am, never have.

7 Q. Are you a member of the Society of Forensic
8 Toxicologists?

9 A. Nope.

10 Q. How about the Palmetto Association of Toxicologists?

11 A. No.

12 Q. American Academy of Forensic Science?

13 A. No.

14 Q. Have you ever published any work on toxicology?

15 A. Yes.

16 Q. Okay. What is that?

17 A. The latest was Compendium. That was an international
18 publication. I was asked by a corporation in Europe as an
19 expert in alcohol toxicology to publish a paper on the use
20 of a specific testing procedure in the United States and I
21 was called upon as their expert to provide that publication.
22 And it is outlined in my CV.

23 Q. And they didn't -- they weren't troubled by the fact
24 that you have no association with any groups or
25 certifications in toxicology?

VOIR DIRE EXAMINATION BY MS. WILLIAMS OF DR. BENNETT

- 1 A. None whatsoever. Those groups are voluntary.
- 2 Q. What about any certification; what is required for
- 3 certification for toxicologists?
- 4 A. There is no required or mandatory certification for
- 5 toxicologists.
- 6 Q. Not required in the State, ---
- 7 A. Right.
- 8 Q. --- but what if you are certified what is required for
- 9 certification?
- 10 A. To take a test.
- 11 Q. Right; and you have not taken that test, have you?
- 12 A. Have not had time.
- 13 Q. Are you aware of the fact that all of the South
- 14 Carolina Law Enforcement Division toxicologists are
- 15 certified?
- 16 A. Sure.
- 17 Q. But you're not?
- 18 A. I haven't taken any test. I just haven't had time to
- 19 do so. Because it is a voluntary thing.
- 20 Q. And you testified that your pharmaceutical license is
- 21 in good standing?
- 22 A. Correct.
- 23 Q. And since when?
- 24 A. It has always been in good standing ever since I passed
- 25 the board in 1980.

1 Q. Isn't it true that you were issued a cease and desist
2 order from the State Board of Pharmacology of South Carolina
3 to stop billing yourself as a pharmacist?

4 A. It was from the State Board of Pharmacy, not
5 pharmacology.

6 Q. I'm sorry.

7 A. But to stop calling myself a pharmacist because I
8 wasn't practicing as a pharmacist in filling prescriptions.
9 So they wanted me to stop calling myself a pharmacist.

10 Q. Isn't that a pretty extreme step ---

11 A. Not ---

12 Q. --- for the State Board of Pharmacy to order you to
13 stop billing yourself as something that you're pretending to
14 be?

15 A. Well, I never pretended to be a pharmacist. In my
16 opinion I am a pharmacist. Once I completed the education
17 and passed the State Board from that point on I am a
18 pharmacist.

19 Now if the LLR wants me to stop calling myself a
20 pharmacist, that's fine; that is not a problem because I
21 don't fill prescriptions anymore.

22 Q. And you don't see patients as a pharmacist?

23 A. No.

24 Q. And you don't see patients really at all; you testify
25 for a living?

VOIR DIRE EXAMINATION BY MS. WILLIAMS OF DR. BENNETT

1 A. Well, I don't see patients at all because patients
2 implies that I am providing medical care, and I do not
3 provide any medical care. But I do see clients on a regular
4 business, on a daily basis in my office.

5 Q. Clients that pay you to give opinions in court?

6 A. No, clients that either pay me to perform certain tests
7 to determine if they are under the influence of any drugs or
8 substances or toxicology test. I -- routinely court's order
9 people to come to my office for testing.

10 Q. And with regard to this little disagreement that you
11 have with the State Board of Pharmacy ---

12 A. There is no disagreement.

13 Q. Okay. Would it refresh your memory to look at the
14 order where they are telling you to stop calling yourself a
15 pharmacist; would this refresh your memory?

16 A. No, I am very familiar with the order. And once that
17 was issued I stopped calling myself a pharmacist.

18 Q. Did you not just call yourself a pharmacist today?

19 A. No, I said it was my opinion that I was a pharmacist.
20 I am not calling myself a pharmacist.

21 Q. So it is kind of like the meaning of is is ---

22 A. Well ---

23 Q. --- or just --- it is just a semantic?

24 A. I just provided you with my opinion. That's all.

25 Q. But just lastly, if you were actually in compliance

1 with the governing board in South Carolina that makes sure
2 that people in your profession are in compliance, if you
3 were in compliance, which you are not, what would be
4 required?

5 A. To take the pharmacy law section and reapply to
6 reinstate my license as active to fill prescriptions.

7 Q. Okay. Let me just ask you another question. Thank
8 you. So you didn't take the test for the pharmacy law
9 section. Isn't it also required that you have continuing
10 education so that you're up-to-date with what's going on
11 with drugs and drug interaction in the field of pharmacy?

12 A. Yes, in order to fill prescriptions.

13 Q. In order to understand this field so that you're
14 certified by this regulatory board?

15 A. See once I got my doctorate degree I don't practice
16 pharmacy as a pharmacist anymore.

17 Q. Last question. Are you aware of how many hours a year
18 you would have to have in terms of education in order to
19 stay current on all of the trends and all of the changing
20 world of drugs and pharmacology in order to be sanctioned by
21 the regulatory board?

22 A. I am not aware of the exact number.

23 Q. Would it surprise you to know that you have to have 15
24 hours a year?

25 A. That sounds about right.

VOIR DIRE EXAMINATION BY MS. WILLIAMS OF DR. BENNETT

1 Q. Okay. And so how many years have you been out of
2 compliance with that? I think it is 1999, is it not?

3 A. That sounds about right.

4 Q. Okay. So since 1999 you haven't taken the test and you
5 haven't had your 15 hours a year which is specifically
6 required to keep people in your field abreast of changes
7 with drug interactions, changes in the field; and would you
8 agree with me that the drug industry is ever-changing?

9 A. Absolutely. That is why I have probably 15 hours a
10 week, not per year, in continuing education in the field
11 that I practice in.

12 Q. And when you say education isn't it true that you have
13 testified before that you consider education reading
14 journals and basically self teaching; you are self-taught;
15 is that true?

16 A. I am self-taught on a daily basis, yes.

17 Q. Okay. So if I as a lawyer go and watch a bunch of
18 shows and read some manuals about pharmacy would I be
19 qualified?

20 A. I'm not sure what you mean by watch a bunch of shows.

21 Q. Okay. Let's forget the shows. How about if I just
22 read some journals, some articles and I self teach myself; I
23 wouldn't be in compliance with the board but I would be
24 teaching myself. Would that be adequate?

25 A. If you kept up on all the scientific journals and the

1 literature that was published you would be well educated and
2 well qualified in my opinion. Okay. Thank you. I
3 appreciate that.

4 Lastly, would you agree with me that you are not
5 qualified to interpret lab tests, to talk about medical
6 diagnoses, and to evaluate the physical or mental diagnosis
7 of a person?

8 A. Part of your answer is correct. I am not qualified to
9 perform any medical examination. I am not qualified to
10 perform any medical diagnosis. And I am not qualified to
11 perform any medical treatment. But I believe that I am
12 qualified to interpret laboratory data because it is a
13 critical component in toxicology.

14 Q. Okay. So you're saying that a person who isn't really
15 even supposed to be telling people that you are an expert in
16 pharmacology, you have no certification in toxicology, you
17 just have an educational background in the field of
18 pharmacy, you are saying that you are qualified to look at
19 complicated medical records and interpret what lab tests
20 mean and then make a diagnosis from that?

21 A. No, I cannot make a diagnosis.

22 Q. Thank you.

23 MS. WILLIAMS: Your Honor, we would object to Dr.
24 Bennett's qualification as an expert in forensic toxicology
25 or forensic pharmacology. We would agree that he does have

VOIR DIRE EXAMINATION BY MS. WILLIAMS OF DR. BENNETT

1 a background in pharmacology based on his educational
2 background, and we would ask that his opinions be limited to
3 that very narrow field.

4 THE COURT: To the narrow field of what, Ms. Williams?

5 MS. WILLIAMS: Pharmacology.

6 THE COURT: Ladies and gentlemen, I need to take this
7 matter up outside of your presence. Do not begin your
8 deliberations. Do not discuss this case amongst yourself.

9 Please rise for the jury. Stay seated. Thank you.

10 (WHEREUPON, jury exited the courtroom 9:51 a.m.)

11 THE COURT: Thank you. Be seated.

12 MS. WILLIAMS: Your Honor, we would like to make the
13 cease and desist a court's exhibit ---

14 THE COURT: All right.

15 MS. WILLIAMS: --- if that would be admissible.

16 THE COURT: Admissible?

17 MS. WILLIAMS: I mean if that would be -- I just wanted
18 to make sure Ms. Gay saw it. I'm sorry. I'm just tired.

19 THE COURT: All right.

20 MS. WILLIAMS: I don't know what number this would be.

21 THE COURT REPORTER: Number 11.

22 (WHEREUPON, Court's Exhibit 11 was marked for
23 identification.)

24 THE COURT: All right.

25 MS. WILLIAMS: May I pass it up, Your Honor?

1 THE COURT: Ms. Gay, Your response.

2 MS. GAY: Your Honor, he did testify that he -- he I
3 think clearly stated that he is not a pharmacist, that he
4 does not write prescriptions, that he is -- you know, I
5 believe that she did cross-examination him about his issues
6 that he cleared up.

7 He -- I was confused because what she actually said to
8 you is not what she had told me beforehand; so, you know, I
9 was not expecting her to object to his being a toxicologist.
10 That she said that she -- that she wanted it to be limited
11 to pharmacology. And I think they are similar enough in
12 nature to -- to be something that we can testify to.

13 But I do believe that he is qualified as a toxicologist
14 as well. He did say that he has been qualified as an expert
15 many many many times in the field, that he has testified
16 that he reads all the journals that he has -- you know, he
17 has educational background in toxicology.

18 And I would argue that not only should he be considered
19 a pharmacologist but he also should be considered a
20 toxicologist based on his history.

21 THE COURT: Rephrase -- I don't think that history is
22 what I need to consider.

23 MS. GAY: Well, I think based on his learning, and
24 experience, expertise in the field, amount of years in the
25 practice type of business that he does, fact that he has

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1 been as I said testified in many cases and many courts and
2 been qualified as an expert and has the appropriate
3 qualifications to be considered an expert in that field.

4 THE COURT: Tell me what -- how this order of the cease
5 and desist factors into my ---

6 MS. GAY: Well, the order ---

7 THE COURT: --- decision.

8 MS. GAY: --- to cease and desist is to not call
9 himself a pharmacist. He said that he has a Phd in
10 pharmacology and that he does not practice pharmacy and that
11 he at one point had a pharmacist license that he does not
12 have anymore but that because he said that it is in a status
13 where he is no longer being a pharmacist.

14 And he said that as a pharmacist he can write
15 prescriptions; but that is not what his practice is, and so
16 he says that as he testified the letter that says don't call
17 yourself a pharmacist he says that he does not -- he is not
18 being presented as an expert in pharmacy.

19 THE COURT: What do you -- what are you asking him to
20 be an expert in and to give an opinion about?

21 MS. GAY: I am asking him to give an opinion regarding
22 pharmacology and toxicology. And pharmacology includes
23 being a pharmacist and writing prescriptions, but it
24 doesn't -- but that is not the only thing.

25 That they don't say you can't be a pharmacologist.. He

1 has got a degree in pharmacology. That is his point is and
2 that is what he testified to, his degree is in pharmacology.

3 THE COURT: All right. Thank you.

4 Can you tell me just simply and quickly the difference
5 between toxicology and pharmacology.

6 DR. BENNETT: There is quite a bit of overlap.
7 Pharmacology is the field of science where you study the
8 effects of drugs and chemical substances on the body.

9 It requires a firm understanding of anatomy,
10 physiology, biochemistry, which I had before studying
11 pharmacology. Then you -- then you can graduate above that
12 and then become a toxicologist where you focus on the
13 toxicity of drugs and chemical substances using pharmacology
14 of the chemical substances on the body to determine the
15 toxicity of those substances.

16 So it is you go from basic science courses of anatomy,
17 physiology, biochemistry, etc., then to pharmacology, then
18 to toxicology.

19 THE COURT: All right. Anything further, Ms. Gay? So
20 just so I am clear, what are you -- you are requesting that
21 he be qualified as an expert in forensic toxicology and
22 pharmacology?

23 MS. GAY: Yes, because he just testified, Your Honor,
24 that it has to do with toxicity ---

25 THE COURT: I just needed a yes or a no.

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1 MS. GAY: Yes.

2 THE COURT: Thank you.

3 And you object to that?

4 MS. WILLIAMS: We just object to the toxicology because
5 he hasn't kept up with his training and experience. He
6 absolutely has no certification and never has had in the
7 field of toxicology.

8 And although it is true that certification is not
9 required in the State of South Carolina, every single
10 toxicologist with any -- that testifies in court, anybody
11 with SLED, is certified. They have to take a test. They
12 have to keep up with their education.

13 Admittedly, he hasn't even kept up with the 15 hours
14 every year for his pharmacy license. And he does bill
15 himself on his CV as a registered pharmacist. That aside,
16 we can use that for impeachment.

17 We are just saying his expertise is in studying the
18 side effects of drugs. To say that he has any expertise in
19 toxicology and how things break down and how it affects the
20 body is just ridiculous. He is self-taught. He hasn't had
21 any training. He is not a part of any of these
22 organizations which provide training. And it is just
23 misleading.

24 THE COURT: All right. Your response to that?

25 MS. GAY: Well, Your Honor, I believe that he testified

1 that he has had much experience in that area and that he has
2 often been qualified in that area.

3 And he did testify also that various patients or people
4 come to him for drug tests and things of that nature, which
5 all has to do with toxins.

6 THE COURT: But it is not about the toxins; it's about
7 how the drug affects the body; correct, that is what
8 toxicology is?

9 DR. BENNETT: Yes.

10 MS. GAY: And that therefore if there's any toxins in
11 the body is what I understand it. And so I believe that
12 would be important to help this jury understand this case,
13 to have him be certified in toxicology.

14 THE COURT: Is that what you have the ability to
15 testify to is toxins in the body?

16 DR. BENNETT: Yes, that's what I practice on a daily
17 basis.

18 THE COURT: And where did you -- what -- what specific
19 training do you have with that?

20 DR. BENNETT: Pharmacology and as well as my doctorate
21 in drug science. And I provide continuing legal education
22 to attorneys on a regular basis for the South Carolina Bar
23 in the field of toxicology.

24 THE COURT: Anything further, Ms. Williams; any
25 further -- further argument?

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1 MS. WILLIAMS: Well, I would just say that I think Ms.
2 Gay can accomplish her goal by having him testify about the
3 side effects of drugs and the effects they have on people.
4 People with a background in pharmacy do that all the time.
5 Without going overboard and having someone that is not
6 qualified start going in to talking about toxicology because
7 that would just be misleading to the jury. He just doesn't
8 have the chops for that.

9 THE COURT: All right. I must determine whether this
10 subject matter is beyond the ordinary knowledge of the jury,
11 which I do find that it is and does require an expert to
12 explain this matter to the jury.

13 The expert must have acquired the requisite knowledge
14 and skills to be qualified as an expert in a particular
15 subject matter. The courts have been clear that the expert
16 need not be a specialist in the particular branch of the
17 field and the substance of the testimony must be reliable.

18 Based upon the testimony that has been presented I am
19 going to qualify him as an expert in toxicology and
20 pharmacology to give opinions in that area.

21 I believe that all of the issues that have been
22 addressed are well ripe for cross-examination and
23 impeachment. Note your exception to that. All right.

24 MS. GAY: Your Honor, one matter of housekeeping.
25 There was a stand that was over here when they were

1 testifying. One of the witnesses there was -- an easel. Do
2 we know where that easel is? May I have that, please. I
3 just wanted ---

4 THE COURT: Are there any legal issues that we need to
5 address before I bring in the jury, Ms. Gay?

6 MS. GAY: No, I just needed the housekeeping ---

7 THE COURT: All right. Thank you.

8 (WHEREUPON, jury enters 7/17/15, 10:02 a.m.)

9 (WHEREUPON, Defendant's Exhibit Number 2, display board of
10 the body, was marked for identification.)

11 (WHEREUPON, Defendant Exhibit Number 3, display board of the
12 brain, was marked for identification.)

13 THE COURT: Thank you. Be seated.

14 This witness will be qualified in the area of
15 pharmacology and toxicology as an expert.

16 Ms. Gay, your witness.

17 MS. GAY: Thank you, Your Honor.

18 **RESUME DIRECT EXAMINATION BY MS. GAY OF DR. BENNETT:**

19 Q. Dr. Bennett, Judge Harrington just qualified you as an
20 expert in the field of pharmacology and toxicology. You
21 explained to the jury what those -- what that would mean.

22 And in this case we are here for the trial of Gary
23 Fraley. And pursuant to that end were you contacted to
24 review his case for me ---

25 A. Yes.

DIRECT EXAMINATION BY MS. GAY OF DR. BENNETT

1 Q. --- for him? And pursuant to that -- that mission,
2 what did you do and what was -- what was the reason that you
3 were involved?

4 A. Well, I practice full-time as a forensic scientist
5 specializing in the field of forensic toxicology and
6 forensic pharmacology. So my full-time practice is that I
7 provide consultation and expertise for court cases.

8 I see clients in my office on a daily basis, most of
9 which are court ordered to come see me for toxicological
10 evaluation. I perform a variety of tests on blood, urine,
11 hair, and other bodily components and fluids to determine if
12 someone is -- has sort of toxic effect or under the
13 influence of drugs and alcohol for example. And I see
14 clients in my office on a regular -- and a daily basis.

15 Q. And when you say toxic effect can you describe to the
16 jury what it -- what it may mean to have a toxic effect.

17 A. Any type of chemical substance including drugs and
18 alcohol has an effect on the body. That effect can vary
19 from mild to toxic. And it's -- my job is to determine if
20 the person that I'm involved with is experiencing a toxic
21 effect of their drug or not.

22 Q. Now when a person experiences a toxic effect could that
23 affect his internal organs?

24 A. If a person is experiencing a toxic effect it is always
25 going to affect their internal organs to some degree

1 somehow.

2 Q. And if a person is experiencing some type of toxic
3 effect could it also affect their brain?

4 A. The brain is one of the major target organs for
5 expecting a toxic effect.

6 Q. And pursuant to that -- I am going to show you what I
7 have marked as -- for demonstrative purposes as we use the
8 easel. Thank you. And if you could come down ---

9 MS. GAY: Can the witness come down to talk to the
10 jury, Your Honor?

11 THE COURT: As long as we can hear him.

12 MS. GAY: Thank you, Your Honor.

13 MS. WILLIAMS: Your Honor, can I have permission to
14 look at what he -- to go up and look at what he is ---

15 THE COURT: You may.

16 Q. Okay. I am showing you what is marked as Defendant's
17 Exhibit 2. It is -- can you tell us what this is, sir?

18 MS. GAY: Can all of y'all see that?

19 A. It is basically a diagram of the human body in which it
20 points out the major organ systems from the ---

21 Q. Here is a marker, sir.

22 A. It delineates the major organ system from the mouth all
23 the way down to the anus. It focuses on the
24 gastrointestinal system and the organs that are related to
25 that.

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 Q. And with regard to that could you tell us where -- what
2 these organs are.

3 A. The first organ is the mouth where substances are
4 usually ingested and can have a toxic effect once
5 absorbed -- once it is consumed into the mouth. It is the
6 most common route for ingestion of foreign substances.

7 Q. Can you highlight that, please.

8 A. Right in the opening of the head. I think we all know
9 where the mouth is. Once a substance is put into the mouth
10 and swallowed it goes down the esophagus which is this long
11 tube that leads to the stomach.

12 The esophagus is a very important part of the body
13 because it is very sensitive to any type of damage. The
14 esophagus empties into the stomach where food is stored and
15 digested.

16 And the liver which is right next to the stomach aids
17 in digestion. Because once any type of substance that's
18 swallowed is into the stomach it then goes into the small
19 intestine which is here (pointing) and starts digestion and
20 absorption process.

21 And then any waste products that are not absorbed are
22 emptied into the large colon and then the waste products are
23 eliminated through the rectum and the anus here at the
24 bottom.

25 Now associated right next to the stomach is the

1 pancreas and the gallbladder. These are organs that are
2 essential to proper digestion, and they allow substances to
3 be detoxified for example in order to be absorbed without
4 causing damage to the body.

5 The liver is one of the largest organs in the body.
6 And its main function is to metabolize and detoxify drugs
7 and food and other substances.

8 So the whole process of digestion requires a
9 functioning digestive system from the mouth, the esophagus,
10 the stomach, the small intestine, the large intestine, as
11 well as the auxiliary organs that help in digestion, mainly
12 the gallbladder, the pancreas, and the liver.

13 Q. Is there ---

14 A. These all have to be functioning properly for proper
15 digestion to occur.

16 Q. Is the kidney on here as well, or is the kidney in the
17 body somewhere; can you describe where the kidney is?

18 A. Yeah, the kidney is on each side of the body near the
19 same organs. And the kidney's function is to eliminate
20 excess fluid in the body. It is also important in having
21 some other psychological processes that are not related to
22 digestion. But the kidneys are there to get rid of excess
23 fluid that is in the body.

24 Q. Now when -- you can have a seat back again, sir.

25 (WHEREUPON, witness returned to witness stand.)

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 Q. When you -- when a human is digesting and processing
2 things that come into the body tell the jury, if you would
3 please, a little bit about the function of the liver. Isn't
4 it a filter?

5 A. It is a filter. Its purpose -- once substances are
6 absorbed into the bloodstream at the point of the small
7 intestine all of that bloodstream flows to the liver first.

8 So the liver gets exposed to everything that is put
9 into the body through the mouth. The liver serves as the
10 one organ to metabolize and detoxify substances that are
11 coming into the body.

12 Now when I say detoxify, for example, if there is a
13 substance that is toxic to the body the liver will attach
14 chemical substances to the body to help the body eliminate
15 them.

16 For example, the most common type of function of the
17 liver is to make a substance more water-soluble because if
18 it is water soluble it can be rapidly excreted by the
19 kidneys. And that is where the kidneys come into play as
20 part of the digestive process.

21 So the -- that is why the liver is so large. It has a
22 big job to do because everything that is put in the mouth
23 is -- that is absorbed by the intestine passes through the
24 liver first before it goes to the rest of the body.

25 Q. And I believe that you showed us the pancreas.

1 A. Yes.

2 Q. And you said as part of the defiltering, cleansing
3 process, the pancreas is very important.

4 A. Right. It provides certain enzymes that are necessary
5 for digestion and absorption of nutrients and protein and
6 other substances that are required on a daily basis for
7 survival.

8 Q. So the normal bodily function is to eat food, have it
9 go through all these organs, be eliminated?

10 A. Correct.

11 Q. And if a person doesn't eat food those things could be
12 messed up?

13 A. Yes, if a person doesn't eat food, for example, then
14 the stomach which produces hydrochloric acid to aid in
15 digestion continues to produce hydrochloric acid but there
16 is no food there to dissolve.

17 So that hydrochloric acid, which is a very strong acid,
18 can over time eat away at the stomach lining and the lining
19 of the intestine, and once it eats away that lining that
20 lining can start to bleed. And if that bleeds we have what
21 is called an ulcer.

22 Q. Okay. So an ulcer is when the stomach is bleeding?

23 A. Yes.

24 Q. And that can be a result of not eating?

25 A. Correct.

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 Q. And well, not eating, how would that affect the liver
2 or pancreas or any of those other organs?

3 A. Those organs that are essentially there for the purpose
4 of digesting food. If food is not provided then those
5 organs start to go into a malfunction type of state.

6 It's -- we have a rule of thumb, use it or lose it.
7 And so if you are not using your digestive system you're
8 going to start to lose it.

9 So the -- all the chemicals and enzymes that are part
10 of the digestive system don't have food to work with. So
11 the whole system becomes awry.

12 Q. Okay. And is there a connection between your -- when
13 your stomach isn't working right to your brain?

14 A. A very powerful connection. In fact the gut-brain
15 connection has been well researched and well documented in
16 the scientific literature.

17 The chemicals that control the gastrointestinal system
18 one in particular is a chemical called serotonin, and it is
19 also a major chemical that controls the function of the
20 brain as far as being calm and relaxed and in what we call a
21 homeostatic state, a peaceful state.

22 The two major organs that contain this one very
23 important chemical, serotonin, is the brain and the GI
24 system. And there are a significant number of neurons and
25 nerves in the GI system that are directly attached to the

1 brain.

2 So because they are so intimately attached that if
3 there is something off with one it is going to affect the
4 other, in both directions.

5 If the brain is off then you are going to have problems
6 with your GI system. For example, if someone is in a
7 stressful situation they may say oh I feel butterflies in my
8 stomach.

9 Well, that is a classic example of if the brain is not
10 in a comfort zone you are going to feel something -- you
11 know, an upset in your stomach call butterflies or the term
12 of gut-wrenching effect. If you are under a lot of stress
13 you feel it in your gut.

14 If you are not right in your mind you are going to have
15 GI problems. And that can range from stomach upset to
16 nausea, vomiting, diarrhea, all because you're -- you have
17 some difficulty with your mental state.

18 And vice versa, if your gut is not functioning properly
19 then that is going to send signals to your brain. And it
20 has been well documented in the scientific literature that
21 diseases within the GI system can cause confusion, delirium.

22 There's even publications that it can cause psychosis
23 if your GI system is not functioning properly.

24 Q. And how about vitamins and things like that in the
25 body?

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 A. Vitamins are the most -- one of the most important part
2 of nutrition, daily nutrition. If you're not eating you're
3 not getting enough vitamins.

4 And, for example, there's a -- there's been several
5 research studies that have been published in scientific
6 literatures that shows that specifically vitamin B-12 if
7 you're not getting enough of that that is can lead to
8 confusion and psychosis.

9 And that was one of the most interesting discoveries
10 that I came across in reviewing this case is when there were
11 scientific publications showing the vitamin B12 deficiency
12 causes psychosis.

13 Q. Now.

14 A. And that's not my opinion. That is the medical
15 literature that I am reporting.

16 Q. And Vitamin B12 would come from food?

17 A. Yes, that is where it comes from.

18 Q. So if there is no food it could lead to a deficiency?

19 A. Yes.

20 Q. And if you don't mind coming back down again.

21 (WHEREUPON, witness steps down to the display board.)

22 Q. It says defense exhibit for demonstrative purposes,
23 three. Okay. I am going to show you what's been marked as
24 three. Do you have your marker, the yellow pen?

25 Okay. Now what is this?

1 MS. GAY: Can all y'all see this? I'm sorry.

2 Q. What is this?

3 A. This is the side view of the human brain showing the
4 different parts of the brain.

5 Q. And can you highlight different parts of the brain for
6 us, please.

7 A. Well, the spinal cord, which is not shown here, leads
8 up into the brain. The first part of the cerebellum which
9 is the major thought process of the brain. And then you
10 have different lobes of the larger part of the brain, the
11 temporal lobe, the parietal lobe, the occipital lobe, and
12 the frontal lobe.

13 And these all have different functions as far as
14 keeping the body alive and keeping it awake and alert. The
15 frontal lobe, for example, is the critical part of the brain
16 that controls rational thinking and impulse control. And
17 that is a part of the -- that is the function of the frontal
18 lobe.

19 Q. Now you described a gut-brain connection on some level.
20 And if a person's brain were to be affected by issues
21 regarding serotonin and things like that what part of the
22 brain would be affected?

23 A. Well, serotonin is actually in all parts of the brain.
24 So if the -- the brain has a mechanism where it is not going
25 to shut down certain key components regardless of what the

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 GI system is doing.

2 For example, if you have Barrett's esophagus and
3 pancreatitis and ulcers and all sorts of problems with your
4 GI system the part of the brain that controls the breathing,
5 for example, is not going to shut down. You're going to
6 keep breathing no matter what. So the parts of the brain
7 that control basic functions to stay alive are going to keep
8 functioning.

9 What is going to be affected is those parts of the
10 brain that are not critical for survival such as rational
11 thinking, impulse control, ability to function in a complex
12 society. And all of those things that we currently see as
13 being a contributing member of society those are going to
14 start to break down.

15 Q. And what area of the brain is that?

16 A. The frontal lobe.

17 Q. So the -- you said if people have Barrett's esophagus,
18 pancreatitis, things of that nature, they could have issues
19 with their -- the rational thoughts, the impulse control,
20 and all that that. And that would directly affect in terms
21 of some kind of physical -- chemical or -- connection the
22 frontal lobe of the brain?

23 A. Yes.

24 Q. Okay.

25 A. And that has been documented in the scientific

1 literature as occurring.

2 Q. All right. And so if a person wasn't eating these are
3 the things that could potentially be results?

4 A. Yes.

5 Q. So with regard to Mr. Fraley I believe that you said to
6 me at one point that you have reviewed over 800 pages of
7 medical records?

8 A. Yes.

9 Q. And pursuant to those medical records there was a lot.
10 And I am going to talk to you about some things. I know
11 that you have reviewed them. And were you during the course
12 of your evaluation given or had opportunity to review
13 Medical University of South Carolina records for Mr. Fraley?

14 A. I did.

15 Q. And can you in a nutshell -- and if you need to see the
16 records I can certainly share them with you. Can you
17 describe for this jury what type of physical problems Mr.
18 Fraley had before August 5th?.

19 A. The medical records indicate that he was suffering from
20 gastrointestinal reflux disease where the stomach acid is
21 regurgitated back up the esophagus, maybe all the way to the
22 mouth. And, again, that is that hydrochloric acid in the
23 stomach that can cause damage and erosion to the esophagus.

24 And he was -- the records indicate that he was
25 suffering from Barrett's esophagus ---

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1 Q. Can you describe what Barrett's esophagus is, please.

2 A. What that means is that the esophagus is normally a
3 very smooth surface but if the esophagus is exposed to acid
4 from the stomach over and over and over again it starts to
5 be damaged. It starts to wrinkle upon itself and it starts
6 to contract and it gets waves and folds in and it kind of
7 looks like what the intestine looks like, instead of a
8 smooth surface it is a crinkled, rough surface.

9 And it's -- it's called Barrett's esophagus because Dr.
10 Barrett was the first to publish on this. And so you get an
11 esophagus that is not normal.

12 MS. WILLIAMS: Objection. I think he is testifying
13 beyond the realm of toxicology and pharmacology. Now is
14 talking about ---

15 THE COURT: All right.

16 MS. WILLIAMS: --- gastrointestinal disease.

17 MS. GAY: I understand. I can limit it.

18 THE COURT: Thank you.

19 BY MS. GAY:

20 Q. So pursuant to the medical records that you read, you
21 saw that Mr. Fraley had a history of stomach gut problems?

22 A. A multitude. G -- Gerd, gastrointestinal ---

23 MS. WILLIAMS: Objection.

24 A. --- reflex disease. These are just what is in the
25 medical records.

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 THE COURT: All right. Please do not respond to an
2 objection by the attorney. That is my role.

3 DR. BENNETT: Okay.

4 THE COURT: Please do not respond to Ms. Williams
5 direct -- if I need more explanation I will ask you.

6 He -- overruled.

7 MS. WILLIAMS: Thank you, Your Honor.

8 THE COURT: Thank you.

9 BY MS. GAY:

10 Q. What else did he suffer from in the records? Just that
11 you saw in his records.

12 A. Pancreatitis, Barrett's esophagus, gastrointestinal
13 reflux disease, and ulcers.

14 Q. And after that set of records we also provided or you
15 to able to look at some treatment records from a place
16 called Wilmington Treatment Center?

17 A. I did review those records.

18 Q. And pursuant to those records were you able to -- what
19 was your impression of those records?

20 A. A treatment center is ---

21 MS. WILLIAMS: Objection. She is asking him for his
22 impression of the records if they --- relevant and outside
23 the scope.

24 THE COURT: Sustained.

25 Q. Did he experience any intestinal problems there in

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 your -- in the records?

2 A. The records indicate that he did, yes.

3 Q. And was he -- I believe there has been testimony in
4 this case that he had received a medicine called Vivitrol?

5 A. The records indicate that he did.

6 Q. And after this hospital stay -- or this time at rehab
7 he then went I believe six days later to the New Hanover
8 Regional Medical Center. Were you able to review those
9 records?

10 A. I was.

11 Q. And in those records did you see that Mr. Fraley had
12 gastrointestinal problems?

13 A. Yes.

14 Q. And of significance is -- tell -- did you see anything
15 in there about the type of -- the fact that he was throwing
16 up?

17 A. I believe I did, yes.

18 Q. Okay. And is there anything significant about the type
19 of throw-up?

20 MS. WILLIAMS: Objection. I don't think he is
21 qualified to answer that question.

22 THE COURT: Sustained.

23 Q. Well, in his history that you reviewed was there
24 anything significant about his -- what was going on with him
25 in the New Hanover Regional Medical records?

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 MS. WILLIAMS: Objection. She is asking the same
2 question.

3 THE COURT: Counsel approach.
4 (WHEREUPON, bench conference was had 7/17/15, 10:21 a.m.)

5 THE COURT: Thank you.

6 BY MS. GAY:

7 Q. So after he in this July period went to New Hanover
8 were you also asked to just evaluate -- and not that you are
9 going to testify about. Just did you look at some medical
10 records from Southwest Regional Medical Center?

11 A. I did.

12 Q. And did you also look at some medical records from the
13 EMS personnel that saw him after his arrest?

14 A. Yes.

15 Q. And also the paramedic?

16 A. Yes.

17 Q. And did you also just in the course of what we
18 discussed ask -- did you review some medical records from
19 Trident Hospital from the date of his arrest?

20 A. Yes.

21 Q. You are a toxicologist and a pharmacologist for
22 purposes of this -- of what we are talking about. Is there
23 anything that you want to share with the jury about your
24 findings in those two areas?

25 A. Well, we discussed the intimate connection between the

DIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 GI system and the brain. It is not only my opinion but well
2 published in the scientific literature, some of which I have
3 here today that we could go over in detail of what was
4 published, in that anytime that there is distress or
5 discomfort or disease in the GI system that that can
6 directly affect the brain. And it can affect it; according
7 to what is published it can cause confusion, delirium ---

8 MS. WILLIAMS: Objection. We are not talking about
9 drugs; we are talking about ---

10 MS. GAY: I asked him specific ---

11 THE COURT: Counsel approach.

12 (WHEREUPON, bench conference was had 7/17/15, 10:24 a.m.)

13 THE COURT: Sustained. Let's move on.

14 MS. GAY: Your Honor, I would like a moment to confer
15 for a minute.

16 THE COURT: Take your time.

17 MS. GAY: I have no further questions for this witness.

18 THE COURT: Ms. Williams.

19 MS. WILLIAMS: Thank you, Your Honor.

20 **CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT:**

21 Q. Mr. Bennett, we got off to a kind of a rocky start,
22 didn't we?

23 A. Oh, that's all right. I am used to it.

24 Q. Okay. You and I have spoken before; is that correct?

25 A. Several times, yes.

1 Q. And you are not telling this jury that anything you
2 read or reviewed caused permanent psychosis or brain damage?

3 A. That's correct.

4 Q. And you're not telling this jury that the day that you
5 met with the defendant -- which was when?

6 A. July 7th.

7 Q. For how long?

8 A. For an hour-and-a-half.

9 Q. And you are not saying on that day he was psychotic?

10 A. I had no indication at that particular point in time
11 that he was psychotic.

12 Q. Are you telling this jury that when someone is really
13 hungry and they haven't eaten for a while they rape and try
14 to kill people?

15 A. I am not saying that.

16 Q. Okay. And you're not telling this jury that because
17 you have gastrointestinal problems that you are inclined to
18 commit violent crimes?

19 A. I am not saying that.

20 Q. Are you trying to say that gastrointestinal problems
21 cause psychosis?

22 A. It can.

23 Q. Is it the Nexium that causes it or the actual
24 discomfort? Because wasn't he taking Nexium for his
25 discomfort?

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 A. He was.

2 Q. Okay. So I've just never heard of this theory.

3 There's not armies of people that have gastrointestinal
4 problems committing violent crimes that would be just -- it
5 seems like it would just be rampant.

6 A. Well, now you are trying to put a quantifiable amount
7 on that. And I don't know the answer to that. I just
8 know that there has been a number of published studies in
9 peer-reviewed scientific journals that clearly show a
10 connection between the gastrointestinal system and the brain
11 how the gastrointestinal system dysfunction can lead to
12 malnutrition and a vitamin deficiency, and specifically one
13 in particular has been documented to cause confusion and
14 even psychosis.

15 Q. And but you are not saying that you have seen the
16 connection between that and crime?

17 A. I didn't study that.

18 Q. Okay.

19 A. I didn't go into the case law on that. I just ---

20 Q. And when you say study when you are talking about this
21 you are talking about your self-taught, your reading of
22 journals and forensic material and books and treatises?

23 A. Most of my study is in the field of pharmacology and
24 toxicology. Rarely do I study case law and the effect of
25 certain pharmacological or toxicological condition and how

1 that affects the outcome of the case. That is usually the
2 attorney's responsibility.

3 Q. Well, you testified before that you had some kind of
4 legal training like that is why the forensic was appropriate
5 for you to have in your title.

6 A. Well, I am forensic training, not legal training.

7 Q. Oh, okay. Well, would you agree with me that Dr. Gomez
8 is best qualified to evaluate whether this defendant had the
9 ability to know the difference between right and wrong and
10 whether this defendant could conform his behavior to the
11 law?

12 A. Yes.

13 Q. And you watched her testify; is that correct?

14 A. Yes.

15 Q. And you heard her say that he wasn't psychotic?

16 A. I did hear her say that.

17 Q. And you heard her say there was no permanent psychosis?

18 A. I did hear her say that.

19 Q. And in fact you agree with that opinion, there is no
20 permanent psychosis?

21 A. Not permanent, correct.

22 Q. And did you hear the reasons why she opined that he
23 could conform his behavior to the law; do you remember that
24 part of her testimony?

25 A. Yes.

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 Q. Okay. Why?

2 A. I don't remember the specifics, but I remember her ---

3 Q. Would it refresh your memory to look at her report?

4 A. Sure.

5 MS. WILLIAMS: May I approach, Your Honor.

6 THE COURT: Yes.

7 Q. She outlines all the reasons right here (pointing).

8 Just read that through and see if that refreshes your
9 memory.

10 A. It states that her opinion based on her examination at
11 the time that it is her opinion that Mr. Fraley had the
12 ability to conform his behavior to the requirements of the
13 law at the time of the alleged offenses.

14 Q. Okay. And why? What are the reasons she gives?

15 A. I think you are referring to what she saw at the time
16 she was -- he was in her office. And I believe that is in a
17 different section.

18 Q. No, she says it right there. She gives all kinds of
19 reasons. She talks about his behavior, his diagnosis.

20 A. She states that Mr. Fraley did not report experiencing
21 psychotic symptoms that may impair his ability to conform
22 his conduct, did not report auditory command hallucinations
23 or operating under a delusional belief. She states that he
24 does not have an impulse control disorder that would have
25 impaired his ability to conform his conduct to the

1 requirements of law at the time of the alleged offense. She
2 states that collateral information indicates that Mr.
3 Fraley's actions prior to the alleged events were goal
4 directed, parenthesis, inviting children to his daughter's
5 birthday. She stated that Mr. Fraley her opinion that he
6 was drinking on the day of the alleged events and may have
7 been impaired from alcohol.

8 Q. Okay. Thank you, Dr. Bennett. I am going to retrieve
9 that document from you if that's okay. And you and Ms. Gay
10 made much ado about this notion that Mr. Fraley was just
11 starving; is that correct, that enters into your whole
12 analysis of why maybe he was -- could have been psychotic;
13 is that correct?

14 A. I think the appropriate word is malnutrition rather
15 than starving.

16 Q. Are you aware of the fact that every doctor he saw
17 described him as malnourished -- I mean as well nourished?

18 A. I did see statements in the medical records where
19 they did state that he was -- well, appeared to be
20 well-nourished.

21 Q. And did you see that on the day of the crime on
22 August 5th when he goes to Trident he is described as alert,
23 oriented, well-developed, and well-nourished?

24 A. Yes.

25 Q. Okay. So they were there and they examined him, right?

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

- 1 A. Well, that statement is based ---
- 2 Q. Ask a question. These people examined him, correct?
- 3 A. Yes.
- 4 Q. You were not there; you did not examine him; correct?
- 5 A. That is correct.
- 6 Q. So would they not be in a better position to determine
- 7 if he was well-nourished?
- 8 A. I can't answer that because I do not know how they
- 9 determined how he was well-nourished or not.
- 10 Q. Well, how are you determining that he wasn't
- 11 well-nourished?
- 12 A. Because I looked at his medical records.
- 13 Q. Oh.
- 14 A. His ---
- 15 Q. The medical records that you're not a doctor, so I'm
- 16 not understanding how you can understand all the different
- 17 implications of his very complicated medical problems.
- 18 A. Well, his ---
- 19 Q. Let's face it; you've got a degree in pharmacology, and
- 20 that is it. So I don't understand ---
- 21 A. I am not sure of the nature of your question.
- 22 Q. --- why you think -- tell me why you think that you
- 23 would ever be qualified to interpret complicated medical
- 24 records; you don't have the background, Dr. Bennett.
- 25 A. Well, the laboratory work was not complicated. It is

1 very standard and straightforward laboratory work. As far
2 as pharmacology, yes, and toxicology, yes, we rely heavily
3 on lab abnormalities to determine if any toxicity is
4 occurring.

5 Q. Okay. Let me ask you this: Did you look through the
6 medical records from Southwest Regional from July 22nd, ---

7 A. Yes.

8 Q. --- 2014? Again, do you remember that it says
9 well-appearing, well-nourished, no acute distress, alert and
10 oriented?

11 A. Yes, I'm assuming that whoever made that statement was
12 of the opinion that he appeared well-nourished.

13 Q. And these people examined him, correct?

14 A. Yes.

15 Q. And they probably had medical licenses, correct?

16 A. I do not know who ---

17 Q. They are called doctors in there?

18 A. Well, I think most of those were from nurses.

19 Q. No, that actually was from an MD. Would you like to
20 review it?

21 A. No, that is fine. I believe you.

22 Q. So if they have MD and they are working at a hospital
23 they probably are actual doctors; would you agree with me on
24 that?

25 A. I'm assuming they are medical doctors, yes.

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 Q. Right. So would you think that if they are working in
2 an emergency room that they might be qualified to determine
3 if a patient is well-nourished?

4 A. They would be qualified, yes.

5 Q. Thank you. Now when you looked through Dr. Gomez's
6 report did you note that part of what she determined her
7 diagnosis on was a medical history?

8 A. Yes.

9 Q. And tell me why you think a medical history, if you do
10 think it is, is important?

11 A. I think it is critically important because it
12 determines what type of condition the person had been in in
13 the past.

14 Q. And even in your work as a pharmacist I would imagine
15 that getting information from a patient would be important?

16 A. Yes.

17 Q. Okay. And you said you reviewed Dr. Gomez's report?

18 A. Yes.

19 Q. And do you remember that the defendant told her when he
20 was describing being tased he said he understood what was
21 going on and they didn't need to tase him; do you remember
22 that?

23 A. Yes.

24 Q. So would that not indicate to you, not even on a
25 medical level but just a commonsense level, that the

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 defendant knew exactly what was going on?

2 A. It would indicate that, yes.

3 Q. And she evaluated him three times; is that true?

4 A. I believe so.

5 Q. Now, Mr. Bennett, I don't mean to be unkind; but isn't
6 it true that you have lied in court before?

7 A. No, I have never lied in court.

8 Q. Isn't it true that you have told different courts that
9 you are a registered pharmacist and you in fact are not?

10 A. I have a -- I am a registered pharmacist from the fact
11 that I have a diploma and a board certification that is
12 hanging in my office. I am registered with the South
13 Carolina Board of Pharmacy as a pharmacist.

14 Q. But those people wrote you a letter and said stop, stop
15 saying you are a registered pharmacist; didn't they?

16 A. They did.

17 Q. Didn't we just go through that?

18 A. Yes, because I don't fill prescriptions.

19 Q. Okay. So if they say you are not registered wouldn't
20 you agree with me that they are probably the ones that we
21 should look to for guidance on that issue?

22 A. If that is your opinion, that is fine, yeah.

23 Q. Okay. And isn't it true that you used to do a lot of
24 work for DSS?

25 A. Correct.

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

- 1 Q. But you don't anymore?
- 2 A. Correct.
- 3 Q. And why is that?
- 4 A. Actually I do. I did some testing for DSS last week.
- 5 Q. For Charleston County DSS?
- 6 A. It was Colleton County DSS.
- 7 Q. But Charleston DSS doesn't use you anymore?
- 8 A. They use me when they need me.
- 9 Q. Okay. Are you familiar with Frampton Durbin?
- 10 A. Yes.
- 11 Q. And isn't it true that he told you they would not be
- 12 allowed to use you anymore?
- 13 A. At one point in time, yes.
- 14 Q. And that is because of the problems they had with the
- 15 kind of work you were doing?
- 16 A. I'm not sure what do you mean by problems.
- 17 Q. Well, wasn't it true that there were five women that
- 18 complained about the fact that instead of taking head hair
- 19 out of their -- for testing that you insisted on taking
- 20 pubic hair?
- 21 A. I never insist on anything.
- 22 Q. Okay. Well, did you take pubic hair?
- 23 A. I take pubic hair as part of analysis on a routine
- 24 basis.
- 25 Q. And why?

1 A. Well ---

2 Q. Why instead of head hair?

3 A. Well, a lot of times women will dye their hair; and
4 research has shown that dying hair will influence the drug
5 content in the hair.

6 For example, we -- I do tests regularly for detection
7 of cocaine in hair, and the scientific literature clearly
8 shows that cosmetic alteration of hair can reduce the
9 cocaine concentration significantly.

10 So if a woman comes into my office that has dyed or
11 bleached hair then we can't use that hair for analysis
12 because of the cosmetic treatment. Then we have to get
13 alternate body hair.

14 Now on woman -- on women they shave under arms and legs
15 and usually the only alternate source of hair is pubic hair.
16 So my female assistant will go into the restroom with that
17 person and assist in collecting pubic hair. I personally
18 have never collected pubic hair.

19 Q. But you are the only ones that thinks that hair
20 products degrade the sample; isn't that true?

21 A. No, ma'am, that is not true. It is published in the
22 scientific literature ---

23 Q. Well, let me ask you something.

24 A. --- that cosmetic treatments can affect the outcome of
25 hair ---

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 Q. Do you use Quest Diagnostics?

2 A. I have used them before, yeah.

3 Q. Okay. Are you aware of the fact that the director for
4 Quest Diagnostics in response to a question about your habit
5 of taking pubic hair said he has found no treatment that can
6 defeat head-hair drug tests?

7 A. Unfortunately he is 100 percent wrong according to what
8 is published in the scientific literature on that particular
9 study.

10 Q. What about Dr. Ruth DeHaven, do you know who she is?

11 A. Yes.

12 Q. And she is actually a medical review officer; is that
13 correct?

14 A. Yes.

15 Q. And in order to be a medical review officer she has to
16 have multiple -- not only is she a doctor but she also has
17 to be certified and take multiple tests and have continuing
18 education; is that true?

19 A. Well, she has to take one test; and that is for the
20 purpose of Department of Transportation urine drug testing.
21 That has nothing to do with forensics.

22 Q. But isn't the Department of Transportation isn't that
23 the standard for testing? For drug testing.

24 A. No, it is not.

25 Q. What is her opinion? Are you aware of the fact that in

1 response to the complaints that were filed with the five
2 women, five of five women, she said as far as I know he's
3 the only one doing it that way?

4 A. Well, I will take that as a compliment because I took
5 the time to do the research to determine why it is necessary
6 and found that it is necessary.

7 Q. Okay. Well, in any case, that wasn't the opinion of
8 the Charleston County DSS office because they are not using
9 you anymore?

10 A. They have used me since then, yes.

11 Q. And isn't it true that some of your erroneous testing
12 has cost certain people their children and that when they
13 were retested they got their children back?

14 A. That is incorrect.

15 Q. What about the case of Karen Ferguson of Mt. Pleasant;
16 she lost her 13-year-old daughter and 11-year-old son
17 because of testing you did and when it was retested found
18 out that you were wrong?

19 A. When she was retested they did not find out that I was
20 wrong.

21 Q. Okay. If that is your position.

22 A. Well, if you do a test at a later date you are going to
23 get a different answer.

24 Q. Ah.

25 A. Because alcohol is rapidly eliminated from the body.

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 Q. Now you basically are -- your job is to testify; you
2 are an expert witness?

3 A. Yes.

4 Q. And basically you just offer those services; you are a
5 paid gun?

6 A. No, ma'am.

7 Q. Okay.

8 A. I provide testimony based on my education, skills,
9 experience, and knowledge.

10 Q. But that is your primary purpose of your business,
11 isn't it; isn't that how you advertise yourself?

12 A. Yes, but actually the majority of my business is
13 actually performing toxicological tests on people that come
14 into my office on a daily basis.

15 Q. And in your literature you actually bill yourself as a
16 forensic scientist, a ballistics expert. Let me see what
17 else. Fingerprinting, fibers, gunshot residue.

18 How did you -- how can you possibly have all of that
19 expertise when the only background that you have is in
20 pharmacy?

21 A. I don't bill myself as an expert in those fields. I
22 offer those services.

23 Q. Really. And so before when you were saying you were
24 self-taught what areas are you self-taught in?

25 A. In forensic science.

1 Q. Okay. And you feel like that qualifies you to testify?

2 A. Yes.

3 Q. Do you think your website is a little misleading?

4 A. No, ma'am.

5 Q. Your website doesn't make it look like you are a DNA
6 scientist?

7 A. I am a DNA scientist.

8 Q. What qualifies you to be a DNA scientist?

9 A. I have studied DNA in both undergraduate and graduate
10 school and have been performing DNA tests for the past 20
11 years, thousands of them.

12 Q. And you can collect DNA from crime scenes?

13 A. No, I do not do that. I can, but I don't.

14 Q. Okay. And isn't it true that recently in the case of
15 State v. Ethan Mack Judge Nicholson failed to qualify you as
16 an -- qualify you as an expert because he was very concerned
17 about your lack of expertise?

18 A. That is completely inaccurate. I was qualified as an
19 expert in that murder case for DNA.

20 Q. But all of the other things you were trying to be
21 qualified for he would not qualify you for; isn't that
22 correct?

23 A. There was -- there was only one other thing that the
24 attorney was trying to qualify me for and that is in trace
25 materials. And I told the attorney that I am not qualified

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 in trace materials that -- but he said he's going to try
2 anyway to get me qualified. That is his opinion --
3 decision. I told him that I was not qualified in that, and
4 the judge saw that.

5 Q. Okay.

6 MS. WILLIAMS: Your Honor, I am going to show Ms. Gay
7 what has been marked as State's 133 and 136.

8 (WHEREUPON, documents were shown to defense counsel.)

9 Q. And it is your testimony that you are not trying to
10 mislead the public about your expertise?

11 A. Correct.

12 MS. WILLIAMS: May I approach, Your Honor?

13 THE COURT: You may.

14 Q. Are these pictures from your website?

15 A. Yes.

16 Q. Well, what are they? Well, first of all do these
17 accurately depict the pictures as they appear on your
18 website?

19 A. Yes.

20 Q. Okay.

21 MS. WILLIAMS: Your Honor, permission to admit State's
22 133 and 136.

23 THE COURT: Any objection?

24 MS. GAY: At this point I would like to know what he is
25 going to say they are before we make that decision.

1 THE COURT: He indicated they were pictures from the
2 website.

3 MS. GAY: Okay. I just was -- would like to strike ---

4 THE COURT: Did you show those to Ms. Gay?

5 MS. WILLIAMS: I did.

6 MS. GAY: Yes, ma'am, without objection.

7 THE COURT: One thirty-three and one thirty-six into
8 evidence without objection. You may publish.

9 (WHEREUPON, State's Exhibit 133 was admitted into evidence.)

10 (WHEREUPON, State's Exhibit 136 was admitted into evidence.)

11 MS. WILLIAMS: Can you put 133 up.

12 BY MS. WILLIAMS:

13 Q. And these are the last questions, Mr. Bennett. You
14 have been very patient. Thank you.

15 A. Sure.

16 Q. Tell us what is it you are trying to tell the public
17 about your expertise here. It looks like you are kind of
18 taking some DNA from some kind of bone or something.

19 A. Yeah, this is a human skull.

20 Q. Okay.

21 A. And which on examining the skull for the damage that
22 occurred after it was cremated.

23 Q. And what gives you the expertise to do that? Like what
24 in pharmacology background? I am just so confused.

25 A. It is I continually study forensic sciences as part of

CROSS-EXAMINATION BY MS. WILLIAMS OF DR. ROBERT BENNETT

1 my profession.

2 Q. And this is what you are talking about like reading
3 books, forensic articles, and treatises and stuff?

4 A. Yes, this was a case I was working on in which it was a
5 murder case in which the body was allegedly disposed of in
6 an incinerator but yet the body was not found in the
7 incinerator. And I studied the effects of incineration on
8 human bones..

9 Q. By reading articles?

10 A. No, I actually went to the crematorium and ---

11 Q. Dr. Bennett. Mr. Bennett. So you are saying that I
12 could get the training that you obtained not by going to
13 school, not by getting certification by any group that
14 certifies people that collect DNA from things like this -
15 can you take that down and put 36 up -- 136 - and that I
16 could too testify as a forensic scientist?

17 A. If you spend enough time and education on that you
18 would become qualified.

19 Q. Okay. Thank you. What about this, this isn't
20 misleading to the public? This is on your website. Do you
21 collect blood evidence from cars?

22 A. I can. I do.

23 Q. And your background in pharmacy and pharmacology
24 qualifies you for that plus yourself reading, your
25 self-taught stuff?

1 A. Collecting blood evidence from a scene does not require
2 a lot of skill or expertise.

3 Q. Really?

4 A. You just collect the blood.

5 Q. Really?

6 A. I am not sure what your question is.

7 Q. Well, my question is the public is looking at these
8 pictures on your website and you are making yourself seem
9 like you are a forensic scientist, like you can collect
10 evidence from crime scenes - you can take that down - and
11 you can't; you don't have the background. And it is
12 misleading, and it is dishonest. And quite frankly shame on
13 you.

14 A. I respect your opinion.

15 THE COURT: Ms. Gay.

16 MS. GAY: Thank you, Your Honor.

17 **REDIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT:**

18 Q. Here today what we are talking about is Gary Fraley.

19 A. Yes.

20 Q. And I understand that Ms. Williams talked to you about
21 all of these other things that she doesn't approve of how
22 you do things. But today you are qualified as an expert in
23 pharmacology and toxicology for Gary Fraley.

24 And pursuant to the review of his case did Gary Fraley
25 tell you that he hadn't eaten in like a really really long

REDIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 time, I think maybe even a week or two; or what did he tell
2 you?

3 A. He told me that he hadn't eaten in a long time. And
4 ironically he was there in a period right before lunch and
5 he brought his lunch with him in a brown paper sack, and he
6 actually when we concluded the interview he left and he left
7 his luncheon. He never ate it. And ---

8 Q. Okay. On the time on August 5th when all this happened
9 and he had told you at that time he had not eaten for days?

10 A. That is what he told me, yes..

11 Q. Would it be your opinion that that would have
12 significantly affected his organs?

13 A. Yes.

14 Q. And would it be your opinion that based on his history
15 pancreatitis, Barrett's esophagus, whatever, that not eating
16 for several days would have affected his body?

17 A. Yes.

18 Q. And is it your opinion that the not eating for several
19 days having the effect on his organs would have affected his
20 mind?

21 A. Yes.

22 Q. And is it your opinion that it could have made him
23 psychotic?

24 A. It could have, yes.

25 Q. And with regard to all the records that we saw, he had

1 an ulcer at one point?

2 A. Yes.

3 Q. He had continued coffee ground throw-up?

4 A. Well, he threw up blood that had ---

5 MS. WILLIAMS: Objection.

6 A. --- the appearance of coffee grounds.

7 THE COURT: Please stop talking.

8 What is your basis?

9 MS. WILLIAMS: Outside the scope of his expertise.

10 THE COURT: Sustained.

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

12 THE COURT: Thank you. Recross?

13 MS. WILLIAMS: No, Your Honor.

14 THE COURT: You may step down. Thank you. Feel free
15 to stay with us, but I believe you are also free to leave.

16 Call your next witness.

17 MS. WILLIAMS: The State calls Dr. Todd ---

18 THE COURT: Hold on. It is still Ms. Gay.

19 MS. GAY: The State rests, Your Honor. I mean the
20 defense rests.

21 THE COURT: Ladies and gentlemen, there is a matter of
22 law that I must take up outside of your presence. Please do
23 not begin your deliberations. Do not discuss this case
24 amongst yourselves.

25 Please rise for the jury.

REDIRECT EXAMINATION BY MS. GAY OF DR. ROBERT BENNETT

1 (WHEREUPON, jury exits the courtroom 7/17/15, 10:50 a.m.)

2 THE COURT: Be seated.

3 Ms. Williams, State's 88 has not been admitted. I
4 understand there was some confusion with the stipulation.
5 Do you have any requests at this time?

6 MS. WILLIAMS: Do you mean 88 or 89?

7 THE COURT: I'm sorry, 89. Right, 89.

8 MS. WILLIAMS: My understanding is that it was admitted
9 and ---

10 THE COURT: I am telling you it has not been admitted.
11 Do you have any requests as to State's 89?

12 MS. WILLIAMS: We would ask that based on the
13 stipulation entered into between the State and the defense
14 that it be admitted. We -- Ms. Gay had asked us to ---

15 THE COURT: All right. Ms. Gay, State's 89 which is
16 the box of ammunition was not admitted. Any objection?

17 MS. GAY: No.

18 THE COURT: State's 89 into evidence without objection.
19 (WHEREUPON, State's 89 was admitted into evidence.)

20 THE COURT: Motions or matters?

21 MS. GAY: Yes, ma'am, I would renew my motion for
22 directed verdict at this time. I think that we have after I
23 have presented my case have been able to establish that we
24 should have gotten that granted, Your Honor.

25 I would also renew all the other motions ---

1 THE COURT: Hold on one second because directed verdict
2 motions are different from all of your other motions. All
3 right?

4 MS. GAY: Yes.

5 THE COURT: Ms. Williams.

6 MS. WILLIAMS: I don't know which specific motions Ms.
7 Gay is talking about. I am assuming ---

8 THE COURT: We are addressing directed verdict.

9 MS. WILLIAMS: Okay. Your Honor, there has been
10 nothing else presented that would negate any of the other
11 elements that the State has put on.

12 As Your Honor knows, the court is concerned with the
13 existence of evidence and not the weight of evidence for
14 directed verdict.

15 And I would stand by my earlier arguments about each
16 element that was presented by the State and how it fit into
17 each element of the statute. And we would just ask the
18 court to refer back to that argument.

19 I can reiterate all of that detailed testimony for the
20 court if you would like. But I would just submit that
21 nothing has changed. There has been no other evidence that
22 would change what the State has already presented.

23 THE COURT: Ms. Gay, what has been presented in your
24 case that would remove any of the elements, the existence of
25 the evidence that was presented during the State's case?

1 MS. GAY: Your Honor, I believe that pursuant to my
2 client's testimony that he was -- had -- had no -- he
3 testified that he was not thinking rationally at the time,
4 and also the doctor's testimony that it could have been
5 psycho- -- could have been affected -- the malnutrition
6 could have affected his mind and made him psycho -- possibly
7 be psychotic, that the element of intent in all of these
8 charges could be -- is now an issue.

9 THE COURT: Motion for directed verdict again denied
10 for all of the reasons articulated at the close of the
11 State's case. Note your exception to my ruling.

12 What other motions or matters do we need to address,
13 Ms. Gay?

14 MS. GAY: Your Honor, there were other motions that I
15 made when we did the in limine, particularly the statement
16 of the defendant which I believe was not hearsay and should
17 have been allowed in this case. The video specifically.

18 And I know that there was some reference to the
19 statement made and pursuant to impeachment but that the
20 actual video is something that I had wanted to would use,
21 and that's -- and any -- I don't believe there were any
22 other significant in limine motions.

23 THE COURT: All right. Based upon my prior ruling in
24 there was no further discussion or request either when it
25 was mentioned in the State's case or when your testified

1 regarding the video I stand by my initial ruling as to the
2 motion in limine.

3 Anything further?

4 MS. GAY: No, ma'am. I would like to take a break
5 though.

6 THE COURT: Do you have rebuttal witnesses?

7 MS. WILLIAMS: Just one, Your Honor. We have Dr. Todd
8 Magro who is here in the courtroom. And he is ready to
9 testify whenever Your Honor ---

10 THE COURT: All right. Take ten minutes.

11 MS. GAY: Thank you.

12 THE COURT: Thank you.

13 (WHEREUPON, break was had 7/17/15, 10:55 a.m.)

14 (WHEREUPON, trial resumed 7/17/15, 11:09 a.m.)

15 THE COURT: Anything from the State?

16 MS. WILLIAMS: Not from the State.

17 THE COURT: From the defendant?

18 MS. GAY: No, ma'am.

19 THE COURT: Let's bring in the jury.

20 (WHEREUPON, jury enters the courtroom 7/17/15, 11:10 a.m.)

21 THE COURT: Thank you. Be seated.

22 Ms. Williams, your rebuttal witness.

23 MS. WILLIAMS: The State would call Dr. Todd Magro.

24 THE CLERK: If you will have a seat. State your full
25 name for the record and spell your last.

1 THE WITNESS: My name is Todd Magro, M-A-G-R-O.

2 **REBUTTAL - DIRECT EXAMINATION BY MS. WILLIAMS OF DR. TODD**

3 **MAGRO:**

4 Q. Good morning, Mr. Magro. Where do you work?

5 A. I have a private practice in West Ashley called Barrier
6 Island Psychiatry.

7 Q. And are you a licensed physician?

8 A. I am.

9 Q. In what state?

10 A. South Carolina.

11 Q. And do you specialize in a particular branch of
12 medicine?

13 A. I do. I specialize in general adult psychiatry and
14 addiction psychiatry.

15 Q. And what is your educational background?

16 A. Four years of undergraduate. Graduated with a B.A.
17 from the University of Mississippi, an M.D. from the
18 University of Tennessee. Then four years of residency in
19 general psychiatry at MUSC. And then a year of addiction
20 psychiatry fellowship at MUSC.

21 Q. And are you a member of any specialized medical or
22 scientific groups or associations?

23 A. Yes. I am a member of the American Psychiatric
24 Association, the American Academy of Addiction Psychiatry,
25 and the American Society of Clinical Psychopharmacology.

1 Q. And is this certification in addition to your license
2 to practice medicine?

3 A. It is.

4 Q. Approximately how many psychiatry cases do you think
5 you have been involved in?

6 A. It would have to be thousands.

7 Q. And before you become a psychiatrist you were talking
8 about your training as a doctor. Did you have to do rounds;
9 like do you have to actually study regular medicine first,
10 or do you have to work in a hospital?

11 A. Yes, medical schools are essentially the same for
12 every physician and then you specialize by going into the
13 residency of your field and even in the residency that
14 the -- it includes training in all of medicine.

15 Q. Okay. And you talked about how many cases you have
16 had. Have many of those cases have involved addiction or
17 alcohol abuse?

18 A. The majority of my cases now do involve addiction or
19 alcohol abuse, and so it would have to be thousands of
20 addiction cases.

21 Q. And you prescribe medications?

22 A. Yes.

23 Q. And in order to prescribe medications do you have to
24 evaluate somebody's medical charts like blood levels,
25 general health, all kinds of lab work from their medical

1 reports?

2 A. I do that all day every day.

3 Q. Okay. How many of your cases would involve a drug
4 called drug called Vivitrol -- or percentagewise?

5 A. It is maybe five or ten percent.

6 Q. And you are familiar with that drug?

7 A. Yes, I have prescribed it hundreds of times. The
8 manufacturer had told me I am actually the number one
9 prescriber in South Carolina.

10 Q. Okay. And do you have a special area of interest -- I
11 know you have described a little bit about that. But in
12 terms of your research work, your publications, is there a
13 special area that you are most interested in?

14 A. Yes, I am interested in all addictions; but I have done
15 research in specifically on alcohol. Did a research study
16 at the VA specifically looking at Vivitrol and was involved
17 in the alcohol research group at MUSC as well.

18 Q. Okay. And the primary part of your job is it
19 testifying or treating patients?

20 A. I have never testified before.

21 Q. So we've brought you in because you are a specialist?
22 You don't testify for a living?

23 A. No.

24 MS. WILLIAMS: At this time, Your Honor, we would offer
25 Dr. Megro as an expert in general psychiatry, medicine,

1 addiction psychiatry, and addiction medicine.

2 THE COURT: Any additional ---

3 MS. GAY: I have no objection.

4 THE COURT: --- voir dire requested?

5 MS. GAY: No.

6 THE COURT: He will be so qualified.

7 MS. WILLIAMS: Thank you.

8 BY MS. WILLIAMS:

9 Q. Dr. Megro, as part of this case did you review the
10 medical records from the defendant Gary Fraley?

11 A. Yes, I have reviewed hundreds of pages of records.

12 Q. We thank you. And what is your opinion about his level
13 of starvation and whether or not he was starving and his
14 nourishment up to two months leading up to the crime and the
15 day of the crime?

16 A. There's nothing from his records that indicate he was
17 starving. He was evaluated by many physicians. None of
18 them ever indicated any signs or symptoms that he was
19 starving on their physical exam or in their assessment of
20 Mr. Fraley.

21 And his laboratory studies are not consistent with him
22 starving. At most he was mildly dehydrated at one time.
23 But certainly not starving.

24 Q. And can alcohol cause dehydration?

25 A. Absolutely.

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. TODD MAGRO

1 Q. And in all of your work with patients and research
2 studies and at MUSC and the University of Mississippi have
3 you ever seen a connection between hunger and psychotic
4 behavior or crime?

5 A. No, I've never seen that.

6 Q. So not only was he not hungry and starving but -- or
7 starving rather. We don't know if he was hungry. But there
8 is not a connection between that and psychosis?

9 A. No, if somebody is already psychotic and they are not
10 eating it could make it worse. But, no, there is no cause
11 of being hungry and becoming psychotic and committing
12 crimes.

13 Q. What about if you have gastrointestinal issues have you
14 ever treated patients that have gastrointestinal issues and
15 that is the cause of psychosis?

16 A. No. I see patients who has gastrointestinal issues all
17 the time. It is related to mood and anxiety and can cause a
18 worsen -- worsening of mood and anxiety disorders and vice
19 versa. They do interact with each other, but it would
20 certainly not cause psychosis.

21 And I have patients with similar medical conditions as
22 Mr. Fraley that work in a high capacity that run their own
23 businesses, that work for major corporations as managers.
24 So it certainly wouldn't be impairing.

25 Q. And when we say psychotic I mean I think as lay people

1 we go he is psychotic or that is psychotic, but we are
2 talking about a clinical definition of psychosis; correct?

3 A. Correct.

4 Q. And when you reviewed all of these records tell us
5 about your impression of the question of psychosis for the
6 defendant.

7 A. There is nothing in the records that lead me to think
8 that he was psychotic at any time. He was evaluated by many
9 physicians. He was in a psychiatric hospital for three
10 weeks being seen by physicians probably daily and
11 psychiatric nurses that are used to psychotic people. None
12 of them ever said he was psychotic.

13 He had a psychiatric evaluation in Pennsylvania, the
14 hospital there just I think one week before the crime and
15 that specifically said he was not psychotic.

16 Q. And that was one week before he came and committed the
17 crime?

18 A. Correct.

19 Q. And he was evaluated at Trident Hospital the day of the
20 crimes. Did you look at those records?

21 A. Yes.

22 Q. And is there anything in those records that indicate
23 that he was psychotic?

24 A. No.

25 Q. And turning our attention to Vivitrol how does Vivitrol

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. TODD MAGRO

1 affect patients?

2 A. Vivitrol is a monthly injection that is used to treat
3 either addiction to alcohol or addiction to opiates like a
4 narcotic pain medication, morphine, and oxycodone.

5 It works by interacting with the craving center of the
6 brain. It blocks a receptor called the opiate receptor.
7 And this receptor is activated in response to a trigger to
8 drink alcohol or if you do drink it is activated by alcohol
9 and it leads to increased drinking.

10 So the shot helps by reducing the desire to drink. And
11 if you do drink after you have received the injection it
12 tends to make alcohol less rewarding. Not any less
13 intoxicating. You will still get just as drunk. It doesn't
14 interfere with that.

15 It doesn't make you sick. It is not like a drug called
16 Antabuse which it does make you sick if you drink. It is
17 nothing like that at all. This one specifically reduces the
18 desire to drink and if you do drink it helps you not drink
19 as much.

20 Q. And how long are the effects of Vivitrol, last
21 generally?

22 A. They generally last for about a month.

23 Q. Okay. Is that why it is dosed once a month?

24 A. Yes.

25 Q. And is there anything about Vivitrol that you have ever

1 seen in your research, your studies, your treatment of
2 patents that would make somebody have like dreamlike
3 sequences and everything is white and foggy and they have
4 memory lapses where they remember a great deal of some
5 things and don't remember details of others; have you ever
6 seen that affect of Vivitrol?

7 A. No, never. I have used it hundreds of times. It has
8 never occurred.

9 Q. Does Vivitrol cause psychosis?

10 A. No.

11 Q. Now turning your attention back to the Trident records,
12 what was Mr. Fraley's blood alcohol level when he went to
13 Trident Hospital?

14 A. I believe it was 209.

15 Q. And what is your expert opinion about that in relation
16 to what is normal?

17 A. It is much higher than normal. If most of us had a
18 blood alcohol level of 209 we would be very intoxicated,
19 slurring words, sedated, having difficulty walking. It is
20 over twice the legal limit to drive an automobile.

21 Q. And why would someone who has been drinking say two
22 bottles of wine a day for a lengthy period of time not have
23 those kinds of symptoms?

24 A. Because over time you get tolerant to the effects of
25 alcohol so you are able to tolerate much higher amounts. So

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. TODD MAGRO

1 it's a higher level is not as impairing.

2 Q. And would you say based on your review of all the
3 medical history and the records that it is likely that Mr.
4 Fraley had developed a tolerance to alcohol?

5 A. Yes.

6 Q. And we have heard some testimony today about throwing
7 up blood, some kind of coffee ground stuff that he was
8 throwing up. In your review of the records do you see
9 anything concerning about this blood that is supposedly
10 gushing out of Mr. Fraley; tell us what your impression is
11 as a doctor of those records.

12 A. He was treated in Pennsylvania in late July. I believe
13 it was July 22nd for a very small bleeding ulcer. It didn't
14 sound like it was very significant at all. He was only in
15 the hospital for two days.

16 And his anemia, which if you are bleeding, losing a lot
17 of blood through an ulcer, your hemoglobin and hematocrit
18 would decrease. And his was lower, but it's actually quite
19 stable. And all the physicians that evaluated him noted
20 that it was stable and it wasn't concerning.

21 In fact, it had improved by the time the day the crime
22 occurred when he was evaluated in Trident; it had improved
23 some. So it was not concerning at all.

24 Q. Okay. And in general had all of his labs improved by
25 the time he got to Trident?

1 A. Yes.

2 Q. And you noticed that he was well nourished in several
3 of the places that he was treated over a period of time?

4 A. Correct.

5 Q. Now there was a list of medications that Mr. Fraley was
6 on. You have already testified that nobody in any of the
7 records ever noticed psychosis. You have noted that
8 Vivitrol does not cause psychosis. There is no evidence
9 that he was psychotic in any way.

10 Is there anything about this lengthy list of medication
11 that Mr. Fraley was taking and their interaction that would
12 lead you to believe that he was psychotic or they could
13 cause psychosis?

14 A. No.

15 Q. And what were those medications generally for?

16 A. Most of them were for mood or to treat the chronic
17 conditions that he had developed mostly in response to heavy
18 drinking.

19 Q. So a lot of his physical ailments would you say are a
20 result of his drinking?

21 A. Yes.

22 Q. And when you say drugs to treat his mood, those are
23 drugs that you work with every day; isn't that true?

24 A. Yes.

25 Q. So in reviewing all the records what would you say the

DIRECT EXAMINATION BY MS. WILLIAMS OF DR. TODD MAGRO

1 primary medical problem is for Mr. Fraley?

2 A. Dependence on alcohol.

3 MS. WILLIAMS: Court's indulgence for just a moment.

4 THE COURT: Take your time.

5 MS. WILLIAMS: Thank you, Dr. Magro. Please answer any
6 questions the defense may have.

7 MS. GAY: One moment, Your Honor.

8 THE COURT: Take your time.

9 **CROSS-EXAMINATION BY MS. GAY OF DR. TODD MAGRO:**

10 Q. Hey. How are you, sir? I just have a few questions.

11 I am trying to understand the body functions. And I

12 understand that all the organs that are in the digestive

13 system. Is it true that the liver is like -- it has to do
14 with filtering your blood?

15 A. Correct.

16 Q. And that if the liver isn't working good then the -- I
17 think in the filtering there is toxins in your blood if it
18 is not filtering good?

19 A. It is -- correct, if it is not filtering well then
20 things can increase to a toxic level, yes.

21 Q. I understand. And is that where if blood is let's call
22 it icky or something like that, doesn't carry as much oxygen
23 as it maybe needs to; would that be fair to say?

24 A. It possibly could, yes.

25 Q. So in the liver there are things that would -- that if

1 it is not functioning the blood that is floating around in
2 the body could be -- could make a person sick on some level?

3 A. Correct.

4 Q. And what type of sick, you know, there are specific
5 things; but it just means that that blood it doesn't --
6 maybe it doesn't have enough oxygen, maybe it has too much
7 of something that it doesn't need to have; and that is all
8 done through the liver?

9 A. Correct, yes.

10 Q. And interestedly you said that you had reviewed all of
11 the records and that there was when he was in Pennsylvania
12 at the hospital there is an indication that they recommended
13 a psychiatric evaluation; and that is true, that is in the
14 records; right?

15 A. Correct.

16 Q. And I believe you said that no one in the records of
17 any of this said that he was psychotic but they certainly at
18 the time in July of 2014 some medical professional there
19 believed that Mr. Fraley could benefit from a psychiatric --
20 you know, in -- stay in the hospital?

21 A. Yes.

22 Q. And so today when we are reviewing these records and we
23 are looking back at what may have been going on all we are
24 seeing is the words on the page. Certainly you would agree
25 with me that we are not seeing the person at the time?

CROSS-EXAMINATION BY MS. GAY OF DR. TODD MAGRO

1 A. Correct.

2 Q. And so and it certainly does say in his medical records
3 that he didn't state for that psychiatric evaluation?

4 A. No, he did stay for the psychiatric evaluation.

5 Admission to the psychiatric ward of the hospital was
6 offered to him, but he declined that admission and the
7 psychiatrist who evaluated him noted that he didn't meet the
8 criteria to be committed involuntary because he was -- his
9 mind was present and he was mentally functioning and able to
10 make his own decisions. He specifically noted he was not
11 psychotic.

12 Q. I understand that, but he also recommended that he stay
13 in the hospital for a while but Mr. Fraley chose not to?

14 A. Correct.

15 Q. And the human mind, the brain, you heard some
16 testimony. And I understand that Dr. Bennett is not a
17 medical doctor; but in terms of just the functioning of the
18 mind the frontal lobe which is the part of your brain that
19 does in fact handle rational thoughts, correct?

20 A. Correct.

21 Q. And so what he said there was true that that is the
22 part of the brain that has to do with rational thoughts. Is
23 it true that if a person has a problem with the frontal lobe
24 of their brain that they may in fact develop problems that
25 have to do with disorientation, confusion, and possibly even

1 psychoses; isn't that the area of the brain where it is?

2 A. It's -- it plays a role. It is more about a circuit
3 that is connected to different parts of the brain. The
4 frontal lobe is involved with higher-level functioning,
5 decision-making, what we call executive functioning.

6 Q. And the fact that this executive functioning is
7 something that is affected in people at times based on what
8 is going on inside their body?

9 A. It's -- it can be affected. It wouldn't directly cause
10 it, but it can play a role in how their mental functioning
11 is working as there is certainly a connection between the
12 brain and the body that we don't fully understand but is
13 there.

14 MS. GAY: Thank you very much. I have no further
15 questions.

16 THE COURT: Redirect?

17 MS. WILLIAMS: Just one question.

18 **REDIRECT EXAMINATION BY MS. WILLIAMS OF DR. TODD MAGRO:**

19 Q. Is there anything about questions that Ms. Gay asked
20 you that change your opinion that Gary Fräley was not
21 psychotic at the time of the crime and was never psychotic
22 according to the records?

23 A. That is correct. His -- based on the records his
24 executive functioning was intact.

25 Q. Thank you.

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1 MS. WILLIAMS: Nothing further.

2 THE COURT: Re-cross, Ms. Gay.

3 MS. GAY: No, ma'am.

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

5 THE WITNESS: Thank you.

6 THE COURT: Call your next witness. Or do you have any
7 further rebuttal?

8 MS. WILLIAMS: We do not, Your Honor.

9 THE COURT: Ladies and gentlemen, you have now heard
10 all of the testimony that you will hear in this case and
11 received into evidence all of the exhibits that will be made
12 part of the record in this case.

13 The exhibits that have been entered into evidence will
14 go back with you in your jury deliberation room when you
15 retire to consider your verdict.

16 There is a matter of law that I must take up outside of
17 your presence, so we are going to go ahead and break for
18 lunch. And I will need you back at 1:00. At this time you
19 will hear closing arguments on behalf of counsel.

20 I will instruct you on the law applicable to this case
21 and then you will retire to consider your verdict.

22 Ladies and gentlemen, please remember all my
23 admonitions. You have not heard closing arguments on behalf
24 of counsel, and most importantly I have not instructed you
25 on the law applicable to this case; so please do not begin

1 discussing this case amongst yourselves or even thinking
2 about any issue in this case until I have instructed you on
3 the law.

4 Please have a wonderful lunch. I will see at you one
5 o'clock.

6 (WHEREUPON, jury exits the courtroom 7/17/15, 11:31 a.m.)

7 THE COURT: Thank you. Be seated. Any motions or
8 matters, Ms. Gay?

9 MS. GAY: Yes, ma'am, Your Honor. I would again renew
10 my motion for direct verdict.

11 THE COURT: All right. And again I haven't heard
12 anything from that one witness that would make me change my
13 ruling as of the close of the State's case and the close of
14 your case. Your motion for a directed verdict on all ten
15 indictments is denied.

16 Any other motions or matters?

17 MS. GAY: Just renewing all other motions that I made
18 in this case.

19 THE COURT: And stand by my original ruling as to that.

20 All right. I need to hear any request to charge at
21 this point.

22 MS. GAY: Thank you, Your Honor. Do you want me to
23 start first? I over the -- over the night from when we
24 talked last night, Your Honor -- and your clerk didn't
25 return the piece of paper that I gave her when we gave it to

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1 her in your chambers last night. It was just something that
2 I wanted to have back. May I approach, Your Honor?

3 I believe, Your Honor, that -- be asking for a charge
4 on involuntary intoxication in this case based on any type
5 of possibility of any -- any medication or anything that may
6 have affected ---

7 THE COURT: Do you have a case in South Carolina or a
8 statute?

9 MS. GAY: No, I do not, Your Honor. I did have -- and,
10 as I said, the clerk had this paper. But People versus
11 Penman 110 N.E. 894 Illinois 1915. It does ---

12 THE COURT: All right. And I had asked -- I had asked
13 you over the evening hour to craft a charge that you would
14 want. Were you able to do that?

15 MS. GAY: Well, unfortunately she had the piece of
16 paper, Your Honor.

17 THE COURT: So that would be a no?

18 MS. GAY: I will have it when we get back. If you give
19 me ten minutes. I just needed this piece of paper. I
20 emailed her this morning about it.

21 THE COURT: All right.

22 MS. GAY: And, Your Honor, with regard to the not
23 guilty by reason of insanity, which I would still ask the
24 court to consider charging, Your Honor, as the evidence was
25 presented this morning my client I believe had a medical

1 condition or defect that caused him to be psychotic.

2 I do not -- I believe as this evidence was presented
3 today it was not presented as it was specific to anything
4 that he voluntarily consumed, that it was a condition in his
5 body that led to a problem -- that could have led to a
6 problem with his brain in the frontal lobe which affects his
7 rational thoughts and could potentially create this
8 psychotic behavior or thought process.

9 This case of State v. Poindexter, it is a case that we
10 spoke about earlier, Your Honor. In this case the man --
11 the jury was charged on NGRI and guilty but mentally ill.
12 The verdict came back as guilty but mentally ill.

13 And this was a vitamin B deficiency case. There was
14 information that the client had a medical condition and --
15 and that that medical condition caused the psychoses which
16 was not permanent because once he could be treated for the
17 vitamin B deficiency he is no longer psychotic.

18 This particular case is the significance is that they
19 did charge it.

20 THE COURT: What is that citation?

21 MS. GAY: It is 431 S.E. 2nd 254 1993 case, South
22 Carolina court, Supreme Court of South Carolina. And this
23 is -- he -- as I said, Your Honor, the defendant appealed.
24 And it was -- the decision was upheld.

25 But in the facts of the case it was noted that they --

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1 that the jury was charged both, NGRI, not guilty by reason
2 of insanity, and guilty but mentally ill. So in this case
3 the court found that -- the court did charge for something
4 that was not permanent.

5 I believe that the issue as we discussed last night was
6 permanency. And ---

7 THE COURT: And there still has been no testimony. As
8 a matter of fact, the -- your expert indicated that it was
9 not permanent and he was not psychotic.

10 MS. GAY: I understand, Your Honor; but I believe under
11 the statute itself the statute does not require an -- it
12 does not say that the deficiency has to be permanent.

13 I believe that further case law says that if it is
14 voluntarily intoxication as in drug use, or alcohol or
15 anything like that that it has to be permanent, but -- and
16 there is a case, which I read of course on that, Your Honor,
17 State v. Hartfield is the case that says with drug use it
18 was permanent therefore he could -- you know, the not guilty
19 by reason of insanity was appropriate.

20 But in my case, Your Honor, I am not arguing at this
21 time that even Vivitrol caused the psychoses. I am arguing
22 that my client's physical state at the time of the incident
23 caused the psychoses.

24 Because my client has testified that he was not eating
25 for days at a time. And this -- this -- the rebuttal

1 witness even said that, you know, the liver and things that
2 my client had problems with could affect the blood, that the
3 brain could be affected by things inside the body.

4 He said there's -- I think -- I wrote down the quote,
5 Your Honor. There's a connection between body and brain
6 that we don't understand but certainly -- you know, he said
7 we don't understand everything that goes on.

8 I believe ---

9 THE COURT: But there has been absolutely no testimony
10 that indicates that the defendant did not know that the
11 alleged crime was morally or legally wrong.

12 And you -- I don't believe that you have met your
13 burden for me to charge this. Even -- even assuming -- and
14 now your argument is different, because up until just a few
15 moments ago I understood that the -- your argument and your
16 defense was that the insanity was caused by the Vivitrol.
17 And so now you are saying it is now caused by the
18 malnutrition and deficiency. Is that your argument at this
19 point?

20 MS. GAY: Before I say whether or not that is my
21 argument, Your Honor, my client testified that he did --
22 that he believed that he had irrational thoughts and could
23 not differentiate and he didn't understand the wrongfulness
24 of these acts.

25 THE COURT: That is not what my notes reflect.

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1 MS. GAY: He did, Your Honor.

2 THE COURT: That is not what my notes reflect. Upon
3 Mr. Poulos' questioning he indicated that every act that he
4 committed he knew that it was wrong legally.

5 MS. GAY: Well, I understand. But, Your Honor, as to
6 regards to my argument I thought -- I just want to put this
7 on the record. Last Friday we got these medical records
8 and ---

9 THE COURT: All right. Ms. Gay, I need you to answer
10 my question. Because ---

11 MS. GAY: Now?

12 THE COURT: And let me make this also abundantly clear.
13 The jury is coming back at 1:30. All right. Is your
14 argument that the insanity was caused by the drug or the
15 malnutrition or something else?

16 MS. GAY: I need to confer with my client, Your Honor,
17 because it makes a big difference I know.

18 THE COURT: It does make a big difference.

19 (WHEREUPON, Ms. Gay conferred with Mr. Fraley.)

20 MS. GAY: Okay. After reviewing these facts and
21 talking to the doctor and talking to -- and Ms. Williams
22 about her expert and deciding what I believe is going on
23 here - and of course I am not a doctor - I believe that my
24 client was psychotic based on his medical condition, Your
25 Honor.

1 So I am not saying that my client was psychotic because
2 of the -- specifically psychotic because of the drug that he
3 took before. I am saying that my client was psychotic
4 because of the bodily functions that were having issues in
5 his body.

6 And of course as part of his body he has had different
7 things happen to him; but I would not say at this point
8 based on having done this whole trial, looked at all the
9 evidence in the case, listened to different witnesses, and
10 made different decisions, I believe that it was an overall
11 system failure.

12 THE COURT: Well, your belief, that may be your belief.
13 The problem is that you have a burden to show that it is.

14 MS. GAY: I understand.

15 THE COURT: And I haven't -- tell me the testimony that
16 indicates that.

17 MS. GAY: Well, Your Honor, my client has a history of
18 organ problems.

19 THE COURT: All right, from -- and when I say evidence
20 I mean for you to tell me which witness testified, not what
21 you believe happened but which witness testified so if I
22 need to go back and pull the testimony I can have it.

23 MS. GAY: My client testified, Your Honor, that he
24 had -- and I do believe that psychoses can be proven through
25 the testimony of the defendant as well as lay witnesses.

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1 And I believe that that is part of the law in South
2 Carolina that -- I believe my client was acting
3 irrationally, Your Honor. He testified that he was acting
4 irrationally.

5 THE COURT: Irrational is not the standard.

6 MS. GAY: I understand. But his testimony would say
7 that he did not understand. He did testify on cross that he
8 knew it was wrong, and I understand that. But initially in
9 his direct he may not have understood the question.

10 THE COURT: So you have a burden. Just because -- this
11 is not a directed verdict standard.

12 MS. GAY: I understand.

13 THE COURT: It is not existence or nonexistence. It is
14 a threshold. It is preponderance of the evidence. And so
15 that is not where we are at this stage; him saying two
16 different things did not meet your burden.

17 MS. GAY: Well, when Dr. Bennett testified he also
18 testified that he had reviewed the file and that there had
19 been different problems related to his organs, that he had a
20 history of issues, and that he believed that and he
21 testified that when you have organ problems - he called it
22 the gut -- gut-brain connection - that if there was organ
23 problems that caused difficulty in your stomach that it
24 could in fact affect your rational processes and become --
25 and make you psychotic.

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22 the gut -- gut-brain connection - that if there was organ
23 problems that caused difficulty in your stomach that it
24 could in fact affect your rational processes and become --
25 and make you psychotic.

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1 And she didn't want him to say that in this case, but
2 overall he said that.

3 THE COURT: Repeat what you just said.

4 MS. GAY: She objected to him saying that he ---

5 THE COURT: Ms. Williams?

6 MS. GAY: Yes, Ms. Williams. Objected to him saying
7 that Gary Fraley was psychotic at the time, but he did
8 testify to the fact that it leads to -- it could lead to
9 psychoses.

10 And I believe that the jury -- I believe I have met my
11 burden because the jury can then through their own rational
12 common sense and their own experiences ---

13 THE COURT: You are at a preponderance of the evidence
14 burden ---

15 MS. GAY: Yes. Yes.

16 THE COURT: --- which means greater weight. It doesn't
17 mean that it has just been said, that it was in the record.
18 And he -- I don't know that your expert linked up to your
19 client.

20 MS. GAY: Well, he reviewed my client's medical
21 records. And ---

22 THE COURT: You are piecing it together which would
23 maybe be an existence or nonexistence.

24 Ms. Williams, let me hear from you.

25 MS. WILLIAMS: Your Honor, first of all, just to

1 clarify what the standard is. I think Ms. Gay has sort of
2 muddied the waters. And I mean that in the most respectful
3 way because it is a very confusing concept.

4 But here's the standard: Does the defendant know the
5 difference between moral or legal right from wrong. And
6 there's nothing in the record that says he didn't.

7 In fact, even on direct Ms. Gay asked him but this --
8 but you didn't know it was wrong, and he goes of course I
9 knew it was wrong. I mean he just wasn't taking the bait.

10 Then within that if there is voluntary intoxication
11 there has to be permanent psychosis or brain damage. So
12 it's not psychosis; that is not what the standard is. The
13 standard is is it -- does he know the difference between
14 right and wrong. That is the McNaughton standard. If there
15 is voluntary intoxication then there has to be permanent
16 psychosis or brain damage. Neither have been met in this
17 case.

18 And I would just point the court to all of the case law
19 that I cited in my brief and particularly the Lewis case and
20 the Center case which have very similar facts to this.

21 And if Your Honor reviews the medical evidence, there
22 is nothing in the record. Nothing. Their own expert said
23 no permanent psychosis; I can't say that he was psychotic,
24 all I can say is based on this that and the other there is a
25 possibility that this could cause psychosis.

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1 THE COURT: And now the argument is that it wasn't,
2 the insanity, was not caused by drugs or alcohol so the
3 burden -- the standard is not permanent.

4 MS. WILLIAMS: I understand that, but there has been no
5 testimony from any witness that said that Mr. Fraley didn't
6 know the difference between right and wrong which is what
7 that they would have to prove in order to meet that
8 McNaughton standard.

9 In fact, Dr. Gomez specifically said he knew the
10 difference between right and wrong and he could conform his
11 behavior. And their own expert sat there and said he agreed
12 with that.

13 THE COURT: All right.

14 MS. WILLIAMS: So ---

15 THE COURT: Thank you. So you are objecting to an
16 insanity charge?

17 MS. WILLIAMS: Strenuously.

18 THE COURT: Anything further, Ms. Gay?

19 MS. GAY: I would like to -- I will start again, Your
20 Honor. I have been explaining the ruling to my client
21 afterwards. So I have no further -- nothing further.

22 THE COURT: Well, I haven't ruled yet. Any other --
23 any further argument?

24 MS. GAY: No.

25 THE COURT: Based upon the testimony that has been

1 presented and now even evaluating the argument that it was
2 malnutrition or some sort of organ failure that would have
3 caused the issue of insanity I do not find that you have met
4 your burden of establishing insanity by a preponderance of
5 the evidence.

6 There has been no evidence in the record that at the
7 time the crime was allegedly committed that because of that
8 mental disease or defect that you are alleging there -- the
9 testimony has always been that the defendant did know the
10 alleged crime in each of the indictments was morally or
11 legally wrong. So I will not be charging insanity, the
12 insanity defense. Note your exception to my ruling.

13 Anything further?

14 MS. GAY: Well, I need to confer with my client because
15 about the guilty but mentally ill. We had talked about that
16 last night.

17 (WHEREUPON, Ms. Gay confers with Mr. Fraley.)

18 MS. GAY: Your Honor, I would -- I believe we talked
19 about this last night. I would ask you to charge guilty but
20 mentally ill.

21 THE COURT: Any objection? State's position?

22 MS. WILLIAMS: I think there's -- we are going to argue
23 against. But I think there is enough evidence in the record
24 to charge it, Your Honor. I think we have an argument
25 against it for the jury, but I think that ---

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1 THE COURT: I will. And you feel free to argue. But I
2 will be including and charging guilty but mentally ill.

3 MS. GAY: Thank you, Your Honor.

4 THE COURT: Any other request to charge? We went over
5 -- over them last evening. Do you have any -- as of this
6 point I don't have anything to consider on involuntary
7 intoxication. I will be charging voluntary intoxication.

8 I will allow you over the lunch hour to come up with
9 some proposed, and we definitely will mark it as a court's
10 exhibit whether I charge it or not. But take a look at it
11 before the jury comes back.

12 Any other requests?

13 MS. GAY: Well, Your Honor, just because I -- in terms
14 of this you're going to -- you just admit -- said that you
15 were going to charge the voluntary intoxication and the --
16 and what that means in terms of the statute but you are not
17 going to charge not guilty by reason of insanity. And I
18 would allege that you need to charge both or not charge
19 voluntary intoxication.

20 THE COURT: All right. That is on the record. I
21 disagree. Are there any lesser included's that you are
22 requesting?

23 MS. GAY: I am requesting -- we discussed that last
24 night that lesser included's are the assault statute. There
25 are several of them. And I believe we discussed that we

1 would charge all of them. And that was something Ms.
2 Williams and I discussed last night with you.

3 Are you -- you are not objecting to that?

4 MS. WILLIAMS: I am objecting. I don't think that
5 lesser included's are warranted. I think that the argument
6 that has been made by defense and by the defendant is that
7 it didn't happen, he doesn't remember it happening.

8 And I don't think there is any evidence in the record
9 that shows that an assault and battery occurred or any of
10 the lesser included. I think the jury has a choice based on
11 the evidence which is it happened or it didn't happen.

12 And we have some case law, Your Honor. And I
13 apologize; it has gotten mixed up with some of these
14 paperworks. But I can e-mail it to you. Within five or ten
15 minutes we will find it.

16 THE COURT: All right. So you are requesting lesser
17 included of attempted murder; is that what you are telling
18 me?

19 MS. GAY: Yes. I believe that my client didn't have
20 the requisite intent for attempted murder.

21 She said that he doesn't remember it, but ---

22 THE COURT: It is not what -- with all due respect, it
23 is not what either one of you think; it is what the facts
24 have been presented. And I must charge the law applicable
25 as to the facts as presented.

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1 I will not be charging any lesser included's. We
2 discussed this last evening. I do not -- there has been
3 nothing -- the testimony has not changed since last evening,
4 and there is nothing that would indicate that factually the
5 lesser included's is appropriate.

6 The testimony has been and even your own client's
7 testimony was that when he came out of his fog, the white
8 light, that he had the gun in his hand. So based upon that
9 I will be charging -- I will not be charging any lesser
10 included's.

11 MS. GAY: Yes, ma'am.

12 THE COURT: Anything further?

13 MS. GAY: No, I was confused about what we were saying
14 last night. I apologize.

15 THE COURT: All right. It was a long day.

16 MS. WILLIAMS: Nothing further from the State, Your
17 Honor.

18 THE COURT: All right. Are there any requests to
19 charge that you wish to place on the record that were not in
20 my charge or you think I may have forgotten to include?

21 MS. WILLIAMS: No, Your Honor. We would just request a
22 copy of your -- which reasonable doubt you use so that we
23 don't misrepresent it to the jury.

24 THE COURT: The one that I have been using -- that I
25 always use; firmly convinced, hesitate to act, benefit of

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1 the doubt to Mr. Fraley. Any other questions?

2 MS. WILLIAMS: Not from the State.

3 THE COURT: Thank you. 1:20 so that if Ms. Gay has
4 that we can discuss the involuntary intoxication.

5 Please make Mr. Fraley available to Ms. Gay over the
6 lunch hour if she needs to discuss closing. Thank you.

7 (WHEREUPON, lunch break 7/17/15, 11:52 p.m.)

8 (WHEREUPON, resumed trial 7/17/14, 1:27 p.m.)

9 THE COURT: All right. Anything before we bring in the
10 jury from the State?

11 MS. WILLIAMS: Not from the State, Your Honor.

12 THE COURT: From the defendant?

13 MS. GAY: With regard to what I have just sent you,
14 Your Honor, I -- we talked about that before about
15 involuntary intoxication.

16 Not only did I print out the part that I had regarding
17 the Illinois case but I also printed a portion that I would
18 have asked you to charge from the model penal code about the
19 definition of pathological intoxication, which is a form of
20 involuntary intoxication which has to do with when a person
21 ingests a substance and it has an unanticipated result in
22 their -- in their body.

23 THE COURT: All right. People versus Penman is the
24 case not from South Carolina; is that correct??

25 MS. GAY: Yes, ma'am.

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1 THE COURT: All right. Thank you. We will print it
2 and it will be Court's Exhibit 12, Madam Court Reporter.
3 (WHEREUPON, Court's Exhibit 12, was marked for
4 identification.)

5 MS. GAY: Thank you.

6 THE COURT: Thank you. Let's bring in the jury. Thank
7 you.

8 (WHEREUPON, jury enters 7/17/15, 1:31 p.m.)

9 THE COURT: Thank you. Please be seated. If you
10 complied, followed my instructions over the lunch hour,
11 please raise your right hand. Thank you. All fourteen
12 jurors indicated that they have complied with the court's
13 instructions.

14 Ladies and gentlemen, we have now reached the stage of
15 the trial where you will hear closing argument on behalf of
16 counsel. Just as I instructed you what was contained in
17 opening statements is not to be considered evidence neither
18 is what is contained in closing arguments.

19 The State has the opportunity for what we call first
20 open -- or first close. And so Mr. Poulos I believe will be
21 giving the charge on the law and then Ms. Gay will have an
22 opportunity on behalf of the defendant to give her closing
23 arguments and then Ms. Williams will have the opportunity
24 for rebuttal.

25 After that I will instruct you on the law applicable to

1 this case and then you will retire to consider your verdict.
2 Please give your strict attention.

3 Mr. Poulos.

4 MR. POULOS: Thank you, Your Honor.

5 **CLOSING BY MR. POULOS:**

6 Good afternoon, ladies and gentlemen. We have come to
7 the conclusion of our trial. And the procedure here in
8 South Carolina allows the prosecution to come before you
9 first simply to talk about the law that applies in this
10 case. And that is what I will be doing.

11 When I finish Ms. Gay will come before you. She will
12 talk about the law. She will talk about the facts. She
13 will give a full and through closing argument. After which
14 Ms. Williams will come back before you and give the State's
15 full and thorough closing argument. I am here simply to
16 discuss the law.

17 We talked about at the beginning one of the charges is
18 attempted murder which states that a person is guilty of
19 attempted murder who would intent to kill, attempts to kill
20 another person with malice of forethought either expressed
21 or implied. So you need intent, attempt, and malice.

22 We know Gary Fraley intended to kill Steven Tsafos. He
23 told Jennifer Moultrie. He told Minor 1 He sent text
24 messages. He made Facebook posts. He was angry. We know
25 the intent was there.

CLOSING BY MR. POULOS

1 We know the attempt occurred when he went to Steven
2 Tsafos' office and he fired the gun; and he did so with
3 malice, with a wicked heart, with an evil intent. We know
4 that he was angry at Steven Tsafos. We know he made a plan
5 and he went into the office to execute that plan.

6 Kidnapping: The law states that whoever shall
7 unlawfully confine or inveigle another person by any means
8 whatsoever without authority of law is guilty of kidnapping.

9 Mr. Fraley is facing two counts of kidnapping. First
10 he confined Mr. Tsafos in his office at gun point.
11 Secondly, he confined Minor 1 in the EconoLodge. After
12 inveigling her mother or tricking her mother into allowing
13 him -- her to go with him.

14 Unlawful conduct towards a child. We know that Mr.
15 Fraley had custody or charge of Minor 1 given to him by
16 her mother. We know that he placed her in unreasonable risk
17 of harm affecting her life, physical or mental health. We
18 know he maliciously caused bodily harm to her and then
19 willfully abandoned her in the parking lot of the Royal
20 Lanes bowling alley.

21 Possession of a weapon during the commission of a
22 violent crime. For our purposes kidnapping is a violent
23 crime; criminal sexual conduct in the second-degree with a
24 minor is a violent crime. The evidence showed you that both
25 crimes were committed while Mr. Fraley was in possession of

CLOSING BY MR. POULOS

1 a 357 revolver, a weapon for our purposes.

2 Criminal sexual conduct with a minor in the
3 third-degree. We know that Mr. Fraley is over 14 years of
4 age. We know that he willfully and ludely committed or
5 attempted lude and lascivious acts upon Minor1 who was
6 under the age of 16 with the intent of arousing and
7 gratifying his own sexual desires.

8 Minor testified in detail about what happened in that
9 hotel room. The DNA evidence and the video evidence all
10 corroborates her claims.

11 And this specifically applies towards all the acts
12 committed against Minor1 on the totality.

13 Criminal sexual conduct with a minor in the
14 second-degree. We know that defendant Gary Fraley engaged
15 in a sexual battery with Minor1 who under the age of 14
16 but at least 11.

17 What is a sexual battery. It can mean sexual
18 intercourse, anal intercourse, fellatio, fellatio being when
19 Gary Fraley forced his penis into her mouth. And of note we
20 know that Gary Fraley forced these acts upon Minor1 but
21 the statute does not require force, simply age.

22 And lastly, the burden of proof. The judge is going to
23 instruct you in great detail about what the burden of proof
24 it. It is beyond a reasonable doubt.

25 The State has the burden of proving the defendant's

CLOSING BY MR. POULOS

1 guilt beyond a reasonable doubt. And we accept that burden,
2 ladies and gentlemen.

3 Some of the things that the judge will tell you is that
4 prove beyond a reasonable doubt is proof that leaves you
5 firmly convinced of the defendant's guilt.

6 In criminal cases the law does not require proof that
7 overcomes every possible doubt. We don't have to prove to
8 you beyond all possible doubt that the defendant is guilty,
9 simply beyond a reasonable doubt.

10 If based on your consideration of the evidence you are
11 firmly convinced that the defendant is guilty of the crime
12 charged you must find the defendant guilty.

13 Ladies and gentlemen, the evidence here is undeniable.
14 It is overwhelming. We ask you to render the verdicts of
15 guilty. We have no other verdict. Thank you.

16 THE COURT: Ms. Gay.

17 MS. GAY: The easel.

18 THE COURT: I'm sorry? You need the easel?

19 MS. GAY: The gentleman and I were talking about the
20 easel. Yes.

21 (WHEREUPON, easel provided.)

22 **CLOSING BY MS. GAY:**

23 It has been a long week. And in the beginning of this
24 case I told you that there wasn't a question as to identity
25 but there was a question as to mental intent and what was

1 going on in Mr. Fraley's head at the time that this
2 happened.

3 There's been a lot of that facts, evidence, in this
4 case, numbers of witnesses about evidence, pieces of
5 evidence, events that occurred.

6 If you noticed as this trial progressed there were only
7 a few witnesses that I asked any questions from. Because
8 there's only a few things that mattered to Mr. Fraley's
9 defense in this case. Because we never objected to any of
10 the evidence they put in. We never questioned -- I never
11 questioned many of the witnesses about what they found and
12 how they found it. It wasn't really an issue in this case.

13 The only issue in this case is Gary Fraley's health.
14 And health is a broad word. And it is a word that has to do
15 with the functioning of the human body and what -- whether
16 or not you believe as a jury that he was functioning
17 completely fine when he committed these offenses or whether
18 he had something called a disease or defect such that he was
19 not able to conform his conduct to the requirements of the
20 law.

21 There are some specific laws that the judge is going to
22 instruct you about about this area. And it has to do with
23 what is a disease or defect, what is a mental disease or
24 defect.

25 And the head is the mental part. Disease could be any

CLOSING BY MS. GAY

1 type of things going on in the body. But we are really
2 talking about his mind.

3 And a few situations. When a person has a PhD and they
4 are a professor and they have a PhD in something - let's say
5 it is history or something - they are actually referred to
6 as Dr. Smith because they may be a professor.

7 So one of the things in this case after -- as the
8 solicitor wants to refer to him as Mr. Bennett testified
9 instead of Dr. Bennett testified, is whether or not he was a
10 doctor.

11 He told you repeatedly that he was not a pharmacist at
12 this time, that he was not a doctor -- a medical doctor but
13 that he is allowed by law to call himself doctor as a title
14 like Mr. or Mrs. as a title because that is his educational
15 background.

16 When -- after all the things she said about him and I
17 asked him are you here and able to tell me about the human
18 body, as a pharmacologist and a toxicologist can you tell me
19 some things about the human body. He said he could.

20 She is, you know, maybe going to say you shouldn't
21 believe a word he says, that when she brought her rebuttal
22 witness in, the psychiatrist, the M.D., I asked him several
23 things. And what really I asked him was is the frontal lobe
24 the part of the brain that controls, you know, all of your
25 rational thoughts; and he said yes.

CLOSING BY MS. GAY

1 So of all the things that Dr. Bennett may have said
2 either about Mr. Fraley or this case or anything what he
3 really did was explain to y'all what happens in the body.
4 And that was confirmed by her expert, just to clear up all
5 the things that she may say about whether you should
6 disregard anything he said. Other than that, he -- what he
7 said is total common sense as well.

8 So when we went through these diagrams -- this is the
9 first one (pointing). This is the human body, the inside of
10 the human body (pointing).

11 Most of us know from our own personal experience and
12 our own common sense how the body functions. But some
13 people are not as clear as others.

14 And how the body functions is that he referred to is as
15 the mouth, the esophagus which is the tube that goes down
16 the stomach, the pancreas, the liver, the intestines the
17 large and small, and the anus and the rectum.

18 So this diagram which is just a description of what is
19 going on talked about -- was just a demonstrative piece of
20 evidence for me to show you that the things that Mr. Fraley
21 has in his past and in his life are affecting these organs
22 in his body.

23 He has Barrett's esophagus which has something to do
24 with, you know, acid reflux chewing up his esophagus. So
25 that is the first problem in his digestive system.

CLOSING BY MS. GAY

1 He has pancreati- -- well, he -- never mentioned the
2 word stomach. That was one thing it didn't -- but it
3 mentioned the pancreas which is the second thing.

4 Okay, so we have one is the esophagus. We have two,
5 the pancreas. And we have three that is liver. And there
6 is also mentioned that these kidneys live over here and they
7 are part of the filtering system. And so the kidneys.

8 So these four things were malfunctioning in Mr.
9 Fraley's body. The doctor, the psychiatrist that came and
10 he talked about some things about the human body as well as
11 other things he certainly agreed with me, and discussed the
12 fact that this system is part of everything going on inside
13 your stomach. We will call it the gut.

14 And he talked about the liver specifically. And I
15 asked him about the liver because the liver is a filter and
16 the liver deals with blood, and so when you have a
17 malfunctioning liver -- which in this case if you recall,
18 Mr. Fraley testified that he had problems with his liver and
19 other people testified that when -- and particularly her
20 doctor, her M.D., testified that in his records he had there
21 was liver issues.

22 His -- his liver is a blood processor. It is a giant
23 filter. And so when Dr. Bennett testified about toxicology
24 and toxins and he said that as a toxicologist I can
25 determine how substances -- how toxin substances affect the

1 body and whether or not it gets toxicity. And then her M.D.
2 also said that toxicity and toxins can be in your blood that
3 can affect your body.

4 And he -- so this process right here all of these
5 different things are messing up and have been messed up in
6 Mr. Fraley.

7 So if we look at his medical records -- and we are not
8 going to talk about them individual but as we -- this is
9 over 800 pages of medical records. If we look at these
10 medical records that started out with his visits to MUSC;
11 and, you know, we discussed that in the evidence that it had
12 to do with this Barrett's esophagus and liver problems and
13 things like that, and then we look at his Wilmington
14 treatment record --

15 Let's diverse for just a second. Mr. Fraley has a
16 drinking problem. There's no doubt. Mr. Fraley has sought
17 medical attention for his drinking problem. Mr. Fraley was
18 drinking on the day that this happened. Mr. Fraley's organs
19 are a result of any number of reasons but, you know,
20 possibly even just because he is a really bad alcoholic.

21 But that doesn't mean that these organs should be or
22 this process that was going on in his gut should be
23 disregarded because he became -- he messed up all of his
24 organs because he was an alcoholic, he messed -- his organs
25 are what they are.

CLOSING BY MS. GAY

1 And so on the day that this happened his organic --
2 what was going on inside his body may or may not have been a
3 result of alcohol that minute or during all this time from
4 the time this started these five weeks before this, and it
5 certainly wasn't -- we are not saying that, you know, all of
6 this happened on the day, that this was the day on August
7 5th and therefore his whole body was falling apart because
8 he was drinking alcohol.

9 There is a big difference between a long history of
10 stomach problems and something that's happening on the day
11 of. This man had a long history of stomach problems.

12 And so in -- when he -- when his gut was falling apart
13 and causing him to have severe issues inside his body it was
14 a long process that had started before and was exasperated
15 by something that happened at the Wilmington rehab center.

16 That was his testimony to you that he had this shot and
17 that the shot made him really sick and that the shot reacted
18 in such a way that he all of a sudden got very very very
19 sick and ended up in the hospital multiple times.

20 The M.D. that came, he talked about how this medicine
21 that he took which is called Vivitrol could in no way cause
22 the problems that Mr. Fraley said that he was having.

23 The problem is is that Mr. Fraley said he was having
24 these problems. And he is not making up that -- this now.
25 He is not saying in this trial I was having all these

CLOSING BY MS. GAY

1 problems but I wasn't telling anybody. He was having all
2 these problems and he was seeking medical attention. And he
3 was going to the doctor and saying I can't eat. Records
4 that would say that he had not eaten in nine days. Records
5 that later on would say they he had not eaten in a
6 multiple -- in like a week or more.

7 He himself testified to that. Other -- the witness
8 testified that he said that he had not eaten. So this is
9 not something that we are making up now that Mr. Fraley
10 wasn't eating food and that Mr. Fraley may have been in a
11 malnourished state or have some kind of a problem with his
12 stomach; this is something that is objective. We will refer
13 to that as meaning documentable through medical evidence
14 that was going on at the time.

15 So he goes to the Wilmington Treatment Center where he
16 says he was trying to seek some help. And he has this
17 Vivitrol shot. And somewhere in the mechanics of his body
18 he starts falling apart. Now was it the Vivitrol; was it
19 something else that was going on in his system at the time?
20 God only knows.

21 But what I do know is that it started this ball rolling
22 of having a significant problem in his life that led him to
23 the point where he had no idea what was going on during
24 periods of time in his life at this point.

25 After he goes as he leaves here, nine days later he

CLOSING BY MS. GAY

1 shows up at the Hanover Hospital. And the Hanover Hospital
2 remember his testimony was that when he got to Hanover that
3 he was crawling in, that he was in such pain that he was
4 having all of these -- he was throwing up this coffee-filter
5 type throw-up that has to do with organ blood.

6 His digestive system, these four functions right here
7 (pointing), his esophagus, his pancreas, his liver, and
8 kidney, were all malfunctioning in a major way to put him in
9 the hospital that time.

10 He then ends up with some medical treatment about that
11 and he has -- it would have been nice if had gotten better.
12 It would have been great if he had felt to the point where
13 he was improving.

14 But as his testimony showed you, it didn't improve. He
15 left there and he came and he -- he says he remembers coming
16 to Charleston and getting his dog, but he doesn't have any
17 idea how. But then he remembers having his dog when he made
18 it -- eventually made it to Pennsylvania.

19 And his testimony was that as he went along in his car
20 that he had no idea where he was, that he was going in and
21 out of understanding what was going on, that people were
22 picking him up because he was on the side of the road after
23 having no gas.

24 All these completely irrational things were happening
25 to him and he was not understanding a lot of what was going

CLOSING BY MS. GAY

1 on, or I think he testified to you that he was coming in and
2 out of understandable what was up.

3 This has -- this has nothing to do with what happened
4 this day. This has nothing to do with what happened this
5 day. It had to do with what was going on in his body at
6 this time that this was going on and his mind.

7 So then he ends up in Southwestern -- Southwest
8 Regional Medical Center in Waynesboro, Pennsylvania. Now
9 Dr. Bennett talked about some of this. And he -- all he
10 could do was review the records. And he is -- you know, he
11 is not going to tell you what is in them.

12 But interestingly we then had an M.D. who came in who
13 was her expert and he came in and he actually said all of
14 the things that I would have liked for him to say is that he
15 said that this man was suffering from an ulcer, that he was
16 suffering from other -- you know, from problems. He said it
17 was a small ulcer, but he said that he was having -- he
18 acknowledged that in these records that there was a request
19 for Gary Fraley to stay in the psychiatric hospital.

20 And there was discussion about well he must have been
21 fine, he must not have been psychotic, they are not saying
22 that he was psychotic; but they were recommending that he
23 stay in the psychiatric hospital.

24 And so -- and then there was all this discussion about
25 well these people would have been M.D.'s, these people would

CLOSING BY MS. GAY

1 have had actually degrees in medicine. And as I asked that
2 expert, you -- we are talking about it now in retrospect
3 looking at pieces of paper. The doctor at the scene at that
4 time would have had the best opportunity to see whether or
5 not they believed there was something mental going on with
6 this man, whether or not they believed there was some kind
7 of problem with his mind.

8 And though he said specifically that it didn't rise to
9 the level of asking for an involuntary admission they asked
10 him to stay in the psychiatric hospital. This was he said
11 less than a week before this incident occurred.

12 So as Mr. Fraley -- and also it says that I believe
13 there was discussion about when -- with ulcers that if the
14 body -- if the liver is not doing the things it is supposed
15 to do and the blood is -- it was all about blood. And the
16 blood is not cleaning and it has toxins in it that it is
17 trickling down and causing an ulcer. Well, that was what
18 was going on.

19 So from the time that we started over here at MUSC in
20 Wilmington until the time that we get to this hospital he
21 has now developed an ulcer from what is going on in his
22 medical problems. He didn't have an ulcer on the day in
23 Hanover at that hospital, but he has developed it within a
24 few weeks and he is now in this hospital with an ulcer.

25 Okay, and you can say that is insignificant. Well, not

1 if your body doesn't improve. See, that is what really
2 happened here. He never got better.

3 So he then he is telling them that he is not eating; he
4 is telling them that, you know, he is not functioning well;
5 he is telling them that he feels, you know, terrible, that
6 he doesn't -- you know, that everything is falling apart
7 inside of him.

8 And when he gets out of this hospital he doesn't go off
9 to become a really healthy guy. What he does is he goes off
10 and becomes somebody who continues not to eat. And he
11 continues to not eat. Maybe his stomach hurts so bad he
12 couldn't hold food. Maybe he was throwing it up so much.
13 For whatever reason he becomes a man who still is not taking
14 good care of himself at all.

15 And so in this records we also noted that there was
16 this coffee groundish type throw-up which the solicitor
17 wants you to say is nothing. But that is organ blood. That
18 is not -- you know, that is what that is; it is the organs.

19 And so -- and Gary Fraley testified that he was aware
20 of what that meant. And there is evidence in the record
21 that that is what is going on. So this guy's system is
22 falling apart.

23 Then we get into -- so let's talk about what happened.
24 Bad blood, bad brain. Bad blood, bad brain. Toxins.
25 Toxins are the things that are bubbling through your system

CLOSING BY MS. GAY

1 and making you sick in any version of ways because your
2 liver isn't working good.

3 And, yes, he is an alcoholic. And, yes, his liver was
4 damaged probably and actually because of extended alcohol
5 abuse. But we are talking about a timeframe in July of 2014
6 a body that existed and that was, you know, seeking medical
7 help and trying to figure out a way for him to be able to
8 eat food and be okay.

9 So here is this body, and it is not filtering the blood
10 the way it is supposed to. And it has all these toxins in
11 it. And the solicitor made a point that Dr. Bennett
12 couldn't say that it might affect the man's brain.

13 But if you remember her M.D., the man who came in on
14 rebuttal who is the star great guy who knows all this good
15 stuff and is an M.D. and perfectly qualified to say
16 everything, he said that yes blood affects your body and yes
17 it can affect your brain.

18 And I think that that was the next thing that I showed
19 you. And this is basically commonsense. I mean, you know,
20 you can say that I presented a man who was an expert
21 toxicologist who was an expert of anything. And she
22 presented a man that was an M.D., you know, a doctor and had
23 just all kinds of great experience with psychiatry and
24 things like this; but really what I'm asking you to consider
25 is your own common sense.

CLOSING BY MS. GAY

1 Because this is what is going on. We have a guy who is
2 not doing okay. Who is not doing okay. Eight hundred pages
3 of records. This dude is not doing okay.

4 And he comes into this situation, and he -- and the
5 doctor, Mr. Bennett, Dr. Bennett, he talks about the human
6 brain and he talks about the frontal lobe and he talks about
7 this place being the center of rational thought.

8 And Dr. -- the other doctor who is her expert --
9 well -- talked about it being the center of rational thought
10 also, that it has to do with the -- I think they called it
11 the executive branch. This is like the president here of
12 the brain, okay.

13 This is the one who talks about whether or not you know
14 what is going on, whether or not you can conform your
15 conduct to what you believe you are supposed to be doing,
16 whether you have any impulse control, whether you can make
17 rational decisions. You know, this is this part of the
18 brain right here (pointing).

19 And so it was testified in this trial that this part of
20 the brain is affected by blood and affected by toxins in
21 your body. Bad blood, bad brain. Bad blood, bad brain.

22 This man's brain was not functioning correctly. Now do
23 we need to have a microscope that we can't even do because
24 we can't go back in time to open up his brain and detect his
25 cells to see what might have been going on in there or can

CLOSING BY MS. GAY

1 we just know as people reviewing this stuff that this guy's
2 brain was not okay.

3 He was reporting weird stuff in his life. He was
4 having significant medical issues. He was going in and
5 complaining about how his stomach was torn up and wasn't
6 working right anymore. And you see, he wasn't making it up.
7 Not only do we have the records but we have history of gut
8 problems.

9 Now the solicitor made a big deal about the fact that
10 Mr. Bennett said that the gut -- there is a gut-brain
11 connection.

12 Okay, apparently he is not qualified to say that; he is
13 not qualified to say that there is a gut brain connection;
14 because everything that he said you should not believe
15 because he is a liar and any number of reasons. And I
16 understand why she said all of that.

17 But the bottom line was is that we all know there is a
18 gut-brain connection. And he referred to it as does anybody
19 have that feeling that their gut aches if they have a lot of
20 stress going on. Yes, that is a commonsense response.

21 But that is just regular stuff. Maybe for regular
22 people who don't have, you know, pancreatitis and Barrett's
23 esophagus and liver problems and every other thing going on
24 with his intestinal system. Maybe for a regular person to
25 have a gut ache may not cause any type of mental breakdown.

1 But for this guy it did. And, you know, it did. It did.

2 And he testified that he doesn't remember what was
3 going on in his life at this time. And he testified that
4 he -- you know, that there was times in his life when he was
5 remembering something, not remembering other things, and he
6 was exhibiting physical symptoms of a psychiatric type or
7 mental health problem.

8 And back -- and, you know, I am not making it up
9 because these people in Waynesboro told him he needed to
10 stay in the psychiatric hospital, recommended that he stay
11 there, a week before this incident happened.

12 Too bad they didn't keep him and move into an
13 involuntary situation and say you are not leaving this place
14 because I doubt we would be here.

15 The problem is is that we are here. And we are here,
16 and this man has committed some terrible things. Factually
17 let's talk about what happened here.

18 Okay, this man goes -- Mr. Fraley goes and takes this
19 young child - we have seen evidence of it - into a hotel
20 room and has -- commits offenses -- or does things to her.
21 Which factually she has testified to, and I under- -- you
22 know, there's -- it is a fact. I mean it is in evidence.

23 And what ends up happening is he then she says in her
24 testimony he was crazy. Then he -- what does he do next.
25 He gets into his car and he backs directly into a moving

CLOSING BY MS. GAY

1 vehicle with no regard for the fact that he has now hit a
2 car.

3 And, you know, she's -- I'm not sure what her use --
4 value is for that, but I firmly believe that that meant that
5 he didn't have any idea what he was doing.

6 I mean as we watched it on video he backed into the car
7 and just kept on going as if it never occurred. This man
8 didn't have any idea what was going on.

9 Now the solicitor would say there was all the
10 preplanning and there's all these things that happened and
11 he was trying to get other children, and he don't remember
12 it.

13 And he testified to you that he doesn't remember it.
14 And he testified to you that he felt completely sick at this
15 point in time, that he was -- that he believes that he was
16 suffering from all kinds of consequences of either the
17 Vivitrol medicine or his body falling apart.

18 And so he -- I believe that -- I assert that in this
19 case we can look at the facts to determine that he was
20 acting completely irrationally and that his irrational
21 decisions -- or his irrational acts is what was happening
22 here.

23 One of the things that was talked about by the victim,
24 the gentleman involved, is that if you remember when I
25 cross-examination him and I had him acknowledge that at the

1 time he gave a written statement and in that written
2 statement it said you are not even taking care of
3 yourself -- he said look at yourself, you are not even
4 taking care of yourself, you are not acting rational.

5 Do you remember Victoria, the little girl who is not a
6 party and she is not his wife; she is not the man he has
7 alleged -- she has alleged to have had an affair with.
8 She's just a girl who works there. And she said he was not
9 normal, he was not the usual person that I saw, he was
10 acting weird. Okay, so the implication is that she even
11 noticed that he was acting strange.

12 Now whether or not these people are having an affair
13 isn't the issue. If they are, they are. If they aren't,
14 they aren't. What he believed at the time based on what was
15 going on in his head and all the things that were going on
16 in his body he thought they were.

17 And so he -- his rational thought processing wasn't
18 able to absorb the fact that they may not be and that they
19 were telling him that they weren't.

20 He had been told by a friend of hers that she was
21 sleeping with this guy. And they as you saw in the
22 testimony they are not even friends anymore. Why?
23 Whatever. But the friend acknowledged that she told Mr.
24 Fraley that they were having an extra-marital affair.

25 So here is this man who is getting all this conflicting

CLOSING BY MS. GAY

1 information who has all of this stuff going on inside his
2 body, whose brain I believe and would assert to this jury
3 and have you believe has had bad blood going through it and
4 bad brain, but making bad decisions based on the fact of
5 what was going on inside his body confuses the situation,
6 whatever, goes after this guy, sits down, says, you know, I
7 want some answers.

8 Even what was being said that was coming out of Gary
9 Fraley's mouth makes no sense. Makes no sense at all. And
10 so here is a man who is suffering from a physical problem
11 who is trying to process what is going on and he is making
12 terrible decisions and because he cannot conform his conduct
13 to the law because he is so messed up in the head.

14 And ultimately Mr. Fraley says, he tells other people,
15 that he wants to kill himself. The medical records say that
16 he's -- has suicidal ideation. The information in the file
17 is that his -- he was going to try to kill himself.

18 And all of these things show that this man was not
19 right that day. He wasn't right. And, you know, today we
20 get to -- we are looking -- you know, hindsight is 20/20 and
21 we look back and we decide, you know, what -- what are we
22 going to -- where are we going to go with this.

23 And all I can tell you is is that when you sit back in
24 your jury room realize that -- again, I didn't make this up.
25 You know, the man who presented to the Trident Hospital that

CLOSING BY MS. GAY

1 day that might have looked well-nourished at that time and
2 over here might have looked well-nourished, that is
3 physical. Now that is physical stuff.

4 Nobody -- we don't have a picture of his brain. We
5 don't -- the EMT and the paramedic who said that he -- he
6 put the SAT monitor on him and he needed some oxygen because
7 his hemoglobin was low for oxygen. You know, we have that;
8 but we don't have a picture of his brain. And we don't have
9 a cell makeup of what was going on with what was happening
10 inside of his head.

11 And this man has serious problems. And he told you
12 that he took this shot at the rehab place. And when he took
13 the shot it was like some kind of catalyst for some kind of
14 horrible gastrointestinal problem that led to a man that was
15 not thinking clearly, was suffering from illness, was
16 suffering from a defect, and that because of that he was not
17 able to conform his behavior to the law.

18 THE COURT: Ms. Williams.

19 MS. WILLIAMS: May it please the court. Ms. Gay.
20 Thank you.

21 **CLOSING BY MS. WILLIAMS:**

22 Ms. Gay just told you something -- let me find the
23 words that she told you. "The only issue in this case is
24 Gary Fraley's health."

25 I disagree. How about the only issue in this case is

CLOSING BY MS. WILLIAMS

1 Minor 1 How about the only issue in this case is Steven
2 Tsafos that almost lost his life but for this person
3 misfiring.

4 You have heard more evidence this week about this man's
5 medical issues than I care to reiterate. But just because
6 someone has this much stuff in their medical records doesn't
7 mean they are allowed to go around raping and almost killing
8 people.

9 There's plenty of people that have extensive medical
10 history. The most valuable asset you bring to this process
11 is your common sense. Most people, the average person, has
12 someone in their life that has chronic health issues,
13 gastrointestinal issues, even mental health issues.

14 One out of seven people in our society has depression.
15 Does that mean they get to pick up an 11-year-old girl and
16 brutally rape her? I don't think so. That is not what the
17 law says. That is absolutely not what the law says.

18 Now Ms. Gay pointed out a few things that were
19 discussed during the case. And I would submit to you that
20 some of that was misstated.

21 For example, our expert did testify that there is a
22 frontal lobe and it is the executive portion of the brain.
23 But who cares? What does it matter?

24 What matters is what is the legal standard for a guilty
25 but mentally ill verdict, and that is can you conform your

1 behavior to the law. And the evidence is so clear that he
2 can conform his behavior to the law.

3 Over and over and over again -- and we will go through
4 some of the evidence briefly because I know that you are
5 tired, and I appreciate your patience.

6 But this man tells people things all through this case.
7 And you are the sole judges of credibility. Not me. Not
8 Mr. Poulos. Not Ms. Gay. You are.

9 And thank goodness, because you are objective. You are
10 the conscious of our system, and you speak the truth. So I
11 would ask you to consider that maybe Mr. Fraley didn't
12 always tell the truth. When he talked to these doctors he
13 might not have been telling the truth. This whole coffee
14 grind, he is throwing up blood; that is coming from him.
15 There is no doctor that ever says that.

16 And even if there were, what difference does it make?.
17 He may have terrible gastrointestinal issues. And that's
18 terrible. He may be very uncomfortable. He may be
19 depressed. That doesn't excuse his behavior.

20 One of the things that our doctor said, he looked
21 through all of these records, and given his expertise and
22 his background he looked at it with a trained eye; and not
23 one doctor said this man was psychotic.

24 When Ms. Gay refers to the time when they suggested
25 that he stay, they specifically noted he wasn't psychotic.

CLOSING BY MS. WILLIAMS

1 That is why they couldn't force him to stay.

2 But they suggested he might because he keeps telling
3 people that he's uncomfortable, that his wife is cheating on
4 him, that he doesn't feel good, that he is doing all this
5 stuff. So they say okay well we don't have enough to commit
6 you because you are not psychotic but maybe you should stay.
7 No, thank you. He drives back.

8 Because he wants to get back at the people he is angry
9 about. His biggest problem is alcohol, alcohol and anger.
10 And let me tell you the most important thing about this
11 (pointing). The mouth, because that is where he pours
12 bottle after bottle after bottle of Merlot. That is the
13 problem. That is the problem.

14 He is a jealous, abusive, angry man who has a drinking
15 problem. And when Minor 1 says he was acting crazy, well,
16 yeah, it is crazy to rape an 11-year-old. That is crazy
17 behavior. But it is not legally crazy. We all use those
18 words all the time, oh, my goodness she is crazy. Or when
19 Mr. Tsafos says you are not behaving rationally; well, no,
20 it is not rational to point a gun at someone and say you are
21 a dead man.

22 And maybe he wasn't taking care of himself. I don't
23 know. But from a legal standard it doesn't matter. You
24 have to be legally guilty but mentally ill. And we are
25 going to go through what the specific instruction is going

CLOSING BY MS. WILLIAMS

1 to be.

2 If I tell you something that differs from what Your
3 Honor says, please defer to her. But she is going to give
4 you instructions on what mentally ill means legally.
5 Because there is a very broad definition of what mentally
6 ill means. That doesn't necessarily mean that his behavior
7 is excused by mental illness in this case.

8 Now I am going to go through ---

9 MS. WILLIAMS: Can you now turn the lights off?

10 BY MS. WILLIAMS:

11 I am going to go through some of the evidence very
12 briefly with you just to remind you, because it has been an
13 incredibly long week.

14 So to go through all of these, because we already went
15 through them. Just to clarify just a couple of things on
16 the law. On the unlawful conduct towards a child we just so
17 happened to have met every element, but it is an "or".. And
18 you will see that when you get the instruction. It's we
19 have to prove this or this or this or this. And I think the
20 last one is abandoning them.

21 With criminal sexual conduct with a minor in the
22 third-degree, that is just touching; touching her breast,
23 touching her vaginal area before he rapes her.

24 So we were just talking about credibility. I want you
25 to consider using your common sense as you evaluate the

CLOSING BY MS. WILLIAMS

1 witnesses that you saw this week, okay. Think about the
2 people that you saw on the stand.

3 Deonna Fraley. I don't care if she is having an affair
4 with Mr. Tsafos or not. She says she wasn't. He says they
5 weren't. You know, what difference does it make except for
6 the fact that he thought they were. And Ms. Gay is
7 absolutely right, that is important. Because that is the
8 motive for this crime.

9 She got up here and told you everything that was going
10 on. You judge her credibility. Did she seem honest to you?
11 That is your job.

12 When you think about Ruth Vick and Chad Vick what kind
13 of people are these? These are people who are respectful,
14 they have good jobs, they take care of their family.

15 When Ruth Vick was testifying she talked about the fact
16 that before she let Minor go to that party what does she do?
17 Even though she is divorced from her husband, she calls him.
18 She respects him. She calls him and she says do you think
19 this is okay, this is your day for visitation.

20 When he got up and testified he said I called Ruthie.
21 I mean these are people that are working hard to take care
22 of their children.

23 And if you think for one minute that Ruth Vick could
24 have let that precious girl go with this man if he was
25 acting in a psychotic way after the way that she acted on

CLOSING BY MS. WILLIAMS

1 that stand.

2 And if you think for one minute that she doesn't think
3 about this every day of her life that she allowed her child
4 to go with this man knowing what he did to her. You judge
5 her credibility.

6 Kimberly Tompkin, Matthew Woltz. They are just
7 neighbors. They have no reason to lie to you. Why would
8 they get up here and tell this story about this predator who
9 goes searching for children for whatever twisted reason he
10 had. If may not be rational. It may seem crazy. But he
11 doesn't get to use that as a excuse.

12 Captain Aarons. You saw a lot of police officers.
13 Captain Aarons was particularly affected by this case. Here
14 is a man that sat and negotiated. Went through great
15 lengths to save Mr. Fraley's life.

16 Because quite frankly it sounded like he had a lot of
17 opportunities where it was a little scary and if he did
18 shoot him it might have been justified. But he didn't do
19 that. He talks to him; we are not going to hurt you. We
20 are not going to hurt you. And you judge his credibility.
21 Because he said he seemed rational, he knew where he was, he
22 knew what he was doing.

23 The EMT guy. They respond; Mr. Fraley is fine. He
24 doesn't even want to go to the hospital. It is once he gets
25 to the holding cell that he starts having chest pains.

CLOSING BY MS. WILLIAMS

1 And I will tell you something of note. Notice that he
2 wants to go to the hospital for chest pains. He doesn't say
3 I want to go to the hospital because I am confused, I don't
4 know where I am. Because he could have said that. But that
5 is not what he said because he doesn't think of that baloney
6 until later.

7 And then think about Gary Fraley. He testified. You
8 judge his credibility. You judge whether he is honest. He
9 did have a few moments with maybe some clear emotion on the
10 stand because I am sure the gravity of what is going on here
11 has finally hit him. And it is horrible. It must be
12 horrible to listen to this.

13 But it is just too convenient that this man remembers
14 everything that helps his case and remembers nothing that
15 hurts his case. He remembers moments before he says you are
16 a dead man. He remembers moments after with his version.
17 But somehow he just don't remember -- he doesn't remember
18 what went on that is criminal.

19 Now he remembers all kinds of things, but the hotel
20 room is a blank. It is just not believable. That is not
21 how memory works. It is all a white fog; it is all just in
22 pieces. The medical doctor said that that drug does not
23 cause that to happen. Starvation doesn't cause that to
24 happen. Not to mention the fact that he was very well-
25 nourished.

CLOSING BY MS. WILLIAMS

1 Gastrointestinal problems don't cause that to happen.
2 There is absolutely no medical evidence in this case to
3 indicate that this man's medical issues affected his ability
4 to do the right thing and to conform his conduct to the law.
5 None.

6 You don't have to believe Gary Fraley. Use your common
7 sense and judge his credibility.

8 Let's talk about Dr. Anna Gomez. She is the only
9 person that is qualified to evaluate whether this man is
10 guilty but mentally ill.

11 And you heard their own expert said he agreed with her.
12 And he read all of the things, all of the reasons. I mean
13 this is like she met with him three times for hours. And
14 she went through meticulously why she said he can conform
15 his behavior. And one of the things that she said I thought
16 that was very very telling was he had goal-directed
17 behavior. And that is very true.

18 He decided on his way back from Pennsylvania what he
19 was going to do. He stopped and bought the ammunition.
20 Then he started this business with trying to find a girl,
21 calling the Woltz family.

22 You heard the voice messages. Did he sound crazy? No.
23 He is just saying oh, you know, Janie -- can Janie come,
24 Alta likes this, and I will pick her up at this time.

25 Alta was in North Carolina. He knew that. His

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1 daughter wasn't even home. It was his birthday on August
2 5th. Keep that in mind.

3 She also talked about the fact that after reviewing all
4 the records and after evaluating him he was not psychotic.
5 She also talked about the fact that she spoke with his own
6 mother, his own mother who has every reason to protect him.
7 His mother said he behaved normally when he was there.

8 And this business of my mother must have put the gun in
9 my bag, his mother filed a police report because he stole
10 her gun. So that doesn't make any sense.

11 Obviously if she filed a police report she wouldn't
12 have put the gun in his bag. He put the gun in his bag.
13 That is why he bought the ammunition for the gun on the way
14 down.

15 So think about that. And if you want to re-listen to
16 any of the testimony of Dr. Gomez or of Dr. Bennett reading
17 Dr. Gomez's report she unequivocally said he can conform his
18 behavior to the law. And that means if you believe her, he
19 is not going to use the excuse of guilty but mentally ill.

20 And I don't meet to belabor the point. I just went
21 through this. Another thing to remember is -- and I will go
22 through what I think are the two main points of why you
23 should not find him guilty but mentally ill. And they are
24 real common sense things. Ms. Gay is right, a lot of this
25 case is common sense.

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1 Two things to think about when you are considering
2 guilty but mentally ill and whether or not this man can
3 conduct -- or conform his behavior to the law.

4 One is what did he tell Minor 1 We hated to recall
5 Minor 1 but once we found out that this was going to be a
6 defense that was asserted remembered that he told her
7 something very important. He said I know I am going to jail
8 because this is rape. He knew what the law was. He chose
9 to not conform his behavior.

10 And also another very very important part that Dr.
11 Bennett read from Dr. Gomez's report, and this comes from
12 the defendant's own mouth, this is what he told Dr. Gomez,
13 he said he understood what's going on, they didn't need to
14 tase him.

15 He knew what was going on. He might have gone there
16 wanting to commit suicide. I don't know. He might have
17 lost his courage. But he knew exactly what was going on.

18 I really don't mean to be unkind about Mr. Bennett. I
19 really don't. Or Dr. Bennett. He did at one time have a
20 PhD in pharmacology. We just don't think he was qualified
21 to testify about some of the issues he was trying to testify
22 about.

23 Of note is that he agreed with Dr. Gomez that she was
24 the most qualified person to make the decision on the
25 conformity of law.

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1 And also I mean it says in the records over and over
2 again he is well-nourished, he is well-nourished, he is
3 well-nourished. I don't know where this business comes
4 about that somehow he was starving himself exempt from him.

5 He also brought up that like while he interviewed him
6 months and months later he didn't finish his sandwich. And
7 that's not relevant. He was well-nourished at the time that
8 he committed the crime. And even if he wasn't it wouldn't
9 be an excuse.

10 Dr. Magro. You judge his credibility. He had the
11 credentials. Think about his demeanor. He was confident.
12 He was comfortable with the topic because he works with it
13 every day.

14 He doesn't testify for a living. He is not a hired
15 gun. He said the defendant was not psychotic; and at two of
16 the hospitals they make specific findings that he wasn't
17 psychotic, one of which was the hospital Ms. Gay told you
18 about where they invited him to stay if he wanted to stay
19 and he chose not to.

20 Gastrointestinal eating issues do not cause psychosis.
21 I think you could probably use your common sense and your
22 everyday experience to evaluate that issue.

23 He is well-nourished, and he said something that is
24 really, you know, the obvious point in this trial. He is an
25 alcoholic. He is a jealous man who is an alcoholic. He has

1 regrets about what he did; but he did it, and he doesn't get
2 a legal excuse to get away with it.

3 Let's think about some of the lay people that observe
4 his behavior. And what I am talking about here is people
5 that just interact with him that notice he is not acting
6 like a lunatic, he is not confused about where he is.

7 There's three people that use that, what I just told
8 you. Minor 1 said he was acting crazy. Steven Tsafos
9 says you are not rational. And then Victoria Booth says he
10 seemed a little confused or he seemed confused, he wasn't
11 himself. So what. That still doesn't mean that his
12 behavior meets the burden of guilty but mentally ill.

13 All of these people interact with him. And the point I
14 just made, do you really think Ruth Vick would have let her
15 child go with him if he was acting irrationally or if he was
16 acting like he was mentally ill when he was at her door.
17 Her son said the same thing. He also interacted with him.

18 I think another interesting thing is Mr. Patel. Mr.
19 Patel told you that he was rushing him out of the room.
20 Why? Because he was planning to rape a child in that room.
21 He needed to make sure that that room was clear.

22 Vanessa Gilchrest was kind of a heart breaking witness
23 because she encountered Minor 1 right after the rape when
24 she came up to her and used her phone. She said Minor was
25 shaking, she was kind of thumbing through the papers she had

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1 in her hand where she had her mom and dad's phone number
2 written down.

3 She sees Mr. Fraley go by and she says are you growing
4 out your beard. Trying to. Just matter of fact.

5 The EMT workers, Captain Aarons and the SWAT team,
6 everybody said he knew what was going on.

7 Let's talk about Officer Mitchum. Another theme in
8 this case for Mr. Fraley is whenever he figures out there is
9 a piece of evidence that hurts him he tries to explain it
10 away.

11 So at some point he figures out they might figure out
12 Minor was in the hotel room. So he starts with this story to
13 mention, he says, you know, I just put her in my car because
14 I needed an innocent child to talk me out of killing myself,
15 oh and by the way she had to go poo-poo so I took her to the
16 EconoLodge so she could go to the bathroom.

17 So I don't know if he remembered that after he anally
18 raped her she defecated and there might have been some of
19 that in the room. I don't know. It is an odd thing to say.
20 But it fits in with his patter of remembering things that
21 kind of help him and forgetting everything else.

22 Think about Officer Mitchum's demeanor as you evaluate
23 his credibility. He didn't really know anything about the
24 case at that point. He knew about the bowling alley. But
25 he was just sent to the hospital to keep an eye on him while

1 they evaluated him. It's no reason to come in here and tell
2 you something about this kid. When he did his report he
3 didn't even know there was a rape.

4 Again not to beat a dead horse, but I would suggest to
5 you when we are looking at common sense that his digestive
6 issues may be the result of his diet of Merlot, Taco Bell,
7 not taking care of himself. And again, the medical records
8 over and over again talk about no psychosis.

9 Some of the lies that he tells, that he never eats, I
10 just don't think that is believable. There's Taco Bell
11 receipts in his car. You know, he said he gave the
12 MexiMelts to the dog.

13 The other issue that he tries to explain away that all
14 of a sudden he has come up with the fact that when he finds
15 out that the gun was cocked and so now we know that not only
16 did he shoot once but he was prepared to shoot again now all
17 of a sudden for the first time he said well Steven Tsafos
18 was trying to get the gun and he cocked it.

19 So not only was Steven Tsafos savvy enough while a gun
20 is pointed at him, and the SWAT team is out there, to
21 wrestle the gun but he also knows to cock it back. Which is
22 ridiculous.

23 In addition to that he told -- I don't know if you
24 remember when Mr. Poulos was impeaching him he told officers
25 that the reason the gun was cocked back was because he was

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1 playing with it. So, you know, please feel free not to
2 believe him.

3 DNA does not lie. That is an easy one. And undeniably
4 this man brutally raped this girl. His DNA is in the rape
5 kit. And that means the vaginal swabs, the rectal swabs,
6 her underwear, her bloody underwear. It is on the NyQuil
7 bottle cap when he took it off so that he could pour it in
8 the cup to drug her. His DNA is on the gun. His DNA is on
9 the pillowcase. And her DNA is on the little dosage cup
10 from where he made her drink the NyQuil.

11 Other corroborations. One thing on here -- that is not
12 on here. Publix, you know, we watched him go into Publix.
13 It was kind of a long and boring tape. But, you know, that
14 is undeniably him. He is savvy enough to go in there. He
15 knows just what he wants. He goes for the baby oil. He
16 goes for the NyQuil. And he goes for the beer. And if that
17 is not planning I don't know what is.

18 Also there is an ammunition box in the car, the receipt
19 to buy ammunition which shows he bought it on the way home.
20 These ridiculous fossils that he shows these poor parents in
21 trying to further this story about a pretend surprise party,
22 that is in the car. And he is found with the gun that
23 matches the ammunition.

24 So not only are the witnesses credible but there is
25 physical evidence that corroborates what they are telling

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1 you. And that is another thing to consider when you
2 evaluate credibility.

3 I just wanted to remind you of a few pictures. You are
4 going to have all of the pictures. And there is a lot of
5 them. And you may or may not chose to review those. But
6 just a few that corroborate, the fossils which show
7 planning, the receipts, the Taco Bell receipt, the Trader
8 World receipt that shows where he bought the ammunition and
9 that he bought it the morning of August 5th which is why his
10 poor wife is scared to death he is coming to kill her and
11 why she goes into the police station to file the report.
12 Which also shows motive.

13 Because he has been threatening and threatening and
14 threatening these people because he thinks they are having
15 an affair.

16 Six bullets exactly missing. Six bullets to fill the
17 gun.

18 We talked a little bit about this already, the memory
19 issues. They just don't make sense. He is not in a white
20 fog. Listen to those voice messages if you want to again.
21 That is the day -- the few days before. That is what is
22 good about them. It is not just the day of the crime. It
23 is when this white fog supposedly started. He is lucid. He
24 is clear. He is furthering his plan to abduct a child.

25 It is not a coincidence that he took rational steps to

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1 achieve his objective. If this man is in some kind of fog
2 he is the luckiest guy on earth because he sets objectives,
3 he has a motive and then he achieves all of his objections.
4 I don't think that is a coincidence. It is just not
5 believable.

6 He wants to get even with his wife. He wants to get
7 Steve. And again, he remembers everything that helps his
8 case. He remembers nothing that hurts his case.

9 He is a predator. He really put forward an elaborate
10 scheme. Let's talk a little bit briefly about the rape of
11 Minor 1 I know this is a very emotional topic and it is
12 uncomfortable to talk about. And I apologize in advance
13 that we have had to talk about this, and then I am going to
14 mention it again. Unfortunately that is the ugly truth of
15 this case.

16 Let's think about what happened in that hotel room.
17 She screamed for him to get off of her. I mean that is what
18 it took. And he finally got off of her but then he got on
19 her again. He pushed her head down on his penis and said
20 deeper, to an 11-year old. The feces in the room, he raped
21 her anally to the point where she defecated.

22 And then he tells her, he tells an 11-year old, my wife
23 cheated on me so I am going to rape you to get back at her.
24 Think about the planning that went into that.

25 And interesting note is that he tries to take the

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1 battery out of her iPod. He's not smart enough to realize
2 you can't do that. I probably wouldn't be either. But he
3 is trying to disable any mechanism or any way that she could
4 contact somebody. That's why he does that. He does the
5 same thing with Steven Tsafos, he tries to take the battery
6 out of his phone.

7 Think about the injuries that poor child has gone
8 through, the pain that she went through, the examination.
9 She was at the hospital -- even after being brutally raped
10 she was at the hospital from 6:00 p.m. until 3:00 a.m., in
11 stirrups, being examined, being poked and prodded.

12 And now she has -- she had to take HIV medicine that
13 could affect her for the rest of her life if she ever gets
14 HIV again. And why? Because there was oozing blood from
15 the injuries to her vagina and her anus. Think about that.

16 Some of the evidence that was collected at the hotel.
17 These people that take such good care of their child, their
18 precious child was taken to this nasty, awful hotel where
19 this man is just drinking bottle after bottle, nasty
20 cigarettes, drugging her with NyQuil. All this evidence is
21 left there. This is disgusting to even think about that he
22 would take this child to the hotel.

23 And then he has the audacity to put SpongeBob on and
24 make her sit there and watch SpongeBob after he has raped
25 her. Remember he takes the gun and he says don't test me.

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1 He showed that child no mercy.

2 Let's transition into the attempted murder of Steven
3 Tsafos. He has a motive. He executes a plan. He tells
4 Jennifer Moultrie he is going down; if I am going down, he
5 is going down. He tells Minor all about his wife cheating
6 with Steve, and he says he is going to kill Steve. Tells
7 her. She doesn't even know who Steven Tsafos is. She just
8 remembers that he told her that.

9 He sends a message to Steven Tsafos, tick, evil, tick.
10 So I mean he is planning it out. He is baiting him. He is
11 threatening him. And then he sends a message to the bowling
12 alley, this family bowling alley where people take their
13 kids. Boom. You are a dead man he says when he walks in.

14 As Steven Tsafos who actually behaved with a lot of
15 bravado in that room, and I don't know why. It probably
16 wasn't the smartest move because he could have been killed.
17 But for whatever reason his adrenaline kicked in. He cursed
18 at him. He yelled at him, and then he walked out. And
19 thank God it worked.

20 But as he is trying to leave he tries to shoot him. He
21 just misses. And then he cocks the gun again because he is
22 getting ready to shoot him again. But thank God Mr. Tsafos
23 got out of that room.

24 And then remember at some point he is on the floor.
25 His version is I just wanted to kill myself, I just laid on

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1 the floor. Mr. Tsafos tells police officers I can't get out
2 of the room, he is on the floor and he has got a gun pointed
3 at me. So two very different versions of that fact.

4 Again, I just wanted to reanimate how compelling. It
5 is hard for us to imagine what that scene was like. But you
6 have this guy that was a SWAT team commander, been with the
7 Goose Creek Department for 19 years. Before that with the
8 Charleston Police Department. Any he sat up here and talked
9 about this event. And he said it still affects him today.
10 That's how bad it was in there. There were families. There
11 were children bowling at the bowling alley. This is in the
12 middle of summer. The kids are not in school.

13 And this man goes in there with a loaded gun because he
14 is angry that he thinks his wife is cheating on him. Who by
15 the way he thinks she is cheating with everybody; Officer
16 Ramirez, people at work, I mean it is just what he does. He
17 just accuses her of cheating all the time.

18 He shows some pretty rational behavior in there. First
19 of all he wants Merlot because that is his drug of choice.
20 And he says, "Look, I didn't hurt anyone; I don't want you
21 to hurt me."

22 I mean he goes right into self preservation mode. So
23 he is savvy enough to figure out what is going on there
24 because he doesn't want to die at that point.

25 Corroborating evidence. The gun is cocked when they

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1 find it. I just want to remind you it is called Royal Lanes
2 Family Entertainment Center. And as I said, this is where
3 people bring their families.

4 And this is difficult to see, but this is -- this is on
5 Mr. Fraley's phone. And you can see on the phone and you
6 can look at the pictures where he has sent a message to
7 Steven Tsafos, tick, evil, tick. And that show preplanning.
8 That shows he knew exactly what he was going to do.

9 And this is the message on the bowling alley Facebook
10 page found on Mr. Fraley's phone where he is talking about
11 Alta and then he says boom.

12 I don't think I need to go into this anymore. He
13 obviously planned it. Think about those voice messages how
14 cool and calm and collected he was. That is probably the
15 best evidence besides the video of him going into Publix and
16 the EconoLodge.

17 This stack of papers is not the best evidence of what
18 his frame of mind was. You have got a picture of him
19 walking around, buying stuff. And you have got his voice
20 the days before these crimes were committed. If that is not
21 the best evidence I don't know what is.

22 This is one of the most telling pieces of evidence in
23 this case. And I encourage you to look at this picture when
24 you are back there. This is the email -- or the text
25 exchanges between him and Jennifer Moultrie. And he says,

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1 that started my spiral so I used rehab as leverage to get
2 away before things got stupid. I planned this.

3 That is his own words. Now I don't know if he is
4 talking about I planned this crime. But he plans these
5 continuous medical treatment things, these rehab things, for
6 attention. He uses rehab as leverage. It is always for
7 Gary. He wants to talk all about his problems all the time,
8 all about his medical issues which are ongoing.

9 There are witnesses in this case that remember
10 everything that happened. I promise you Ruth Vick will
11 never ever ever forget what happened. Chad Vick will never
12 forget what happened. Deonna Fraley will never forget what
13 happened. Captain Aarons will never forget what happened.

14 And I promise you Gary Fraley remembers everything that
15 happened. And in his most honest moment maybe when he
16 actually shows tears, that is when he is being honest.

17 Now think about this. That is what she told her
18 father: I will never go to another birthday party again.

19 There's a lot of things that are never going to be same
20 for her. But that statement is so telling. Because he told
21 her he was taking her to a birthday party. And he savagely,
22 brutally raped her.

23 You are the conscious of this system. And I am asking
24 you to have the courage of your convictions. Don't fold
25 back there. Speak the truth. Do the right thing and find

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1 him guilty. Do not let him use this baloney as an excuse.

2 THE COURT: All right. Ladies and gentlemen, I will
3 now instruct you on the law applicable to this case. It is
4 an appropriate time for us to take a break if you would like
5 a break. Anybody need a break?

6 Can somebody remove the easel for me. Thank you.

7 Ladies and gentlemen, I typically do not give a written
8 copy of my charges, so please listen very carefully.

9 I remind you that during this trial you and I have had
10 certain duties to perform. As the trial judge it is my
11 responsibility to preside over the trial of this case. I
12 have the duty to rule on the admissibility of the evidence
13 offered during this trial.

14 You are to consider only the evidence before you. If
15 there was any testimony ordered stricken from the record you
16 must disregard that testimony.

17 You are to consider only the testimony that you heard
18 from the witness stand, the exhibits that have been made
19 part of the record in this case, as well as the stipulations
20 of counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge I am the
23 sole judge of the law in this case.

24 You are not to infer from anything that I have said or
25 done throughout the progress of this trial that I have any

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1 opinion about the facts in this case. The law does not
2 allow me to have opinion about the facts in this case. This
3 is solely a matter for you to determine.

4 The indictments in this case charge Ms. Fraley with
5 kidnapping, possession of a weapon during the commission of
6 a violent crime, unlawful conduct towards a child, attempted
7 murder, criminal sexual conduct with a minor in the second-
8 degree, and criminal sexual conduct with a minor in the
9 third-degree.

10 I remind you the fact that Ms. Fraley was arrested,
11 charged, and indicted in this case is not evidence and
12 cannot be considered by you as evidence of guilt nor does it
13 create any presumption or inference of guilt. The
14 indictment is simply the formal written instrument which
15 contains the charge made against the defendant. It is the
16 formal document by which this case is brought into court.

17 Just as the indictments in this case are not evidence,
18 any terminology or label used to refer to the individuals
19 involved in this case cannot be considered as evidence.

20 For example, the use of the words defendant and victim
21 are merely labels and may not be considered by you as
22 evidence. The indictments in this case allege several
23 different defenses against the defendant.

24 The charges are Indictment 2014-GS-08-1505, kidnapping;
25 Indictment 2014-GS-08-1505, possession of a weapon during

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1 the commission of a violent crime; Indictment 2014-GS-08-
2 1507, unlawful conduct towards a child; Indictment 2014-GS-
3 08-1508, attempted murder; Indictment 2014-GS-08-1509,
4 kidnapping; Indictment 2014-GS-08-1511, criminal sexual
5 conduct with a minor second-degree; Indictment 2014-GS-08-
6 1684, criminal sexual conduct with a minor second-degree;
7 Indictment 2014-GS-08-1685, criminal sexual conduct with a
8 minor second-degree; Indictment 2014-GS-08-1874, criminal
9 sexual conduct with a minor third-degree; Indictment 2014-
10 GS-08-1934, possession of a weapon during the commission of
11 a violent crime.

12 Each indictment charges a separate and distinct
13 offense. You must decide each indictment separately on the
14 evidence and the law applicable to it uninfluenced by your
15 decision as to any other indictment.

16 The defendant may be acquitted or convicted on any or
17 all of the offenses charged. Madam foreperson, you will be
18 given a separate verdict form for each indictment.

19 Mr. Fraley has pled not guilty to each indictment. A
20 person charged with committing a criminal offense in South
21 Carolina is never required to prove himself innocent.

22 I charge you it is an important rule of the law that
23 the defendant in a criminal trial no matter what the
24 seriousness of the charge may be will always be presumed to
25 be innocent of the crime for which the defendant was

1 indicted unless guilt has been proven by evidence satisfying
2 you of that guilt beyond a reasonable doubt.

3 The presumption does not end when you begin your
4 deliberations but it accompanies the defendant throughout
5 the trial until you reach a verdict of guilty based upon the
6 evidence satisfying the standard of guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is not merely legal
9 theory. It is not just a little phrase. It is a
10 substantial right to which every defendant is entitled
11 unless you the jury are satisfied from the evidence of the
12 defendant's guilt beyond a reasonable doubt.

13 The State has the burden of proving Mr. Fraley guilty
14 beyond a reasonable doubt. Some of you may have served as
15 jurors before in civil cases where you were told it was only
16 necessary to prove that a fact is more likely true than not
17 true such as by a greater weight or preponderance of the
18 evidence.

19 Proof beyond a reasonable doubt is proof that leaves
20 you firmly convinced of the defendant's guilt. There are
21 very few things in this world that we do know with absolute
22 certainty. And in criminal cases the law does not require
23 the burden of proof that overcomes every possible doubt.

24 If based upon your consideration of the evidence you
25 are firmly convinced that Mr. Fraley is guilty of the crime

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1 charged you must find Mr. Fraley guilty.

2 If on the other hand you think that there is a real
3 possibility that Mr. Fraley is not guilty you must give him
4 the benefit of the doubt and find him not guilty.

5 There are two types of evidence that are generally
6 presented throughout the trial, direct evidence and
7 circumstantial evidence. Direct evidence directly proves
8 the existence of a fact and does not require deduction.
9 Circumstantial evidence is proof of a chain of facts and
10 circumstances indicating the existence of a fact.

11 Crimes may be proven by circumstantial evidence. The
12 law makes no distinction between the weight or value to be
13 given either direct or circumstantial evidence; however, to
14 the extent the State relies on circumstantial evidence all
15 of the circumstances must be consistent with each other and
16 when taken together point conclusively to the guilt of Mr.
17 Fraley beyond a reasonable doubt.

18 If these circumstances merely portray Mr. Fraley's
19 behavior as suspicions the proof has failed. The State has
20 the burden of proving Mr. Fraley guilty beyond a reasonable
21 doubt.

22 This burden rests with the State regardless of whether
23 the State relies on direct evidence, circumstantial evidence
24 or a combination of the two.

25 Necessarily you must determine the credibility of the

1 witnesses who have testified in this case. Credibility
2 simply means believability. It becomes your duty as jurors
3 to analyze the facts and determine the evidence which
4 convinces you of its truth.

5 In determining the believability of the witnesses who
6 have testified in this case you may believe one witness over
7 several witnesses or several witnesses over one witness.
8 You may believe a part of the testimony of one witness and
9 reject the remaining part of that same witness. You may
10 believe the testimony of a witness in its entirety or reject
11 the testimony of a witness in its entirety.

12 You may consider whether the witness has exhibited to
13 you any interest, bias, prejudice, or other motive in this
14 case. And you may also consider the manner and appearance
15 of a witness while the witness was on the witness stand.

16 The rules of evidence ordinarily do not permit
17 witnesses to testify to opinions or conclusions. The
18 exception to this rule exists for witnesses we call expert
19 witnesses. A witness who by expert or education and
20 experience has become an expert in some art, science,
21 profession or calling may state an opinion as to relevant
22 and material matter in which the witness claims to be an
23 expert and may also state the reasons for that opinion.

24 You should consider any expert opinion received in
25 evidence in this case and like any other evidence give it

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1 the weight you think it deserves.

2 If you decide that the opinion of an expert witness is
3 not based on sufficient education and experience or if you
4 conclude that the reasons given in support of the opinion
5 are not sound or that the opinion is outweighed by other
6 evidence you may disregard the opinion entirely.

7 An expert witness' testimony is to be given no greater
8 weight than that of other witnesses simply because that
9 witness is an expert. Further you are not required to
10 accept an expert's opinion even though it is not
11 contradicted.

12 There has been evidence presented that a witness made
13 prior statements which are not consistent with the
14 witnesses' present testimony. You may use this evidence to
15 decide whether to believe the witness. You may also use
16 evidence of the earlier contradictory statements to
17 determine the truth of those statement. It is up to you to
18 determine whether to believe the earlier statement or the
19 testimony given at trial.

20 If a witness has shown to have knowingly testified
21 untruthfully concerning any material matter you may consider
22 this in determining whether to trust the witness' testimony
23 as to other matters. You may reject all testimony of that
24 witness or give all or part of the testimony the weight that
25 you think it deserves.

1 A person who has committed prior bad acts or has a past
2 criminal record is competent to testify during a trial.
3 Prior bad acts or a past record does not affect the ability
4 of that witness to testify.

5 The prior bad acts or past record may be considered by
6 you if at all in determining the witness's believability.
7 Remember, you are the sole judges of the facts in this case
8 and of the believability of any and all of the witnesses.

9 During this trial you have heard testimony from a
10 child. Where a witness is a child you must determine as
11 with any witness whether that testimony is believable.

12 In deciding believability you may consider not only
13 matters that I have already discussed with you but you may
14 also consider the age of the child, the child's ability to
15 observe and remember facts, and the child's ability to
16 understand and answer questions.

17 Because young children may not fully understand what is
18 happening here in court it is up to you to decide whether
19 the child understood the seriousness of appearing as a
20 witness at this criminal child, whether the child understood
21 the questions, whether the child has a good memory, and
22 whether the child understands the difference between lying
23 and telling the truth.

24 In addition young children may be influenced by the way
25 that questions are asked. It is up to you to decide whether

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1 the child understood the questions asked.

2 A statement alleged to have been made by the defendant
3 has been admitted into evidence in this case. While I have
4 determined that the statement is admissible I instruct you
5 that you make the ultimate decision of whether or not the
6 defendant made the statement.

7 If the defendant did make the statement you must
8 determine whether the statement was made by the defendant
9 voluntarily and of his own free will. This means that the
10 statement was not caused by pressure, force, fear, threats,
11 coercion or intimidation or by hope or a promise of leniency
12 or reward of any kind.

13 In determining whether the statement was voluntary you
14 should consider both the characteristics of the defendant
15 and the details of the questioning.

16 Some of the factors you must consider are the age of
17 the defendant, the defendant's education or lack thereof,
18 the defendant's mental ability or capacity, the defendant's
19 IQ or intelligence, the defendant's background and
20 environment, the place and length of detention, the nature
21 of the questioning and the advice or lack thereof to the
22 defendant of his constitutional rights including but not
23 limited to the right to remain silent, that anything
24 statement could be used against him in a court of law, the
25 right to have a lawyer present, that if he could not afford

1 a lawyer a lawyer would be appointed to represent him
2 without any cost, and that he could stop making a statement
3 at any time.

4 You must carefully consider all of the surrounding
5 circumstances before you give any weight to an alleged
6 statement. The State has the burden of proving beyond a
7 reasonable doubt that the alleged statement was voluntary.
8 If you determine it was, you may give the statement any
9 further consideration that you deem proper. You must decide
10 what weight if any should be given to the alleged statement.

11 If you determine the alleged statement was not the free
12 and voluntary statement of the defendant you should not
13 consider the statement at all.

14 In order to establish criminal liability criminal
15 intent is required. For example, the mental state required
16 to be proven by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness or criminal
18 negligence.

19 Criminal intent must be proven by the State beyond a
20 reasonable doubt. It is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation.

23 There is no way to prove intent to a mathematical
24 certainty. There is no way medical science can dissect a
25 person's brain and determine what the person had in mind.

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1 So the law says that criminal intent may be inferred from
2 the circumstances shown to have existed. This is how you
3 make a determination of whether or not the element requiring
4 the intent was present.

5 It is not necessary to establish intent by direct and
6 positive evidence. But intent may be established by
7 inference in the same right as any other fact by taking into
8 consideration the acts of the parties and all the facts and
9 circumstances of this case.

10 Criminal intent is a mental state. It is a conscious
11 wrongdoing. It is up to you the jury to decide and
12 determine what the defendant intended to do based upon the
13 circumstances shown to have existed.

14 Criminal intent can arise from action or a failure to
15 act. It may arise from negligence, recklessness, or an
16 indifference to duty or to consequences that is considered
17 by the law to be the equivalent of criminal intent.

18 I am now going to go over the elements of the crime
19 charged. The defendant is charged with kidnapping. The
20 State must prove beyond a reasonable doubt that the
21 defendant knowingly and unlawfully seized, confined,
22 inveigled, decoyed, kidnapped, abducted, or carried away
23 another person without authority of law.

24 To do a thing unlawfully is to do it -- to do it
25 willfully against the law. Knowingly means with knowledge,

1 consciously, not accidentally. Seized means to take hold of
2 suddenly or forcibly. Confine means to limit, restrict or
3 enclosed within bounds, imprison or shut in or keep in.
4 Inveigle means to lure, entice or lead astray by false
5 representation, promises or other deceitful means.

6 Decoy means to lure by or as if by decoy. A decoy is
7 something to entice a person into a trap.

8 Kidnap is to remove a person against his or her will by
9 unlawful force or by fraud.

10 Abduct means to carry off secretly or by force for an
11 illegal purpose.

12 Carry away means to remove.

13 The State does not have to prove that the defendant did
14 all of these things. Instead if you find beyond a
15 reasonable doubt that the defendant did any of these things
16 you may find the defendant guilty of kidnapping.

17 Something done without authority of law is something
18 which the law does not sanction, permit, allow, condone or
19 provide justification for.

20 The kidnapping does not have to be for any personal or
21 monetary gain, for any illegal purpose, but may be for any
22 reason whatsoever.

23 The defendant is charged with unlawful conduct towards
24 a child. The State must first prove beyond a reasonable
25 doubt that the defendant had charge or custody of the child,

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1 was the parent or guardian of the child, or was responsible
2 for the care and support of the child.

3 A person responsible for a child's welfare includes the
4 child's parent, guardian or foster parent; an operator,
5 employee or caregiver of a public or private residential
6 home, institution, agency or child daycare facility or an
7 adult who has assumed the role or responsibility of a parent
8 or guardian for the child but does not necessarily have
9 legal custody for the child.

10 The State must also prove beyond a reasonable doubt
11 that the defendant placed the child at unreasonable risk of
12 harm affecting the child's life, physical or mental health
13 or safety, and/or unlawfully or maliciously did or caused to
14 be done any bodily harm to the child so that the life or
15 health of the child is endangered or unlikely to be -- or
16 likely to be endangered. Child means a person under the age
17 of 18.

18 The defendant is charged with attempted murder. In
19 order to prove this crime the State must prove that the
20 defendant attempted to kill another person with malice of
21 forethought either expressed or implied.

22 Malice is hatred, ill will, or hostility towards
23 another person. It is the intentional doing of a wrongful
24 act without just cause or excuse and with an intent to
25 inflict injury or under circumstances that the law will

1 infer an evil intent.

2 Malice of forethought does not require that the malice
3 exists for any particular time before the act is committed
4 but malice must exist in the mind of the defendant just
5 before or at the time the act is committed. Therefore,
6 there must be a combination of the previous evil intent and
7 the act.

8 Malice of forethought may be expressed or inferred.
9 These terms express and inferred do not mean different kinds
10 of malice but merely the manner in which the malice may be
11 shown to exist. This is either by direct evidence or by
12 inference from the facts and circumstances which are proved.

13 Expressed malice is shown when a person speaks words
14 which express hatred or ill will for another and when the
15 person -- or when the person prepared beforehand to do the
16 act which was later accomplished.

17 Malice may be inferred from conduct showing a total
18 disregard for human life. Inferred malice may also arise
19 when the deed is done with a deadly weapon.

20 A deadly weapon is any article, instrument, or
21 substance which is likely to cause death or great bodily
22 harm. Whether an instrument has been used as a deadly
23 weapon depends upon the facts and circumstances of each
24 case.

25 A specific intent to kill is not an element of

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1 attempted murder but there must be a general intent to
2 commit serious bodily injury.

3 Intent means intending the result which actually
4 occurs, not accidentally or involuntarily. Intent may be
5 shown by absent conduct of the defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent.

8 Evidence of the character of the act, the character of
9 the instrument used, the manner in which it was used, the
10 purpose to be accomplished, and the resulting wounds or
11 injuries may be considered in determining the intent with
12 which the act was committed.

13 Intent may also be inferred when it is demonstrated
14 that the defendant voluntarily and willfully commits an act
15 the natural tendency of which is to destroy another's life.

16 The defendant is charged with second-degree criminal
17 sexual conduct with a minor. The State must prove beyond a
18 reasonable doubt that the defendant engaged in a sexual
19 battery with the victim.

20 A sexual battery is sexual intercourse, cunnilingus,
21 fellatio, anal intercourse or any intrusion however slight
22 of any part of a person's body or of any object into the
23 genital or anal openings of another person's body except
24 when the intrusion is accomplished for medically recognized
25 treatment or diagnostic purposes.

1 The State must then prove beyond a reasonable doubt
2 that the victim was at least 11 years old but not more than
3 14 years old at the time of the sexual battery.

4 Consent, willingness, indifference or ignorance on the
5 part of the minor if any as to what was taking place does
6 not in any way affect the charge of criminal sexual conduct
7 when the minor -- with a minor because an unmarried women
8 under the age of 14 cannot legally consent to sexual
9 intercourse.

10 Pursuant to Section 16-3-657 of our Code Of Laws the
11 testimony of a victim need not be corroborated in
12 prosecutions for criminal sexual conduct with a minor in the
13 second-degree.

14 The defendant is charged with third-degree criminal
15 sexual conduct with a minor. The State must prove beyond a
16 reasonable doubt that the defendant willfully and lewdly
17 committed or attempted to commit a lewd or lascivious act
18 upon or with the body or its part of the child under 16
19 years of age with the intent of arousing, appealing to, or
20 gratifying the lust, passions or sexual desires of the
21 defendant or the child.

22 Pursuant to Section 16-3-657 of our Code Of Laws the
23 testimony of the victim deem not be corroborated in
24 prosecutions for criminal sexual conduct with a minor in the
25 third-degree.

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1 The defendant is charged with possession of a weapon
2 during the commission of or attempt to commit a violent
3 crime. The State must prove beyond a reasonable doubt that
4 the defendant was in possession of a firearm or visibly
5 displayed what appeared to be a firearm during the
6 commission of a violent crime.

7 A firearm means any weapon which will, is designed to,
8 or may be readily converted to expel a projectile. In order
9 to find the defendant guilty of possession of a weapons
10 during the commission of a violent crime you must first find
11 the defendant guilty of either committing a violent crime or
12 attempting to commit a violent crime.

13 Kidnapping is considered a violent crime. Criminal
14 sexual conduct with a minor in the second-degree is a
15 violent crime. Both kidnapping and criminal sexual conduct
16 with a minor in the second-degree, madam foreperson, are
17 considered violent crimes under the Code of Laws in the
18 State of South Carolina.

19 The State must prove beyond a reasonable doubt that the
20 weapon further advanced or helped in the commission of a
21 crime.

22 You have heard testimony concerning the penalty a
23 person can serve for a particular crime. In determining the
24 guilt or innocence of the defendant you cannot consider any
25 possible penalty for any particular crime. The punishment

1 for the crime is a matter for me to determine and should
2 never be considered by you in any way whatsoever in arriving
3 at an impartial verdict as to the guilt or innocence of the
4 defendant.

5 Insanity caused by the use of drugs or alcohol may be
6 a -- may be a defense if the insanity is permanent and
7 destroys the defendant's ability to know right from wrong.
8 However, when involuntary intoxication has not produced
9 permanent insanity it is not a defense to a crime. A person
10 who voluntarily becomes intoxicated is just as responsible
11 for the acts committed while intoxicated as when the person
12 is not intoxicated.

13 It is possible for you to determine the defendant to be
14 guilty but mentally ill. The defendant is guilty but
15 mentally ill if at the time of the crime the defendant was
16 able to distinguish moral or legal right from wrong or to
17 recognize his act as being morally or legally wrong but
18 because of a mental disease or defect the defendant did not
19 have sufficient ability to follow the law.

20 The State still has the burden to prove beyond a
21 reasonable doubt that the defendant committed the crime.
22 However, the defendant has the burden of proving that he is
23 guilty but mentally ill by a preponderance of the evidence.
24 The preponderance of the evidence simply means the greater
25 weight of the evidence.

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1 There are three possible verdicts for you to consider
2 on each indictment. If you have any reasonable doubt as to
3 the defendant's guilt after considering all of the evidence
4 as to each indictment you must find the defendant not guilty
5 on that indictment.

6 If you have no reasonable doubt that the defendant
7 committed the crime but you find that the defendant had the
8 mental capacity to distinguish moral or legal right from
9 wrong or recognize the crime as morally or legally wrong but
10 that it is more likely than not because of a mental disease
11 or defect the defendant could not follow the law you must
12 find the defendant guilty but mentally ill.

13 Another possible verdict in this case on each
14 indictment is guilty. You may only find the defendant
15 guilty if the State has proved beyond a reasonable doubt
16 that the defendant committed the crime, that the defendant
17 was able to distinguish moral and legal right from wrong and
18 to recognize the crime as morally and legally wrong and that
19 the defendant was able to follow the law.

20 Ladies and gentlemen, as I indicated to you, your
21 foreperson is responsible for completing the verdict form.
22 There is each -- there is a verdict form for each
23 indictment. You must consider each indictment separately
24 uninfluenced by your previous decisions.

25 Ladies and gentlemen, for each charge there is the

1 option of not guilty or guilty or guilty but mentally ill.
2 The decision on each indictment must be unanimous, meaning
3 all 12 of you must agree.

4 Once you have reached a verdict, a unanimous verdict on
5 each verdict form, you will sign it, Madam Foreperson, date
6 it indicating that you have reached a unanimous decision on
7 each indictment.

8 Once you have completed all of the verdict forms you
9 will indicate to the bailiff that you have completed your
10 deliberations and we will receive you back into the
11 courtroom.

12 Madam Foreperson, do not think that you will have to
13 stand up and read the verdicts aloud. I will check those
14 before and then the clerk will make the announcement.
15 Sometimes that is always a concern for the foreperson so I
16 just wanted to allay any fears that you may have about that.

17 Ladies and gentlemen, this is the last time that I will
18 say this to you. Do not begin your deliberations. Do not
19 begin discussing this case amongst yourselves. We are going
20 to gather the verdict forms, the evidence that will go back
21 with you, and at that time you will be informed when you may
22 begin your deliberations.

23 To my two alternates, you have completed your service
24 to this case at this time, but I ask that you remain with
25 us. They will keep the two of you together but separated

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1 from the first twelve until they begin their deliberations
2 and then I will come and release you from your service to
3 this case.

4 The same admonition to you. Do not discuss this case
5 with each other or with anyone and do not begin
6 deliberating.

7 Please rise for the jury.

8 (WHEREUPON, jury exits the courtroom 7/17/15, 2:56 p.m.)

9 THE COURT: Thank you. Please be seated. Any
10 objection, corrections to the charge as read from the State?

11 MS. GAY: Not from the State, Your Honor.

12 THE COURT: From the defendant?

13 MS. GAY: No, ma'am.

14 THE COURT: All right. Ms. Gay, we made you a copy of
15 that request, and it has been also marked as Court's 12.

16 MS. GAY: Thank you.

17 THE COURT: Here are the verdict forms. Please make
18 sure that all of the Exhibits that are going back -- have
19 you already checked all the evidence?

20 MS. GAY: Not yet.

21 MS. WILLIAMS: No, we have not.

22 (WHEREUPON, break to review exhibits and then case presented
23 to jury 7/17/15 3:43 p.m.)

24 (WHEREUPON, bench conference regarding question from jury
25 7/17/15, 3:59 p.m.)

1 THE COURT: Court's 13.

2 (WHEREUPON, Court Exhibit Number 13, jury question, was
3 marked for identification.)

4 (WHEREUPON, Court's Exhibit Number 14, definition of murder
5 for the jury, was marked for identification.)

6 (WHEREUPON, at recess awaiting verdict 7/17/15, 4:00 p.m.)

7 (WHEREUPON, trial resumes 7/17/15, 4:47 p.m. for verdict)

8 (WHEREUPON, jury enters 7/17/15, 4:47 p.m.)

9 THE COURT: Thank you. Please be seated. Mr.
10 Martinez, would you please get the verdict form, and please
11 fold it. Thank you.

12 Madam Clerk.

13 Mr. Fraley, please rise.

14 THE CLERK: In the case State of South Carolina, County
15 of Berkeley versus Gary Curtis Fraley, Indictment 2014-GS-
16 08-1509 as to the charge of kidnapping we find the defendant
17 guilty. Signed by the foreperson.

18 As to the Indictment 2014-GS-08-1874 as to the charge
19 of criminal sexual conduct with a minor in the third-degree
20 we find the defendant guilty. Signed by the foreperson.

21 Indictment Number 2014-GS-08-1685 as to the charge of
22 criminal sexual conduct with a minor in the second-degree we
23 find the defendant guilty. Signed by the foreperson.

24 Indictment Number 2014-GS-08-1684 as to the charge of
25 criminal sexual conduct with a minor in the second-degree we

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1 find the defendant guilty. Signed by the foreperson.

2 Indictment Number 2014-GS-08-1506 as to the charge of
3 possession of a firearm during the commission of a violent
4 crime we the jury find the defendant guilty. Signed by the
5 foreperson.

6 Indictment Number 2014-GS-08-1505 as to the charge of
7 kidnapping victim Minor 1 we the jury find the defendant
8 guilty. Signed by the foreperson.

9 Indictment Number 2014-GS-08-1511 as to the charge of
10 criminal sexual conduct with a minor in the second-degree
11 victim Minor 1 we find the defendant guilty. Signed by
12 the foreperson.

13 Indictment Number 2014-GS-08-1507 as to the charge of
14 unlawful conduct toward a child victim Minor we find -- we
15 the jury find the defendant guilty. Signed by the
16 foreperson.

17 Indictment Number 2014-GS-08-1934 as to the charge of
18 possession of a weapon during commission of a violent crime
19 we find the defendant guilty. Signed by the foreperson.

20 Indictment Number 2014-GS-08-1508 as to the charge of
21 attempted murder we find the defendant guilty. Signed by
22 the foreperson.

23 Madam foreperson and ladies and gentlemen of the jury,
24 if this is your verdict please signify by raising your right
25 hand at this time.

1 THE COURT: Thank you. Let the record reflect that all
2 12 jurors raised their hand.

3 Anything further required of the jury from the
4 defendant?

5 MS. GAY: Yes, ma'am, I would like you to poll the
6 jury.

7 THE COURT: All right. Please have a seat, Mr. Fraley.
8 Please poll the jury using the jury numbers.

9 THE CLERK: The jury -- not the names?

10 THE COURT: The jury numbers.

11 THE CLERK: Okay.

12 THE COURT: Thank you.

13 (WHEREUPON, jurors were polled asking two questions: Is
14 this your verdict? Is this still your verdict?)

15 (WHEREUPON, all jurors answered in the affirmative to both
16 questions.)

17 THE CLERK: Your Honor, the jury has been polled. The
18 verdict stand.

19 THE COURT: Thank you.

20 Anything further required of the jury from the
21 defendant?

22 MS. GAY: No, ma'am.

23 THE COURT: From the State?

24 MS. WILLIAMS: Not from the State, Your Honor.

25 THE COURT: Ladies and gentleman, this completes your

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1 service to this case. It also completes your service of
2 course for the week. Please return back to your jury room.
3 I will be there in just a few moments to personally thank
4 you for your service to Berkeley County.

5 Please rise for the jury.

6 (WHEREUPON, the jury exits 7/17/15, 4:53 p.m.)

7 THE COURT: Thank you. Please be seated. Outside of
8 the presence of the jury anything further from the State?

9 MS. WILLIAMS: Not from the State, Your Honor.

10 MS. GAY: Yes, ma'am. I make a motion for a new trial
11 on my client's behalf. Your Honor, specifically reiterating
12 all of the prior motions that I had made and the rulings
13 that -- and I guess my motion for directed verdict as well
14 as my motions in limine regarding the statement exception.

15 Specifically, Your Honor, I would state that your
16 denial to -- or your decision not to charge not guilty by
17 reason of insanity is -- should have been re- -- we should
18 have charged that.

19 Additional, Your Honor, I did submit two proposed jury
20 charges that had to do with involuntary intoxication, one
21 having to do with the definition of pathological
22 intoxication meaning that something you take has a
23 disproportionate or more severe reaction than you can
24 imagine or had been prepared for or had anticipated and that
25 involuntary intoxication would be a complete defense. And I

1 believe that that would have not required the permanent
2 psychoses, a component.

3 And I also objected to your charging voluntary
4 intoxication in the absence of not guilty by reason of
5 insanity.

6 THE COURT: All right. Anything further? Any response
7 from the State?

8 MS. WILLIAMS: Your Honor, we stand on our earlier
9 argument against those two instructions.

10 THE COURT: They have, again, been marked for the
11 record. Court's 12 I believe. I stand -- I do -- I stand
12 by all of my rulings made at the time that I made the
13 rulings. I have heard nothing that would make me change my
14 ruling, any of my rulings.

15 I do find that the jury verdict is appropriate based
16 upon the testimony that has been presented and the law as
17 given by this court.

18 Are you ready for sentencing?

19 MS. WILLIAMS: Yes, Your Honor. The family would like
20 to address Your Honor. I just need ---

21 THE COURT: All right. I am going to release the jury,
22 so just get sentencing ready.

23 Mr. Gay, please advise your client of his appellate
24 rights and all of those things while I go release the jury.
25 Thank you.

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1 (WHEREUPON, break 7/17/15, 4:55 p.m.)

2 THE COURT: All right.

3 (WHEREUPON, resume 7/17/15 5:03 p.m.)

4 THE COURT: You said you were ready for sentencing.

5 MS. WILLIAMS: No, I am sorry for the miscommunication.

6 THE COURT: All right. Well, let me go ahead and we
7 will just hear from -- I understand you have ---

8 MS. WILLIAMS: Yes..

9 THE COURT: --- presentation.

10 MS. WILLIAMS: Would you like them to -- they wanted to
11 come up together. Would you like them to come up one at a
12 time?

13 THE COURT: How many do you have that wish to address
14 the court?

15 One at a time. Thank you.

16 MS. WILLIAMS: Okay. This is Quenton Vick.

17 THE COURT: I need you to state your full name for the
18 record and please spell your last name for me. Thank you.

19 MR. QUENTON VICK: Quenton Tyler Vick, V-I-C-K.

20 **QUENTON TYLER VICK:**

21 Your Honor, over the course of this past year many
22 things have happened involving my family. On the day of
23 August 5th, 2014, my family was spoiled by a man inviting my
24 sister to a birthday party. This was done so by the trust
25 that my parents once had with Mr. Fraley.

VICTIMS ADDRESS THE COURT

1 I can tell you that we were all in great shock when we
2 heard the news that my sister spoke to my father as they
3 were at the Northwoods Mall that night. At that time I was
4 working my previous job at McDonald's when I received that
5 phone call saying that I had a family emergency. I thought
6 that something minor had happened to one of my siblings, but
7 never had I thought to the extent that where one of my
8 family members has been raped and injured during the course
9 of that time period.

10 As I went outside after the phone call ended I cursed
11 out God and blamed it all of him. I have never felt so much
12 anger inside myself as well as hurt. It was one of my
13 darkest moments I have ever encountered with myself.

14 As the course of the night went on when I looked at --
15 when I looked at my sister Madison, the 14-year-old, I have
16 never seen such disgust and hurt in her eyes.

17 As I held her crying and trying to comfort her I myself
18 was troubled and struggling to understand why such a man
19 would commit such a monstrous act. It broke my faith. I
20 had nothing else to believe in. I knew at that exact moment
21 that I was to attend my sibling's safety and emotional
22 being.

23 That next when I saw Minor the look that was presented
24 on her face was pure fear and disgust as well as pain. I
25 have never felt so much pain for someone in all of my life.

VICTIMS ADDRESS THE COURT

1 As we had gone to the bond hearing later that day I was
2 petrified being in the same room as my sister's rapist. The
3 hurt that I felt and the anger that was in my heart overcame
4 that fear and was purely wanting vengeance upon Gary's life.

5 After that hearing I first came to be introduced to the
6 Goose Creek Police Department and Detective Paul Trembly.
7 They were the most sincere and the most caring people I have
8 ever met.

9 Over the next several months I have fought demons
10 within my soul that yearned to seek vengeance on the man
11 that hurt my sister, yet during that time I truly felt the
12 presence of my savior speaking to me reminding me that this
13 battle I face is not meant to be fought on my own.

14 I came to terms with this as I went on a far retreat
15 with my youth group. As time went by my heart was softened
16 and I had come to terms with what has happened was already
17 in the past. It was time for me to let go of this pain that
18 was in my heart and let my Savior begin to work through me.

19 As I had let him do this I felt myself begin to be able
20 to see things in a different perspective on this case.
21 Seeing now of all the people that have testified my heart is
22 heavy for those that were affected by this man just as my
23 family was.

24 I say to you today that my sister Minor will never be
25 the same. Her character has been made stronger having to

VICTIMS ADDRESS THE COURT

1 deal with all of this. Her attitude toward life is a lot
2 brighter now since the incident occurred.

3 My sister has grown up so fast. It never ceases to
4 amaze me every time I see her. She is such a brilliant and
5 intelligent young lady. I cannot wait to see what God has
6 planned for her in the future.

7 I would like to take the time to thank all of those who
8 have worked on this case. The Goose Creek Police Department
9 I thank you for working diligently and caring oh so much
10 about the safety of this city as well as the care of my
11 little sister.

12 Captain, thank you for putting a smile on my face each
13 day after the session of this past week.

14 Detective Trembly, you have mentored me and have helped
15 me greatly over these past couple of months. I am so
16 greatly appreciative for all that you have done for me.
17 Thank you for being there to listen to me as I have gone
18 through things. You are a great listener as well as mentor.

19 Anne, you have blown the minds of myself as well as my
20 father and mother with your knowledge on this case. Thank
21 you for taking the time to defend my sister and be her light
22 in what seems like this time of darkness. You have truly
23 been a blessing to all of us.

24 To my sister's therapist, Danielle, you have done so
25 much for Minor 1 You have mentored her and been there for her

VICTIMS ADDRESS THE COURT

1 since the beginning. You have helped her so much into
2 maturing and keeping a positive attitude throughout all of
3 this.

4 Your Honor, as I come to my conclusion in this
5 statement I say to you today that from the pain that this
6 monster has caused our family that this man be placed to the
7 highest sentence and the highest degree of punishment. This
8 man does not deserve to see the light of day ever again.
9 Thank you.

10 THE COURT: Thank you.

11 Please state your name for the record and spell your
12 last name.

13 MS. Madison V. My name is Madison V.

14

15 **MS.** Madison V.

16 I just wanted to say thank you to everyone involved in
17 this case, to the police department, to the Dorchester
18 Children's Center, to Ms. Anne and her colleagues. I would
19 also like to thank on behalf of me and my family for all the
20 kind words and prayers sent to us. Not only this week but
21 (inaudible-crying) all this we wouldn't have been able to go
22 through this without them.

23 The other day -- I'm sorry. The other day I ran across
24 a scripture passage that I couldn't seem to shake off of me.
25 It was Romans 5.3 through .5. It reads not only that but we

VICTIMS ADDRESS THE COURT

1 rejoice in our sufferings knowing that suffering produces
2 endurance and endurance produces character and character
3 produces hope. And hope does not put us to shame, because
4 God's love has been poured into our hearts through the Holy
5 Spirit, who has been given to us.

6 A lot of terrible things have happened, a lot of bad.
7 But, you know what, out of all that bad came greatness and
8 my family has become even closer and we all have a sense of
9 security within each other.

10 Minor has grown up so quickly but she has done it with
11 such a sense of poise and grace like my little Minor knows
12 how to.
13 We all seek God more than before, but not on our own. We do
14 it together as a family.

15 So, Mr. Fraley, even though you had (inaudible-crying)
16 intentions for Minor and my family (inaudible-drying) to God
17 and I hope one day you experience God's grace and love.

18 Even though I really really want to wish bad things
19 upon you and call you a bad name, that is not my place nor
20 my judgment. We are called to love (inaudible-crying) we
21 are still called to love.

22 You tried to bring evil and hate into my family. And
23 guess what? Not today. Not any day for that matter will we
24 as a whole let your actions get the best of us. We are
25 better than that. We will stand together.

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1 But as for you, Mr. Fraley, I don't know what will
2 become of you. Maybe you will turn from your ways and ask
3 for forgiveness from your lying and destructive nature or
4 maybe you will continue to dwell on them alone by yourself.
5 I just hope one day you realize how much you miss your
6 daughter Alta or your dog Nibbles.

7 I will pray for your family hoping that they can move
8 on and forgive you for what they have done to them by doing
9 this and continue their lives without you.

10 Just remember that you have no one else to blame not
11 even a single excuse to fault for your actions and that when
12 you decided to commit these actions you sent yourself in a
13 downward spiral by yourself of your own free will. Thank
14 you.

15 RACHAEL DANIEL ADLER: Rachael Daniel Adler, A-D-L-E-R.

16 **RACHAEL ADLER:**

17 Though she may be little, she is fierce. Gary, you
18 picked the wrong girl.

19 THE COURT: Ms. Adler, I need you to address your
20 comments to me.

21 MS. ADLER: I'm sorry.

22 THE COURT: Thank you.

23 MS. ADLER: He picked the wrong girl and the wrong
24 family. You chose a girl who already knew God's love and
25 God's strength. It is because of this that you were brought

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1 to justice today. God's light which you unsuccessfully
2 tried to take from an innocent child will shine brightly
3 through Minor each and every day.

4 Her strength, poise, and grace that everyone saw this
5 week will turn this tragedy into triumph. There are big
6 plans in store for her.

7 Our family is stronger because of this. We now know
8 that we can get through anything together. The only thing
9 strong about Gary are the bars that physically surround him
10 forever.

11 Gary, you are a forever threat to our community and
12 incapable of any sort of rehabilitation. May you never be
13 able to -- may you never be allowed to slither amongst
14 society stealing the innocence of others ever again.

15 May God show no mercy on your soul. May the judge or
16 your fellow inmates also show no mercy upon you. And may
17 you never forget that we are Vick strong. Thank you.

18 MS. RUTH VICK: Ruth Ann Vick, V-I-C-K.

19 **RUTH VICK**

20 Your Honor, I would like to take a moment of your time
21 to reflect on the life of one precious angel that has been
22 entrusted to me that is changed forever by an act of
23 senseless shame one sunny day last August 5th, 2014.

24 My daughter is number three in the lineup with three
25 siblings. She has an older brother and sister and a little

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1 brother, of all whom she looks up to deeply.

2 My daughter was nearing the end of her summer break not
3 looking forward to starting sixty grade, nervous having left
4 elementary and would be starting middle school this year.

5 All she could think about was new school clothes that
6 would be fitting in with the other girls, getting the right
7 book bag and tennis shoes and completing her summer reading
8 for the first day of school which was only two weeks away.

9 This Tuesday afternoon was not unlike any other. She
10 enjoyed laying around the house watching T.V. all day until
11 her dad came to pick her up and her others siblings for
12 dinner and possibly bowling, until the doorbell rang that
13 faithful day.

14 My children are all very close. They have all learned
15 to rely on one another, to tattle, to comfort, and to
16 protect each other. And this day was unlike no other except
17 for the fact that this day would be one that each one of us
18 will never forget.

19 Minor was rushed into the emergency department by her
20 dad and I upon finding out about her rape. I can tell you
21 firsthand as I read out her statement for the police
22 department that this was the hardest thing as her mother
23 that I have ever had to do.

24 Listening to the events that took place that day in
25 great detail was nothing as painful as having to leave her

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1 alone with the SANE nurse and others so that she could be
2 examined from head to toe in the most degrading of the way
3 and photos taken of her private areas.

4 There are no words to describe the horror as I listened
5 to her tell her story and give her account while her dad
6 spoke with the detective and then he began to ask questions
7 as to what has happened to his daughter.

8 And upon describing some of the sexual events, watching
9 him break into tears outside of her room. No parent should
10 ever have to live through this hellish nightmare. And it is
11 beyond overwhelming to the point of numbing.

12 How do you listen as a parent and not cry for your
13 child, be strong for her as she has to endure painful
14 examinations at 11 years of age, swallow antiviral and birth
15 control medications at her age and then we are not allowed
16 as parents of a victim to know whether or not the person who
17 has raped her has STD, AIDS or hepatitis. She had no
18 rights.

19 Everything she knew and all we knew would begin a
20 tailspin of doctor's appointments, emotionally painful
21 counseling sessions every week. She had to be able to
22 retell the most traumatic event that she has ever
23 experienced to both her dad and I.

24 This took months of therapy and lots of convincing to
25 even go at first. She laid on her bed sobbing this first

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1 week we had to start therapy. Refusing to want to talk
2 about what she had experienced.

3 This was the week before school was to start. This
4 should have never have been what she was made to do. She
5 should have been focused on school starting and making new
6 friends.

7 Instead the only thing on her mind was getting through
8 the day, taking medication that made her sick and moody and
9 tired all the time.

10 My reaction always had to be to strong. I needed to
11 stand as her mom never letting her see me weak or crying.
12 As a healthcare professional I had to do what I do best, by
13 maintaining an upright and happy and peaceful home for her
14 and her siblings, never letting her see me weak.

15 I can tell you standing here today that I and my
16 daughter and her siblings are not the same. We have all
17 been changed. They have had to go up and mature faster than
18 I would have liked to have seen them.

19 They all take on an elevated sense of responsibility
20 for each other. There is not a day or time that goes by
21 when we are not all home together that no one gets out of
22 anyone's sight. Our sense of trust in others even though
23 we -- even though as we call neighbors and friends it will
24 be forever shaken.

25 Children are the greatest gift that God gives us as a

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1 parent. It is our duty and responsibility to protect them
2 and shelter them and keep them from harm.

3 I recall the words of Paul in Romans 12 starting with
4 Verse 17, repay no one evil for evil, have regard for good
5 things in the sight of all men. If it is possible as much
6 as depends on you live peaceably with all men. Be loved.
7 Do not avenge yourselves but rather give place to wrath, for
8 it is written.

9 And this is the verse I quote: Vengeance is mine. I
10 will repay says the Lord, ending in Verse 19.

11 I have had to keep this verse many times on the
12 forefront in my mind. To walk into the unknown and to have
13 to wait as justice is to be served is not the easiest thing
14 to do when all your heart can do it break inside of you for
15 the injustice that has been acted upon, the innocence that
16 has been stolen, and for the anger that rages inside to cool
17 down and see justice served.

18 So this day I ask you, Your Honor, if you would please
19 grant the request of my angel baby to let justice be served,
20 to maximize his sentence to the full extent of the law with
21 no chance of parole.

22 I never want my daughter to ever worry about the
23 monster that hurt her to ever see the light day outside of
24 his jail cell. Thank you.

25 **MR. CHAD VICK:**

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1 I want to thank everybody for hanging out. I know it
2 has been a long day. And we travel. We are a family. We
3 are not perfect, but we travel together in hurt. So thank
4 you for waiting for us here.

5 First off I would like to thank the Goose Creek Police
6 Department for everything that they have done, endless
7 hours, the hard work, the dedication. I truly believe they
8 took Minor as their own daughter.

9 To Investigator Paul Trembley words could never -- I
10 should never have the words to repay you for what you have
11 done for my family.

12 Secondly, I would like to thank Danielle and the
13 Dorchester Children's Center. There is not a doubt in my
14 mind that without Danielle and all their hard work and
15 everything they did there that my daughter wouldn't be at
16 the point of recovery that she is at today.

17 And finally I would like to thank Ms. Anne Williams and
18 her staff and the State. I keep coming to the word
19 meticulous because that is just to me what they represent.
20 And the again endless and countless hours that they spent on
21 this case and for justice to be served to my family.

22 Your Honor, this now the fourth time I have had the
23 opportunity - I believe the third with you - to speak before
24 the court for my daughter regarding what happened to her on
25 August 5th, 2014.

1 I was looking over what I wrote from the last time I
2 spoke before you. And a large majority of what I said is
3 obviously still true for today, but not all of it.

4 Yes, Gary still stands here before this court and the
5 rest of us lying, blaming everyone and everything else for
6 the incomprehensible atrocities he committed that day.

7 In his first bond hearing he stood before me and my
8 family and shook his head in defiance and said he didn't
9 remember what he did to my daughter hours prior to and
10 blamed his actions on blackouts from his hypnosis therapy he
11 received for the supposed post traumatic stress disorder he
12 suffers from when he was in the military.

13 Post traumatic stress disorder, now that is something
14 my daughter and the victims of that day know all too much
15 about thanks to Gary.

16 As I said the last time I spoke, my daughter is the one
17 who suffered from real post traumatic stress disorder. My
18 daughter has been through hell and back because of him.

19 We have been there through every minute of counseling.
20 We have been there through every tear she has cried. We
21 been there through every sleepless night she has
22 experienced. We have been there through every panic attack
23 she has fought through at school and at home. We have been
24 there through every humiliating medical exam she endured.
25 We have been there through every STD test. We have been

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1 there through every hepatitis test. We have been there
2 through every HIV test. We have been there through every
3 preventative medication she had to take. And we have been
4 there through every side effect she has experienced.

5 And now this time we have been here in this building
6 through every nerve wracking appointment she had to go
7 through to prepare for this trial.

8 We have been here in this courtroom having to look at
9 our 12-year-old daughter, the little girl that we love so
10 much sit up on that stand on relieve and testify about every
11 single horrific event that happened that day, the day her
12 innocence was stripped from her from the selfish evil coward
13 who did it, sitting only feet away from her. And it is an
14 insult to her and everything she has gone through that she
15 even had to take that stand yet again.

16 We have seen so much how this girl has fought through
17 and endured and how much she has grown up in such a forced
18 amount of time. And it has changed all of us forever.

19 Minor is the strongest, bravest, most courageous person
20 I have ever met. Gary Fraley is a disgrace to himself, his
21 family, and the country he served.

22 He is a monster and a master manipulator. This time in
23 court we had to sit here and painstakingly listen about his
24 new excuse, his shot of Vivitrol.

25 On and on he went rambling about flashes of light and

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1 frames of time that he remembers, listening to him talk
2 about how he remembered buying his dog a MexiMelt from Taco
3 Bell, forgetting how to drive, aimlessly wandering through
4 North Carolina like Moses wandering through the wilderness
5 and then finding the strength and ability to teach himself
6 how to drive again and finding his way home, remembering
7 that he had to get his dog out of the hotel that he was
8 about to rape my daughter in, and somehow waking up with a
9 loaded gun cocked in his hand in Steve Tsafos' office at the
10 bowling alley that I planned on taking my kids to at the
11 exact time, the place that we had experienced so much fun
12 together multiple times in the past.

13 We watched as Ms. Gay conveniently and strategically
14 mentioned Gary's only weaknesses, his daughter Alta. And we
15 watched him weep over her knowing that his relationship with
16 her will never be the same.

17 Other than Minor out of everyone that Gary's selfish
18 actions hurt that day my family and I's heart goes out the
19 most for her. Forever scarred, damaged, and humiliated by
20 the horrible excuse of a father she was given and to know
21 that he drug, raped, and sodomized at gun point a friend of
22 hers two years younger than she is and also for what
23 possible similar actions he may have done to her.

24 On and on Gary went stumbling over one lie after
25 another. And yet as the State so meticulously dissected,

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1 the one constant in all of his lies, stories, and excuses
2 and that -- is that he was not responsible and everyone else
3 was wrong.

4 It was everything in me to sit there and watch his
5 antics and listen to the raw sewage that spewed from his
6 mouth about the thing that -- about the thing that gave me
7 solace yesterday and it gives me solace for every day
8 forward is that he is going to have the rest of his life
9 sitting in a cell behind bars, locked up hopefully forever,
10 with no hope, with no chances, with nothing to look forward
11 to.

12 All you are going to have, Gary, are all of your
13 stories, all of your excuses, all of your lies. But the
14 only beings who will be there to tell them to will be the
15 demons that will haunt your soul in your mind for the rest
16 of your life.

17 Meanwhile I will be able to watch my brave, beautiful,
18 young daughter turn the page from today and start the rest
19 of her life surrounded by the family and friends with all
20 the hope, love, and support in the world that any child
21 could ask for.

22 Truly this is a new beginning for her. And I cant wait
23 to continue to see what good that with God's help she will
24 create from going through this horrendous event.

25 Your Honor, I beg you to please set an example out of

1 Gary Fraley. My daughter's greatest fear in all of this is
2 that some day he will be set free.

3 Please do not allow in any way for the opportunity or
4 chance of that happening. Please do not allow her days to
5 consist of counting down the years until he is able to be
6 free. She has suffered enough.

7 You, Your Honor, have the power right now to save her
8 from that fear and to put that nightmare to bed forever. If
9 he ever did get out it would be the ultimate insult to her
10 and everything she went through and as is she would go
11 through that hellish day again and again.

12 My family and I beg and plead for your mercy and ask
13 that you give Gary the maximum sentence possible for each
14 charge he was found guilty of today and that they be served
15 in a consecutive order and not concurrent, without an
16 opportunity for parole.

17 We humbly thank you for you and this court's time,
18 effort, and hard work. Thank you.

19 THE COURT: Thank you.

20 MR. VICK: Your Honor, may I stand up here?

21 THE COURT: You may.

22 MS. Minor 1 Do I state my name?

23 THE COURT: Please do.

24 MS. Minor 1 [REDACTED]

25 Minor 1

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1 First of all I would like to thank the Goose Creek
2 Police Department for all their hard work and compassion
3 they have shown my family. Thank you, Paul, for being my
4 bodyguard.

5 Next I would like to personally thank Danielle and
6 everyone at DCC. You have been a great counselor and a huge
7 help to me.

8 Ms. Anne, thank you for defending me and making sure
9 justice is being served and making good while doing it. I
10 really like your new haircut. And everyone else who I don't
11 know who helped me with my case, thank you.

12 Gary, hope someday I can forgive you for everything you
13 have done to me. But truthfully all I feel is anger and
14 hatred towards you right now. I know you know what you did
15 and I also know you know what you did to me is wrong.

16 You are a horrible father and a deceitful man. I hope
17 you never see the light of day. I feel bad for Alta that
18 she had you as a dad.

19 I refuse to let this affect the rest of my life. I
20 will make something good out of this. This will not define
21 me. This will not be the end of me. But this is the end
22 for you.

23 THE COURT: Thank you, Minor 1

24 Is that it, Ms. Williams?

25 MS. WILLIAMS: That is, Your Honor. Mr. Tsafos is here

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1 and he would ask for the maximum time. He wanted the Vick
2 family to be able to speak. But he has been here every day
3 and he is here now, and he wants you to know that he is
4 here.

5 Your Honor, just briefly from the State, this case has
6 affected all of us. The facts, as you know, are egregious;
7 and we would ask for consecutive time at least from one case
8 to the other.

9 They are two separate cases although they happened one
10 after another, two separate sets of victims. And aside from
11 the victims that were directly affected it has affected so
12 many people, and we would ask you to please give him the
13 maximum and run them consecutive.

14 THE COURT: All right. Ms. Gay, I will be happy to
15 hear from whomever before I sentence.

16 MS. GAY: Your Honor, Mr. Fraley did testify in his
17 trial so some of his personal history you already know. He
18 is 49 years old, Your Honor. He had been previously in the
19 military.

20 He was talking in his testimony about how he was doing
21 some civilian contracting work. He is also -- he is also
22 disabled. And some of that is for mental reasons. Some of
23 that is for physical reasons.

24 He does have one child that we have discussed in this
25 case, Alta F. Your Honor. And we would just ask you to

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1 be as merciful as possible.

2 THE COURT: All right. Mr. Fraley, please stand. You
3 do not have to, but do you wish to address the court? Do
4 you wish to address the court?

5 MR. FRALEY: Can I address the Vick family?

6 THE COURT: No, you may address the court.

7 (WHEREUPON, Ms. Gay confers with Mr. Fraley.)

8 MR. FRALEY: I didn't know I could speak.

9 THE COURT: I'm sorry, I can't hear you.

10 MS. GAY: He said he wasn't prepared to say anything,
11 Your Honor. He is just thinking about it for just a second.

12 THE COURT: All right. Ms. Gay, did you advise Mr.
13 Fraley of his right to appeal?

14 MR. FRALEY: Yes, I did, Your Honor.

15 THE COURT: And did you advise Mr. Fraley of all of the
16 collateral consequences of this guilty verdict?

17 MR. GAY: Yes.

18 MR. FRALEY: I am kind of speechless. And I apologize
19 to everybody for everything. I saw a lot of stuff up there
20 that I had done. And honestly just say there was a lot that
21 I didn't know about. And I apologize for that.

22 And I wish the best for Minor and their family. I hope
23 they saw that I was their neighbor. They saw what happened.
24 They -- it wasn't -- I just wish the best for them.

25 THE COURT: Anything further, Ms. Gay?

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1 MS. GAY: No, ma'am.

2 THE COURT: Ms. Gay, you advised that the kidnapping is
3 a most serious and a violent offense?

4 MS. GAY: Yes.

5 THE COURT: And you advised your client that the
6 attempted murder is a violent and a most serious offense?

7 MS. GAY: Yes, ma'am.

8 THE COURT: And that the CSC with a minor second-degree
9 is a most serious and a violent offense?

10 MS. GAY: Yes, ma'am.

11 THE COURT: Did you advise your client of the
12 consequences that he will have to register?

13 MS. GAY: As a sex offender he -- we've discussed that
14 over the process that there would be -- that when he is
15 released from -- if he is ever releasable from prison they
16 will also determine whether or not -- there is a civil
17 aspect of civil commitment and things of that nature that
18 would be applicable if he were to be in a situation where he
19 could be released and as well that he would need to register
20 as a sexual offender.

21 THE COURT: Mr. Fraley, any questions about the
22 collateral consequences or your right to appeal?

23 MR. FRALEY: I don't have any questions, ma'am.

24 THE COURT: All right.

25 MS. GAY: I did have ---

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1 THE COURT: You understand you do have the right to
2 appeal but you must do so within ten days of today's date?

3 MR. FRALEY: Yes, ma'am.

4 MS. GAY: I have a question with regard to the
5 kidnappings because one of the kidnappings was about a
6 victim, a female victim, and one of them isn't; and so I was
7 trying -- I was asking the solicitor during this time that
8 is there a specific designation for the kidnapping that is
9 not about a female?

10 THE COURT: Well, I have to make a finding that it is
11 not a sexual offense.

12 MS. GAY: Right.

13 THE COURT: However, at this point I do not know that
14 that is going to matter to your client; but I will note on
15 the sentencing sheet for the kidnapping for Mr. Tsafos that
16 it did not involve a sexual offense but the kidnapping of
17 Minor 1 did ---

18 MS. GAY: Yes, ma'am.

19 THE COURT: --- and that will place him on the
20 registry, as well as the three counts of criminal sexual
21 conduct with a minor second-degree and the criminal sexual
22 conduct with a minor third-degree will automatically place
23 him on the registry.

24 MS. GAY: Yes, ma'am. I just wanted to be clear that
25 one of them was not.

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1 THE COURT: All right. Is that your understanding, Ms.
2 Williams, of the statute?

3 MS. WILLIAMS: Yes, Your Honor.

4 THE COURT: All right. In no particular order it is
5 the order of the court on 2014-GS-08-1505 that you be
6 committed to the State Department of Corrections for a term
7 of 30 years.

8 It is the order of the court on 2014-GS-08-1511 that
9 you be committed to the State Department of Corrections for
10 a term of 30 years.

11 It is the order of the court on 2014-GS-08-1684 that
12 you be committed to the State Department of Corrections for
13 a term of 30 years.

14 It is the order of the court on 2014-GS-08-1685 that
15 you be committed to the State Department of Corrections for
16 a term of 30 years.

17 It is the order of the court on 2014-GS-08-1874 that
18 you be committed to the State Department of Corrections for
19 a term of 15 years.

20 It is the order of the court on 2014-GS-08-1506 that
21 you be committed to the State Department of Corrections for
22 a term of five years.

23 It is the order of the court on 2014-GS-08-1507 that
24 you be committed to the State Department of Corrections for
25 a term of 10 years.

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1 It is the order of the court on 2014-GS-08-1934 that
2 you be committed to the State Department of Corrections for
3 a term of five years.

4 It is the order of the court on Indictment
5 2014-GS-08-1509 that you be committed to the State
6 Department of Corrections for a term of 30 years. I find
7 that that did not involve a sexual offense.

8 It is the order of the court on 2014-GS-08-1508 that
9 you be committed to the State Department of Corrections for
10 a term of 30 years.

11 The indictment 2014-GS-08-1505 will run consecutive to
12 Indictment 2014-GS-08-1511, 1684, 1685, 1874, and 1506 in no
13 particular order. It is just the way they have appeared on
14 my bench.

15 Those two indictments will run consecutive to
16 2014-GS-08-1507, 1934, 1509, and 1508.

17 Good luck to you, sir.

18 (WHEREUPON, trial concluded 7/17/15, 5:36 p.m.)

State vs. Gary Fraley

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on August 13-17, 2015 .

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: 8/30/2015

Certified Transcript Provided For: SCCD

Certification Reference # 082015 0715

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	Case Number: 2000-GS-10-1770
	)	Warrant Number: G-368263
STATE OF SOUTH CAROLINA	)	Trial Brief for the State of South Carolina
	)	INDICTMENT NUMBER(S): 2014-GS-08-01505;
	)	2014-GS-08-01506; 2014-GS-08-01507;
	)	2014-GS-08-01508; 2014-GS-08-01509;
	)	2014-GS-08-01511; 2014-GS-08-01684;
	)	2014-GS-08-01685; 2014-GS-01874;
	)	2014-GS-08-01934
v.	)	
Gary Curtis Fraley,	)	Charges: Kidnapping (X2); Poss of a Weapon
	)	During Viol Crime(X2); Unlawful Conduct;
Defendant	)	Attempted Murder; CSC w a Minor Second (X4)

THE HONORABLE Kristi L. Harrington
South Carolina Circuit Court Judge, Ninth Judicial Circuit

Appearances:

For the State: Anne Williams, Assistant Solicitor
Daniel Poulos, Assistant Solicitor

For the Defendant: Melisa Gay, Esquire

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 - a. Notice of Insanity Defense
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 - c. Motion to Sequester
 - d. Motion in Limine to Exclude Prior Bad Acts
 - 1) prior acts are relevant to refute Insanity Defense

FILED
15 JUL -9 PM 4:45
MARY P. BROWN
CLERK OF COURT
BUTLER COUNTY, S.C.

- 2) prior acts are part of the res gestae
- 3) prior acts are proper 404 (b) evidence

D. Proposed Witnesses

II. Proposed Voir Dire

I. STATEMENT OF THE CASE

A. Procedural History

On August 5, 2014 Goose Creek Police Department responded to the Royal Lanes Bowling Alley in Goose Creek, in response to a hostage situation. Swat team officers located defendant, Gary Fraley, who was holding victim number one: Steven Tsafos at gunpoint in a closed office inside the bowling alley. Eventually Mr Tsafos escaped the office unharmed after the defendant fired one round but missed Mr Tsafos. As police continued to negotiate for Mr Fraley to surrender, he implied he was going to kill himself. Ultimately he was disarmed and arrested for Attempt Murder, Kidnapping and Possession of a Weapon During the Commission of a Violent Crime.

While the scene unfolded in the bowling alley, victim number two: eleven (11) year old Minor 1 exited the defendant's vehicle and approached an employee in the parking lot about using the employee's phone to call her father. She was shaking and appeared to be scared. Once she was alone with her father, Minor 1 disclosed that the defendant, (who was a neighbor of the Vick family) had taken her to the Econolodge and sexually assaulted her, (the child's forensic interview and DNA evidence collected at the scene corroborated her account). On August 7, 2015, the defendant was served warrants for Criminal Sexual Conduct with a Minor, Kidnapping, Unlawful Conduct Towards a Child and Possession of a Weapon during the Commission of a Violent Crime for crimes against Minor 1. The State subsequently presented Direct Indictments for Criminal Sexual Conduct with a Child in the Third Degree, and three counts of Criminal Sexual Conduct With a Child in the Second Degree and elected to go forward

on the direct indictments with regard to the sexual offenses and the warrants on the remaining charges. The defendant gave conflicting statements about the events to law enforcement, he spoke spontaneously to officers at the hospital without being asked any questions on August 5th and on August 6th gave a taped statement in which he was verbally mirandized and signed a waiver of rights form. He eventually stated he couldn't remember anything that happened. On January 20, 2015, a court ordered evaluation concluded that the defendant was competent to stand trial. On May 27, 2015 a Court ordered evaluation for Criminal Responsibility concluded that the defendant had the capacity to distinguish moral or legal right from wrong and to recognize the acts as morally or legally wrong. A trial date was initially set for June 22, 2015 and a Scheduling Order signed by Judge Kristi L. Harrington on March 27, 2015. Defense counsel, Lisa Gay requested a continuance and a second Scheduling Order was signed by Judge Harrington on May 27, 2015. The trial was ordered to start the week of July 13, 2015.

B. Factual Summary

The State anticipates various law enforcement officers and other witnesses will testify about the events leading to the arrest of Defendant, Gary Fraley for the kidnapping and attempted murder of Steven Tsafos; and the kidnapping and sexual assault of eleven-year-old Minor 1. A summary of the facts gathered by law enforcement follows.

During the month of June in 2014, Gary Fraley, who was estranged from his wife Deonna Fraley, began telling friends and family that he believed his wife was cheating on him with her boss, Steven Tsafos. Several days before the crimes, the defendant drove to his mother's house in Pennsylvania and took her .357 magnum pistol before driving back to South Carolina. During his return he stopped to buy ammunition and posted threatening messages on Facebook. On

Saturday, August 2nd, the defendant approached neighbor Lori Woltz¹ to ask if her fourteen (14) year old daughter could come help his daughter with some homework. When he was told the Woltz girl was not free that day he then requested that she come to a birthday party for his daughter the following Tuesday, August, 5th at Royal Lanes Bowling Alley. He was told that the child was not available for the birthday party because she had a hair appointment. During the next few days the defendant persisted in his attempts to get the the the fourteen (14) year old to come with him to the party: he called repeatedly, approached her brother, and showed her and her brother some rocks he referred to as "fossils" explaining that the kids were going to use them as a craft to make "fossil molds" at the birthday party. His last attempt was on the day of the crimes, August 5th, 2014.

On the afternoon of Tuesday, August 5th, the defendant approached another neighbor, Ruth Vick to see if her fourteen (14) year old daughter could come to a birthday party for his daughter at the bowling alley. He said it was a surprise and he would drive the child to the party. He showed Mrs. Vick some rocks he referred to as "fossils" explaining that the kids were going to use them as a craft to make "fossil molds" at the party. The fourteen (14) year old was not home so the defendant then asked if eleven (11) year old Mino could come to the party. Mrs. Vick allowed Mino to go but told the defendant that she had to be home by 5:30 for visitation with her father. The defendant then drove to publix where he purchased alcohol and Nyquil before taking the child to the Econolodge, pulling out the 357 magnum handgun, threatening her and forcing her to drink Nyquil. The child was then raped repeatedly. The defendant's DNA was retrieved

¹ The defendant was well known to the Vick and Woltz families as he used to drop his daughter off at the bus stop and their daughters had spent time with the defendant's daughter from time to time. He lived just a few houses away from both families.

from the Sexual assault kit, bedding at the hotel and the child's underwear. The child's DNA was retrieved from the lip of the Nyquil cap.

Earlier that day, on August 5th, the defendant's estranged wife Deona Fraley went to the Goose Creek Police Department to file a report because she was frightened that her husband would harm her. She had seen some disturbing messages on Facebook and had also seen a charge on their credit card for ammunition at a local gun shop. She filed the report and went to work at the Royal Lanes Bowling Alley.

After assaulting Minor 1 the defendant drove her to the parking lot of the bowling alley and told her he would harm her if she told anyone what happened. He then left her in the running car and went into the bowling alley to confront Steven Tsafos. He entered Mr Tsafos' office telling him he was going to kill him. He took Mr Tsafos' cell phone and removed the battery. The two men argued, and as the victim stepped toward the door, the defendant discharged his weapon. Fortunately, the shot missed Mr Tsafos. After hearing the gunshot, the employees began to get all of the customers out of the business and call 911. When officers and SWAT team members arrived, the victim was still in the office and verbal contact was attempted through the door. Once the victim escaped, The defendant indicated he was going to kill himself. Entry was eventually made and the defendant was arrested. By this time Minor 1 had exited the vehicle and called her father. Once he learned what happened he immediately called her mother and they drove her to MUSC for an examination.

C. Evidentiary Issues

1. State's Motions in Limine

a. Compliance with Rape Shield

Pursuant to South Carolina Code Section 16-3-659.1 (1), the State moves to ensure that all references or any line of inquiry regarding sexual activity or reports of sexual assault regarding the victim Minor 1 in compliance with the "Rape Shield Statute" be prohibited. This includes, but is not limited to references made during summation, argument or witness examination. The State knows of no other reports of sexual assault or actual sexual assaults regarding this victim but wishes to prevent inferences that could be drawn from argument or inquiries in violation of the Statute. Furthermore, pursuant to South Carolina Code Section 16-3-659.1 (2), before any such evidence which defense believes is an exception to the law can be presented, the Statute requires notice be given to the State and such evidence be proffered before the Court and reviewed *in camera*.

b. Motion for Admission of out of court statements by victim pursuant to 17-23-175.

The state may move to admit the taped statements made by victim, Minor 1 after she testifies in court and is subject to cross examination. Pursuant to the statute, the state will present evidence to the Court that Minor 1 was under the age of twelve (12) when she was had a forensic interview at the Dorchester Children's Center by a trained forensic interviewer, Helen Boyle. Furthermore, evidence will be presented that this statement was taped, it was given in response to questioning during an investigative interview, and that the totality of circumstances surrounding the making of the statement provide particularized guarantees of trustworthiness. The State will request an *in camera* review by the Court for consideration of the following factors in support of said evidence pursuant to 17-23-175(B): (1) whether the

statement was elicited by leading questions, (2) whether the interviewer was trained in conducting investigative interviews of children, (3) whether the statement contains a detailed account of the offense, (4) whether the statement has internal coherence, and (5) the sworn testimony of any participant which may be determined necessary by the Court.

2. State's Response to Defendant's Motions

a. Notice of Insanity Defense

The Defendant has given the State notice of the affirmative defense of insanity. In its response, the State asserts that there is ample evidence of Defendant's sanity at the time the crimes were committed. The State will present evidence from medical experts, lay people and law enforcement officers regarding this issue.

In every criminal case, it is presumed the defendant is sane. State v. Milian-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985). Insanity is an affirmative defense to a prosecution for a crime. *Id.* 328 S.C. 273.

South Carolina has adopted the M'Naghten test to determine insanity, which requires the defense to show that at the time of the crime, as a result of mental disease or defect, the defendant could not distinguish moral or legal right from wrong, or recognize the particular act as being morally or legally wrong. This is an affirmative defense that must be established at the time of the crime by preponderance of evidence. S.C.Code Section 17-24-10(B); State v. Milan-Hernández, 287 S.C. 183, 336 S.E. 2d 476 (1985); State v Moultrie, 283 S.C. 252, 322 S.E.2d 663 (1984). The State will present expert and lay person evidence of the defendant's sanity in the present case.

The defendant in the case at hand was evaluated by Dr Ana Gomez at the Medical

University of South Carolina (MUSC) on February 9, 2015. In her May 27, 2015 report, Dr. Gomez opined that during the commission of the crimes, the defendant had the capacity to distinguish moral or legal right from wrong and to recognize the acts as morally or legally wrong. She further stated that on the date of the alleged incidents, the Defendant had the capacity to conform his conduct to the requirements of the law.

In addition to the medical opinion that the defendant was sane under the law at the time of the crimes, his actions as observed by lay people also support the conclusion that he was sane. The defendant told several people he was angry with his wife and Steven Tsafos for having an alleged affair. He retrieved his mother's hand gun from Pennsylvania in the week before the crimes and purchased ammunition the morning of the crimes. He told Jennifer Moultrie, a friend of his estranged wife, that he thought she was having an affair with Steven Tsafos and made threats against him. His conversations with Jennifer Moultrie are described by her as lucid and clear.

With regard to Minor 1 sexual assault and kidnapping, the defendant began soliciting a neighbor of Minor 1 in the three days preceding her kidnapping. He called and dropped by the Woltz family's house continuously begging for their daughter to come to a birthday party on Tuesday. Although his persistence was off putting, the Woltz family described the defendant's demeanor as calm, lucid and normal. Mrs. Vick also described the defendant's behavior as normal. The defendant invented a story about a birthday party with both of the families he targeted because he knew he could not tell them what he was really going to do. He hid his true intentions because he understood that taking them to the Econolodge to sexually assault them was wrong. The Defendant's actions leading up to the crimes show his ability to understand right

from wrong.

The Court in the case of State v Senter, 396 S. C. 547, 722 S.E. 2d 233 (2011), looked at all of the defendant's behavior before and after the crime in determining if the State had presented adequate evidence of sanity after the Defendant made a motion for directed verdict.

The Court stated:

"State presented adequate evidence of defendant's sanity to present a question for the jury, during prosecution for assault and battery with intent to kill (ABWIK) and criminal domestic violence of a high and aggravated nature in which the defendant's estranged wife was the victim; the victim's neighbor testified that defendant went to her home the morning of the shooting to look for victim and that he was calm, in the months leading up to the shooting defendant endorsed all property settlement checks from the victim with the statement "Will be paid regardless of any medical, arrest or other event," and defendant removed the victim from public view after she collapsed in the front yard following the shooting."

Another case that mirrors the facts of the present case is State v Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997), where the defendant went to his ex-wife's home because he was jealous of her new relationship. The defendant shot the victim then ran back into the house threatening to shoot himself exactly as the defendant Gary Fraley behaved at the bowling alley in this case. The Court looked at the actions of the appellant in Lewis and stated:

After carefully reviewing the evidence presented, we conclude appellant was not entitled to a charge on insanity. While it is uncontroverted appellant suffered from

severe depression, the evidence does not suggest he was unable to distinguish between right and wrong or unable to recognize his actions as morally or legally wrong at the time of the offense. Even appellant's own testimony that he was "out of [his] mind" does not indicate he could not differentiate between right and wrong or recognize his conduct as wrong. We note "there are but few instances where one slays another while his mind is in normal condition." State v. Gardner, 219 S.C. 97, 107, 64 S.E.2d 130, 135 (1951), citing Anderson v. State, 67 Tex.Crim. 320, 148 S.W. 802 (1912).

Moreover, appellant's own testimony suggests he was sane. After killing Sammy, appellant testified he chased Charlotte out of her home then ran back inside when he saw police officers with their guns drawn. He allowed an emergency crew into the home to remove Sammy, who was still alive. Thereafter, appellant remained in Charlotte's residence for hours, threatening to shoot himself but not doing so until the SWAT team entered. These actions suggest appellant recognized the gravity of the situation and that his conduct was wrong, and tend to establish his sanity rather than his insanity. *Id.* at 106, 64 S.E.2d at 135 (defendant not entitled to insanity charge even though police testified, shortly after the homicide, defendant "didn't act clear" and "looked like a madman," but stated he was "ready to be electrocuted;" the statement showed the defendant "fully appreciated the gravity of his act."). *Id.* at 117-118.

The Medical opinion, lay people's observations of the defendant's behavior before the crimes were committed and his behavior during and after the crimes provide strong evidence that

he was sane at the time of the crimes.

b. Notice to suppress statements

The Defendant moves this Court to suppress his statement to law enforcement. As outlined above, the Defendant was interviewed by law enforcement at the Goose Creek Police Department. Officers advised the Defendant of his Miranda rights during the interrogation and the Defendant signed a form waiving those rights. The Defendant also made statements to an officer at trident hospital that were not in response to any questions so were not subject to Miranda and are admissible.

c. Motion to Sequester Witnesses

The State has no objection to this motion except as it relates to the victim, Steven Tsafos, the minor victim, Minor 1 parents, and case agent, Paul Tremblay of the Goose Creek Police Department.

d. Motion in Limine to Exclude Testimony of Prior Bad Acts

The State asserts that the admissibility of several specific prior acts in the days, hours and minutes before the crime is firmly supported by law. These acts include but are not limited to:

- The defendant's attempts to coerce another neighbor's child, the fourteen (14) year old Woltz girl, to come with him on August 5th, and Minor 1 fourteen (14) year old sister.
- The purchasing of ammunition for his gun the morning he used it for the Vick and Tsafos kidnappings.

- A message he put on the Royal Lanes Bowling Alley Facebook page that read "BOOM" along with other Facebook messages threatening his wife Deonna and Steven Tsafos the day of the kidnappings.
- The statements he made to other people (Minor 1 and Jennifer Moultrie) about threats to Steven Tsafos because he believed his wife was having an affair with him.
- The Hit and Run committed by the defendant at the Econolodge as he drove with Minor 1 to the Royal Lanes Bowling Alley.

1) Prior Acts relevant to refute the Assertive Defense of Insanity

Defendant's actions before the crime are relevant to the question of sanity. Lay person testimony can be sufficient to prove sanity State v Smith, 298 S.C. 205, 379 S.E. 2d 287 (1989); and the observations of the people encountered by the defendant in the time leading up to the crime speak to his ability to know right from wrong.

The Defendant's attempts to accost The Woltz family's daughter up to the day before Minor 1 abduction is relevant to the defendant's consciousness of guilt, his ability to distinguish right from wrong and his knowledge and understanding that the act of taking a young girl to the Econolodge to sexually assault her was wrong. The affirmative defense asserted by the defendant must satisfy the M'Naghten test discussed above, and must be established at the time of the crime by preponderance of evidence. S.C.Code Section 17-24-10(B); State v Milan-Hernandez, 287 S.C. 183, 336 S.E. 2d 476 (1985); State v Moultrie, 283 S.C. 252, 322 S.E.2d

663 (1984). If the contention of insanity is suggested, the State may present evidence of sanity in its case-in-chief rather than waiting to do so during its case in reply. State v Smith, 298 S.C. 205, 379 S.E. 2d 287 (1989).

The defendant did not just ask Minor 1 mother if her daughter could come to a hotel room with him so that he could sexually assault her. He instead he made up an elaborate story about a birthday party for his daughter, showed Mrs. Vick some "fossils" that he planned to let the party goers use for a party activity and promised to bring her back from the party at 5:30. The defendant made up this story because he knew that taking Minor 1 to a hotel room to rape her was wrong; otherwise he would've just told Mrs. Vick the truth. The defendant also attempted the same ruse with the Woltz family. Defendant told that family the identical story that he told the Vicks and persisted in begging for the child to come with him up to the day before he abducted Minor 1. The fact that he used identical tactics with each family shows an ability to understand his plan to bring a child to the hotel was wrong. There is absolutely no evidence that a birthday party was ever planned by anyone for the defendant's daughter on August 5th. In fact, he knew his daughter's birthday was two months earlier and that she had already had a party. Both parents describe Defendant's demeanor as clear, lucid and normal. He decided he wanted to sexually assault a young girl and formulated a careful, detailed plan to accomplish that. Each attempt, one successful and the other not, shows the defendant's consistent and methodical planning of the crime and his attempt to hide his criminal intentions.

Additionally, Defendant's hit and run accident which is occurred after the rape of Minor¹ but before he arrived at the bowling alley² shows the defendant understood that what he was doing wrong. He fled the scene before he could be caught with the eleven (11) year old victim that he had just sexually assaulted.

Evidence of Defendant's planning and cover-up is relevant to proving the defendant's sanity. This type of evidence was considered by the Court in both State v Senter and State v Lewis, discussed above.

Defense counsel intends to present evidence of defendant's hospitalizations, behaviors, medications and actions from June through August of 2014 as proof of his insanity. The State has been put on notice that Robert Bennett will testify about how a shot of medication given to the defendant in June could affect his behavior in August. Certainly the State should also be allowed to present evidence of the defendant's behavior during the same period of time. The actions of the defendant outlined above support a conclusion that he was sane at the time of the crimes and the State is permitted to present evidence of sanity in its case-in-chief State v Smith, 298 S.C. 205, 379 S.E. 2d 287 (1989). It would be misleading and confusing to the jury to hear only about some behaviors and actions leading up to the crime rather than all of them.

2) Prior Acts are part of the *Res Gestae*

In addition to circumstantial evidence of the crimes committed on August 5th, the preparation of the crime (purchasing ammunition the day of the crime), the threats made to the

² the location of the hit and run is the Econolodge parking lot which is less than an eighth of a mile from Royal Lanes Bowling Alley

victims, discussion of his belief that an affair was occurring between his wife and Steven Tsafos, the hit and run accident and the attempts to abduct a different victim in the same neighborhood, are all part of the *res gestae* of the case. The threats to victim, Steven Tsafos and the defendant's behavior toward his estranged wife beforehand explain why the defendant committed the crimes at the bowling alley. The thwarted attempt to coerce a different girl into his car before he goes to the Vick house a setting and timeline for his behavior at the Vick house and his crimes against Minor 1. The defendant's hit and run, committed as he is leaving the hotel with Mino on the way to the bowling alley, is part of the unfolding story and gives insight into the defendant's sense of urgency. These facts are interwoven into the story of the crime and important in understanding the context of what happened.

In State v Rice, 368 S.C. 610, 629 S.E. 2d 393 S.C. App., (2006), the court allowed the State to present evidence of both drug trafficking and murder because "without the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case. The cocaine trafficking evidence was necessary for a full presentation of the case without fragmentation. See State v Simmons, 352 S.C. 342, 573 S.E. 2d 856 (Ct.app.2002)"; State v Rice, 368 S.C. 610, 629 S.E.2d 393 S.C.App.,(2006). The Court went on to cite State v. Adams, 322 S.C. 114, 470 E. 2d 366 (1996) to recite the basic premise of *res gestae*:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to

complete the story of the crime on trial by proving its immediate context or the res gestae or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... [and is thus] part of the res gestae of the crime charged. And where evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae. *id* at 122, 470 S.E. 2d at 370-371.

Without presenting the evidence of how the defendant prepared for the crime and what he did beforehand, the jury will not get a full understanding of the story and context of the events of August 5th, 2014. Without all of the facts surrounding the crimes, the jury will get a fragmented view of what happened and they could easily be misled and confused into thinking the defendant's actions were spontaneous and erratic, when in fact the context provides a much different picture. The acts of the defendant beforehand are so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other.

3) Prior Acts are proper 404 (b) evidence

Additionally, the prior attempt to trick the Woltz family into allowing their daughter to attend the fictitious birthday party clearly falls under proper 404 (b) evidence.

Evidence of other crimes, wrongs, or prior bad acts may be admissible to show "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. See *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

The State seeks admission of this evidence pursuant to the South Carolina Rules of Evidence, Rule 404(b), as prior bad acts on the part of the defendant. The admissibility of such

evidence was first addressed in State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923). In Lyle, the Court held that clear and convincing evidence of other crimes that is logically relevant to prove intent is admissible if its probative value outweighs its prejudicial effect. See Bell, supra. Evidence is relevant if it tends to make more or less probable some matter in issue upon which it directly or indirectly bears. State v. Simmons, citing State v. Alexander, 401 S.E.2d 146 (1991); State v. Bell, supra. Evidence is admissible if "logically relevant to establish a material fact or element it need not be 'necessary' to the State's case in order to be admitted. State v. Sweat, 606 S.E.2d 508 (2004)."

In this case, the evidence is relevant to material issues in the case and the probative value of the defendant trying to coerce another neighbor's child into his car in the identical manner is probative to planning, lack of accident and common scheme; and far outweighs the prejudicial effect.

In order to present 404 (b) evidence, there must be a common scheme or plan, the evidence must be clear and convincing and there must be a close degree of similarity. State v. Scott 405 S.C. 489; 748 S.E. 2d 236 (2013). The State will present clear and convincing evidence that the encounter with the Woltz' occurred. The State will present testimony from people that encountered the defendant as he explained that he wanted the Woltz daughter to come to a birthday party at the bowling alley, witnesses will authenticate taped messages left by the defendant to that effect and also describe the rocks he showed the Woltz family to convince them the party would have a craft involving the rocks. Witnesses that encountered Mr. Fraley at the Vick house will describe an identical encounter. There is no evidence that there was ever a birthday party at the bowling alley and the defendant's daughter's birthday was two months prior

- she had a party at that time and he was aware of it.

The State will also present evidence of the similarity of the two encounters. In a recent case, State v Scott, 405 S.C. 489; 748 S.E.2d 236, (2013), the Court explained the importance of similarity between the two acts and provided some guidance as to what to look for:

“(1) the age of the victims at the time of abuse; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence. *Wallace*, 384 S.C. at 433–34, 683 S.E.2d at 278; *Taylor*, 399 S.C. at 59–60, 731 S.E.2d at 601. When a review of all pertinent factors establishes a “close degree of similarity” no further analysis is necessary; the evidence is admissible. *Wallace*, 384 S.C. at 434, 683 S.E.2d at 278. Finally, in making this similarity determination, focus is upon whether each particular proffer of bad act evidence is sufficiently similar to the crimes charged, not whether multiple proffers are sufficiently similar to each other. *See id.* at 433–34, 683 S.E.2d at 278 (holding bad act evidence must be sufficiently similar to the crimes charged).”

In the present case, the defendant’s first target, the Woltz girl, was fourteen (14) years old, the defendant’s second target, the older Vick girl, was fourteen (14) years old, and the defendant’s eventual victim, Minor 1 was eleven (11) years old. The neighborly relationship is identical, the location is identical and the manner of occurrence is identical in terms of the attempts to get each girl into his car.

Evidence that the defendant attempted to coerce the Woltz girl into his car up to the day before the crime and evidence that he also tried to get Minor 1 fourteen (14) year old sister

before he settled on Minor is relevant to plan, motive, identity and common scheme or plan. The probative value of this evidence also outweighs its prejudicial effect.

Additionally, Defendant's threats regarding Steven Tsafos, discussion of why he was angry with him and preparation for the crime are relevant to motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

D. Potential Witnesses

The Government anticipates its case-in-chief will take three (3) days. The following is a list of *potential* witnesses. The Government does not anticipate calling all of the witnesses on this list.

1. Minor 1
2. Chad Vick
3. Ruth Vick
4. Quenton Vick
5. Steven Tsafos
6. Deonna Fraley
7. Alisa Locke
8. Vanessa Gilchrist
9. David Reagin
10. Jennifer Moultrie
11. Jasmyne Collins
12. Caroline Brouters
13. Victoria Booth
14. Dallas Boggs
15. Michael Blanton
16. William Lawrence
17. Jordan Powell
18. Lori Woltz
19. Matthew Woltz
20. Kimberly Tompkins-
21. Janie W.
22. Elizabeth
23. John Robinson MUSC
24. Sharieka Mood
25. Sgt. C. Stayton,
26. Ptl. Killian, (GCPD)
27. Lt Schreures, (GCPD)
28. Captain Soderberg, (GCPD)

29. Chief Becker, (GCPD)
30. Captain Granger, (GCPD)
31. Captain Aarons, (GCPD)
32. Sgt Ramirez, (GCPD)
33. J. Sceviour (GCPD)
34. Sgt McElman, (GCPD)
35. Pfc Coffey, (GCPD)
36. Pfc Davis, (GCPD)
37. Ptl Hammonds, (GCPD)
38. Ptl Mitchum, (GCPD)
39. Ptl, Diaz, (GCPD)
40. Ptl Carlson, (GCPD)
41. Ptl Wegner, (GCPD)
42. Ptl Moree, (GCPD)
43. Inv. Sean McWilliams, (GCPD)
44. Inv Paul Trembley, (GCPD)
45. Inv Micah Fogle, (GCPD)
46. Inv Maggie Carver, (GCPD)
47. Capt Laffey, (GCPD)
48. Lt Joshua Battista (GCPD)
49. Helen Boyle, DCC
50. Wendy Myers (GCPD) g
51. Karen Droze SANE, MUSC
52. Natalie Dixon, PA MUSC
53. Dr Ana Gomez, MUSC
54. Tracy Mckinnon, South Carolina Law Enforcement Division (SLED)
55. Amy Stephens SLED
56. Doris Yarbough SLED
57. Kevin Selinsky SLED
58. Dr Daniel Deemers, Intelligenetics
59. Kady Thurman, Intelligenetics
60. Jim Bongalis, Publix
61. Mr Patel, Econolodge
62. Terry Reno
63. Brian Lee
64. John Lee City of Goose Creek EMS
65. Paul, Clendenning, City of goose Creek EMS
66. Dr Todd, Magro

II. PROPOSED VOIR DIRE

1. Have you, your relatives or your close friends had any contact with law enforcement officials that might prejudice you against law enforcement?
2. Your duty, if selected as a juror, is to judge guilt or innocence based on the evidence. It is my duty, as a judge, to determine punishment if you vote guilty. The law does not permit you to consider the issue of punishment because there are factors having nothing to do with this trial that will determine lenience or harshness. Is there anybody here who would vote "not guilty" no matter what the evidence indicates, merely because this crime may result in a prison sentence?
3. Is there anyone who holds religious, moral, ethical or philosophical beliefs that would prevent you from sitting in judgment of your fellow human being in a criminal case?
5. Have you or anyone you know been falsely accused of a crime?

RESPECTFULLY SUBMITTED,

SCARLETT WILSON
NINTH CIRCUIT SOLICITOR

By:



Anne Williams
Assistant Solicitor



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January 20, 2015

Anne Williams, Esquire
300-B California Ave
Moncks Corner, SC 29461

Re: The State of South Carolina v. Gary Fraley
Department of Mental Health #: 1032-0548
Berkeley County, Court of General Sessions

Dear Attorney Williams:

In accordance with the court order issued by the Honorable W. J. Young, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health pursuant to S.C. Code Ann. §44-23-410 (1976).

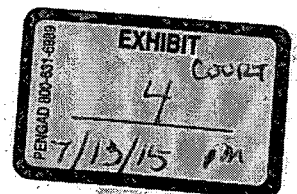
Please see the attached report for the results of this evaluation.

This **nine** page attached report is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410.

1-20-15
Date

Alison Knight
Alison Knight
Forensic Administrative Coordinator

cc: Melisa Gay, Esquire
Cathy Garner



COMPETENCY TO STAND TRIAL EVALUATION

Examinee: Gary Curtis Fraley

DMH#: 1032-0548

Date of Evaluation: January 9, 2015

First Examiner: Ana Gomez, M.D.

Second Examiner: Mollie Dadin, LISW-CP

IDENTIFYING DATA: Mr. Fraley is a 48-year-old male charged with Attempted Murder, Kidnapping (2 counts), Possession of a Weapon during the Commission of Violent Crime (2 counts), Unlawful Conduct towards a Child, Criminal Sexual Conduct First Degree and Criminal Sexual Conduct with a Minor Second Degree (3 counts). He was evaluated at the Medical University of South Carolina (MUSC) Forensic Psychiatry Program pursuant to a court order from the Berkeley County Court of General Sessions requesting an evaluation of his Competency to Stand Trial. At the conclusion of the evaluation, Mr. Fraley was returned to the Berkeley County Detention Center to await disposition of his charges.

OPINION/COMPETENCY TO STAND TRIAL: Yes. It is our opinion, to a reasonable degree of medical certainty, that Mr. Fraley was competent to stand trial on the date of this evaluation.

SOURCES OF INFORMATION:

1. Berkeley County Court of General Sessions Order for Competency to Stand Trial Evaluation, dated November 20, 2014;
2. SLED Arrest Record for G. Fraley, dated August 12, 2014;
3. Indictment for Possession of a Weapon during Commission of Violent Crime (2 counts), Kidnapping (2 counts), Unlawful Conduct toward a Child, Attempted Murder, Criminal Sexual Conduct with a Minor Second Degree (3 counts), dated October 7, 2014
4. Arrest Warrant 2014A0820200443 and Attached Affidavit for Attempted Murder, dated August 6, 2014;
5. Arrest Warrant 2014A0820200444 and Attached Affidavit for Kidnapping, dated August 6, 2014;
6. Arrest Warrant 2014A0820200445 and Attached Affidavit for Possession of a Weapon during a Violent Crime, dated August 7, 2014;
7. Arrest Warrant 2014A0820200446 and Attached Affidavit for Criminal Sexual Conduct First Degree, dated August 7, 2014;
8. Arrest Warrant 2014A0820200447 and Attached Affidavit for Kidnapping, dated August 7, 2014;

Name: Gary Fraley
DMH#: 1032-0548

9. Arrest Warrant 2014A0820200448 and Attached Affidavit for Possession of a Weapon during a Violent Crime, dated August 7, 2014;
10. Arrest Warrant 2014A0820200451 and Attached Affidavit for Unlawful Conduct toward a Child, dated August 7, 2014;
11. City of Goose Creek Police Department General Sessions Case Preparation Packet, dated August 5, 2014;
12. Booking Report by Officer Mitchum, dated August 5, 2014;
13. Incident Report by Officer Stayton, dated August 5, 2014;
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15. Supplementary Report by Officer Ramirez, dated August 5, 2014;
16. Supplementary Report by Officer Killian, dated August 6, 2014;
17. Supplementary Report by Officer Schreurs, dated August 5, 2014;
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21. Supplementary Report by Officer Moree, dated August 6, 2014;
22. Supplementary Report by Officer Hammonds, dated August 6, 2014;
23. Supplementary Report by Officer Aarons, dated August 6, 2014;
24. Supplementary Report by Officer Fogle, dated August 7, 2014; August 8, 2014; August 11, 2014; August 12, 2014; August 13, 2014; August 13, 2014;
25. Supplementary Report by Officer McWilliams, dated August 7, 2014;
26. Supplementary Report by Officer Carver, dated August 7, 2014; August 11, 2014; August 12, 2014; August 19, 2014;
27. Supplementary Report by Officer Mitchum, dated August 7, 2014;
28. Supplementary Report by Officer Davis, dated August 7, 2014;
29. Supplementary Report by Officer Carlson, dated August 7, 2014;
30. Supplementary Report by Officers Powell and Battista, dated August 8, 2014;
31. Supplementary Report by Officer Tremblay, dated August 8, 2014;
32. Supplementary Report by Officer McElman, dated August 10, 2014;
33. Supplementary Report by Officer Myers, dated August 11, 2014; August 18, 2014;
34. Goose Creek Police Department Statement of minor, dated August 5, 2014;
35. Goose Creek Police Department Statement of Q.V., dated August 7, 2014;
36. Goose Creek Police Department Evidence/Property Control Form (multiple forms);
37. Search Warrant, dated August 5, 2014 and Return, dated August 7, 2014 (three warrants);
38. Search Warrant, dated August 6, 2014 and Return, dated August 7, 2014;
39. Photocopy of a Receipt, dated August 5, 2014;
40. Goose Creek Police Department Advice of Miranda Rights and Statement of G.F., dated August 6, 2014;

41. Goose Creek Police Department Inventory of Two Vehicles, dated August 5, 2014;
42. Goose Creek Police Department Advice of Miranda Rights and Statement of D.R., dated August 11, 2014;
43. Goose Creek Police Department Advice of Miranda Rights and Statement of L.W., dated May 7, 2014 (sic);
44. Goose Creek Police Department Statement of J.W., undated;
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47. Photocopy of a Phone Call Log, dated August 2, 2014;
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58. Berkeley County Detention Center Records, dated August 6, 2014 to November 20, 2014;
59. Records from the Ralph H. Johnson VA Medical Center, dated October 22, 2007 to December 8, 2014;
60. Letters from the Department Of Veterans Affairs to G. Fraley, dated October 16, 2009; March 5, 2008; February 23, 2006;
61. Line of Duty Determination, dated September 2, 2002;
62. TDRL Evaluation, dated February 23, 2006; TDRL Reexamination, dated March 7, 2006;
63. Goose Creek Police Department Statement of T.R., dated December 1, 2014;
64. Medical University of South Carolina Records, dated November 14, 2011;
65. Clinical Interview of G. Fraley on January 9, 2015.

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Fraley was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be

confidential and would be used to prepare a report for his attorney, the solicitor and the judge. He was also informed that the nature of the evaluation did not include a treatment relationship with either examiner and treatment would not be provided. Mr. Fraley acknowledged that he understood the parameters of the evaluation, and he signed a consent form to proceed.

BACKGROUND HISTORY: All historical information was provided by Mr. Fraley unless otherwise noted. Mr. Fraley was born in Fort Gordon, Georgia. He was "an army brat" and moved frequently. His biological mother is German. His father had custody of both he and his brother, and he was later adopted by his step-mother. He reported receiving "beating[s]" which left marks and bruises. He reported no domestic violence. His basic needs were met while growing up. He moved in South Carolina in 1986 when he joined the military.

Mr. Fraley has been married 3 times. His first marriage began around 1988 and lasted a couple of years. He had one daughter from that marriage. The second marriage lasted from about 1995 to about 1999 or 2000. He had one daughter from that marriage as well. The third marriage started about 4 years ago. They are currently separated.

Educational History: Mr. Fraley completed high school and began attending the University of Kentucky. He completed a couple of years in the "Career College of the Air Force." During his schooling, he never repeated a grade. He attended regular classes and was in an advanced class in middle school. He did not recall ever being suspended or expelled from school.

Military & Vocational History: Mr. Fraley joined the Air Force in 1986 and mainly worked as a jet engine mechanic. When asked about disciplinaries he said he had "tiny things" and "a lot of medals." He left the military in 1996 with an honorable discharge, and then was "hired back in" as a civilian doing the same type of work. This was from 1996-2005. While enlisted he said he went to Panama during an invasion and added, "There were a lot of things I was not prepared to see," such as cargo planes carrying dead people. He said he was not in direct combat, but he would go to places with political turmoil to remove individuals; "a lot of times you're getting shot at." Aside from his military related work, he worked as a contractor for a couple of years in an air craft related job.

Legal History: Mr. Fraley reported no history of any other legal charges. His criminal history background check corroborates this.

Substance Use History: Mr. Fraley was smoking cigarettes at a rate of two packs per day. In terms of alcohol, he drank up to 2 bottles of wine per day or more. He reported

experiencing some symptoms of withdrawal. He went to a rehabilitation program three times last year and explained that he was seeking treatment as a way of escaping from his marital situation at home. In addition, he was in treatment in North Carolina, and he attended a substance program at Palmetto Lowcountry Behavioral Health. He went to MUSC for detoxification. He reported trying marijuana once and no other experimental drug use.

Collateral Data: Mr. Fraley was admitted to MUSC on November 10, 2011 after being referred by his psychiatrist for alcohol detoxification. During that admission he reported that for the previous 3 to 4 years he had been drinking a bottle of wine every night. Sometimes he also drank in the morning, "if he needs more sleep." Mr. Fraley was safely detoxed from alcohol and showed no acute signs of withdrawal. He was given a primary diagnosis of alcohol dependence. Other diagnoses listed include Posttraumatic Stress Disorder and Depression, Not Otherwise Specified.

Records from the Berkeley County Detention Center indicate that when Mr. Fraley first arrived at the detention center (August 8, 2014) he was placed on an alcohol detoxification protocol.

Medical History: Mr. Fraley reported, "I got a heart virus" while working as a civilian in the military. He reported receiving service connection disability, 50% mental and 40% for medical. He believed the mental is for "severe depression." He mentioned having "a lot" of medical problems including "Barrett's esophagus" possibly esophageal cancer, "GERD [reflux]," pancreatitis, ulcerative colitis, high blood pressure and neuropathy in his hands and feet. At the time of this evaluation he was prescribed something for GERD, Neurontin for neuropathy and something for his "digestive system."

Mr. Fraley has been hospitalized due to pancreatitis more than 5 times. His last hospitalization was in 2013 or 2014 at Trident. He reported being hit in the head three times with subsequent loss of consciousness. The most recent was in 2011 when he was working alone at night and a wash rack fell and hit him on the head. Even though he was alone, he estimated it took 3-4 hours before he regained consciousness. A few days later he sought medical treatment. He did not remember what was done or if he had any follow up. He endorsed no history of seizures.

Collateral Data: Records from the Department Of Veterans Affairs indicate that Mr. Fraley's cardiac problems are considered 30% disabling.

Psychiatric History: Mr. Fraley began receiving mental health treatment in 2002 at the Charleston Air Force Base. He has been hospitalized three times at Palmetto Behavioral Health because of depression. He has been seeing the same outpatient psychiatrist since

2002. He did not remember what he was most recently prescribed by his psychiatrist. At the time of this evaluation he said he was taking prazosin, which he described as a "PTSD [Posttraumatic Stress Disorder] pill."

He said he did not remember who diagnosed him with PTSD. He said it was in the VA's medical records. He believed his psychiatrist (non-VA) also diagnosed this. When asked to describe what PTSD symptoms he has experienced he said difficulty going to sleep and concentrating, waking up easily, bad dreams constantly "about issues I've lived." He said he wakes up with his body "pulsing with pain," and at times he does not know where he is when he awakens. When asked to describe the trauma he experienced he said, "A variety of things, military dreams get me...it's maybe half of it...my failed marriage my children...not pleasing God."

Collateral Data: An evaluation done on February 23, 2006 notes that Mr. Fraley's civilian psychiatrist diagnosed him with Major Depressive Disorder; Panic Disorder; Borderline Personality Disorder and Somatoform Disorder, Not Otherwise Specified. Symptoms of depression included difficulty sleeping, low energy excessive guilt, poor concentration, lack of interest and suicidal thoughts. Mr. Fraley was hospitalized several times because of depressive symptoms.

Records from the Ralph H. Johnson VA Medical Center (VA) indicate that a PTSD screen done on December 21, 2009 was negative. Another PTSD screen on January 18, 2011 was also negative. A primary care note from January 25, 2012 states he was prescribed Vistaril and Remeron for sleep. Records from the Department Of Veterans Affairs indicate that Mr. Fraley's Major Depressive Disorder diagnosis is considered 50% disabling. The available VA records do not indicate a PTSD diagnosis.

PSYCHIATRIC REVIEW OF SYMPTOMS: Mr. Fraley has been treated for depression for many years. When asked to describe what symptoms he has experienced he said, "Physically ill, cannot think, lose total focus, will not eat...it feels like death." He also described pain throughout the core of his body "physical and mental anguish and pain, you can't comprehend, you don't know what's going on." He said he has felt "constantly" suicidal, though he endorsed no suicidal thoughts during the evaluation. He reported no homicidal thoughts. After his second marriage failed, he held a gun to his head and it misfired, then he sold his guns. He told someone about this years later. He was on suicide watch when he was first incarcerated. He reported terrible sleep recently due to his situation. He was not eat regularly and estimated losing 15 lbs. He reported no history of auditory hallucinations, visual hallucinations or paranoia. He reported no bizarre thoughts. He reported no history of manic episodes.

MENTAL STATUS EXAMINATION: Mr. Fraley was dressed in standard jail-issued clothing, with adequate attention to hygiene and grooming. He was cooperative with the interview. Eye contact was appropriate. He did not display any abnormal movements. His speech was of normal rate and volume. His mood remained mostly stable throughout the interview. His affect showed a full range of facial expressions. He reported no suicidal or homicidal thoughts. He was not responding to internal stimuli. His thought process was mostly linear and goal-directed with a few tangential moments. Attention and focus were good throughout the interview. Judgment and insight were poor to fair. Mr. Fraley frequently pointed out and endorsed symptoms that he was experiencing of his own accord. He did this multiple times throughout the interview.

A brief cognitive examination revealed the following. He was alert and oriented to person, place, time and situation. He was able to complete serial subtractions without prompting. He correctly spelled the word 'world' forward and backward. Short term memory was not impaired as he could register and recall three items. He correctly identified the current and past three presidents. He was able to name five cities. He was able to correctly identify direction of travel from South Carolina to other states including California, New York and Florida. He correctly made change from a dollar and stated how many nickels the change would equate. He was able to identify similarities between objects for simple object pairs. Interpretation of proverbs was good, indicating no impairment in abstraction abilities.

DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the bases of the above data and according to the *Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR)*.

The diagnosis Alcohol Dependence, In a Controlled Environment is given as Mr. Fraley has demonstrated tolerance, efforts to cut down his use as evidenced by undergoing rehabilitation and detoxification, and he has continued using alcohol despite recurring flare-ups of pancreatitis. The specifier 'In a Controlled Environment' is included to indicate he is not in remission from this disorder, but rather his use is curbed due to incarceration.

The diagnosis Major Depressive Disorder, Recurrent is rendered based on records which indicate past treatment for this disorder. Records also note that Mr. Fraley has experienced the following symptoms: poor sleep, guilt, low energy, lack of interest, suicidal thoughts. He has been hospitalized several times because of depression.

OPINION REGARDING COMPETENCY TO STAND TRIAL: It is our opinion that, on the date of the evaluation, Mr. Fraley had the capacity for a rational and factual

understanding of his legal situation and the capacity to work with his attorney on his defense. The following evidence supports this opinion.

Mr. Fraley identified his lawyer by name and understood her role. He was aware of how to contact her and had no concerns about being able to work with her. He understood the role of the judge and the adversarial role of the solicitor. He said that if the solicitor called he would not say anything beyond his name because the solicitor is against him.

Mr. Fraley was able to accurately identify and define the pleas guilty and not guilty. When asked if there would be a trial after entering a guilty plea he said he did not know. As we discussed this with him, he later understood that there would be no trial if entering a guilty plea. We also discussed that in order to go to trial, a defendant would plead not guilty to the charge(s). On review, Mr. Fraley recalled this information.

He understood the purpose of a trial and defined the role of the jury as "weigh all your evidence and be your peer, to decide whether or not you're guilty after they look at all the evidence." He initially believed there are 11 people on a jury. We informed him that there are twelve jurors, and he recalled this information when reviewed later. He understood that family and friends of the defendant could not be on the jury "because they're going to be on your behalf they can't do that."

He defined evidence as "something that pertains to the case that's going to be litigated" and provided examples such as DNA, a weapon and a picture. He defined a witness as "somebody knows something about your case" and understood that a witness would have seen the alleged events.

Mr. Fraley was aware that a jury verdict must be unanimous otherwise it is a "hung jury" and a new trial with a new jury would most likely ensue. He understood that a criminal defendant cannot be compelled to testify on his own behalf.

He understood the concept of a plea bargain. He was aware that such an offer would involve less time than what the defendant was facing. He was also aware that a defendant does not have to accept a plea bargain. He was able to discuss appropriate courtroom conduct and understood the consequences for disruptive behavior could include being charged with "Contempt."

We discussed his pending charges last. Mr. Fraley was able to identify when the alleged events took place. He said that from the alleged incidents at the bowling alley he was charged with "Kidnapping and Attempted Murder." We explained that he also had a weapon charge related to that incident. He was able to explain what each charge meant.

When asked to describe the allegations leading to these charges, he explained that his recollection was not clear, and he had not reviewed his discovery. He had not discussed the charges with his attorney. We explained to him the basic elements of the events leading up to these charges, and he reiterated this back to us in his own words.

For the events involving the child, he said his charges were "Sexual Misconduct" and possibly "Kidnapping" as well. We related the name of each of the charges involving the child and again explained the basic elements of the events leading up to these charges. He said he had no questions. He did not know how much time the charges carry, but he understood that cumulatively it was a potentially lengthy sentence. He understood the differences between misdemeanor and felony charges. He did not know which category the charges are under, but he understood that he could ask his attorney for clarification. Mr. Fraley was able to provide examples of witnesses and evidence that could be relevant to his case.

Based on the evaluation, Mr. Fraley has a factual and rational understanding of his legal situation. Though he was not able to describe the events regarding his charges without prompting from us, this was not due to the effects of mental illness, as he stated that he had not reviewed his discovery and had not talked with his attorney about the allegations. It is our opinion that Mr. Fraley has the *capacity* to understand the allegations against him. He also demonstrated that he is teachable. It is also our opinion that he has the capacity to work with his attorney.

SUMMARY: It is our opinion, to a reasonable degree of medical certainty, that Mr. Fraley has the capacity to form a rational and factual understanding of the proceedings against him and the capacity to adequately assist counsel in his defense. Therefore, on the date of the evaluation, he is opined competent to stand trial.

Respectfully submitted,

Ana Gomez, M.D. 1.19.15

Ana Gomez, M.D.

Forensic Psychiatrist



Forensic Psychiatry Program
Department of Psychiatry and Behavioral Sciences
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forensicpsychiatry@musc.edu

May 27, 2015

Melisa Gay, Esquire
1031 Chuck Dawley Blvd. #3
Mount Pleasant, SC 29464

Re: The State of South Carolina v. Gary Curtis Fraley
Department of Mental Health #: 1032-0548
Berkeley County, Court of General Sessions

Dear Attorney Gay:

In accordance with the court order issued by the Honorable W. Jeffrey Young, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. §17-24-10 (1976).

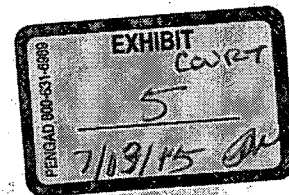
If the court order specifies either an "evaluation requested by either party after defendant's assertion of insanity defense" or an "evaluation requested by consent of both parties at any time," both the solicitor and the defense attorney will find a copy of the SCDMH report attached to this letter. However, if the court order specifies an "ex parte evaluation requested by defendant prior to assertion of insanity defense," only the defense attorney will find a copy of the SCDMH report attached to this letter.

This **eighteen** page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410 (1976).

5.27.15
Date

Bonnie Dykstra
Bonnie Dykstra
Forensic Administrative Coordinator

cc: Anne M. Williams, Esquire
Cathy Gardner



Criminal Responsibility and Capacity to Conform Evaluation

Examinee: Gary Curtis Fraley

DMH#: 1032-0548

Dates of Evaluation: February 9, 2015; February 17, 2015; May 13, 2015

Examiner: Ana Gomez, M.D.

Others Present: Melissa Gay, Defense Counsel; Bradley Orr, MUSC Medical Student both present May 13, 2015

IDENTIFYING DATA: Mr. Fraley is a 48-year-old male charged with Attempted Murder, Kidnapping (2 counts), Possession of a Weapon during the Commission of Violent Crime (2 counts), Unlawful Conduct towards a Child, Criminal Sexual Conduct First Degree and Criminal Sexual Conduct with a Minor Second Degree (3 counts). He was evaluated at the Medical University of South Carolina (MUSC) Forensic Psychiatry Program pursuant to a court order from the Berkeley County Court of General Sessions requesting a consent of both parties evaluation of his Criminal Responsibility and Capacity to Conform. At the conclusion of the evaluation, Mr. Fraley was returned to the Berkeley County Detention Center to await disposition of his charges.

OPINION/CRIMINAL RESPONSIBILITY: Yes. It is my opinion, to a reasonable degree of medical certainty that at the time of the alleged acts, Mr. Fraley had the capacity to distinguish moral or legal right from moral or legal wrong and to recognize the particular acts charged as morally or legally wrong.

OPINION/CAPACITY TO CONFORM: Yes. It is my opinion, to a reasonable degree of medical certainty, that at the time of the alleged acts, Mr. Fraley had the capacity to conform his conduct to the requirements of the law.

SOURCES OF INFORMATION: The following sources of information were reviewed:

1. Berkeley County Court of General Sessions Order for an Evaluation of Criminal Responsibility and Capacity to Conform, undated;
2. SLED Arrest Record for G. Fraley, dated August 12, 2014;
3. Indictment for Possession of a Weapon during Commission of Violent Crime (2 counts), Kidnapping (2 counts), Unlawful Conduct toward a Child, Attempted Murder, Criminal Sexual Conduct with a Minor Second Degree (3 counts), dated October 7, 2014
4. Arrest Warrant 2014A0820200443 and Attached Affidavit for Attempted Murder, dated August 6, 2014;
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Name: Gary Fraley
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59. Records from the Ralph H. Johnson VA Medical Center, dated October 22, 2007 to December 8, 2014;
60. Letters from the Department Of Veterans Affairs to G. Fraley, dated October 16, 2009; March 5, 2008; February 23, 2006;
61. Line of Duty Determination, dated September 2, 2002;
62. TDRL Evaluation, dated February 23, 2006; TDRL Reexamination, dated March 7, 2006;
63. Goose Creek Police Department Statement of T.R., dated December 1, 2014;

64. Competency to Stand Trial Evaluation report by Ana Gomez, M.D., conducted on January 9, 2015;
65. Medical University of South Carolina records, dated November 14, 2011;
66. Wilmington Treatment Center records, dated May 28, 2014 to June 22, 2014;
67. Southwest Regional Medical Center records, dated July 22, 2014 to July 24, 2014;
68. Psychiatric records from John V. Custer, M.D., dated May 19, 2010 to April 7, 2014;
69. CDs entitled Interview w/ Garey Fraley Disc 1 and 2; Publix Video (3 discs); Econo Lodge Video; J. Moultrie Interview; D. Reagin Interview; Phone Data (2 discs); Rule 5 00476; Interview w/ Q. Vick; Interview w/ V. Gilchrist; Interview w/ R. Vick; Interview w/ N. Vick;
70. Clinical Interview of G. Fraley on February 9, 2015; February 17, 2015 and May 13, 2015;
71. Collateral Phone Interviews of S. Hilton, Mr. Fraley's friend, and C. Fraley, Mr. Fraley's mother, on May 18, 2015, conducted by Mollie Dadin, LISW-CP;
72. Collateral Phone Interview of Amy VandenBerg, PharmD, BCPP, Clinical Pharmacy Specialist-Psychiatry, on May 25, 2015.

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to each interview, Mr. Fraley was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any information he provided would not be confidential and would be used to prepare a report that would go to his attorney and the solicitor. He was also informed that the nature of the evaluation did not include a treatment relationship with me and treatment would not be provided. Mr. Fraley acknowledged that he understood the parameters of the evaluation, and he signed a consent form to proceed.

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Mr. Fraley has been married 3 times. His first marriage began around 1988 and lasted a couple of years. He had one daughter from that marriage. The second marriage lasted from about 1995 to about 1999 or 2000. He had one daughter from that marriage as well. The third marriage started about 4 years ago. They are currently separated.

Educational History: Mr. Fraley completed high school and began attending the University of Kentucky. He completed a couple of years in the "Career College of the Air Force." During his schooling, he never repeated a grade. He attended regular classes and was in an advanced class in middle school. He did not recall ever being suspended or expelled from school.

Military & Vocational History: Mr. Fraley joined the Air Force in 1986 and mainly worked as a jet engine mechanic. When asked about disciplinaries he said he had "tiny things" and "a lot of medals." He left the military in 1996 with an honorable discharge, and then was "hired back in" as a civilian doing the same type of work. This was from 1996-2005. While enlisted he said he went to Panama during an invasion and added, "There were a lot of things I was not prepared to see," such as cargo planes carrying dead people. He said he was not in direct combat, but he would go to places with political turmoil to remove individuals; "a lot of times you're getting shot at." Aside from military related work, he was a contractor for a couple of years in an air craft related job.

Legal History: Mr. Fraley reported no history of any other legal charges. His criminal history background check corroborates this.

Substance Use History: Mr. Fraley was smoking cigarettes at a rate of two packs per day. In terms of alcohol, he drank up to 2 bottles of wine per day or more. He reported experiencing some symptoms of withdrawal. He went to a rehabilitation program three times last year and explained that he was seeking treatment as a way of escaping from his marital situation at home. In addition, he was in treatment in North Carolina, and he attended a substance program at Palmetto Lowcountry Behavioral Health. He went to MUSC for detoxification. He reported trying marijuana once and no other experimental drug use.

Collateral Data: Mr. Fraley was admitted to MUSC on November 10, 2011 after being referred by his psychiatrist for alcohol detoxification. During that admission he reported that for the previous 3 to 4 years he had been drinking a bottle of wine every night. Sometimes he also drank in the morning, "if he needs more sleep." Mr. Fraley was safely detoxed from alcohol and showed no acute signs of withdrawal. He was given a primary diagnosis of Alcohol Dependence. Other diagnoses listed include Posttraumatic Stress Disorder and Depression, Not Otherwise Specified.

Records from the Berkeley County Detention Center indicate that when Mr. Fraley first arrived at the detention center (August 8, 2014) he was placed on an alcohol detoxification protocol.

Collateral Data: Mr. Fraley was admitted to the Wilmington Treatment Center in Wilmington, North Carolina for substance abuse treatment from May 28, 2014 to June 22, 2014. On admission he reported drinking 6 to 8 glasses of wine per day. He endorsed tolerance, withdrawal, using more alcohol or using over a longer period of time than planned, trying to cut down his use, spending time obtaining, using or recovering from alcohol, giving up important activities to drink and continued use despite knowledge of physical or emotional problems worsened by his use. He reported a history of undergoing alcohol detox. He noted being treated for PTSD and depression. His mental health medications on admission were Campral (for alcohol cravings), Viibryd (anti-depressant), Zaleplon (sleep medicine) and Prazosin (nightmares). He was diagnosed with Alcohol Dependence and Posttraumatic Stress Disorder. Mr. Fraley underwent EMR (eye movement desensitization and reprocessing) and CPT (cognitive-processing therapy) to due PTSD. He was deemed to have a poor prognosis with a high risk of relapse due to unresolved triggers and minimizing and rationalizing his drinking. He was given an injection of Vivitrol on June 21, 2014. Vivitrol is a medicine used to treat alcohol dependence and/or to prevent relapse in opioid dependence after undergoing opioid detox.

Collateral Data: Mr. Fraley was admitted to Southwest Regional Medical Center from July 22, 2014 to July 24, 2014. He presented to the emergency department intoxicated from alcohol and throwing up blood. He reported drinking 4 liters of alcohol a day for the past six months. His urine drug screen was also positive for benzodiazepines; it was noted that he was unable to explain this result and reported no use of such substances. He was admitted to the hospital for acute alcohol withdrawal. He underwent an upper gastrointestinal scope which revealed he had a small bleeding ulcer; this was cauterized and biopsies were sent. On discharge he was advised to stop drinking alcohol. Psychiatry also consulted on Mr. Fraley and offered to psychiatrically hospitalize him, but he preferred to follow-up with his own psychiatrist. There was no indication that he met involuntary admission criteria.

Medical History: Mr. Fraley reported, "I got a heart virus" while working as a civilian in the military. He reported receiving service connection disability, 50% mental and 40% for medical. He believed the mental is for "severe depression." He mentioned having "a lot" of medical problems including "Barrett's esophagus" possibly esophageal cancer, "GERD [reflux]," pancreatitis, ulcerative colitis, high blood pressure and neuropathy in his hands and feet. At the time of this evaluation he was prescribed something for GERD, Neurontin for neuropathy and something for his "digestive system."

Mr. Fraley has been hospitalized due to pancreatitis more than 5 times. His last hospitalization was in 2013 or 2014 at Trident. He reported being hit in the head three times with subsequent loss of consciousness. The most recent was in 2011 when he was

working alone at night and a wash rack fell and hit him on the head. Even though he was alone, he estimated it took 3-4 hours before he regained consciousness. A few days later he sought medical treatment. He did not remember what was done or if he had any follow up. He endorsed no history of seizures.

Collateral Data: Records from the Department Of Veterans Affairs indicate that Mr. Fraley's cardiac problems are considered 30% disabling.

Psychiatric History: Mr. Fraley began receiving mental health treatment in 2002 at the Charleston Air Force Base. He has been hospitalized three times at Palmetto Behavioral Health because of depression. He has been seeing the same outpatient psychiatrist since 2002. He did not remember what he was most recently prescribed by his psychiatrist. At the time of this evaluation he said he was taking prazosin, which he described as a "PTSD [Posttraumatic Stress Disorder] pill."

He said he did not remember who diagnosed him with PTSD. He said it was in the VA's medical records. He believed his psychiatrist (non-VA) also diagnosed this. When asked to describe what PTSD symptoms he has experienced he said difficulty going to sleep and concentrating, waking up easily, bad dreams constantly "about issues I've lived." He said he wakes up with his body "pulsing with pain," and at times he does not know where he is when he awakens. When asked to describe the trauma he experienced he said, "A variety of things, military dreams get me...it's maybe half of it..my failed marriage my children...not pleasing God." On February 7, 2015, Mr. Fraley reported was recently prescribed Prozac for depression. During the interview on May 13, 2015, Mr. Fraley said he was prescribed Wellbutrin for anxiety and stress.

Collateral Data: An evaluation done on February 23, 2006 notes that Mr. Fraley's civilian psychiatrist diagnosed him with Major Depressive Disorder; Panic Disorder; Borderline Personality Disorder and Somatoform Disorder, Not Otherwise Specified. Symptoms of depression included difficulty sleeping, low energy excessive guilt, poor concentration, lack of interest and suicidal thoughts. Mr. Fraley was hospitalized several times because of depressive symptoms.

Records from the Ralph H. Johnson VA Medical Center (VA) indicate that a PTSD screen done on December 21, 2009 was negative. Another PTSD screen on January 18, 2011 was also negative. A primary care note from January 25, 2012 states he was prescribed Vistaril and Remeron for sleep. Records from the Department Of Veterans Affairs indicate that Mr. Fraley's Major Depressive Disorder diagnosis is considered 50% disabling. The available VA records do not indicate a PTSD diagnosis.

Psychiatric records from Mr. Fraley's psychiatrist Dr. Custer from the period June 2010 to April 2014 were reviewed. These records indicate the presence of insomnia, anxiety and alcohol abuse/dependence. The available records from Dr. Custer do not indicate a PTSD diagnosis.

PSYCHIATRIC REVIEW OF SYMPTOMS: During the interview on February 9, 2015, Mr. Fraley said he was "mentally stressed" and "very depressed." He endorsed no suicidal or homicidal thoughts. He was not experiencing auditory or visual hallucinations. He described some paranoia directed at his wife. He reported "terrible" sleep and said he was tired and had not slept well the night before due to a "raid" in the detention center. Because he did not feel well enough for the evaluation, we were unable to continue, and he returned to the detention center. His reported symptoms on May 13, 2015 were similar to those just described with the following changes. He was not paranoid. His level of anxiety was present but improved.

MENTAL STATUS EXAMINATION: Mr. Fraley's presentation was similar across interviews. Mr. Fraley was dressed in standard jail-issued clothing, with adequate attention to hygiene and grooming. He was cooperative with the interview. Eye contact was fair. He did not display any abnormal movements. His speech was of normal rate and volume. He described his mood as "anxious." His mood remained mostly stable throughout the interview. His affect showed a full range of facial expressions. He reported no suicidal or homicidal thoughts. He was not responding to internal stimuli. His thought process was frequently tangential despite multiple requests to provide a chronological timeline of events; this was most distinct during the interview on February 17, 2015. The topic he discussed when going on a tangent was his wife and the alleged victim from the bowling alley. He also frequently related many of his concerns regarding the Vivitrol injection he received in June 2014. Attention and focus were fair.

A brief cognitive examination revealed the following. He was alert and oriented to person, place, time and situation. He was able to complete serial subtractions without prompting. He correctly spelled the word 'world' forward and backward. Short term memory was not impaired as he could register and later recall three items after a five minute delay. He correctly identified the current and past three presidents. He was able to name five states. He was able to correctly identify direction of travel from South Carolina to other states including California, New York and Florida. He correctly made change from a dollar and stated how many nickels the change would equate. He was able to identify similarities between objects for simple object pairs. Interpretation of proverbs was good, indicating no impairment in abstraction abilities. Judgment and insight was adequate based on hypothetical scenarios.

DIAGNOSTIC FORMULATION: The following diagnoses are rendered on the bases of the above data and according to the *Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR)*.

The diagnosis **Alcohol Dependence, In a Controlled Environment** is given as Mr. Fraley has demonstrated tolerance, efforts to cut down his use as evidenced by undergoing rehabilitation and detoxification, and he has continued using alcohol despite recurring flare-ups of pancreatitis. The specifier 'In a Controlled Environment' is included to indicate he is not in remission from this disorder, but rather his use is curbed due to incarceration.

The diagnosis **Major Depressive Disorder, Recurrent** is rendered based on records which indicate past treatment for this disorder. Records also note that Mr. Fraley has experienced the following symptoms: poor sleep, guilt, low energy, lack of interest, suicidal thoughts. He has been hospitalized several times because of depression.

EVALUATION REGARDING CRIMINAL RESPONSIBILITY: Mr. Fraley was evaluated with respect to the alleged offenses regarding issues related to criminal responsibility and capacity to conform his conduct to requirements of the law.

Defendant's Account of Functioning Prior to the Alleged Offense:

Interview, February 9, 2015: Mr. Fraley was asked to relate what his life was like in the month prior to the allegations. Mr. Fraley noted that after leaving a substance abuse treatment center in Wilmington, North Carolina he returned to Goose Creek, South Carolina for about a week. He then returned to Wilmington to attempt readmission into the substance treatment center. He was staying with a friend. He was denied readmission, and he returned to Goose Creek. He then returned once again to the treatment center in Wilmington and was again denied readmission. He then drove to see his mother in Pennsylvania. He said, "You don't remember how you slip in the concussive like state." Mr. Fraley said he ended up on the side of the road, and he had forgotten how to drive. He said he was not eating, and once he arrived at his mother's residence she drove him to a nearby hospital. As noted in the Psychiatric Review of Symptoms section, Mr. Fraley said he was not feeling well enough to continue the evaluation, thus the interview ended.

Interview, February 17, 2015: Given that the above information was incomplete, Mr. Fraley was again asked to relate what his life was like in the month prior to the allegations. He began by mentioning that at the end of June he was in Wilmington Treatment Center, a substance abuse treatment program, in Wilmington, North Carolina. It was around this time he received an injection of Vivitrol, a medicine used to

treat alcohol dependence and/or to prevent relapse in opioid dependence after undergoing opioid detox. Mr. Fraley then returned to Goose Creek, but then again returned to Wilmington Treatment Center, "I think." He believed that this was now July 2014. He said he was not readmitted because he would have had to start drinking again since they would not admit him for depression alone. He said he then went to a hospital in Wilmington where he was "crawling around." He said, "That shot was making me sick." He believed this was around the same time as when he tried to get readmitted to the substance abuse program. He was in the emergency department for over 12 hours but does not remember the outcome of the medical work-up or being told what was wrong, if anything.

He then again returned to Goose Creek, though he was not sure for how long. He left and started driving to Pennsylvania. On his way, he got lost in North Carolina while taking "back country roads." He said he felt as if he was coming out of a "comatose state" when a policeman found him. Mr. Fraley said at that time, "I forgot how to drive." Two concerned citizens that lived nearby drove him to the hospital, one of those individuals drove Mr. Fraley's car. Mr. Fraley said he watched while the man drove in order to "figure out how to drive again." He did not know what hospital he was taken to as he did not know where he was. He was told that he was having an anxiety attack. He left the hospital after being there for one or two hours. He said, "I was confused and did not understand what to do." He said he spent the night in a few different towns on his way to Pennsylvania. He said he could not read a map, "Everything was a mess I couldn't understand nothing."

He eventually made it to his mother's home. He said he laid on her floor for days and was not eating. He said he was confused and "couldn't stomach food." He recalled seeing things in a "white fog" with "hardly any color." He said, "I could not figure out what was going on." His mother took him to a doctor who rewrote his prescriptions, but he did not fill them. During the interview on May 13, 2015, Mr. Fraley was asked why he did not refill these prescriptions. He said he was running low but still had some medications left.

His mother lived by a river, and he said he found himself in the river "when I came out of it again." He thought, "Why was I in a river?" He said his face was swollen around his eyes, and he saw no color. He told his mother he needed to go to the emergency room and went to a hospital in Waynesburg, Pennsylvania and told the physician, "I'm emaciated." He said he was in the intensive care unit for five days because he was throwing up blood. He was diagnosed as having stomach ulcers. He believed they were trying to move him to the psychiatric ward, so he "checked out" of the hospital. During the interview on May 13, 2015, Mr. Fraley said the stomach ulcers were a side effect of the Vivitrol injection he received, and he referred to this as "anorexia."

On returning to his mother's home, he laid down on the floor because he was not feeling any better. He said, "I did not know what to say or do." He said, "I couldn't tell anyone how I felt because I wasn't putting two and two together with the dog on shot."

He returned to South Carolina towards the end of July. He said it took him 3 to 5 days to return. He said he stayed at a certain hotel for what he believed was one night, but when he went to check out, he was told he had stayed there longer.

In the month preceding the allegations, Mr. Fraley reported domestic issues at home were on his mind. He was not taking any of his medications aside from Nexium (stomach medicine). He was unsure of what medications he was supposed to be taking because his wife was the one who set up his pill tray. He was not seeing his psychiatrist around this time. When asked if he was experiencing any suicidal thoughts at that time he said he must have been trying to commit suicide when he found himself in the river. He then said, "That shot makes you not eat." He reported no homicidal thoughts in July.

In the month preceding the allegations, Mr. Fraley said he "felt like I was constantly awake." He believed he could not sleep because of the shot as well. He added that the shot causes "anorexia" and makes depression worse. He said he did not remember eating in July. When asked if he was hearing any voices he said, "I couldn't tell you." When asked about visual hallucinations he said, "I saw a lots of nothing." He described this as a filter in a movie camera, "black and white with a heavy white fog... some things were outlined with colors." While in Pennsylvania, he was drinking about 2 or 3 "coffee cup" sized amounts of wine per day. During the interview on May 13, 2015, Mr. Fraley clarified that he was not using any drugs.

Collateral Accounts of the Alleged Offense on August 5, 2014: The following information pertains to the events involving the alleged child victim (minor). Officer Carver's report, dated August 12, 2014 includes information obtained from a neighbor (L.W.). The report indicates that from August 2, 2014 to August 4, 2014, Mr. Fraley made efforts to contact L.W. regarding her daughter (J.W.). On August 2 and 3, the request involved allowing J.W. to "cast fossils" with Mr. Fraley's daughter. On August 4, 2014, Mr. Fraley went to another neighbor's house to inquire about J.W. According to L.W., Mr. Fraley told her son that he was having a surprise birthday party for his daughter at the bowling alley and wanted J.W. to come. When advised that J.W. had to get a haircut at that time, Mr. Fraley offered to pay for the haircut, if J.W. could come to the birthday party. L.W. said her daughter and Mr. Fraley's daughter have spent the night at each other's house in the past. This was the first time that Mr. Fraley had called and come to her home so many times.

Officer Carver also spoke with J.W., J.W.'s brother and L.W.'s roommate. All indicated that Mr. Fraley told them he was planning his daughter's surprise birthday party around J.W.'s schedule so she could attend. J.W.'s brother and L.W.'s roommate both indicated that Mr. Fraley was offering to pay all of the friends that would show up at the birthday party.

According to the police interview of R. Vick, she interacted with Mr. Fraley shortly before the alleged incidents. She described him as coherent and logical. She noted he was not intoxicated and there was "nothing out of the ordinary." He seemed "normal like any other time I talked to him."

According to the police report by Officer Tremblay, dated August 8, 2014, mino underwent a forensic interview at the Dorchester Children's Center. mino related that Mr. Fraley said he was having a birthday party for his daughter and wanted her (minor) to attend. He drove her from her home to Publix and instructed her to wait in the car while he went inside. Mr. Fraley then allegedly drove the child to the Econo Lodge. He allegedly told her that he had made fossil molds for the party, but he did not want "to get germs on the molds," so he had her take a shower. While showering, Mr. Fraley left the shower curtain half open and told mino to take about six tablespoons of Nyquil. He also allegedly told her to drink "whiskey milk," a substance which she described as smelling like beer. She said she tried to spit the substances out when he was not looking. She then put her clothes back on, but Mr. Fraley allegedly had her remove them again and put his hand on the back of her head and "forced his penis into her mouth." He then allegedly pushed her head up and down on his penis for an unspecified period of time.

According to minor, Mr. Fraley said he had a gun and showed it to her. She saw the gun had bullets. He then put the gun away. Mr. Fraley then allegedly tried to kiss mino but she kept her mouth closed. While pointing to anatomical models, mino indicated that Mr. Fraley was on top of her and "achieved vaginal penetration." mino "cried out in pain" and asked to go to the bathroom. She was allowed to do this, and once she returned, Mr. Fraley allegedly made her lay on her stomach and penetrated her anally. According to minor, after Mr. Fraley stopped he said, "I'm going to the bowling alley to kill Steve and myself." They left the hotel room at around 5PM and drove to the bowling alley. Mr. Fraley instructed mino to stay in the vehicle.

Officer Mitchum notes that Mr. Fraley began making the following statements of his own accord. Mr. Fraley told the officer that he was supposed to take his daughter's friend to a birthday party at the bowling alley, but instead he kept her in the car to talk with him. He reasoned that talking to "an innocent child" would talk him out of killing himself. While driving with the girl, he stopped by the Econo Lodge where he had a

room because she had to go to the restroom, and he wanted his cigarettes. He opened one beer can but did not drink it. They drove to the bowling alley where he left the girl in the car and gave her his mobile phone and keys.

The following information is regarding the events at the bowling alley. In a report dated August 13, 2014, Officer Fogle notes that V.G., who is an employee at the bowling alley, was sitting outside the establishment after just coming off of work. She knew Mr. Fraley and noted his beard by mentioning he was growing it out. He allegedly responded to her that he was "working on it." He held the door open for a boy who he believed was going to enter the bowling alley, when the boy did not enter, Mr. Fraley went inside.

Officer Stayton's report notes that multiple witnesses said they "heard and smelled" a single gunshot being fired. They did not witness the individual firing the gun. Officer Schreurs' report notes that the alleged victim (S.T.) was in the office with Mr. Fraley. S.T. said he was unable to open the door, and that Mr. Fraley had a gun. Officer Aarons notes that he heard S.T. say something like "you can shoot me, but I am leaving." After this S.T. opened the door and "rushed" out of the office.

Officer Schreurs notes that he heard Mr. Fraley say he entered the office and "discharged a round." Officer Aarons' report states that when he began speaking with Mr. Fraley, Mr. Fraley immediately said he had a gun. Mr. Fraley said he "discharged the weapon into the ground." Verbal communication continued while the Goose Creek Police Department SWAT team arrived. After "one hour and twenty-four minutes" of negotiation, Mr. Fraley would not hand over his gun. (Officer Moree notes in his report that it was about an hour). Mr. Fraley asked for something to drink. Officer Aarons tried to use this as an exchange for his gun but to no avail. Mr. Fraley was given something to drink in a cup. Mr. Fraley kept his hands above his head while retrieving the cup. Mr. Fraley had gestured several times as if he would "try and secure his handgun." He was advised by Officer Aarons that such movement would lead to him being shot. Mr. Fraley heeded this warning. Mr. Fraley made numerous suicidal remarks which caused the officers to believe an imminent event was about to transpire. According to Officer Coffey's report, three policemen entered the office to overtake Mr. Fraley. He was tazed several times due to not complying with commands.

After being taken into custody, he complained of chest pains and was taken to a hospital. He was released that evening. The following day, he was interviewed by police. During the police interview, Mr. Fraley said he was "drunk as a skunk yesterday." He also said he had been drunk for 3-5 days since his return to South Carolina.

Collateral Phone Interviews: A collateral phone interview with Mr. Fraley's mother indicated that her last contact with him before the alleged incidents was on July 30, 2014. While he was staying with her, he was drinking unknown quantities of alcohol. She did not have concerns about his drinking, as she was aware "he was a drinker." She said he was not using any drugs. She reported he was taking his medication as far as she knew. During his stay with her, she described his behavior as normal, though he was not sleeping or eating well. He collapsed in her home, was taken to a hospital and diagnosed as having a "small bleeding ulcer." A collateral phone interview with S. Hilton, Mr. Fraley's friend of 20-25 years indicated the following. Her last contact with him before the alleged incidents was in June or July 2014. When she last saw him he appeared nervous and "consumed" by domestic difficulties involving his wife.

Defendant's Account of the Alleged Offense on August 5, 2014:

Interview, [REDACTED] 2015: Mr. Fraley said that he woke up around 2 or 3AM and took some medicine out of a blister pack, but he did not remember the name of the medicine. He was staying at the Econo Lodge. He said he did not remember anything between 2 or 3AM and the events at the bowling alley. He later said he could not answer questions regarding the allegations involving the child because he does not know what was "dream-like" and what was real because he had not yet been told what happened. Because of this, he preferred to talk with his attorney first, "because of my dream-like state I was in."

Mr. Fraley said he did not remember driving to the bowling alley. He said once inside the establishment and walking towards the alleged victim's (S.T.) office, he put a bullet in the gun. He said he went there to kill himself. He believed his wife was involved with the alleged victim. Mr. Fraley said, "What way can I make it look so bad...their affair is going to come to surface." He surmised he would kill himself in that office. He said when he walked in all he saw was white lights and a flash of lightning. He recalled holding a gun on the right side of his body. S.T. reached out the grab the gun, and it fired. Mr. Fraley said he was there to hurt himself and said to S.T., "You don't have to stay for it; you can go if you want." He said he was not holding S.T. in the office, and S.T. was free to leave at any time. Mr. Fraley went under the desk and lit a cigarette; S.T. then left the office.

Mr. Fraley said he could see the police were at the door. He said police gave him a mini bottle of wine to drink. He said the police were talking to him, and he told them he would rather kill himself than have them kill him. When he lifted up his hand to wipe his eyes, he was tazed several times. He said he understood what was going on, and they did not need to taze him. He added, "I'm still out of it." After being taken into custody he went to the hospital because his chest was hurting. He said, "All I know is I

wanted to kill myself...I wanted the cops to shoot me...I'm quite sure that's what happened."

Mr. Fraley said he remembered having some wine at around 3AM. He did not use any drugs that day. Regarding sleep the night before he said, "I wasn't sleeping still, it was in and out."

Interview May 13, 2015: Mr. Fraley was asked to quantify the amount of wine he mentioned consuming at 3 AM as noted in the preceding section. During this interview, Mr. Fraley said he was not sure if the wine he had was on the 4th or 5th, and he did not know how much he had consumed. Mr. Fraley said he did not use any drugs. Mr. Fraley volunteered that after receiving an injection of Vivitrol, one does not feel the effects of drugs or alcohol. He clarified this to mean one would not feel intoxicated and act sober.

Since he was able to talk with his attorney since the last interview, Mr. Fraley was asked to relate his version of the incidents involved the alleged child victim. He said he did not know. He said he was losing days at a time, and he woke up with a loud noise at the bowling alley. I asked him several times what was the last thing he remembered before the bowling alley; he said he did not remember anything. Because of this, I read him the last paragraph of Officer Mitchum's report from August 7, 2014 (as noted on pg. 12 of this report). Mr. Fraley said he did not remember anything of what was mentioned in that report. Mr. Fraley was then asked about his statement made during the police interview that he was intoxicated. Mr. Fraley said he did not recall this, though he did recall the officers insinuating that he had killed someone.

He does not remember whether he experienced any auditory hallucinations on the day of the alleged events. When asked about visual hallucinations, he said his vision was bad and "everything was white." He did not recall whether he was paranoid. When asked how his thoughts were coming to him, he said he could not explain it.

Collateral Interview: A collateral phone interview with MUSC pharmacist Amy Vandenberg, Pharm D, BCPP, Clinical Pharmacy Specialist- Psychiatry was conducted on May 25, 2015. She explained that after receiving a Vivitrol injection, blood levels peak within the first 2 to 3 days and then plateau. After about 14 days, levels continue to decrease; by the end of the month levels are very low. Because of this, the injection is dosed every 28 days.

Vivitrol does not change the effects of alcohol, aside from blocking any "feel good" reaction one may have to alcohol. Therefore, one can feel the physical effects (staggering, slurring words, etc.) without feeling the euphoric effects of intoxication.

One can still drink enough to experience a blackout. Dr. Vandenberg indicated she was not "aware of any psychiatric side effects," to include memory loss, loss of awareness of one's actions or confusion as a result of receiving Vivitrol.

OPINION / CRIMINAL RESPONSIBILITY: Yes. It is my opinion, to a reasonable degree of medical certainty, that on the date of the alleged events, Mr. Fraley had the capacity to distinguish moral and legal right from moral and legal wrong and to recognize a particular act as morally and legally wrong. This opinion is based on the following:

Mr. Fraley has been diagnosed with Major Depressive Disorder and Alcohol Dependence. Records also indicate others have diagnosed an anxiety disorder, personality disorder and somatoform disorder. Mr. Fraley indicated he has been diagnosed with PTSD. The records I have received do not indicate such a diagnosis by the VA or his most recent psychiatrist. Despite the variety of psychiatric illnesses Mr. Fraley may have, the illness(es) he does not have is notable. Records do not indicate the presence of a psychotic illness, either as part of a mood disorder or as a primary disorder. Mr. Fraley did not report symptoms consistent with a history of manic symptoms or psychotic symptoms. When asked about the presence of such symptoms around the time of the alleged events, his answers were not consistent with a psychotic process. Records also do not indicate the presence of these symptoms.

Mr. Fraley reported that he did not remember many of the alleged events; particularly the time period involving the child allegations. His account of the events in the bowling alley does not indicate the presence of odd, unusual or non-sensical thoughts. As noted by the interview with R. Vick who saw Mr. Fraley very close to the time of the allegations, he was not exhibiting odd or unusual behaviors just before the alleged incident, and he was not talking non-sensically or in an odd manner. Other collateral information does not indicate that Mr. Rogers was talking non-sensically or behaving in an unusual manner around the time of the alleged incident or shortly thereafter.

During the police interview, Mr. Fraley admitted to drinking alcohol and being "drunk as a skunk" on the date of the alleged incidents. It is possible that Mr. Fraley may have been intoxicated to the point of experiencing blackouts. This could explain his lack of memory around that day. However, voluntary intoxication cannot be used as the only basis for lack of criminal responsibility unless the intoxication has resulted in permanent cognitive damage, so-called "settled sanity." Mr. Fraley does not meet criteria for diagnosis of settled insanity as a result of his substance use.

Lastly, the possibility of an idiosyncratic reaction to Vivitrol was considered. This is highly unlikely given that Mr. Fraley received the injection nearly 6 and a half weeks

prior to the alleged events. Also, the claimed effects involving memory deficits are not known to result from this medication, much less over 6 weeks from the time of dosing.

Therefore, since Mr. Fraley does not have a mental illness that would hinder his ability to understand wrongfulness; was not experiencing symptoms of being out of touch with reality due to a mental illness around the time of the alleged acts; was likely intoxicated and/or experiencing an alcoholic blackout; and did not have an idiosyncratic reaction to Vivitrol, it is my opinion that Mr. Fraley does not have a mental illness that would render him incapable of distinguishing moral and legal right from moral and legal wrong at the time of the alleged incident.

OPINION / CAPACITY TO CONFORM: Yes. It is my opinion, to a reasonable degree of medical certainty, that Mr. Fraley had the capacity to conform his behavior to the requirements of the law on August 5, 2014. This opinion is based on the following.

Mr. Fraley did not report experiencing psychotic symptoms that may impair his ability to conform his conduct (e.g., auditory command hallucinations or operating under a delusional belief system). He does not have an impulse control disorder that would have impaired his ability to conform his conduct to the requirements of the law at the time of the alleged offense. Collateral information indicates that Mr. Fraley's actions prior to the alleged events were goal-directed (inviting children to his daughter's birthday party).

As noted in the previous section, Mr. Fraley was drinking on the day of the alleged events and may have been impaired from alcohol. Despite that possibility, voluntary intoxication cannot be used as the sole basis for lack of capacity to conform, and Mr. Fraley does not meet criteria for a diagnosis of settled insanity.

In conclusion, Mr. Fraley does not suffer from a psychiatric illness (impulse control disorder, manic behavior, psychotic symptoms) that could have impaired his volition, and thus his ability to conform his conduct to the requirements of the law at the time of the alleged offenses. Therefore, it is my opinion that Mr. Fraley had the ability to conform his behavior to the requirements of the law at the time of the alleged offenses.

SUMMARY: Mr. Fraley is a 48-year-old male charged with Attempted Murder, Kidnapping (2 counts), Possession of a Weapon during the Commission of Violent Crime (2 counts), Unlawful Conduct towards a Child, Criminal Sexual Conduct First Degree and Criminal Sexual Conduct with a Minor Second Degree (3 counts). It is my opinion that at the time of the alleged incidents, Mr. Fraley had the capacity to distinguish moral or legal right from moral or legal wrong and to recognize the acts charged as morally or legally wrong. It is further my opinion that on the date of the

alleged incidents, Mr. Fraley had the capacity to conform his conduct to the requirements of the law.

Respectfully submitted,

Ana Gomez M.D. 5.27.15

Ana Gomez, M.D.
Forensic Psychiatrist

BEFORE THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA

In the Matter of:
Robert M. Bennett
4 Carriage Lane
Suite 404
Charleston, SC 29407

ORDER TO CEASE AND DESIST

OIE #: 2012-97 Respondent

TO THE ABOVE NAMED RESPONDENT:

WHEREAS, the Board is charged with promoting, preserving and protecting the health, safety and welfare of the public by and through the effective control and regulation of the practice of pharmacy, the licensure, permitting, control and regulation of all sites or persons, in or out of this State, that distribute, manufacture, possess or sell drugs or devices within this State, and

WHEREAS, it has been brought to the attention of the South Carolina Board of Pharmacy (hereinafter "the Board") that Respondent is using the "Title" R.Ph., which is an abbreviation for registered pharmacist, and maintains a business web site (www.drrobertbennett.com) that refers to Respondent as a forensic pharmacist, when in fact Respondent's license to practice pharmacy in South Carolina is lapsed. Therefore Respondent is in violation of S.C. Code Ann. § 40-43-30(39), 40-43-86(R)(1)(a), and 40-43-86(R)(2) (Supp.2003).

WHEREAS, it is unlawful for any person, except a pharmacist licensed by this State, to represent himself as a "pharmacist" by a title or any other declaration; and

WHEREAS, you are not currently authorized by the Board to engage in the practice of Pharmacy pursuant to S.C. Code Ann. § 40-43-80; and

WHEREAS, this Order is authorized by § S.C. Code Ann. §§ 40-43-60; 40-43-150(B), 40-43-140, 40-1-100, and 40-1-120 (Supp. 2003).

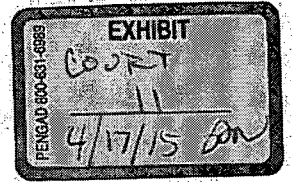
THEREFORE, YOU ARE HEREBY NOTIFIED AND EXPRESSLY ORDERED to immediately cease and desist from using the title R.Ph. or representing yourself as a pharmacist as required by S.C. Code Ann. § 40-43-86 and until such time, if ever, as you may be properly authorized by the Board in accordance with law.

VIOLATIONS MAY BE PUNISHED BY THE IMPOSITION OF CIVIL PENALTIES IN AMOUNTS UP TO TEN THOUSAND DOLLARS (\$10,000.00) FOR EACH VIOLATION AND CRIMINAL PENALTIES WHICH MAY INCLUDE FINES OR IMPRISONMENT, AS PROVIDED BY LAW.

SOUTH CAROLINA BOARD OF PHARMACY

February 4, 2013

BY: 
Lee Ann Bundrick, R.Ph.
Board Administrator



AMW2014-08-01776

WITNESSES

Goose Creek Police Department

Gary M. Fraley

AGENCY CASE NUMBER

20143270

ARREST WARRANT NUMBER

2014A0820200447

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Martin A.

Foreperson of Grand Jury

Date: 10-7-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801505

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Kidnapping

868

FILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 OCT -7 PM 12:21

Coff

FF

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

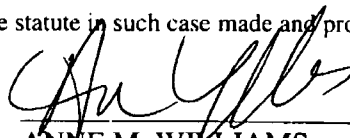
INDICTMENT

At a Court of General Sessions, convened on October 7, 2014 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Minor 1 without authority of law, in violation of Section 16-03-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Anne M. Williams 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-1508☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. August 5, 2014☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Ramon Anderson

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0801505A/W: 2014A0820200447Date of Offense: 08/05/2014S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender Fundsexual offenseOther: A is to serve 2014-GS-08-1505C/S to 2014-GS-08-1508C/S to 2014-GS-08-15092014-GS-08-1507, 1506, 1511, 1684,1689, 1874 + 1934 are to run☐ Appointed PD or appointed other counsel. c/c with\$47.12 requires \$500 be paid to Clerk each otherduring probation. and 2014-GS-08-1509.Presiding Judge: Kurt HaysJudge Code: 2151Sentence Date: 7/23/15

COUNTY OF BERKELEY
STATE VS.GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

[Signature] 63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-11685; 2014-GS-08-1508☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning *Fine: \$ Substance Abuse Counseling ☐§14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ pmts. of \$ Beginning §56-5-2995 (DUI Assessment) \$12 \$ \$ Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ Other: Sexual offenseProviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation

Clerk of Court/Deputy Clerk: K. MillsPresiding Judge: [Signature]Court Reporter: Phyllis NortonJudge Code: 10151Sentence Date: 7/17/15

KWM

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

[Signature]

AGENCY CASE NUMBER

20143270

ARREST WARRANT NUMBER

2014A0820200448

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Martin J.

Foreperson of Grand Jury

Date:

10-7-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801506

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Possession of a Weapon During Commission
of a Violent Crime

872

THOMAS P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 OCT -7 PM 12:21

FILED

C. J. H.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

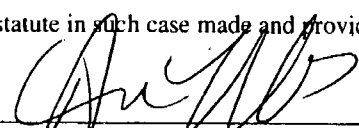
At a Court of General Sessions, convened on October 7, 2014 the Grand Jurors of Berkeley County present upon their oath:

Possession of a Weapon During Commission of a Violent Crime

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Criminal Sexual Conduct with a Minor, ^{2nd} ~~1st~~ Degree, a violent crime. (24)

This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY
STATE VS.GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Anne M. Williams 76463
Senior Assistant Solicitor SC Bar #

Defendant

[Signature] 63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 180 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$, provided that upon the service of days/months/years and or payment
 of \$, plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 2014-GS-08-1505☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]Judge Code: Sentence Date: 5/10/15Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis Norton

KWM

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

Angie M. Pinn

AGENCY CASE NUMBER

20143270

ARREST WARRANT NUMBER

2014A0820500451

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Martin

Foreperson of Grand Jury

Date: 10-9-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801507

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Unlawful Conduct Toward a Child

FILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 OCT -7 PM 12:21

CJA
875
HC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

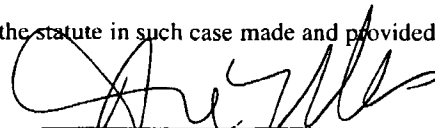
INDICTMENT

At a Court of General Sessions, convened on October 7, 2014 the Grand Jurors of Berkeley County present upon their oath:

Unlawful Conduct Toward a Child

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, did have charge or custody of Minor 1 and did place the child at unreasonable risk of harm affecting the child's life, physical or mental health or safety and or did cause to be done unlawfully or maliciously bodily harm to the child so that the life or health of the child is endangered or likely to be endangered. This is in violation of Section 63-5-70 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY
STATE VS.GARY CURTIS FRALEYAKA:
Race: White Sex: M Age: 48
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Unlawful Conduct Toward A ChildIn violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Anne M. Williams 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

63773
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1508☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Karen AndersenPresiding Judge: [Signature]Judge Code: 1215Sentence Date: 7/23/15INDICTMENT/CASE#: 2014GS0801507
A/W: 2014A0820500451
Date of Offense: 08/05/2014
S.C. Code §: 63-05-0070
CDR Code #: 2481Amended
SENTENCE SHEET

KWM

COUNTY OF **BERKELEY**

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Unlawful Neglect Of A Child**In violation of § **63-05-0070** of the S.C. Code of Laws, bearing CDR Code # **2481**☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

[Signature] 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

[Signature] 63773
Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**,
for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1505☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☐ **RESTITUTION:**☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§47.12 requires \$300 be paid to Clerk

during probation.

Presiding Judge: [Signature]Judge Code: Sentence Date: 7/17/15Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90**TOTAL** \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis Hatten

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

Long Mc Ruid

AGENCY CASE NUMBER

20143264

ARREST WARRANT NUMBER

2014A0820200443

DATE OF ARREST

August 6, 2014

ACTION OF GRAND JURY

True Bill

Thomas M. Marking

Foreperson of Grand Jury

Date: 10-7-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801508

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Attempted Murder

FILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 OCT -7 PM 12:21

C. J. A.

879

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

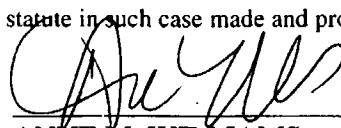
INDICTMENT

At a Court of General Sessions, convened on October 7, 2014 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, willfully, feloniously, and intentionally attempt to kill another person, Steven Tsafos, with malice aforethought, either expressed or implied, by means of a gun, in violation of §16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted MurderIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 76463

Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

63773

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years and/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and or payment of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for [REDACTED] months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 2014-GS-08-1505; 2014-GS-08-1509☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ [REDACTED] plus 20% fee: \$ [REDACTED][REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]Obtain GED ☐☐ Set by SCDPPPS [REDACTED]Attend Voc. Rehab. Or Job Corp. [REDACTED]Recipient: [REDACTED]May serve W/E beginning [REDACTED]*Fine: [REDACTED] \$ [REDACTED]Substance Abuse Counseling ☐§14-1-206 (Assessments 107.5%) \$ [REDACTED]Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ [REDACTED]pmts. of \$ [REDACTED] Beginning [REDACTED]§56-5-2995 (DUI Assessment) \$12 \$ [REDACTED]\$ [REDACTED] Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ [REDACTED]Other: [REDACTED]Proviso 47.9 (Public Def/Prob) \$500 \$ [REDACTED]§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ [REDACTED]§50-21-114 (BUI Breath Test Fee) \$50 \$ [REDACTED]§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ [REDACTED]☐ Appointed PD or appointed other counsel,Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

\$47.12 requires \$500 be paid to Clerk

3% to County (if paid in installments) \$ [REDACTED] \$ 3.90

during probation.

TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsPresiding Judge: [Signature]Judge Code: 2157Sentence Date: 7/28/15Court Reporter: Helen Andersen

Kwm

INDICTMENT/CASE#: 2014GS0801508A/W: 2014A0820200443Date of Offense: 08/05/2014S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Attempted MurderIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Anne M. Williams, Senior Assistant Solicitor SC Bar # 76463

Defendant

Attorney for Defendant SC Bar # 63773

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-1505; 2014-GS-08-1509
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing
 Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis Norton

INDICTMENT/CASE#: 2014GS0801508
 A/W: 2014A0820200443
 Date of Offense: 08/05/2014
 S.C. Code §: 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

Presiding Judge: [Signature]Judge Code: 251Sentence Date: 7/17/10

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

[Signature]

AGENCY CASE NUMBER

20143264

ARREST WARRANT NUMBER

2014A0820200444

DATE OF ARREST

August 6, 2014

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury

Date: 10-7-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801509

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Kidnapping

JANE E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 OCT -7 PM 12:21

FILED

[Signature]

883

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on October 7, 2014 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Steven Tsafos, without authority of law, in violation of Section 16-03-910 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

COUNTY OF **BERKELEY**

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] DrCity, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

[Signature]
Attorney for Defendant63773
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-1508; 2014-GS-08-1505

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning *Fine: \$ Substance Abuse Counseling ☐§14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ pmts. of \$ Beginning §56-5-2995 (DUI Assessment) \$12 \$ \$ Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ Other: No Sexual OffenseProviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: K. MillsPresiding Judge: [Signature]Court Reporter: Phyllis NortonJudge Code: 1215Sentence Date: 7/17/15

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

In re: Foye

AGENCY CASE NUMBER

20143270

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Madish
Foreperson of Grand Jury

Date:

11-4-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801511

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Criminal Sexual Conduct with a Minor,

Second Degree

CDR: 0396

886

FILED
14 NOV - 4 PM 1:12
CLERK OF COURT
BERKELEY COUNTY, S.C.

Chum

Kwm

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

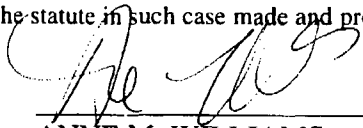
INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, Second Degree

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, commit a sexual battery upon a minor who was at least fourteen (14) years of age or less but who is at least eleven years of age; to wit: vaginal/genital intercourse upon Minor 1 date of birth January 10, 2003, and the Defendant was older than the victim or was in position of familial, custodial, or official authority to coerce the victim to submit; in violation of Section 16-3-655(2), S.C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct With A Minor, Second DegreeIn violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Anne M. Williams, Senior Assistant Solicitor SC Bar # 76463 DefendantAttorney for Defendant [Signature] SC Bar # 63773WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1507☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis NortonPresiding Judge: [Signature]Judge Code: 1315Sentence Date: 7/17/15

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

In m. Faye

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Martin

Foreperson of Grand Jury

Date: *11-4-14*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801684

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Criminal Sexual Conduct with a Minor,

Second Degree

CDR: 0396

CLERK OF COURT
BERKELEY COUNTY, S.C.

14 NOV -4 PM 1:12

FILED

Chum

C

Kwm

889

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

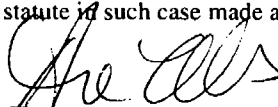
INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, Second Degree

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, commit a sexual battery upon a minor who was at least fourteen (14) years of age or less but who is at least eleven years of age; to wit: fellatio upon Minor 1 date of birth January 10, 2003, and the Defendant was older than the victim or was in position of familial, custodial, or official authority to coerce the victim to submit; in violation of Section 16-3-655(2), S.C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED] 5DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct With A Minor, Second DegreeIn violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

See [Signature] 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

[Signature] 63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1685☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 47.9 (Public Det/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90☐ Appointed PD or appointed other counsel

§47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis [Signature]Presiding Judge: [Signature]Judge Code: 2151Sentence Date: 7/17/15

Kwm

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

Em A Fyle

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Martin R

Foreperson of Grand Jury
Date: *11-4-14*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801685

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Criminal Sexual Conduct with a Minor,

Second Degree

CDR: 0396

892

FILED
14 NOV -4 PM 1:12
CLERK OF COURT
BERKELEY COUNTY, S.C.

Chum

C

Kwm

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, Second Degree

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, commit a sexual battery upon a minor who was at least fourteen (14) years of age or less but who is at least eleven years of age; to wit: anal intercourse upon Minor 1 date of birth January 10, 2003, and the Defendant was older than the victim or was in position of familial, custodial, or official authority to coerce the victim to submit; in violation of Section 16-3-655(2), S.C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct With A Minor, Second DegreeIn violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Anne M. Williams 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

[Signature] 63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1511☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]Judge Code: 2451Sentence Date: 7/17/15Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis Norton

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

S. McWILLIAMS *S*

AGENCY CASE NUMBER

20143270

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Mackie R.
Foreperson of Grand Jury
Date: *12-16-14*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801874

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

December Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Criminal Sexual Conduct with a Minor, 3rd
Degree

CDR: 3661

FILED
14 DEC 16 PM 1:49
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Kwm 895

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

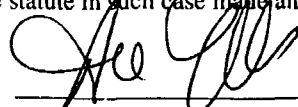
INDICTMENT

At a Court of General Sessions, convened on December 16, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, 3rd Degree

That Gary Curtis Fraley, DOB August 5, 1966, being over the age of fourteen years did in Berkeley County on or about August 5, 2014, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body of one Minor 1 DOB January 10, 2003, a child under the age of sixteen (16) years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the actor or such child. This is in violation of Section 16-3-655(c) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY
STATE VS.GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct with a Minor, Third DegreeIn violation of § 16-03-0655(B)(4) of the S.C. Code of Laws, bearing CDR Code # 3661☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

76463

Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

63773

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1505☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning *Fine: \$ Substance Abuse Counseling ☐§14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ pmts. of \$ Beginning §56-5-2995 (DUI Assessment) \$12 \$ \$ Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ Other: Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ ☐ Appointed PD or appointed other counsel.Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

§47.12 requires \$500 be paid to Clerk

3% to County (if paid in installments) \$ \$ 3.90

during probation.

TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Karen AndersonPresiding Judge: [Signature]Judge Code: 6151Sentence Date: 7/23/15KWMINDICTMENT/CASE#: 2014GS0801874A/W: 2014GS0801874Date of Offense: 08/05/2014S.C. Code §: 16-03-0655(B)(4)CDR Code #: 3661

SENTENCE SHEET

Amended

COUNTY OF BERKELEY
STATE VS.GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct with a Minor, Third DegreeIn violation of § 16-03-0655(B)(4) of the S.C. Code of Laws, bearing CDR Code # 3661☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST

[Signature] 76463
Anne M. Williams, Senior Assistant Solicitor SC Bar #

Defendant

[Signature] 63773
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$, provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1685☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis NortonPresiding Judge: [Signature]Judge Code: 12151Sentence Date: 7/17/15

Kwm

AMW2014-08-01776

WITNESSES

Goose Creek Police Department

S. McWilliams

AGENCY CASE NUMBER

20143270

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

August 7, 2014

ACTION OF GRAND JURY

True Bill

Thomas Martindale

Foreperson of Grand Jury

Date: *12-16-14*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0801934

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

December Term 2014

THE STATE

vs.

GARY CURTIS FRALEY

DOB: 1966-08-05

W/M

Indictment for

Possession of a Weapon During Commission
of a Violent Crime

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 DEC 16 PM 1:49

FILED

Kwm 899

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

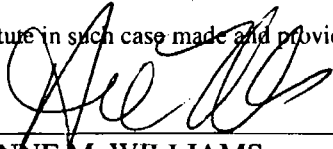
INDICTMENT

At a Court of General Sessions, convened on December 16, 2014 the Grand Jurors of Berkeley County present upon their oath:

Possession of a Weapon During Commission of a Violent Crime

That Gary Curtis Fraley did in Berkeley County, South Carolina, on or about August 5, 2014, possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of kidnapping, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY

STATE VS.

GARY CURTIS FRALEY

AKA:

Race: White Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Possession Of A Weapon During The Commission Of A Violent Crime**In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

[Signature]
Anne M. Williams, Senior Assistant Solicitor SC Bar # 76463

Defendant

[Signature]
Attorney for Defendant 63773
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-08-1874☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Phyllis Norton☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

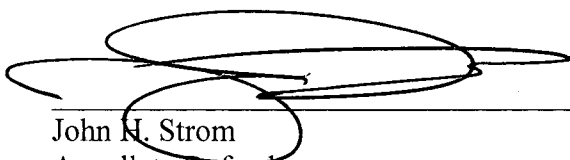
during probation.

Presiding Judge: [Signature]Judge Code: 72157Sentence Date: 7/10/15

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of August, 2016.

RECEIVED

AUG 31 2016

SC Court of Appeals