STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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S.C. SUPREME COURT

ROBIN G. REESE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001110

APPENDIX

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[1] Pages 629, 725, and 1090 from the trial transcript are missing and were not included in the Record on Appeal for Petitioner or her co-defendant in their direct appeal cases. Petitioner's Counsel contacted the court reporters involved with the trial but neither of them had retained a copy of the 2012 trial transcript.

Q That's information that you specifically asked her about circumstances and other things?
A Yeah, I asked those questions based on what she already said.
Q And prior to her signing this statement, did you take any steps to make sure it was correct as she reduced it in writing?
A That's correct. And prior to Ms. Anderson signing the statement, as a general practice I read the statement or either have them to read it. In this case, I read it back to her and as a matter of fact there were some mistakes that were made, a couple of lines that she had to sign off on, at least put her initials on. But after I read the statement to her, she indicated by signing it that the statement was true as she gave it to me.
Q In this case, I believe she actually corrected one thing you had written down. Instead of saying "going to my sister's house", she corrected it as leaving?
A She did.
Q And she initiated that?
A That's correct.
Q That would have been when you had gone back

over the statement to make sure everything you had reduced to writing was what she had said?

A That's correct.

Q And then she signed each and every page indicating that was her information?

A She did.

Q And in cases such as this, specifically with Ms. Anderson, was she very forthright and very consistent in what she told you?

A She was forthright.

Q In interviewing some witnesses in general, they may vacillate a little bit or change, but in this chase she was forthright?

A She was very straightforward.

MS. SAMPSON: That's all I have, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. FARLEY:

Q Investigator Reese?

A That's right.

Q You said that you interviewed Mary Anderson on the 16th. That's what?

A February 16th.

Q So this was several days after the

incident. The incident occurring on February 13, 2010?

A Three days after.

Q You stated you interviewed Ms. Anderson?

A Right.

Q And as a result of that interview, you wrote down what you understood her interview to be.

A Yes, sir.

Q And then you had her sign it?

A That's correct.

Q Do you think it would be fair to say that you wrote an approximation of what she conveyed to you? Not exactly?

A That would be fair. It's as close as I could get it to what she said.

Q But sort of paraphrasing?

A Yes, sir.

Q I mean -- and just making sure that the jury understands it's not like a court reporter who takes down everything, but you take what you feel is the gist of what is telling you, wants to convey.

A I write down as much as I could understand her to say and the way she said it, says it. I

don't put my words. If she uses street vernacular, that's what I put.
Q But it's still paraphrasing?
A It's still paraphrasing.
Q And not everything that she would have said in that interview would have ended up on the paper, necessarily?
A I could have missed some things. It's not an exact truth form of what she said. Again, it is as close as I could possibly get it.
MR. FARLEY: Thank you Mr. Reese, that's -- please answer any questions Mr. Chaplin has.
WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. CHAPLIN:
Q Investigator Reese, did Ms. Anderson have her glasses on that day?
A I don't recall.
Q You don't recall?
A Excuse me. I don't remember that.
Q Okay. And you stated that you testified that you wrote this statement, correct?
A Yes, sir.
Q Now, I'm familiar with your work because

you also met with Kara Chase and Kiki Burns, but they wrote their own statements?

A Is that a question?

Q No. Did Kara Chase and Kiki Burns write their own statements?

A I would have to see the statements. I don't really remember.

Q Would it surprise you if I told you that they did?

A No. It wouldn't surprise me.

Q So can you help me understand why Mary Anderson didn't write her own?

A I can't remember why she didn't. It could be a number of reasons.

Q Can Mary Anderson read?

A I don't recall.

Q Did you ask Mary Anderson if she was under the influence of alcohol or drugs that day when you met with her?

A I don't recall but if I would have asked her that, that would have been -- there would have had to have been a reason for me to ask her that. If I didn't ask her, she didn't exhibit any reason for me to ask her was she high on drugs or drunk on alcohol.

Q I'm trying to ask this. So she gave a statement to you, that you wrote, on the 16th of February and she testified very differently from that statement today.

MS. SAMPSON: Objection, Your Honor.

THE COURT: Sustained. You can't testify.

MR. CHAPLIN: I apologize, Your Honor.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q If I would have noticed a difference in her two testimonies, which one would you say the accurate ---

MS. SAMPSON: Objection.

THE COURT: She has only testified once.

MR. CHAPLIN: Yes.

THE COURT: You said two testimonies.

MR. CHAPLIN: I'd like to rephrase.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q If I were to notice a difference between her statement and her testimony, ---

MS. SAMPSON: Objection, Your Honor, to his interpretation.

THE COURT: Ask the question.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q If there was a difference noted between her statement that she gave to you and her testimony at trial, which would you say is the correct version?

MS. SAMPSON: Objection, Your Honor. How on ---

THE COURT: Just -- I understand.

THE WITNESS: Shall I answer it?

THE COURT: No. He didn't hear her testimony in court. He's been sequestered. There is no way he can compare a written statement which he took to her testimony today except your interpretation of the way that she testified today. So I sustain the objection.

MR. CHAPLIN: No further questions of this witness.

THE COURT: Anything further?

MS. SAMPSON: No, sir.

THE COURT: You may come down.

WITNESS: Thank you, Your Honor.

(WITNESS STEPS DOWN)

THE COURT: May this witness be

excused?

MR. FARLEY: No objection.

THE COURT: Without objection.

MS. CAMPBELL: The State calls Investigator McCracken.

(WITNESS TAKES STAND)

ROBERT McCRACKEN, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Good afternoon.

A Yes.

Q What -- did you say you're a sergeant now?

A No, Investigator.

Q Investigator. Okay. I just want to make sure I got all the titles right. How long have you been with the Columbia Police Department?

A This March I will be starting my twenty-third year.

Q How did you'll go through the ranks with the department?

A I was a patrolman for eight years.

After I was a patrolman, I got assigned to the regional investigations as a patrolman or a

master patrolman at that time. I was assigned to regional investigations for approximately a year, year-and-a-half.

After that I was promoted to investigator. I remained in regional investigations for another couple of years.

When they reorganized and started the Violent Crimes Unit, I was assigned to the Violent Crimes Unit.

Q Do you receive training in order to be an investigator?

A Yes, you receive training. We do training at the academy. Basic investigator. When I went to it, it was two week training program, all aspects of investigations including crime scene, interrogation, that kind of thing. Also there are additional classes that we do attend. I've attended several. I can't name them all, but we try to attend as many as we can, different aspects of investigations.

Q Are you trained on how to take written statements?

A Yes. I've had a class in written statements, interview and interrogation techniques, that kind of thing.

Q And how about on how to present photo lineups?
A There is not really a training class for that, but we do have certain procedures that we go by and that's what I have use.
Q Okay. Now, back in February of 2010, were you an investigator in your region at that time?
A I was an investigator in the Violent Crimes Unit; yes, ma'am.
Q How did you become involved with this case?
A Back in February -- I believe that it was on the 15th -- I was requested by Sgt. Pegram, Investigator Pegram at the time, but it was requested that I do a search warrant initially and that's how I became involved in this particular case.
Q Is it unusual for an investigator to ask another investigator to do part of the investigation?
A No, ma'am. When you have an investigation like this, there's a lot of stuff you have to do. You just can't do it by yourself, so yes we frequently have numerous investigators involved in these type occasions for different things.
Q Okay. I believe you said you're first

involvement was preparing a search warrant?
A Preparing a search warrant for medical records, just a basic search warrant.
Q And you got the medical records?
A Yes.
Q And those were for the victim in this matter?
A For the victim from the hospital.
Q And what did you do with the records once you received them?
A They would have been turned over to Sergeant Pegram.
Q And I believe you next interpret view Ms. Kara Chase.
A Yes.
Q And do you remember what date you did that on?
A I'd have to refer back to the case notes but I believe it was on the 16th if I'm not mistaken, of February.
Q And do you remember if she wrote the statement or if you wrote the statement?
A I do not remember. I'd have to look at the statement.
Q Would seeing the statement refresh your

memory?
A Yes, I haven't seen it since.
MS. CAMPBELL: May I approach, Your Honor?
THE COURT: You may.
DIRECT EXAMINATION CONTINUED
BY MS. CAMPBELL:
Q Investigator McCracken, do you recognize this.
A Yes, that's a Columbia Police Department statement form.
Q Is that statement you took from Ms. Kara Chase?
A Yes, it is.
Q How do you know that is what it is?
A As far as the top part, and my signature is on there as well.
Q In looking that, who wrote that statement?
A I filled the blanks at the top, the date and time, location and that kind of stuff. The statement was actually written by Ms. Kara Chase.
Q So everything that's written on that first page she wrote?
A Correct, everything except what I just

explained to you.
Q Did you tell her what to write?
A No, ma'am. I didn't tell her. I wouldn't have known what to tell her, I wasn't involved in the case.
Q Can you explain to the jury what your procedure is when she comes in to give the statement?
A What I do -- now, I don't know what other investigators do, but what I do is I fill out the top portion of the statement. I ask the person, whoever it is, whether it's a witness, victim, suspect, to start at the very beginning and write down everything from the beginning to the end. Normally the question you get back is, 'Well, do I start here?' They mention something. I tell them whatever you believe the beginning is, you start there. If you leave something out I'll start the question-and-answer later. That's what I do.
Q Did you tell her in any way who did what or what to write down?
A No, ma'am. Like I said, I didn't -- I would have had very limited knowledge. I did not go on the scene. I was not involved in the

case until basically this statement, other than medical records.

Q Did you know at the time you gave her that statement who the suspects were?
who assaulted Mr. Mack or what to write down?

A I would not know; no, ma'am.

Q And when she came and spoke with you, was she cooperative?

A Yes, ma'am.

Q You didn't have to find her and drag her in or anything?

A No, ma'am. My understanding from my case notes is she was at headquarters, that she was a witness. So, no, she wouldn't have been somebody we went out to try to find and bring in.

Q Okay. I would turn you to the second page. You've stated to the jury already that you have them write and then you ask them some questions. Is that what happened in this case?

A Correct, on page two and -- the third page. What we did, is I wrote the question and she wrote the answer.

Q And when she is writing those answers, again do you tell her what to write?

A No, ma'am.
Q Do you suggest in any way what to write?
A No, ma'am. The only way she would know what to write is based on the question itself, answering the question.
Q Okay. I'm going to show your what's been introduceed as State's Exhibit number 71 and 70 and ask if you recognize these.
A Yes, ma'am, that is photo lineup form that we fill out, as well as the photo lineups that would have presented at the time.
Q Can you tell the jury how you did present those lineups to Ms. Chase?
A These lineups would have been presented -- I had her sit down, and this was done in the conference room, according to my notes. I would have her sit down in the conference room, my normal procedures of presenting a photo lineup to an individual is that I lay the photo lineup face down on the table. In this case, it was a table. Sometimes we do it on the floor or something if we don't have anywhere to lay it down. In this case it was a table.

I advise the person that is looking at a photo lineup -- before they turn it over, I tell

them that there's six photographs on the paper. I tell them when they get ready that I want them to turn the paper over; that the person may or may not be in these picture. Then I advise them to look at each picture in the photo lineup. As they look at each picture, if they recognize anyone in the lineup, even if it was in the grocery store the day before -- anybody that you recognize in the photo lineup, I want you to point to that picture.

Once they do that and point to a picture, I asked them 'how do you recognize that person?' They respond however they would respond.

Q Is that what you did in this case?

A Yes, ma'am.

Q Did you at any time tell her who to pick?

A No, ma'am.

Q Did you ever suggest in any way that any suspects were in that photo lineup?

A No, ma'am. That's why I lay it face down and let them do everything.

Q Do you do them together or one at a time?

A One at a time.

Q And that's what you did in this case?

A Yes.

Q And Ms. Chase was able to identify two people?
A Yes. Each lineup has an indication on it.
Q And you didn't prepared the photo lineup. You didn't choose the photographs to put in that lineup?
A No, I did not.
Q And why is that?
A I just didn't do this one.
Q So I guess the question is, you didn't know who for her to pick in the first place?
A I did not, no.
Q Okay. And again, was she cooperative in doing the photo lineups with you?
A Yes, she was cooperative the whole time. I don't have any indication in my notes that she was uncooperative, which I would do if she was.

MS. CAMPBELL: Thank you, Investigator McCracken.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. FARLEY:

Q Investigator McCracken?
A Yes, sir.
Q You also interviewed Ms. Chase the 16th?

A Yes, sir, that would have been the 16th.
Q And you said that she did -- she had written this herself. You didn't write it for her?
A Correct. She wrote her answers in the statement herself . The only thing I wrote was the questions and then filled in the date and time location, that kind of stuff.
Q And I know you said earlier in the course of the interview that she didn't seem -- she seemed to be cooperative and forthright, ---
A Yes, sir.
Q That kind of thing. Also, you said you'd take notes is there was anything that seemed odd to you?
A If there was something odd about it, I would have noted that in my case notes.
Q Did she seem at all nervous or a little off put by speaking with an investigator?
A No, sir. She was comfortable with me.
Q You didn't put that in your notes? It seemed like she was a little ---
A Well, anytime you have an incident that you're at the police department, you can expect some nervousness, but it wasn't anything that

would have been unusual or noteworthy.
Q All right. But there probably was some nervousness?
A There could have been but nothing that stuck out enough for me to write it down.
MR. FARLEY: Please answer any questions Mr. Chaplin may have.
WITNESS: Yes, sir.
CROSS EXAMINATION
BY MR. CHAPLIN:
Q Okay. Investigator McCracken, so I think you testified that you assisted in this investigation; correct?
A Yes, sir.
Q All right. So I'm not sure what you had access to, but did you read any reports prior to meeting Ms. Chase pertaining to this investigation?
A What kind of reports?
Q I'm not sure.
A Police reports?
Q Police reports.
A I don't recall. I don't think I did, but I can't recall that.
Q Okay. Well, now, Investigator McCracken,

isn't it true that Kenneth Mack died on February 14th?

A I don't know.

Q Okay. Isn't it true that Marcellius Brooks was arrested for his murder on the 15th?

A I do not know.

Q Okay. And isn't it true that Marcellius Brooks is the one that told the police department about the second attack?

A I do not know.

MS. CAMPBELL: Objection, Your Honor. He is asking him about hearsay.

THE COURT: He said he doesn't know. It calls for a hearsay answer.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Are you aware that Marcellius Brooks informed the police about a second attack?

MS. CAMPBELL: Same objection, Your Honor.

THE COURT: Sustained.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Were you aware at the time that there were two separate attacks?

A I believe I was. I'm not sure.
Q And were you aware that Marcellius Brooks had been charged in the first attack?
A I do not know that.
Q Are you aware of any negotiations between Marcellius Brooks and Investigator Pegram?
A No. I had a very limited part in this case, just what I've explained to you.
Q So you have no knowledge as to whether somebody a subject anything?

MS. CAMPBELL: Objection, Your Honor.

THE COURT: He has answered that. Sustained.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q So on the 16th, the day after Marcellius was arrested, Mary Anderson, Kara Chase and Donetti Perry, all three, came to the police department at the same time; is that correct?
A I cannot answer that. I was requested by Investigator Thomas to interview Ms. Kara Chase. That's what I can testify to.
Q Okay. Are you aware whether Ms. Chase had been subpoenaed or did she come voluntarily?
A My understanding is she would have come

voluntarily.

Q You indicated that Ms. Kara Chase picked Mr. Gray out of a photo lineup?

A What I did was show the photo lineup, the first photo lineup. She identified number one. I asked her who is number one, and she responded "Six's sister." So whoever that is.

Then the second photo lineup was shown to her. She identified a photo, which is number two. Number two, I asked her who that was and she responded "Six."

So -- I don't have their names. I have what she told me they were.

Q Okay. Did you ask her whether or not she had known Six previously?

A I'd have to read her statements to see if she had that in there. I don't have that documented in my case notes.

Q Do you know who prepared the photo lineup?

A I do not.

Q Do you know why she wasn't shown a photo lineup with Marcellius Brooks?

A I can't answer that question either. Again I had limited involvement in this.

MR. CHAPLIN: Thank you very much.

THE COURT: Redirect?

MS. CAMPBELL: No, sir.

THE COURT: All right. You may come down.

(WITNESS STEPS DOWN)

THE COURT: May this witness be excused?

MR. FARLEY: No objection, Your Honor.

MR. CHAPLIN: No objection.

THE COURT: Next witness.

MS. CAMPBELL: The State calls Malik Akbar.

(WITNESS TAKES STAND)

MALIK AKBAR, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q How old are you?

A Forty-seven (47).

Q Are you from the Columbia area?

A I've lived here a while.

Q About how long have you lived in Columbia?

A Steadily now for about sixteen years.

Q And what to you do?

A I own a company where we put chain stores and restaurants together.
Q I want to turn your attention back to February 10th, 2012. Where were you employed?
A At Cousin's Mini Mart.
Q And what was your position?
A Co-owner.
Q You actually owned that with the people?
A. Yes.
Q Who did you own it?
A Magic, Malik -- myself, -- and Moses -- (inaudible).
Q And in your position as co-owner what were your duties? What did you do?
A I ran the restaurant and made sure that everything was straight for the restaurant and we kept the books and stuff straight and every now and then I would watch the monitors, the video tape, to see what was going on in the store.
Q And describe a little bit -- I know you just said you ran the restaurant. Exactly what type of establishment was Cousin's or is Cousin's Mini Mart, or was it back then?
A It's a convenience store where the

restaurant was in the bark. It's in the neighborhood close to Gonzales Gardens on Forest Drive. Right across the street is Sherwin Williams, Bojangles. Right next to it is a cleaners. Right next to it is a liquor store. Right on the other side of it is Blue Ocean Fish Market.

Q And all this is pretty -- within a block pretty much?

A Within blocks.

Q And you mentioned video surveillance equipment, that you reviewed that as part of your duties as co-owner, can you describe a little bit about your surveillance equipment that you had?

A All total, if my memory serves me correctly, I have sixteen cameras. Of the sixteen camera, they're located throughout the store, our premises of the store, and along the premises on other end of the store toward the fish market.

Q Okay. So you actually had cameras inside the store?

A Yes, ma'am.

Q And on the outside, the front of your

building?
A Outside of the front it's four cameras, one down the far end, one directly as you come in, one right on the other end and then there's one zone go straight down towards the end towards Gonzales Gardens.
Q Did that surveillance equipment actually record things?
A Yes, ma'am.
Q And are you aware of whether that surveillance equipment was recording back on February 13, 2010?
A It records every day.
Q Every day.
Q And those records or disk are maintained, you were able to retrieve them?
A We can retrieve them any time that we need.
Q And the police actually came to you and asked for the video, correct, or one of your co-owners?
A They asked Mack I think first and he could not download it. Then we brought in a company to try to download it but we didn't get the disk that they say that they wanted, as to the right time. Then they served us with a subpoena and

took all of our surveillance equipment.
Q So they actually took the whole equipment.
A Yes, ma'am.
Q Let me ask you -- this here today, you're actually under subpoena here today?
A That's correct.
Q You don't really want to be here?
A No, ma'am.
Q I'm going to show you what has been marked as State's Exhibit 77 now, earlier did I show you -- or myself and some colleagues in my office, were you able to review part of a disk?
A Yes, ma'am.
Q Do you recognize this?
A Yes, ma'am.
Q And was that disk surveillance from your store?
A Yes, ma'am.

MS. CAMPBELL: Your Honor, at this time the state would introduce State's Exhibit 77.

MR. FARLEY: No objection.

MR. CHAPLIN: Without objection.

THE COURT: No objection.

(SO ENTERED AS STATE'S EXHIBIT 77)

MS. CAMPBELL: Permission to publish?

THE COURT: Certainly.

MS. CAMPBELL: It will take just a moment to set up the ---

DIRECT EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q While they're setting up, I know you referred to it as Cousin's Mini Mart, is it also referred to as an open air market?

A The reason why a lot of people say open air market is because Mr. Roach, who used to own the store beforehand, had an open air market for fifteen years. When we purchased it we changed the name to Cousins for our company but people still recognize it because it's been open for so long. It's just like, let's say, you run a family business for so long and people just know it by that.

Q Event if it goes over to corporate, that's what they refer to?

A Yes.

Q But open area and Cousins is one and the same?

A Yes, it's one and the same.

Q How close is it to Gonzales Gardens?
A About eighty yards.
Q Eighty yards, so not very far at all?
A No.
Q Did you actually work in the store pretty much on a daily basis?
A I worked in the store thirteen to fourteen hours a day six days a week, and then one day a week about forty-five hours.
Q So you worked a whole lot in the store and you were familiar with people coming in and out?
A Yes, ma'am.
Q Okay. Our very fancy technology needs a moment to warm up before the signal will come on. It's counting down from about four minutes. I don't know if you wanted to sit tight or take a short break.

THE COURT: Does that answer your question?

MS. CAMPBELL: Sit tight.

THE COURT: No such thing as a five minute break.

MS. CAMPBELL: You are correct.

DIRECT EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q While we're waiting, just a couple more questions. You said you worked there daily, correct?
A Yes, ma'am.
Q And you're pretty familiar with the people coming in and out?
A Yes, ma'am.
Q Did you know Robin Reese?
A She comes in the store regularly.
Q Regularly and you had video game machines or poker machines in the store at the time?
A Yes, ma'am.
Q Would she be playing on those when she came in sometimes?
A Sometimes.
Q And are you familiar with Henry Gray?
A Yes, ma'am.
Q He would come in the store, as well?
A Yes, ma'am.
Q And are you familiar with Robin Reese's daughter. They refer to her as Lucy?
A Yes, ma'am.
Q And do you know Marcellius Brooks, who is referred to as Bloom?
A Yes, ma'am.

Q Did you know that Robin Reese and Lucy were affiliated with Marcellius Brooks?
A What do you mean they were affiliated?
Q That they knew and hung out with Bloom, associated with him?
A I wouldn't say that they was, uh, -- hung out. I'd just say they would know each other. That's as far as I know with that part.
Q Your surveillance equipment records only what happened but no audio, correct?
A Pardon.
Q Yes. Is there any audio with respect to your surveillance equipment or just the video?
A There is no audio except by the register.
Q By the register?
A By the register.
Q If I can have you step down just for a second so you can see.
A. (Complies).
Q (Video playing) -- Can you tell us what part of the store that we're watching in this camera, just describe the layout for what we're seeing.
A This is the restaurants part right here.
Q Where the people are, the very top part?

A The top part there, that's the restaurant part there.
Q Okay.
A That's the beer cooler and this is the front part of the store. This is the part right here, the wall as you walk in straight to your left.
Q And back towards the restaurant, is that where the video machines are?
A Those machines are in the red right there, machine right there and -- and the bulk that you see on the other side.
Q So you had two machines in the store. Where were these actually ---
A There were three.
Q Where was the other one?
A See the person playing right there.
Q Okay.
A That's the machine.
Q Okay. Where is the actual entrance to the store in relationship to that?
A You can't see it from this one but right at this barrel, ten, maybe twelve feet down is another door that walks right in here.
Q Okay. You were actually working at the

Mini Mart on that day?
A Yes, ma'am, back here.
Q In the restaurant?
A Yes, ma'am.
Q You can have a seat -- (video ended)
A (Complies)
Q Also Mr. Akbar, the timestamp on the video, it's little bit off, correct? Doesn't it kind of flip flop back and forth to where the time stamp is not exactly correct?
A. Yes. Just a little bit. The cameras are motion sensor. It records but it's records when someone walks.
Q So while the date is correct the time may not be necessary correct?
A. Right. There is -- sometimes there's anywhere between a six second and twelve minute gap between customers. If you don't walk under it, that means the cameras is there but it is not recording.
Q Mr. Akbar, when you came up here earlier, were you actually working and could be seen in the video?
A Yes, ma'am.
Q Did you work that whole day?

A Yes, ma'am.
Q This video is kind of long, but you recall Ms. Reese coming in that day?
A Yes, ma'am.
Q And was she playing the video machines?
A Yes, ma'am.
Q We're going to go ahead and switch to title two. Is this going to be a different camera or just a different timeframe?
A Just different cameras.
Q Just different cameras. Mr. Akbar, if I can have you step down for just a second.
A (Complies)
Q (Video running) -- Were you still behind the register or where were you in this video?
A Actually just -- right there (indicating).
Q Stand back where the jurors can see you?
A That's me walking back there in the white.
Q Okay. Do you know one of the people sitting at the machines?
A Yeah, that's Robin there.
Q That's Robin who is sitting at the machines?
A Yeah.
Q Okay. If you could step back just a little

bit. She is actually standing there with two guys, I believe, around her?
A Yes.
Q And that's where all three machines for?
A We have two other machines are facing that way. She's on the short end of the machine.
Q And you're still outside or have you come back?
A I'm outside. I'm outside. I'm going that way back to the counter. That the time it's like a big crowd in there getting their food and stuff and playing on the machines.
Q At some point during those breaks, do you ever play the machines?
A Yes, I play.
Q Were you actually playing on this day? Are we going to see you come up?
A Actually, a little bit earlier I was playing, then the crowd started, so I stepped back. I was playing that machine right there.
Q Okay. That machine is actually right next to where Ms. Reese was playing?
A Ms. Reese is right here and the machine is right here. She will be at this one and I'll be at that one next to her.

Q In a few minutes the crowd kind of comes in?
A Well, actually this crowd right here kind of dissipated down. Both people came in and as it dissipated town, she is still going to be playing on one of the machines on the side.
Q And do you know any of the people around her right now?
A I can't remember this person's name, but I do know him when I see him.
Q And is that?
A This right here looks like Marcus right there. It's a little hard to tell. I notice this person here keeps moving more, but I can't tell you his name.
Q We haven't seen Ms. Reese's daughter come in yet?
A No, ma'am.
Q But you were there when she came in, as well?
A Yes, ma'am.
Q And did she come in with a group?
A I didn't see a group because when I first saw her, when she came in, I was like in that section going back to the kitchen getting some

food.

Q Okay. So maybe -- but then you came back out at some out, correct?

A Yes. Any time I'm there fixing the food, I get the food, come back and serve it to the people.

Q Do you remember when Lucy came into the store?

A I can't remember exactly what happened or what all happened when she came in the store.

Q Right. Now, that little crowd is kind of dancing around, aren't they?

A Yeah.

Q And Ms. Reese is still sitting there?

A Yes, ma'am.

Q You said you know that guy who is moving around a lot?

A Yeah, I just can't think of his name.

Q Do you recognize some of the people leaving? You said this is the crowd that goes down, right? Kind of dispersed?

A Yes, ma'am.

Q And Ms. Reese?

A Actually, when somebody walks in front of the camera it creates motion for another camera

and as that camera comes in, this camera blinks out. So you miss out a section when somebody walks, our system right there.

Q Not very fancy?

A But the one we had, I can go straight to it and split the screen and the other person is straight up as they walk out the door and you can see them then.

Q And do you know who that person is who just came and talked to her, from your best recollection of that day?

A No. I can't see it.

Q Are you still behind the counter cooking?

A At this point right here -- you don't see that until you do.

Q Were you paying attention when people came in?

A I paid enough attention to know basically what you're doing, where you're at. We have trouble spots in the store, so I paid attention to the trouble spots. These are trouble spots right here, right here and somebody -- there's another spot right here that the camera don't show you that's a trouble spot.

Q They're trouble spots because they're out

of sight of anybody who might be working in the store?

A Right, somebody comes in the store for people to rob you and stuff like that. Those are called trouble spots.

If anybody is working up to here, we pretty much know who is it and will see you every day. I knew a lot of people there. I know some of them by names, some by faces, some by nicknames.

Q Do you remember Lucy coming in that day and Robin being there?

A She was there before Lucy came in the store. When Lucy came in, I can't remember whether she left right then but I do know she left out of the store shortly after.

Q Okay. Do you know if Lucy left with her?

A I don't remember.

Q You don't remember.

Q Okay. So the cameras are -- you have a total of sixteen cameras, correct?

A Correct. Looking based on what you looking at, you're looking down a little bit, you only use two cameras. There's another camera that's right there that zooms this way.

Q There were complications with copying the

disks?
A Yes, we had to get a technician to come in to drop to download these cameras. It's complicated.
Q Now, is Ms. Reese still in the store?
A No, she's not there.
Q All right. So she has left out?
A That's when I tell you that when people move to different a motion camera, it blips and they are gone. The next motion on the other camera -- between here and there, there's five cameras. In the process of walking through each camera, it blips. The motion sensors do that. If you have the system where it's gone onto the rest of the cameras, you can pull up it up when someone walks out and walks up here. But here you are only on two cameras.
Q So it's probably the equipment that is not allowing us to see it?
A Yes. You see, it's five cameras there. There's a camera right there. In the front there's three cameras right there. Two cameras on the register. As soon as you walk out the floor, there's another camera that got you. We use that security measures to use when y'all

want to check something, a robbery. Those are motion sensitive at all times. So the equipment that you'll have when they're drawn out, you should have followed through the motion.

Q So we're seeing the center of the store where the camera kind of always reverts back to, outside of the motion sensors?

A Right. This runs all day like this. The outside camera runs all day. The other camera in the back runs. All the motion cameras blip off as this goes back. This is the one you really want to put in the system.

Q And who is that walking out of the store now?

A Oh, that was Tyree. He works there.

Q Oh, he actually works there. Okay. And on that day when Ms. Reese was in there and Lucy walked in, do you recall anything about how they were acting or whether they were kind of allowed or were they quiet, things of that nature?

A I know it was like fussing but quiet, be quiet and then everybody left. A while later, everybody made a whole bunch of noise, stuff like that.

Q And kind of dancing around?

A Yes, ma'am.
Q Socializing, things of that nature?
A Yes, ma'am.
Q You're no longer affiliated with that business, correct?
A No, ma'am.
Q You said there were additional cameras also in that store during that timeframe?
A Yes, ma'am.
Q And the person you know as robin Reese, do you see her in the courtroom today?
A Yes, ma'am.
Q Can you point her out for us?
A Right there in the brown.
Q Is she next to her attorney?
A Yes, ma'am.
Q And the person you know as Henry Gray or Six, do you see him in the courtroom?
A Yes, ma'am.
Q Where is he?
A He's in the blue shirt.

MS. SIMPSON: Thank you.

THE COURT: Cross-examination?

MR. FARLEY: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. FARLEY:
Q Mr. Akbar, did you recognize robin at the machine on the video or do you just remember her being there?
A Pardon me?
Q Do you recognize her from the video?
A I recognize her in the video because I could recognize people that walk. If I deal with a person and the person comes in the store all the time, that's my job to remember how people look and stuff, so when I saw her in the video that's what I was looking for. I was looking for body structure and stuff and I recognize the person in the video.
Q And you recognized her from watching the video?
A Yes, I did, yes, I did.
Q Okay. Well, it's kind of hard to tell who else was who, but you said -- I believe your testimony was there was a lot of moving around?
A A lot of moving around, but if somebody comes in your store every day for a whole year and you talk to them and see them every day, you'll be able to recognize them.
Q I wasn't talking about Ms. Reese, I was

talking about a lot of the other folks on the video, that it was kinda hard to pick them out as they were moving around.

A Some of them I recognize but I don't know people by names.

Q Right.

Q And you did say there was a lot of in and out?

A Yes.

Q And you yourself went in and out?

A I went in and out the kitchen. I didn't go in and out of the store.

Q But your attention was a little bit distracted and you were back in the restaurant; is that correct?

A Yes, sir.

Q The -- and the other thing I want to ask, if you could clarify something for me, this is something you would know as far as the video was concerned. I was kinda curious when I saw the video time date stamp at the top said 21312 but at the bottom it said 22412. I was just kind of confused by that.

A Okay. Sometimes when they go inside the system to reboot the system or to recheck the

system, they log in a time. That time is the -- the top time is usually the last time that somebody went in the system to manually record on the system. The bottom time is supposed to set the time that it goes through the camera. Sometimes on the camera if they go in and they boot it out, then the time will skip. In this case here, four different people tried to mess with it to try to get it to pull up, so as far as I've known the time I've worked there, there's been times we went to court on other situations and because they didn't pull it out of the program correctly, the time always kicks out.

Q So when you say the time kicks out, you mean if ---

A It means like if there is a delay on the motion sensor. Say if the delay is -- for example the day is 2/29 okay. And say that ti is 1:00 o'clock, but the motion skipped. There's nobody come on this time zone on this camera. Well, the time they were actually rolling on the camera, but it won't actually show the time that you actually walk through the part and it won't show nothing else. If nothing

else comes in on that timeframe, it won't show nothing else but that time and that's it.

Q So the date of February 24th, 2010, at the bottom is the date that that timestamp on the bottom would be the ---

A I can't tell you one way or the other on that timestamp on that one, because of the simple fact is I have never was the one that pulled it or the one to go into it or anything once the incident happened. They came in on the same day of the incident and asked that we download and pull it at that moment. Because nobody was there to authorize, besides myself and there's only one other person who could, they couldn't pull it.

When he came back to pull it, he didn't say he wanted each part of the tape. He scanned the camera manually and tried to download it. Anything could happen between then, but one thing for sure, it was already solved the same day and they want to pull it the same day. It's just that the senior partner wasn't going to let y'all have the camera because it meant we didn't have no security on the store. Anyway, it ended subpoenaed on everything but we still didn't

have security.
Q But anything could happen to the video?
A What I'm saying is anything could happen to the video but one thing for sure, the video that I saw today was the video that was taken on that same day.
Q But anything that could have happened and that kinda goes to the accuracy of the video.
A No.
Q Well, you were just saying it has motion sensors on it and it blips. Isn't it fair to say there's pieces missing?
A Pieces missing how?
Q Well, you said there were blips?
A The blips are that if they had a better computer system there, I can pull up every camera here and show you exactly what happened, every person that walked in the store or out of the store.
Q Well, Mr. Akbar, ---
A Hold up. Because you don't have a better system, you can't see everybody walking in the store and out of the store; but on that disk that's pulled from our program, you can see everything in the store, everything moving in

the store.
Q Now, Mr. Akbar, ---
A If you'll allow me to go to my car, we can get a computer system in here and we can download everything and I pull everything up for you; if you need that.
Q I wouldn't want you to do that, Mr. Akbar, but what I'm saying is the video that was shown by the prosecution is what we have to deal with. That's the video I want you to speak to. What I'm saying is, are there pieces missing out of that video that was just shown to the jury?
A I would say that there were sections missing where the camera relates itself.
Q So is it fair to say not all the pieces were there, that there are pieces missing?
A No.
Q From the video that we just saw?
A No. I'm saying they don't have the proper equipment to show the video.
Q My question is not about equipment. My question about what they saw?
A And my answer to you is still the same. They do not have the proper equipment to show you the video that you just saw.

Q So not withstanding the equipment, the resulting image is not a complete image?
A It's not a complete image? The image of everybody that was in that video that I said was I that video is in that video.
Q But you just said there were pieces missing, because ---
A No, I did not. I said everybody was there that did not have the complete equipment to show you each camera. That's what I said.
Q Okay. And this was only one -- I'm sorry, two cameras and there were five cameras in the store?
A There's a total of sixteen cameras.
Q A total of sixteen cameras but we only have two views?
A They only had two views that they pulled from the system.
Q And when I say two views, I mean, the jury only saw two perspectives. I don't want you to get hung up on the equipment we have. I'm just saying.
A I don't want to mislead anybody, because everything was on the camera. You're trying to tell me that they only saw part of something.

I'm telling you that they can only see what the equipment allows them to see. That's it.

Q They only saw what the equipment allowed them to see. Thank you Mr. Akbar. No further questions.

CROSS EXAMINATION

BY MR. CHAPLIN:

Q Good afternoon Mr. Akbar. At the time in February of 2010, you ran the store.

A Yes, sir.

Q Okay. You no longer run that store?

A No, sir.

Q Who runs the store?

A Magic. Well, Magic don't run it now.

Q Do you know Marcellius Brooks?

A Bloom.

Q Bloom/Marcellius Brooks?

A Yes.

Q How do you know him?

A I know him through the store and seeing him around the neighborhood.

Q You didn't see any attacks that took place on February 13th, 2010, did you?

A No, sir.

Q You didn't. Earlier you said you knew my

client, Henry Gray?
A Yes, sir.
Q And that's because you run the store in the community, right?
A That and I've seen him around.
Q Okay. All right. No further questions. Thank you.
THE COURT: Anything further?
MS. SIMPSON: Nothing from the State, Your Honor.
THE COURT: All right. Mr. Akbar, thank you very much. You're free to go.
(WITNESS STEPS DOWN)
MR. CHAPLIN: No objection.
THE COURT: You're excused.
MR. FARLEY: No objection.
THE COURT: Next witness.
MS. SAMPSON: The State calls Marcellius Brooks.
THE COURT: Ladies and gentlemen it's going to take Mr. Brooks a few minutes to appear. I suggest we take a short afternoon break. Just retire to your jury room. Don't discuss the case among yourselves while you're in the jury room. Just relax a few minutes. I

hope the bailiffs will have you some refreshes.

(JURY OUT @ 3:44 p.m.)

(BRIEF RECESS)

(DEFENDANTS PRESENT)

THE COURT: Be seated. Ready for the jury?

MS. SAMPSON: The State is ready.

THE COURT: Defense ready?

MR. FARLEY: We're ready.

MR. CHAPLIN: Ready, Your Honor.

THE COURT: Bring the jury.

(JURY IN @ 4:01 p.m.)

BAILIFF: All jurors are present, Your Honor.

THE COURT: Solicitor, call your next witness.

MS. SAMPSON: May it please the Court. The State calls Marcellius Brooks. Be careful. Go over there.

(WITNESS TAKES STAND)

MARCELLIUS BROOKS, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MS. SAMPSON:

Q Mr. Brooks, how old are you?
A Twenty-four (24).
Q And are you from the Columbia area?
A Yes, ma'am.
Q How long have you been living in Columbia?
A All my life.
Q Where did you go to high school?
A A.C. Flora High.
Q Are you familiar with Gonzales Gardens?
A Yes, ma'am.
Q Why are you familiar with Gonzales Gardens?
A Because I used to live out there.
Q And what area of Gonzales Gardens do you live in?
A At the bottom of the gardens in the Building.
Q The Building?
A Yes, ma'am.
Q When you say the bottom of the Gardens, what area is that?
A On Forest Drive.
Q It's on Forest Drive?
A Yes, ma'am.
Q Are you familiar with where and are?
A Yes, ma'am.

Q As well as the building on the other end?
A Yes, ma'am.
Q Are you familiar with the open air market there on Forest Drive?
A Yes, ma'am.
Q Is that within walking distance of Gonzales Gardens?
A Yes, ma'am.
Q Did you know Robin Reese?
A Yes, ma'am.
Q Tell this jury how you know Robin Reese.
A Well, me and my girlfriend lived next door to her for about two years, two-and-a-half years.
Q Would you consider yourself to be friends or acquaintances with Ms. Reese?
A Yeah, we talked.
Q You talked?
A Yeah, was next-door neighbors.
Q And did you know that she had a daughter?
A Yes, ma'am.
Q And what was her daughter's name, did you remember?
A I know her by the name "Lucy".
Q Lucy?

A Yes, ma'am.
Q And you know Lucy from living next door to her for a couple of years?
A Yes, ma'am.
Q Did you know her brother Henry Gray?
A I knew of him but I don't know hims.
Q Did you know whether or not he had nickname?
A Yes.
Q What was his nickname?
A Six.
Q Were you familiar with whether or not he also lived in Gonzales Gardens?
A I'm not sure about that.
Q Do you know whether or not their father lived in Gonzales Gardens?
A Yes, ma'am.
Q What building was that?
A It was the G building.
Q Do you have a nickname?
A Yes, ma'am.
Q What's your nickname?
A I go by the nickname of "Bloom."
Q Bloom?
A Yes, ma'am.

Q And that's what everybody pretty much knows you by?
A Yes, ma'am.
Q Would you say that your relationship with Robin Reese was a good relationship. You were on good terms?
A Yes, ma'am.
Q I want to turn your attention back to February 13th of 2010, the day all this happened?
A Yes, ma'am.
Q Were you in the Gardens that day?
A Yes, ma'am, I was.
Q What were you doing that day, that afternoon?
A I was walking down the street on McDuffie Street.
Q On McDuffie Street?
A Yes, ma'am.
Q What did you o?
A I observed Lucy and an unknown guy talking. Well, it was in some type of altercation.
Q All right. When you say she was talking when you first observed them, were they standing up on the ground or where were they?
A They were face to face, talking.

Q And what -- and you were just walking down the street. At that point, you didn't know anything was going on?
A No, ma'am, I didn't.
Q What did you observe next that caught your attention?
A I observed Lucy slap the guy.
Q So prior to seeing Lucy slap the guy, you just observed them talking?
A Yes.
Q After you saw Lucy slap the guy, what happened?
A I saw the guy pick Lucy up and slam her to the ground.
Q To the ground?
A Yes, ma'am.
Q And the guy that we're referring to, the ultimately victim in this case?
A Yes, ma'am.
Q Did you know him?
A No, not at all.
Q Had you ever seen him before?
A Had never saw him.
Q Had you ever been to his barber shop down the street?

A No, ma'am.
Q So the first person you saw do anything of a not nice nature or a violent nature was Lucy slapped him?
A Yes, ma'am.
Q You don't know what was said or what caused that?
A No, ma'am.
Q You don't know anything about how she wouldn't give him his potato chips or anything like that?
A No, ma'am.
Q At that point when you saw him slam Lucy to the ground, what was going through your mind?
A Go help Lucy.
Q So is that what you did?
A That's what I did.
Q Tell this jury what happened -- how far away from them were you when this happened?
A Like from here to where the benches are at.
Q Like from here over to here?
A Yes, ma'am.
Q Back to this bench or even further back maybe?
A I'd say right there in that area.

Q And is what -- you were perceiving is that Lucy was in trouble and you were helping her?
A I was helping Lucy, yes, ma'am.
Q What happened next?
A I then ran and bum rushed the guy.
Q When you say "bum rushed" the guy, what is that? For people old, like me?
A I tackled him off of her.
Q Off of her?
A Yes, ma'am.
Q So you bum rushed him, you kinda pushed him off?
A Yes, ma'am.
Q At that point is he down on the ground?
A Yes, ma'am.
Q So what to you do?
A I'm on top of him and I hit him twice.
Q Okay. With what?
A With a closed fist.
Q Were there other people in the area?
A I mean, a crowd started to form to see what was going on then.
Q Is that typically what happens in Gonzales Gardens when there is a fight?
A That's typically what happens when there is

a fight, any fight.
Q Then what happened?
A After that a little struggle, a little tussle here and there. We both were tussling with each other. I was then pulled up by someone, Little Ricky. Then after that the guy got up and ran off.
Q Little Ricky, is his name Angelo?
A Angelo Boyd. Yes, ma'am.
Q What about Kenneth Archie, was he out there that day?
A I don't know anybody by the name of Archie.
Q You don't know him by that name?
A No, ma'am.
Q Do you remember another person involved in the fight, getting some licks in?
A I didn't see nobody else there.
Q Do you remember? Are you going to tell this jury about how you got Lucy to kick him a few times.
A. Yeah, she did. She tried to kick him but I was on top of him. I was on top of him, so I will guess she couldn't really get a lick in like that because I was on top of him.
Q And you're kind of protective of Lucy?

A What do you mean by that?
Q Protective of Lucy, you look at her fondly?
A Oh, yes, ma'am; yes, ma'am.
Q So you told Lucy to kick him but you testimony here today is that she couldn't get good licks in.
A She couldn't because I was on top of him.
Q Do you remember a guy named Thomas Joseph being out there that day?
A Just -- he probably was in the crowd if he was, but I'm not sure.
Q You don't recall anybody else joining in your fight?
A No, ma'am.
Q And hitting him?
A No.
Q And your testimony here today is that you only hit him twice?
A Twice; yes, ma'am.
Q Do you remember kicking him?
A No, ma'am, I did not kick him.
Q Do you remember what the victim was saying when you had him pinned down to the ground and was hitting him?
A No, ma'am.

Q Do you remember how long you had him down on the ground?
A No, ma'am, not really.
Q You mentioned that somebody had to pull you off of him?
A Ricky did pull me off of him.
Q Ricky Boyd?
A Yes, ma'am.
Q Do you remember Ricky getting in his couple of licks that he testified to?
A No, no, no, ma'am, I didn't.
Q Was the victim bleeding?
A He did have a busted lip.
Q And was that where you'd hit him?
A I'm not sure. Probably so.
Q Or was that from where Lucy hit him?
A I'm not sure.
Q Once you got pulled off of him, what happened?
A I then got Lucy, she got up, she picked her shoes up off the ground and I walked her to the store, to the open air market.
Q And who all was with you?
A I mean, the crowd was behind me but I'm not sure who was in the crowd.

Q Little Ricky?
A Yes, he was with me.
Q And some of these other guys who have nick names?
A I mean, I don't know. I'm not sure. There was a crowd that was walking.
Q Once you left and you got Lucy, where were you taking her?
A To the store where her mother was.
Q And why were you taking her to the store?
A Because that's the mother be at, at that store.
Q She's always at the store?
A Yes, ma'am.
Q What is she doing at the store?
A Playing on the machines, video poker.
Q That's what she does pretty much on a daily basis?
A That's what we -- well, we all do that, so yeah.
Q So you went straight to the store with Lucy and the crowd that was traveling behind you?
A Yes, ma'am.
Q When you got to the store, what did you do?
A Took her to her mother, told her mother

what happened.
Q What did you tell her mother had happened?
A I just told her some guy was on Lucy or whatever. I got him off of Lucy and I brought her to him, whatever.
Q And what was her mother's reaction?
A She was like, 'Who?' That's the question she asked me was who was the guy.
Q What did you tell her?
A 'I don't know.' She asked her daughter who it was.
Q Do you remember what Lucy told her?
A She said she don't know.
Q Was somebody else able give information identifying the person?
A No, ma'am.
Q Were you able though to give her a description of what the person was wearing and what they looked like?
A I didn't, though.
Q Do you know if anybody else did?
A I am not sure.
Q But there were other people in the store, as well?
A Yeah.

Q And everybody was pretty upset?
A I mean, not everybody. It was just really it was me talking to Robin and Lucy. Really, they was together.
Q Were they upset? Was she upset?
A Yes, she was upset.
Q Do you remember Robin getting on the phone while you were there?
A Not when she was in the store but when she walked out of the store.
Q Well, before y'all left the store, did she have to finish her video poker game?
A I'm not sure.
Q You don't remember that part either?
A No, ma'am. I'm not sure about that part.
Q When you all left the store, did she leave first or did you leave first?
A She left first.
Q And once outside you said you saw her get on the phone?
A Yes, she was on the phone.
Q Do you know who she was talking to?
A No, ma'am, I don't.
Q But she was down there making a phone call?
A Yes, ma'am.

Q Could you hear what she was saying to the person on the other end of the phone?
A No.
Q Was she excited, was she upset, was she angry?
A All I saw, she was just on the phone.
Q Was Lucy with her at that point?
A Yes, ma'am.
Q Were you with her at that point?
A No, ma'am.
Q Was this right outside the store or back into Gonzales Gardens?
A Well, she was trying to get on the phone when she was going out of the store.
Q So she was trying to make phone calls as she left the store?
A Yes, ma'am.
Q She ended talking to someone. You just couldn't hear what she said?
A I don't know what she said.
Q Where did you go?
A I went back down McDuffie and walked through the Gardens to the S Building.
Q To the edge of it?
A To the S Building.

Q Which is on McDuffie Street?
A No, ma'am. It's in the Gardens plaza. It's in the middle of the Gardens.
Q It's in the middle?
A Yes.
Q But it's not next to be F and G?
A No, ma'am.
Q Did you cut through the children's center?
A The daycare, no. No, I didn't cut through there because I was still on McDuffie so I cut like through the -- I'd say the "O" and "R" area.
Q Okay.
Q But you cut through that area in the middle.
A Yes, ma'am.
Q Did you go down the F and G building at that point?
A No, ma'am.
Q You went to building S?
A Yes, ma'am.
Q That's where you were living at the time?
A No, ma'am. I went there to go see someone.
Q Who were you going to see?
A Vallery, Ms. Vallery.

Q Ms. Vallery Goodwin?
A Yes, ma'am.
Q Why were you going to see Vallery Goodwin?
A Well, I'd got a phone call from her. She asked for a couple of dollars for her son that was incarcerated, a friend of mine.
Q A friend of yours?
A Yes, ma'am.
Q So you went by there to give her some money for her son who was incarcerated?
A Yes, ma'am.
Q So you went into her apartment?
A Yes, ma'am, I did.
Q Do you remember the police coming to that apartment and knocking on the door?
A No. I was gone there. I was gone.
Q You didn't leave because the police came, did you?
A No, ma'am.
Q Then where did you go?
A I went to my mother's house.
Q Where is your mother's house?
A On Rosewood.
Q How did you get there?
A She picked me up.

Q And where did she pick you up?
A From off of McDuffie.
Q Why did you want to go to your mother's house suddenly?
A I'd called her before of this happened. I've been calling.
Q Let me ask you this. After the fight you got up and left. Lucy got her shoes and she left. Where did the victim go?
A The victim was running like towards the bottom of the Gardens.
Q Why was he running?
A Because of what just happened.
Q Because you beat him up?
A Yes, ma'am, he got up and ran off.
Q Did he say anything as he left?
A No, ma'am, not that I know of.
Q After you left the store that day, did you see what direction Robin Reese went?
A Yes, ma'am. She walked straight down Forest Drive.
Q And if you go straight down Forest Drive.
If you go straight down Forest Drive, is that another edge -- McDuffie goes this way and Forest Drive goes this way? Are there a row of

buildings there in Gonzales Gardens?
A Yes, ma'am.
Q In Gonzales Gardens?
A Yes, ma'am.
Q Does that include F and G?
A Yes, ma'am.
Q And where did her daughter go?
A Her daughter was with her.
Q In that same direction?
A Yes, ma'am.
Q When she left the store that day, how would you describe her demeanor?
A Angry.
Q So the first person you saw throw a punch that day, or threw a punch as far as you know, was Lucy?
A Yes, ma'am.
Q After you got to your mother's house, did you become aware the police were looking for you?
A No, ma'am.
Q Not that day?
A Well, yes, that day when I got to the mall. I left my mother's house, went to the mall.
Q Okay. And how did you become aware that

the police were looking for you?
A I got a phone call from my brother.
Q And they were trying to contact you?
A Ma'am?
Q They were trying to contact you?
A Now, he did contact me and told me about what was going on.
Q Your brother did?
A Yes, ma'am.
Q The next day did the police find you?
A No, ma'am. They called my phone, though.
Q Did you turn yourself in?
A Yes, ma'am.
Q When did you turn yourself in?
A I guess that was the 15th.
Q A day or two after this happened?
A Yes, it was like the 15th or something like that, 14th or the 15th.
Q Could it have been February 15th around that evening?
A I know it was like evening time, like after 5:00.
Q And you actually went to the police department yourself?
A Yes, ma'am, my mother took me.

Q When you got there, did you make contact with investigators?
A Yes, ma'am.
Q Do you remember what investigators you talked to?
A Pegram and Thomason.
Q And at that point, were you aware of why they were looking for you?
A Yes, ma'am. They told me on the phone when they called me.
Q And why were they looking for you?
A For a murder.
Q And then you went and turned yourself in?
A Yes, ma'am.
Q Once you turned yourself in at headquarters, did they advise you of your rights?
A Yes, ma'am.
Q Did you decide to waive your rights and talk to them?
A Yes, ma'am.
Q They went through your whole advice of rights; is that correct.
A Yes, ma'am.
Q Your right to remain silent?

A Yes, ma'am.
Q Your right to have an attorney?
A Yes, ma'am.
Q All your Constitutional rights?
A Yes, ma'am.
Q But you choose to talk to them?
A Yes, ma'am.
Q Why?
A Because I felt that I was innocent.
Q Had you been given some information about a second assault that happened that day?
A Yes, ma'am.
Q Was that information -- was that some information you wanted to give to the police?
A Yes, ma'am.
Q Did you give them the recorded statement, the information on the assault you participated in and then what you'd heard about what had happened after that?
A Yes, ma'am.
Q What information did you give the police?
A About with the second incident?
Q The first incident where we talked about, going to the open air market and all that.
A Right.

Q Then what information did you give them about the second incident?
A I told them what I heard was the man got to the bottom.
MR. CHAPLIN: Objection, Your Honor.
THE COURT: All right. He told him. He can't say what he told the officer you can't say what somebody else said.
MS. SAMPSON: I'm just asking what he told the officers.
THE COURT: Overruled.
DIRECT EXAMINATION CONTINUED
BY MS. SAMPSON:
Q Tell me what you told the officers?
A I told the officer that I heard someone said that the man got to the bottom, uh, said he got in contact with someone was talking to them, said he was -- asked him what happened to him, said he was up the street fighting with some little B.
MR. FARLEY: Your Honor, I'd like to renew that hearsay objection.
MS. SAMPSON: I'll move on.
THE COURT: Move on.
MS. SAMPSON: Okay.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:

Q Once you told them the information that you had heard, were you arrested that day?

A No, ma'am.

Q When were you arrested?

A Oh, -- yes, -- yes, ma'am.

Q You were arrested that same day?

A Yes.

Q For, I believe, the murder and lynching?

A Yes, ma'am.

Q And those charges are still pending, are they not?

A Yes, ma'am.

Q And you have a lawyer?

A Yes, ma'am.

Q And is she here in the courtroom?

A Yeah.

THE COURT: Stand up.

WITNESS: Yes, ma'am, right there.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:

Q And you're aware that your murder charge carries thirty to life?

A Yes, ma'am.

Q And you're also aware that the lynching charge carries five to forty.
A Yes, ma'am.
Q You also have pending charges that include criminal domestic violence?
A Yes, ma'am.
Q Malicious injury to property?
A Yes, ma'am.
Q Simple possession of marijuana?
A Yes, ma'am.
Q Two counts.
A Yes, ma'am.
Q And PWID marijuana, possession with intent to distribute?
A Yes, ma'am.
Q And those are all pending?
A Yes, ma'am.
Q Are you testifying here today?
A Yes, ma'am.
Q Why?
A Because I'm innocent.
Q Has anybody promised you any deals as far as any reduction?
A No, ma'am.
Q Any dismissal?

A No, ma'am.
Q Any certain sentence?
A No, ma'am.
Q Any kind of leniency in exchange for your testimony?
A No, ma'am.
Q Are you hoping that will happen?
A I mean, I hope that they'll see me innocent in this.
Q You hope that someone takes it into consideration down the road?
A Yes, ma'am.
Q But you understand you can still be prosecuted for all these charges I've just gone through?
A Yes, ma'am.
Q And there are absolutely no deals that have been made, with you or your lawyer or anyone else?
A No, ma'am.
Q And you're facing up to life?
A Yes, ma'am.
Q Did you participate in the second assault?
A No, ma'am, I didn't.
Q The people that you knew, Ms. Robin Reese

and -- you knew who her brother was?
A Yes, ma'am.
Q Do you see them here in the courtroom?
A Yes, ma'am.
Q And what was his nickname?
A Six.
Q Can you point him out for the jury?
A (Indicating).
Q Seated at the table?
A Yes, ma'am.
Q What's Six wearing?
A Blue shirt.
Q And Ms. Reese is the only female at the table?
A Yes, ma'am.
Q And you aren't here today to tell the jury you didn't beat up Kenneth Mack that day?
A Ma'am?
Q You aren't saying that you beat up Kenneth Mack that day?
A. No.
Q You're just saying he walked away?
A Yes, ma'am.
Q And you had nothing to do with the second assault?

A No, ma'am.
Q And you're the one that went with her daughter and actually told her about what you perceived as an assault on her daughter?
A Yes, ma'am.
Q And who was the first person to throw a punch that afternoon?
A Lucy.
Q After the altercation -- and you don't know when the altercation happened because you didn't see it?
A No, ma'am.
Q Did Ms. Reese try to make any further contact with you that afternoon?
A Yeah, she called my phone.
Q Okay. What did she want to talk to you about after these assaults took place?
A I really can't remember.
Q You don't want to tell the jury?
A I mean, I don't remember.

MS. SAMPSON: Thank you.

THE COURT: Cross-examination?

CROSS EXAMINATION

BY MR. FARLEY:
Q Mr. Brooks, you stated that you knew Robin

Reese and her daughter?
A Yes, sir.
Q Knew them pretty well?
A Yes, sir.
Q You lived next door to them for about two years?
A Yes, sir.
Q I guess around the neighborhood?
A Being neighbors, yes, sir.
Q Being neighbors and you knew Lucy pretty well?
A Yes, sir.
Q Do you know how old Lucy is?
A At the time I guess she was like thirteen.
Q And I'd just like to go back to that day, as well, February 13th. You said that you were out walking along?
A Yes, sir, McDuffie.
Q Where were you going? Were you going --
A I was going to the store.
Q You were going to the open air market?
A Yes, sir.
Q The open air market?
A Yes, sir.
Q When you said you saw Lucy and this person,

can you tell us us how you saw them? I mean, you were walking to the store?
A No, I was on the sidewalk of McDuffie walking, so I guess I was between the O and the L buildings when I saw what was going on. That's where I was on the sidewalk between the O and the L building.
Q How far away were you?
A I mean, from here to where you're at.
Q Okay. So not very far at all?
A No, not far at all.
Q Okay. And did it seem as if -- I know you said that you saw her strike this man?
A Yes, sir.
Q Did you see anything that happened before then?
A No, sir, I didn't.
Q Okay. But I mean, you said earlier in your testimony there was an altercation?
A Yeah, they was standing in front of each other. That's what I saw. I mean, you could see them talking but I don't know what they was talking about. You could see her and the guy talking. From what it was that I saw, it was just talking, you know what I mean. After I saw

the slap, then it was something different.
Q What was going through your mind at that point?
A Going to help Lucy.
Q Well, I know you were going to help Lucy but why did you feel that you needed to help her?
A Why did I feel I needed to help her?
Q Yes, sir.
A Because I know her and she's got this hand messing with her, an older guy, she slapped him and he was -- he was thirty, thirty-plus and Lucy was thirteen. That's why I helped her.
Q Right.
A Yes, sir.
Q Did you think at the time he was taking advantage of her?
A He was; yes, sir.
Q And that's why you felt like you had to intervene?
A Yes, sir.
Q And you said that you -- I want to use your words -- you "bum rushed" her? Or bum rushed him?
A Yes, sir.

Q And that means to tackle him?
A Off of her.
Q So and -- so that you kind of tumbled?
A No, I was just on top of him at the time. That's all it was.
Q So you knocked him off?
A Off the top of her.
Q He was on the top of her?
A He was on the top of Lucy.
Q And you knocked him off?
A Yes, sir.
Q And then you were on top of him?
A Yes, sir.
Q And you stated that you were only on top of him for a few minutes?
A I said I didn't know how long I was on top of him.
Q And do you know -- do you recall that when -- I believe you said that Little Rick pulled you off?
A Yes, sir.
Q Angelo Boyd?
A Yes, sir.
Q You said you didn't remember anyone else around?

A No, sir, I didn't.
Q You said Lucy got her shoes and then you went to the store?
A Yes, sir.
Q And did you know to go to the store?
A Yes, sir.
Q How did you know to go to the store?
A I know that's where her mother would be. Her mother would be at the store.
Q All right. So you took Lucy back there and explained what happened?
A Yes, sir.
Q But did I understand this correctly, you said that they left before you did? Did I understand your previous testimony correctly, that they left before -- that they left the open air market before you did?
A Yes.
Q And then you left shortly thereafter?
A Right after.
Q You left right after?
A Right after.
Q But you don't know exactly where they were going?
A No.

Q You just kind of saw them leave and you said -- you did say that she called you later on that evening, right?
A Yes, sir.
Q But it wasn't -- but you recall what she wanted?
A I don't recall the conversation.
Q Was that unusual?
A What, sir?
Q I mean, did she call you ever?
A Yeah, she did. She called me a few times before that.
Q You can't recall any reason why she would have called you?
A For that I'm not sure. I'm not sure. I don't remember.

MR. FARLEY: All right. Well, thank you, Mr. Brooks.

CROSS EXAMINATION:

BY MR. CHAPLIN:
Q Good afternoon, Marcellius Brooks?
A Good afternoon.
Q Mr. Brooks, you said you're twenty-four years old?
A Yes, sir.

Q And before being arrested where were you working?
A Well, I had a few jobs. I was probably was at TGI Fridays. No, I mean Fatz Café.
Q How long did you work there?
A Two years, two-and-a-half years.
Q You were working there on February 13, 2010?
A I believe I had the job still, yeah.
Q So that's a yes?
A Yes, sir.
Q You maintain that you used to live in Gonzales Gardens?
A Yes, sir.
Q And where do you live now?
A With my girlfriend in Hidden Homes. Well, what's it's called, Rosewood, Rosewood Hills, Rosewood Hills.
Q When you say your girlfriend, is that Kenyatta Brown?
A Kenyatta Brown.
Q Now, but you indicated you used to live in Gonzales Gardens.
A Yes, sir.
MR. CHAPLIN: So may I approach,

Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Thank you, sir. I'm basically just trying to get a schematic or a little diagram of this because we keep talking about these streets, so I want you to help me out here. My drawing is not so good. Let's say this is Forest Drive. Okay. Where is McDuffie?

A Go ahead.

Q Right here?

A Yeah.

Q Okay. All right. And then where would the seafood market and Cousins and all of that be? Would it be somewhere right here?

A Yeah.

Q Okay. Kind of

A Forest Drive like.

Q So that's pretty good?

A Yeah.

Q All right. So that's all facing the store -- the street. That is facing Forest Drive?

A Forest Drive, yeah.

Q Okay. Maybe L building is over here?

A Yeah, you can do that.
Q Okay.
A The I building, J.
Q J would be on the corner, right?
A Yeah, the corner right there.
Q Okay. And then where would F and G be?
A Down at the bottom.
Q Tell me when to stop?
A Go on down. There.
Q Okay. All right. Then they're facing each other, right?
A Yeah.
Q So I could draw them like that?
A No, you have to do them the other way.
Q I've got to do them this way?
A Yeah, just the letters like you did at the top.
Q All right. I'm just going to scratch through this so I don't confuse anybody.
A It's F and G.
Q Got it. So the incident that you're referring to as -- that you were involved with with Lucy and the gentleman, Kenneth Mack, the deceased, was that down here or up there?
A At the top.

Q At the top. Okay. So where would that be? That would be -- tell me hot, cold?
A On the side. You can do it on top of that L.
Q Right here?
A Yeah.
Q Okay. I'm going to put a big X there?
A Right.
Q Okay. Now, let's do the -- I'm going to try to refresh your testimony. You indicated that when you walked up, you saw Lucy slap the victim?
A Yes, sir.
Q What area would they have been?
A Right in that area.
Q Okay. I'm going to use an "x" for attack. Can I just put a one there, maybe that's where the slap took place?
A Yes.
Q Okay. Now, you said then you came over and you bum rushed him?
A Uh-huh.
Q I'm going to put a two here for another attack?
A Uh-huh.

Q All right. And then I think somebody might have kicked him with their boot. You didn't see any of that, so I can't put it up here now, and then you said the victim ran away?
A Ran away.
Q And the victim ran down or to the left?
A Between the J and the A building.
Q The victim ran down here. Okay. All right. So you've got at least two attacks up here that occurred and then he got up and ran, did he just kind of pop up and run?
A No.
Q No stumbling, no nothing?
A Not from my knowledge, he just got up and ran off.
Q All right. Did anybody ever tell you a lady by the name of Amber Hardy saw that attack?
A Yes.
Q Okay. So it's your testimony that you hit him twice?
A Yes, sir.
Q And he was fine. He got up and he just walked away?
A Ran -- yes, sir.
Q Was anybody chasing him when he ran?

A No, sir.
Q So right after this you get arrested originally for A-B-I-K (sic) yes?
A No.
Q No?
A No.
Q Well -- when you became aware of it, you got arrested for charged with murder?
A Yeah.
Q Okay. So let me ask you this, Marcellius, after you said you just hit him twice and then you got charged with murder, how did that make you feel?
A I just couldn't believe. I just couldn't believe.
Q Couldn't believe.
A. Right.
Q All right. So then at some point after that, you met with the Columbia Police Department and you told them about a second attack?
A Yes, sir.
Q All right. And at some point, you identified witnesses that saw a second attack?
A Yes, sir.

Q And you had conversations on the telephone with your girlfriend, Ms. Brown, about these witnesses?
A Plenty of times. I mean, I talked to her about it so many times.
Q Yeah. Well, there's around forty phone calls that you made from the jail. Is it possible you could have discussed that with her?
A Yeah. Some.
Q Okay. After you identified these witnesses, then they went down to the police department and gave statements?
A Yeah.
Q Okay. Now, earlier you testified that no one had promised you anything or whatever, but isn't it true that you were under the impression that once your witnesses testified that your murder charge was going to change to a simple assault?
A I said it should have changed to a simple assault.
Q And it's ---
A I assaulted the guy, but I didn't kill the guy.
Q Right. Did you ever have a conversation

with anybody from the Columbia Police Department about changing your charge to simple assault?
A No.
Q Are you certain?
A I'm positive.
Q Do you recall ever talking with Investigator Pegram -- maybe Kenyatta Brown called him for you, a three-way call.
A A three-way call with Pegram?
Q Yes.
A I don't remember a three-way call with Investigator Pegram.

MR. CHAPLIN: Your Honor, may we approach?

THE COURT: Certainly. Thank you.

(OFF RECORD BENCH CONFERENCE)

MR. CHAPLIN: I apologize for the interruption.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:
Q So you said that you thought that your charge was going to be reduced to simple assault once your witnesses has testified.
A I said it should be.
Q Should have been reduced.

A Yes.
Q Was it reduced?
A No, sir.
Q Did your witnesses testify? I mean, did they give statements?
A Yes, sir.
Q They did. And who were those witnesses, do you know?
A D, Kara and Nova.
Q So Kara is it Kara Chase?
A Yes.
Q And "D" is Donetti Perry?
A Yes.
Q And Nova is Sanovia Thompson?
A Yes.
Q And these are your witnesses?
A They are witnesses.
Q Okay. During the time that you were incarcerated, did you have a conversation with another person by the name of Juve, letting him know that you didn't scream his name to the police?
A Do what?
Q Did you have a conversation with a gentleman by the name of Juve, informing him

that you didn't mention him to the police?
A No.
Q Now, when you said that you left the open air market, you went to -- well, you said you called your mother before this started?
A Yes, sir.
Q To pick you up?
A Yes, sir.
Q All right. And where were you when you called your mother?
A I mean, I'm not sure.
Q Not sure?
A Not sure about that.
Q And then after you left the open air market after the incident at the top, you went to Vallery Goodwin's apartment?
A Yes, sir.
Q All right. And how do you know Vallery Goodwin?
A From the neighborhood.
Q Do you know her son?
A Yes, sir.
Q And who is her son?
A Antonio.
Q And where does he live?

A He was living with her.
Q And where does he live now?
MS. SAMPSON: Objection, Your Honor, if we can approach.
THE COURT: What's the objection?
MS. SAMPSON: I need to approach.
(OFF RECORD BENCH CONFERENCE)
CROSS EXAMINATION CONTINUED
BY MR. CHAPLIN:
Q And where is Antonio now?
A He's in jail.
Q Okay. On February 13th, 2010, were you with someone by the name of "Tu", up at the top, so to speak?
A No, sir.
Q Okay. What about "Trigger"?
A No, sir.
Q What about Genesis?
A Genesis? No, sir. I don't even know who Genesis is.
Q Now, you said that when you finished your business -- you went to Vallery Goodwin's house and you stayed there approximately three minutes?
A Yes, sir, I'd say about that long.

Q And you went in the front door?
A Went in the front door to the back, went to the back door.
Q And you left out the ---
A Back door.
Q Back door.
Q Okay. That took three minutes?
A Yes, sir.
Q All right. Were you aware that the police were at Vallery Goodwin's house?
A I mean, after I came home, all that other stuff, yes.
Q Now, Marcellius, you said that you went to the open air market and you told Robin Reese something about what happened to her daughter?
A Yes, sir.
Q Okay. Tell us what you said?
A Well, I just told her I saw the guy, her and Lucy -- him and Lucy was arguing. Whatever was going on with them. I saw her daughter slap him. He slammed her. I helped her and that was it. She asked who. 'I don't know.' She asked her daughter who. She said she didn't know.
Q Did you tell her at that time that Angelo Boyd kicked the man in the head?

A No, I didn't.
Q You didn't see that?
A No, I didn't.
Q Did anybody pull you off of the man?
A Ricky/Angelo.
Q Angelo Boyd, so you saw him there?
A Yes.

MR. CHAPLIN: Beg the Court's indulgence.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Marcellius, you know, who Investigator Pegram is, don't you?
A Yes.
Q Did he ever tell you that he wishes you had been straight with him?
A No, I don't recall him saying that to me.
Q Marcellius, have you ever told a lie to help a friend?
A I mean, I don't know. I don't remember. I don't think I did.
Q Have you ever told a lie to get out of trouble?
A When I was young with my mother and my brother.

Q At what age did you stop doing that?
A I can't say. I don't know.
Q Would you tell a lie to help a family member?
A Not on the Bible.
Q What does that mean?
A I wouldn't swear it and lie.
MR. CHAPLIN: Your Honor, that's all I have for now, but I do request the opportunity to recall this witness in the morning.
THE COURT: Without objection.
MR. CHAPLIN: Thank you.
THE COURT: Redirect?
MS. SAMPSON: No, sir.
THE COURT: All right. You may come down. Most witnesses I say are free to go, but I can't tell you that.
(WITNESS STEPS DOWN)
THE COURT: Counsel, let me see you. Let's talk about scheduling for a minute.
(OFF RECORD BENCH CONFERENCE)
THE COURT: Call your next witness.
MS. SIMPSON: The State calls Katie Ukra.
(WITNESS TAKES STAND)

KATIE UKRA, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MS. SIMPSON:

Q How do you pronounce your name?

A Katie Ukra.

Q Good morning, Ms. Ukra. What do you do?

A I'm a forensics DNA analyst at the South Carolina Law Enforcement Division.

Q And how long have you been with -- is it generally termed SLED?

A Yes.

Q How long have you been with SLED?

A Six years.

Q And what type of services does SLED provide?

A In my division we provide serological and DNA testing for evidence items.

Q You said serological testing, what is that?

A Serology is the identification of body fluids such as blood, semen and saliva.

Q And can you tell us us a little bit about your educational background and your training?

A I have a bachelor of science degree in

forensics biology. I also have a masters in science in forensics. Upon my employment at SLED, I continued a year long training program under the supervision of a forensics DNA analyst.

Q Do you actually posses any certifications or qualifications.

A I am certified to be a forensics DNA analyst.

Q And do you consistently maintain, take classes or courses to stay update with respect to the DNA?

A Yes, we're required to complete proficiency tests twice a year. I have successfully completed those every year. We also are required to attend outside training once a year.

Q Okay. And what exactly is the study of DNA?

A DNA as it relates to forensics is when we are generating a DNA profile from an item of evidence, as well as from a known standard and we compare the known profiles and determine if they match.

Q It is a pretty large field, would you say?

A I'm not sure what you're asking me.

Q Okay. The study of DNA -- like, it encompasses a variety of things?

A Yes, DNA is very large and forensics is a very small subset of that.

MS. SIMPSON: Your Honor, at this time I would seek to qualify Ms. Ukra as an expert in DNA analysis.

THE COURT: Any *voir dire* or objection?

MR. CHAPLIN: None from Mr. Gray.

MR. FARLEY: None from Ms. Reese, Your Honor.

THE COURT: All right. You may proceed.

DIRECT EXAMINATION CONTINUED

BY MS. SIMPSON:

Q Where exactly can DNA be found on humans?

A DNA is found within the nucleus of a cell.

Q Can you explain that to us?

A Your body is composed of cells. Your organs have cells, your skin has cells, your blood has cells. Within the nucleus of those cells is where your DNA is found.

Q You mentioned blood and saliva, those are specific sources of DNA?

A Yeah, these are typical samples of what we

might find from crime scenes.
Q Are some sources of DNA where you might develop a profile, are they better than others?
A Yes.
Q Can you explain more about that, whether it is like touch DNA or blood or semen?
A Touch DNA is when you just touch an item, either a pen or a notebook. You have the potential to leave some DNA behind, but you don't always.
A known buccal standard is just scraping the inside of your cheek and that has tons of DNA.
Q And known standards, what exactly do you mean by that phrase?
A A known standard is a DNA swab that is from a specific person.
Q And with respect to DNA, can any of us have exactly the same DNA?
A Identical twins have the same DNA.
Q Could anybody else have the same DNA or only twins?
A Everyone has a different profile.
Q Does DNA ever change in any way?
A DNA can undergo degradation and break up,

into smaller pieces, but your profile doesn't change.

Q Okay. So essentially your ability to develop a profile of a partial versus a full may be affected by that but not the DNA itself?

A Right.

Q And can you explain a full DNA profile versus a partial DNA?

A In the type of analysis that I will do, we're looking at fifteen locations on the DNA. A profile is where I get information. A partial profile is where there is information missing at one or more locations.

Q And did you -- when evidence comes to you, what form does it come in?

A Generally the evidence that I will receive is a swab.

Q And exactly where swabs are taken from, do you actually take the swabs yourself?

A No.

Q Are those typically given to you from law enforcement?

A Law enforcement or our evidence processing department.

Q In this case, did you actually receive some

swabs.
A (No verbal response).
Q Did you actually receive some swabs for testing in this case?
A Yes.
Q I'm going to show you'll what is marked as State's Exhibit 78 and ask if you can tell us whether you recognize this?
A It has our SLED label on it, as well as my initials.
Q Okay. And while it's in your custody here, this hadn't been opened, would you like to go ahead and open it?
A If you need me to.
Q That would be great.
A (Opening)
Q And this is sealing that you do after it's been tested?
A I would receive it in a heat-sealed pouch and then when I do my analysis, I cut along the side to get out is inside. Then when I'm done I seal it back inside the pouch.
Q And while it's -- when it comes to you, it comes to you typically from, you said, your evidence processing department, correct?

A Or the log-in department.
Q Or the log in, and typically evidence there are procedures for which they have so it's not altered or tampered with in any way?
A Correct.
MS. SIMPSON: Your Honor, at this time the State would introduce State's Exhibit 78 into evidence.
MR. CHAPLIN: No objection.
MR. FARLEY: No objection, Your Honor.
(SO ENTERED AS STATE'S EXHIBIT 78)
COURT REPORTER: Is this the only exhibit that you have marked?
MS. SIMPSON: And 79 for ID.
(SO ENTERED AS STATE'S EXHIBIT 79, ID ONLY)

DIRECT EXAMINATION CONTINUED

BY MS. SIMPSON:
Q Were you able to collect a known standard in this case?
A I don't typically collect standards.
Q Okay. Did you have a known standard availability to you for comparison?
A Yes, yes.
Q Is a known standard needed for comparison?
A Yes.

Q In this case, whose standard did you have?
A I had a blood standard from Kenneth Mack.
Q Okay. I wants to talk a little bit. You actually -- about your procedure with respect to comparing the DNA and analyzing it. Can you explain that for the jury?
A When I open up the evidence typically what I get are swabs, so I take a small cutting of a swab put it in a tube. Then I do my analysis from there. The DNA profile is kind of like your Social Security number. It's just a string of numbers, so we have a string of numbers for evidence and the same for a known standard so I'm just comparing the number to say whether it agrees or disagrees.
Q Did you do that in this case?
A Yes.
Q And what all did you have -- what all evidence was submitted to you?
A I had SLED item number four, a controlled swab from the black metal chair; SLED number five, from left armrest of the black metal chair; SLED item six, a swab from the bottom of seat on right side of black metal chair. SLED item seven, a swab from the edge of bottom of

black chair.
Q And I want to -- did you actually come to some results in this case?
A Yes.
Q I want to talk to you a little bit about that. I'm showing you what has been marked as State's Exhibit 79. In State's Exhibit 79 are these essentially your results comprised into a chart?
A Yes.
Q Would it assist you in explaining to the jury your results if you could step down and perhaps use this chart?
A Yes.
Q That would be great.
MS. SIMPSON: Your Honor, at this time I'd like to introduce State's Exhibit 79 into evidence?
MR. CHAPLIN: No objection.
THE COURT: Without objection.
(SO ENTERED AS STATE'S EXHIBIT 79)
DIRECT EXAMINATION CONTINUED
BY MS. SIMPSON:
Q If you could, just step down?
A Can I take my report with me.

A Yes.
Q Okay. Explain to us how you -- what results you arrived at and what this means?
A First I did serological testing on each of the evidence items and found them to be ---
COURT REPORTER: Your Honor, ---
THE COURT: Slow down.
MS. SIMPSON: And we'll trade sides. I think she (court reporter) might be able to hear a little better.
THE COURT: You're going to have to make sure that she can see you. The court reporter has to hear what you have to say.
THE WITNESS: Yes, sir.
DIRECT EXAMINATION CONTINUED
BY MS. SIMPSON:
Q Let's go back a little bit. You said that in some of the swabs blood was indicated. Can you explain that to the jury?
A When I do a serology test, it is a chemical reaction. I take a small cutting of the swab, put a chemical on it. A color change occurs, that means it's a positive result.
Q Okay. What does that mean to you if you get a positive result?

A Generally when we get positive results, we'll will continue with DNA analysis.
Q Okay. And in this case I notice there is a control swab from the black metal chair but no analysis was performed. Is that typical with respect to a control swab?
A Right. We don't perform analysis on control swabs.
Q Okay. Item five, the swab from the left armrest of the black metal chair, here we have "blood indicated but no DNA profile developed." Can you explain that result to the jury?
A That just means my serological test indicated a positive reaction for blood, but no DNA profile was developed from that item.
Q Just because you have blood from some other course doesn't necessarily mean you're going to be able to develop a DNA profile.
A Right. Serological tests are presumptive. It was just indicating the possibility of that blood being present. There's other substances, such as rust, that can cause a false positive, so that could be the case in this instance.
Q Okay. And then moving to item number six, which is a swab from the bottom seat, right-hand

side of black metal chair. Explain your results.

A The partial DNA profile developed from that item matches the DNA profile of Kenneth Mack. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is one in approximately twenty-five million.

Q Okay. So one, explain how you arrive at the potential of one in twenty-five million.

A When we have an evidence sample that matches a known standard, we perform a statistical calculation to give weight to that piece of evidence. In this case the calculation was one in twenty-five million.

Q Is that a pretty high number?

A That's pretty high, yes.

Q How many zeros is one in twenty-five million?

A A million has six zeros.

Q So one -- six zeros?

A Yes.

Q That's one million?

A Yes.

Q One in twenty-five million?

A Would be twenty-five with six zeros, (25,000,000).
Q So it's a pretty safe bet that is Kenneth Mack, the victim in this case? Belonged to him?
A Yes.
Q The DNA profile, I apologize?
A Yes, I would say it's consistent with his profile.
Q And then the swab from the bottom of the seat, front edge, of the black metal chair, blood was indicated but again no DNA profile was developed.
A Correct.
Q But you were able to get the blood standard from Kenneth Mack and that DNA was found on the black metal chair?
A Correct.
Q And your results, you actually do formulate them into a report?
A Yes.
Q Okay. And is that the extent of your involvement with respect to this case?
A Yes.

MS. SIMPSON: Thank you.

THE COURT: Cross-examination?

CROSS EXAMINATION

BY MR. FARLEY:

Q Thank you, Ms. Ukra. You were saying that you had a partial blood match on the left armrest and the bottom of the seat center. Is that ---

A The match was to the swab on the seat on the right seat of the chair. I did not identify blood on that item.

Q Forgive me. Which item is that again?

A Swab from bottom of seat on right side of black metal chair.

Q So not on the right side of the black metal chair but on the left side and on the seat? Is that? I'm sorry?

A It's SLED item six, swab from bottom of seat on right side of black metal chair.

Q That is the DNA match you were speaking of?

A Yes.

Q Is there any explanation as to how that DNA got there?

A I can't tell how DNA get on an item. I can only say that I found DNA.

Q So there's no way you can say how the DNA got on there?

A No.
Q Just that there was DNA on there?
A Right.
Q And from the swabs you said there was some blood indicated?
A Which swab?
Q I was looking at SLED item number five or number seven?
A Yes, there was blood indicated on those swabs.
Q Is it -- is it just like something that matches up in -- I mean, it doesn't give you any amount or anything of that nature?
A I was unable to develop a DNA profile from either of those items.
Q Right, but I was just talking about the blood. The blood itself was indicated?
A It's a serological test that I do that let's me know if I should continue testing.
Q And it said there was blood indicated?
A Right.
Q So you continued testing because there was some amount of blood that turned up. Is that?
A The serological that I performed indicated the presence of blood.

Q Okay. But there's no indication of how much blood or anything of that nature.
A Right.
Q And again you're not here to speculate on how that got there or offer any explanation?
A Right.
Q From your testing?
A Right.

MR. FARLEY: Thank you. Please answer any questions Mr. Chaplin has.

CROSS EXAMINATION

BY MR. CHAPLIN:

Q You didn't collect these samples, did you?
A No.
Q Okay. A gentleman by the name of Roger Milan Gillian said that he collected them?
A (No verbal response).
Q Do you know who collected them?
A I don't know.
Q You don't know.

MR. CHAPLIN: Your Honor may I approach?

THE COURT: Yes.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q I think Mr. Gilland said that he investigated a crime scene around building F. Do you if any blood -- did you test anything that came from this location, to your knowledge?
A I don't know where those logs were -- what area those logs were from.
Q You just know they were on a black metal chair?
A That's how they were described to me.
Q That's how they were described. Is it possible the swabs could have come from something other than a black metal chair?
A I have no idea.
Q Is it possible?
A It's possible.
Q How did you receive the swabs?
A (No verbal response).
Q I mean was it in a Ziploc baggy? How was it presented to you?
A The swabs were in a heat-sealed poach that all of our evidence gets put in when it comes to the log in.
Q Okay. When did you do the test?
A I began analysis on July 20th, 2010.
Q So a little more than five months after the

incident. Would you say that DNA evidence has been wrong in the past?

MS. SIMPSON: Objection, Your Honor.

MR. CHAPLIN: She's been qualified to.

MS. SIMPSON: With respect to relevance in this case.

THE COURT: Well, overruled.

WITNESS: I don't know.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q You've been qualified to testify in this area, I'm just asking you for an opinion. Has DNA been wrong in the past?

A I don't think DNA evidence is wrong. We can't change the profile that we get.

Q So DNA analyses (sic), you're not aware of any of them ever making a mistake?

A People make mistakes. I don't know if they'd changed the results.

Q So if they a-make a mistake, it wouldn't have an impact on the results?

A It could. I mean, I follow all the procedures outlined to me.

Q Yeah. No, I'm certainly not implying that you did something wrong. I'm just asking you a

question about your opinion.
A People make mistakes. That's all I can say.
Q Now, there's different qualities of types of DNA like maybe strong and weak?
A Right. Sometimes we'll get a full profile and other times we'll get a partial profile.
Q Would you consider this evidence that you analyzed here strong or weak?
A It's a partial profile.
Q So your answer is it's strong or weak?
A I would say it's a very strong profile.
Q Okay. Did you read Mr. Gilland's report that came along with collecting these swabs?
A I probably read the incident accident report before I performed analysis. I don't recall any information right now.
Q Would you like to review it? Would that help you? I want to ask you some questions about it?
A I can read it.
Q Okay.
MR. CHAPLIN: May I approach, Your Honor?
THE COURT: Yes.

MS. SIMPSON: Objection, Your Honor, with respect to this witness testifying about another witness's report.

THE COURT: Well, let's wait until we hear a question.

MR. CHAPLIN: Basically that he tested something and didn't get it used another way?

MS. SIMPSON: And, Your Honor, if counsel is asking the witness a question.

MR. CHAPLIN: I was simple trying to explain to her the area I was looking at but she is, right. I shouldn't have been talking directly to her.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Referring to the last paragraph.

A No.

Q Okay. Thank you. So in his report he says -- did you read that the chair was nonvisible for DNA?

A I believe he said there was no visible blood.

Q Yes. Then he used UV lighting?

A Correct.

MS. SIMPSON: Objection, Your Honor, to questioning this witness.

THE COURT: Overruled.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Both short and long wave?

A I believe that's what it says.

Q And he still had no results.

A I don't remember. (Upon review), he said he used short and long wave and no results.

Q No results. Okay. Then after not having any visible results and not having any results using UV lighting, short and long wave, he then used a BlueStar reagent. He got a positive result, right?

A Correct.

Q How accurate are samples that are obtained using a reagent such as BlueStar?

A Bluestar from what I understand is quite commonly used in crime scenes. It's used to detect minute amounts of blood. From what I know, it should not interfere with DNA testing.

Q Now, this chair was located in the evidence room at the City of Columbia when the swabs were taken?

A If you say so.
Q For five months?
A I can't comment on the collection of evidence.
Q Well, you said you did your results in June or July?
A July.
Q July. Okay. And then we've had this thing sitting here, and I just want to kind of look at it for a second. It's a chair. Can you see it from where you're at?
A If I stand up.
Q Please. So you're saying that the blood, the sample was found on the bottom of the chair is that what you're saying?
A I have three separate swabs described from being taken on different places on the chair.
Q Okay. I'm just trying to understand you. So the first swab was?
A There was one swab from the left armrest. There was another on the bottom of the seat on the right seat and there was one on the bottom seat, center, front edge.
Q Okay. So the one that you said is positive for the victim's blood was on the bottom of the

seat?
A I didn't say that anything was positive for the victim's blood.
Q Oh.
A I developed a DNA profile but my serological testing did not indicate blood.
Q So what did it indicate?
A There was a DNA profile there.
Q But no blood?
A My test did not indicate blood.
MR. CHAPLIN: Thank you. No further questions.
THE COURT: Redirect?
MS. SIMPSON: Briefly.
REDIRECT EXAMINATION:
BY MS. SIMPSON:
Q Counsel first of all referred to I believe the collection of evidence. You don't participate in actual physical collection of evidence, correct?
A No.
Q Your role is with respect to processing and analyzing that evidence?
A Correct.
Q Now, I think there's been some confusion

with respect to blood and DNA. DNA, does it just float through the air?

A No.

Q So in order to, say, put my DNA on something, I have to have contact with it in some way?

A Correct.

Q I don't themselves have to leave blood in order for my DNA to be there?

A Right.

Q Just because blood was indicated but no DNA profile developed doesn't necessarily mean there was no DNA. There was just not enough blood to ---

A Right.

Q Go ahead.

A Maybe there wasn't enough sample there to develop a DNA profile. As I said serological testing is a presumptive. There are other factors that wouldn't give you a result of a DNA profile.

Q So just because of -- well, let me back up a little bit, too, the surface of the item which is touched makes it -- or where the evidence DNA potentially is left -- does that affect the

ability to collect DNA?
A It can.
Q Or samples for DNA?
A It can. Certain objects that DNA is left on could inhibit, but our process now is so streamlined that it doesn't affect it as much as it used to in older times, older days.
Q But say a slick surface where it might smudge, that would be different than say a rough surface?
A I don't think that would really affect how much DNA is on there.
Q How about weather elements, can that affect the ability to collect something that would allow you to get enough for a DNA profile?
A Yes. Humidity and heat can degrade DNA, which might lead me to get a positive serological result but not get a DNA profile. If something has been cleaned, wet, washed off, that could remove some of the sample.
Q I believe counsel went over the incident report. You've don't rely on that for your testing, correct?
A We read it to get an idea of what happened. What they're looking for if they're looking for

blood or semen. We do use that to see how we should proceed with our testing if we have any questions, but we'd call investigator if there's anything that comes up.

Q But that report doesn't necessarily affect the outcome of your testing as to whether you get a profile?

A No.

Q And what profile is developed?

A Right.

Q And does time affect the results?

A Time?

Q Of the DNA profile itself?

A Time?

Q Correct?

A As long as DNA is stored properly and it's not exposed to the elements, heat or humidity, water, DNA is stable for room temperature for many, many years.

Q And earlier I believe you said this was very strong represent to the DNA profile, how you would view it in your opinion?

A It's a good match, yes.

Q And the match is for Kenneth Mack, correct?

A Right, right.

MS. SIMPSON: Thank you.

THE COURT: Recross?

RECROSS EXAMINATION:

BY MR. FARLEY:

Q Just a quick followup question, Ms. Ukra, I know you were saying there was a DNA match earlier, did you -- on redirect, did you say that you identified blood but it wasn't -- you could not identify Kenneth Mack's blood being on the chair?

A For item six there was no blood indicated. However, I developed a DNA profile matching Kenneth Mack.

Q Was that from blood?

A I don't know. The submitting agency used BlueStar, which is a test for blood. BlueStar can sometimes interfere with our serological testing, so even though I got a negative blood test, I continued with the DNA because I know that BlueStar can interfere with our testing.

Q So you're saying that the test that the previous person did can interfere with the results of your test?

A It can interfere with the serological testing.

Q Which is the body fluids and those things?
A Correct.
Q There were none of those indicated that belonged to Kenneth Mack?
A There was no blood indicated on item six, however blood found on the other items matches Kenneth Mack.
Q And that item wasn't blood?
A I can't say.
Q Is that what you're saying, though. That's whey I'm trying to understanding. It seems to say no blood indicated so that you're saying that Kenneth Mack's blood wasn't on the chair, at least to item six?
A My serological testing was that no blood is indicated. However, the testing that was performed by the submitting agency is a blood test, presumptive blood test. So -- but I can't say from my testing that I found blood.
Q So from your test, you found no blood?
A For item six, no.
Q And the testing that they did is BlueStar, which could interfere with your testing?
A BlueStar can interfere with the serology tests that I perform.

MR. FARLEY: Thank you, Ms. Ukra.

THE COURT: Anything further?

MR. CHAPLIN: Briefly.

RECROSS EXAMINATION

BY MR. CHAPLIN:

Q You said that the way the item is stored can also affect the quality of the test. Do you know how it was stored?

A No.

Q What is an allele?

A Allele.

Q Yes.

A For a DNA profile, the string of numbers that they each, each set of numbers has an allele, such a repeated unit and you have a possibility of two numbers. Each of those numbers is what well call an allele.

Q Okay. But that wasn't applicable in this chase?

A I don't know what you are asking.

Q Did you apply that theory in this matter?

A Every DNA profile has alleles. I compared the alleles from the evidence samples to the alleles from the victim's standard.

Q I think you said that you were not aware

that can not here at nine o'clock, would you raise your hand. Thank you.

Again don't discuss the case among yourselves when you return to the jury room or with anyone else over the evening hours. Have a pleasant evening and please don't do any research on this case. You don't need to go home and looking up DNA.

Thank you very much. You're excused for the evening.

(JURY OUT @ 5:33 p.m.)

THE COURT: Can we make priority request that the defendants be here seated by 9:00 o'clock in the morning.

DEPUTY: Yes, sir.

THE COURT: Thank you.

MR. FARLEY: Your Honor, can I just put one last thing on the record. It's just been informed by the deputies that -- we requested Mr. Weather come and be transported tomorrow. He actually was transported today, he is here right now. I just want to make sure ---

MS. SAMPSON: I've already taken care of that.

MR. FARLEY: He is a witness that we

want to call so we just wanted to make sure he was going to be called tomorrow.

THE COURT: Well, talk it over with the solicitor's office. Nine o'clock.

(COURT IN RECESS)

(TRANSCRIPT CONTINUED NEXT PAGE)

MARCH 1, 2012 9:00 A.M.

(DEFENDANTS PRESENT)

THE COURT: Is the State ready to proceed?

MS. SAMPSON: One matter that we need to bring up. During the course of the trial yesterday, Kara Chase testified and then it came out during the course of that that she had been interviewed by an investigator in our office. We want to put him up to talk about his interview with her. He is not on our witness list.

THE COURT: She is the witness you declared hostile?

MS. SAMPSON: Yes, sir. Who had that memory lapse. His name is Cambo Streeter.

THE COURT: What?

MS. SAMPSON: Cambo Streeter is his name. He used to be a SLED agent.

THE COURT: Defendant's position?

MR. CHAPLIN: Your Honor, clearly we're going to be object. I'm going to object to that. We're also concerned about the amount of time that I'm going to have to present Mr.

Gray's defense with all of these additional witnesses being added. We're now at Thursday morning.

THE COURT: I'm aware of that.

MR. CHAPLIN: I don't mean state the obvious, but we would object to that, Your Honor.

MR. FARLEY: I would also object to that, Your Honor. I mean, Ms. Chase was here. She testified.

MS. SAMPSON: Exactly.

THE COURT: All right. What happened to the tape that your folks reported yesterday?

MR. CHAPLIN: I have the tape and I have a recorder to play it on today.

THE COURT: You've listened to it?

MS. SAMPSON: Yes, sir.

THE COURT: Is it what he says it was?

MS. SAMPSON: Yes, sir.

THE COURT: It is what he said it was?

MS. SAMPSON: Yes, sir.

THE COURT: Is Bloom back.

MS. SAMPSON: Is Bloom downstairs

yet? I know they had to get a separate batch. They had to bring these defendants separate from the other ones. If you give me one second, I will go and check on his status.

THE COURT: Well, we don't need him right now.

MR. CHAPLIN: We can do that at some point. I mean, it doesn't have to be right now, Your Honor.

THE COURT: What's scheduled for right now?

MS. SAMPSON: Witnesses.

THE COURT: Can you give me an idea?

MS. SAMPSON: One, two, three, four, maybe five at the most.

THE COURT: All right. I'm going to allow Mr. Streeter to testify. I don't know what he's going to testify to, but I'll allow him to testify. So your objection is overruled.

MR. CHAPLIN: Thank you, Your Honor.

THE COURT: Ready for the jury?

MS. SAMPSON: State's ready.

THE COURT: Defense ready for the jury?

MR. CHAPLIN: Ready, Your Honor.

MR. FARLEY: We're ready, Your Honor.

THE COURT: Bring the jury.

(JURY IN @ 9:17 a.m.)

BAILIFF: Your Honor, the jury is presents.

THE COURT: Good morning ladies and gentlemen. We are ready to continue with the trial.

MS. CAMPBELL: Thank you, Your Honor. The State would call Sanovia Thompson.

(WITNESS TAKES STAND)

SANOVIA THOMPSON, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q How old are you?

A Thirty-three (33).

Q And where do you live?

A Gonzales Gardens.

Q How long have you lived there?

A Almost five years.

Q And do you work?

A No.

Q You take care of children sometimes in your home?

A Uh-huh.
Q In fact, in February of 2010, you lived in Gonzales Gardens?
A Uh-huh.
Q I need you to say "yes" or "no"?
A Yes.
Q And what apartment do you live in?
A .
Q , is that across from
A Directly across from
Q So if I'm standing facing the buildings, would be here and would be here?
A Yes, ma'am.
Q Okay and , which end is it on?
A It's on the Forest Drive end.
Q So if I'm driving down Forest Drive, I can actually see the end of your building, correct?
A Correct.
Q That's where you lived back in 2010 in February?
A Yes.
Q What were you doing that day?
A Babysitting and cleaning you.
Q Babysitting, who were you babysitting?
A My cousin and five kids.

Q Five kids?
A (Affirmative nod).
Q That's a lot. What were they doing that day?
A They were outside running around playing.
Q Were you outside with them?
A I was back and forth because Kara was babysitting with me.
Q Is that Kara Chase?
A Yes.
Q Was she staying with you or does she live near you?
A She was staying with me temporarily.
Q Was she helping you with the kids?
A She was helping me off and on.
Q So did anything unusual happen that day?
A Yes.
Q What happened?
A I was sweeping my steps -- well, I was back and forth outside talking to Cara. Cara was outside with the kids. I was sweeping down my stairs. When I got to the next to last stair, I noticed a man walking down the street with his hand over his head. He appeared to be intoxicated, to me.

Q Okay. I want to stop you. When you say walking down the street, is he walking down Forest Drive?

A He's walking. He's on the Gonzales Gardens sides. He was walking down the sidewalk on Forest Drive.

Q So between Forest Drive and your building is a sidewalk?

A It's a sidewalk that goes all the way up Forest Drive.

Q And he's walking from the market towards your?

A Down, yes, ma'am.

Q You can see him from your front porch?

A I can see him from the bottom stair walking down Forest Drive.

Q And when you say that the children are outside, there's a big -- is there a big yard?

A It's a big open field.

Q And they're out playing in that field?

A Running around.

Q Did you know the man?

A No, ma'am.

Q All right. So. You see him. Could you see him face?

A Yes, ma'am.
Q How did it appear to you?
A He had a knot on his head and it obviously was bleeding. He was kind of like staggering like he might have been intoxicated.
Q But he could walk?
A He could talk, but he was staggering.
Q Could he talk?
A At the time he didn't say anything.
Q So then what happened.
A He walked up and was talking to one of the guys that lives out there. The guy lives in one of the apartments ---
Q Did you know the guy that he spoke with?
A No, I don't really know the guy but -- so he was walking up the ramp.
Q Who was walking up the ramp?
A Mr. Gray. He looked at him. He was like, 'What happened to you?' Then he went on about his business.
Q Now, let me stop you. How tune Mr. Delay?
A I've been knowing him a long time, not really personally.
Q Okay. When you say Mr. Gray, what's his first name?

A Henry.
Q Do you see him in the courtroom?
A To my left.
Q Is he sitting at the defense table?
A Uh-huh.
Q Let the record reflect that she has identified Henry Gray?
THE COURT: The record so reflects.
DIRECT EXAMINATION CONTINUED
BY MS. CAMPBELL:
Q Now, Ms. Thompson, what did he say to the man?
A He said, 'What happened to you?' Because the man had a knot on his head, was bleeding. I was standing in my front door, which is where they were standing was directly in front of me.
Q I want you to tell me, how far away were they? I know you don't know in feet but tell me when to stop when I get to where they were.
A From about here to this table, maybe a little farther because it's directly in front of you.
Q So this far?
A Probably a little farther.
Q A little farther?

A Uh-huh, about that far.
Q And you could hear them talking?
A He didn't really like talk to him. He just said, you know, what happened to him.
Q Did the person with the knot, did he respond?
A He said something about some young -- I couldn't hear the whole thing but he said something about some young men up the street.
Q Could you just hear the whole conversation?
A I heard a little. He said something about some young b-i-t-c-h up the street.
Q So he was able to talk ---
A (Affirmative nod).
Q --- and did Mr. Gray respond?
A No. He went inside.
Q Okay.
A His phone had rung. He went inside.
Q Whose apartments did he go into?
A His father's.
Q So then what happened?
A He came outside and he said "you put your hand on my niece." He grabbed him on the collar. He said, "we're going to talk to my sister."

Q Who was his sister?
A Robin.
Q Do you see her in the courtroom?
A Uh-huh.
Q Where is she?
A She is to my left.
Q She is also at the defense table?
A (Affirmative nod).

MS. CAMPBELL: Let the record reflect she has identified Robin Reese.

THE COURT: The record so reflects.

DIRECT EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q Did you know that they were brother and sister?
A (Affirmative nod)
Q How did you know?
A I used to date her brother.
Q How long have you known Ms. Reese?
A I knew her -- I didn't know her on a personally level at the time because they were already grown, when I was dating her brother. I came to really, really know her where I moved out there.
Q So for five years or so you'd known her?

A Uh-huh.
Q Had conversations with her?
A. (Affirmative nod).
Q Friendly with her?
A (Affirmative nod).
Q And so you knew that she and Mr. Gray were brother and sister?
A Yes.
Q And who is the niece he was speaking of?
A Lucy.
Q And you knew that his neice?
A That was her daughter.
Q So when he said that to him, what did you do?
A I kind of stood there watching, had him by the collar saying "we're going to talk to my sister." You don't want to make it obvious that you're ---
Q You were being nosey?
A Yeah, being nosey. Then I came around, I walked out the back door. When I came around, I walked around the building.
Q I want you to stop there. You walked through your back door?
A I walked behind my building to go around.

Q Is it a big long walk to go from one end of the building?
A It's from apartment eight to apartment one.
Q So there's only one, two, three, four, five six seven?
A Kind of spaced out, and Cara was already outside.
Q So Cara and Donetti were outside?
A Yes.
Q And they were in front of Donetti's apartment?
A (Affirmative nod)
Q Which is
A because is on the backside.
Q Okay. So. You went around the back way.
A (Affirmative nod).
Q Why did you do around the back?
A To be nosey, to be honest.
Q Why didn't you do around the front?
A Because you don't want to make it obvious you're being nosey.
Q So your went around and what did you do when you got back to the front?
A The guy was on the ground. I seen Robin coming down the sidewalk.

Q How did she appear to you? Was she upset? Was she mad?
A She looked like she was upset, maybe crying. So you don't really know what's going to happen. You don't know how, you know, the outcome. I'm telling the kids, you know, let's go in the house. I walk out to maybe F-6 and then told the kids 'let's go in the house.'
Q On the front or the back?
A On the back.
Q So you can't see what else going on?
A No.
Q So what do you do?
A After the kids go in, I walk around. I heard Robin say, 'Why did you put your hand on my baby' or something like that. She kicked him on the leg one or two times and just walked away.
Q They walked away?
A (Affirmative nod).
Q Did you ever see him defending himself?
A No.
Q Did you ever see him get up?
A (Negative gesture).
Q I need you to say it out loud?

A "No."
Q Did you notice that the chair, anything about the chair?
A I just noticed the chair was out of place.
Q It was out of place. Where is it normally?
A Up against the wall.
Q Up against what wall?
A The wall of the apartment across from me.
Q Which apartment is that?
A G-something.
Q But in front of the G building?
A I didn't really pay attention. I just know it was in the grass.
Q It wasn't where it was before?
A No.
Q Did you see anything else happen to the man?
A No.
Q Did you watch EMS come?
A I went back in the house at the time.
Q Okay.
A And I went back. I came back out the door because I was -- oh, gosh, you know, just kind of nervous. I dialed 9-1-1 to tell them that there was a man lying on the ground.

Q You dialed 9-1-1?
A I dialed but Cara talked to them, I couldn't really. She talked to them. I went back in the house, stood at the front door. I heard the police said he was throwing up blood and the ambulance was on the side, on my side by the fire hydrant and they said to turn him over.
Q Okay. Did you at that time talk to police?
A No.
Q Did you ever go talk to police?
A I did.
Q And you told them what you saw?
A I told them what I saw and then one of the guys, I don't know his name, he said, 'Okay, well, you didn't really see much. I know your buddies talked about it. What did you buddies say they saw.'
Q You told them?
A I told them what they say they saw. I didn't see what they saw.
Q So you told them what you heard and what you saw?
A I told them what I will saw and what I heard. I told them what I saw first and then

what I heard.

Q Okay. Why didn't you write your statement, write a statement for him?

A First of all, I didn't want to be involved. Secondly of all, he said based on what I saw, it wasn't really no evidence. I wasn't really no witness.

Q Why didn't you want to be involved?

A Because it had nothing to do with me.

Q Were you truthful with them?

Q Are you being truthful today?

A Yes, yes.

MS. CAMPBELL: No further questions. Please answer anything that the defense may ask you.

CROSS EXAMINATION:

BY MR. FARLEY:

Q Hello Ms. Thompson.

A Hello.

Q I just have a few questions for you. You stated earlier that you -- you said you had five kids?

A Yeah, I was babysitting my cousin's five kids.

Q Five kids. That is a handful.

A Yes.
Q You have a front door, and I think you said you went out the back?
A Correct.
Q So you have the front door and a back door?
A Correct.
Q And five kids?
A Running around.
Q And all in the apartment, ---
A (Affirmative nod).
Q So were you going from the front door, the back door and herding all these children?
A Well, the kids were outside with Cara, and they were back and forth. She was at my house babysitting.
Q Helping?
A Helping. So while I was cleaning up, she said she was taking the kids outside, so that's how they ended up outside. I was just kind of walking back and forth.
Q Is it fair to say that you were back and forth and you could only watch some of what occurred but not all of what occurred?
A None of the kids were in the house at the time. They were all outside. I was cleaning

and mopping. She agreed to take the kids outside.

Q So. I'm just saying what you heard.

A Yeah.

Q I mean you were testifying that you were in and out, back and forth?

A Yeah.

Q So you didn't see all of what occurred but some of what occurred?

A No.

Q Okay. And you did say that you saw my client, Ms. Reese, come around the corner and that she was, she looked upset I think was?

A She looked upset, uh-huh.

Q And you saw her come up and make a statement to Mr. Mack?

A Yes, she was asking him "why you put your hand on my baby?" Or 'why did you touch my baby?' I couldn't really. I wasn't real close to her.

Q And then you said that she left?

A Uh-huh, she left.

Q How long do you think she was there?

A Well, maybe a minute or two, if that. I know it wasn't long because the timeframe for me

to walk to one end of the building; which was probably about a minute, you know. I was a little slow but about a minute, maybe a minute or two.

Q So in the going back and forth, all you know is the chair wasn't in the place where you're accustomed to seeing it?

A Yes.

Q Which is up against the G building?

A Yes.

Q Okay. But you don't recall seeing anybody with the chair or anything like that?

A No.

Q And you didn't want to give a statement because you said ---

A I didn't want to be involved.

Q You said you didn't want to be involved?

A Didn't want to be involved.

Q Well, that makes sense. I understand that. You're being truth with us here today?

A Yes.

Q Thank you for coming. Please answer any questions Mr. Chaplin has?

MR. CHAPLIN: Beg the Court's indulgence.

CROSS EXAMINATION

BY MR. CHAPLIN:

Q Ms. Chase?

A I'm Ms. Thompson.

Q Ms. Thompson. You indicated that when you spoke with the police on the 16th of February that you told them what you heard and what you saw?

A I told them what I saw at first. He said, 'Well, I know you and your buddies got together and talked about it. What did your buddies say?'

I told them what was said. That's not what I witnessed. I told him that's not what I saw. He said, 'I already know what happened. Just tell me what your buddies said.' You know.

Q Are you under subpoena today?

A Uh-huh -- yes.

Q And you took an oath, right, to tell the truth?

A Yes.

Q And you were telling us the truth?

A Yes.

Q All right. I thank you.

THE COURT: Redirect?

MS. CAMPBELL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q I want to make sure we have the timeline of events, correct. It seems like you got a little confused. You seen Mr. Gray grab the guy by the collar.

A Yes.

Q And say, 'I'm taking you to my sister.'

A Yes.

Q Then you go back and you come back out, he's on the ground?

A Yes. I did hear the guy say, and I forgot to mention this part, 'I am not going back around that corner. I'm not going back around that corner.'

Q The fellow said that to Mr. Gray?

A Yes, obviously what happened happened around the corner, he didn't want to go back. 'Whatever is going to happen is going to happen right here. I'm not going back around the corner.'

Q All right. And then you go back around, you come back out and at that time he is down on

the ground?
A He is on the ground.
Q Mr. Gray is standing there beside him?
A Correct.
Q Then Ms. Robin Reese comes up?
A Correct.
Q You go back around to the back?
A Not all the way, about halfway.
Q And when you come back, you see her kick him?
A And then she walked away.
Q So you did see her actually assault him?
A Yes.
Q Okay.

MS. CAMPBELL: No further questions, Your Honor.

THE COURT: Anything further?

MR. FARLEY: Just one question.

RECROSS EXAMINATION

BY MR. FARLEY:
Q You said that at that time my client was there was only about a minute or two.
A He was only there shortly. It doesn't take me much time to walk from one end of the building to the other.

Q Make a quick kick at him and then left after that?
A Yeah.
MR. FARLEY: Thank you.
RECROSS EXAMINATION
BY MR. CHAPLIN:
Q Ms. Thompson, ---
A Yes.
Q --- you testified that when you initially saw the victim that he had a knot on his head?
A Correct.
Q That he was bleeding?
A Correct.
Q He was staggering?
A Correct.
Q That is before he made any contact with Mr. Gray?
A Correct.
MR. CHAPLIN: Thank you very much.
THE COURT: All right. Ma'am. Thank you very much. You may come down. You're free to go. Thank you very much.
(WITNESS STEPS DOWN)
MS. CAMPBELL: May we approach, Your Honor?

(OFF RECORD BENCH CONFERENCE)

THE COURT: Next witness.

MS. SAMPSON: State calls Isaac Weathers.

(WITNESS TAKES STAND)

THE COURT: Ms. Sampson, hold up a minute. Ladies and gentlemen of the jury, again one of my function is to try to manage time. We're going to send out for your lunch today and the court reporter's -- I'm sorry, the clerk is going to hand you a menu. We will give you a few minutes to fill it out. We're going to have a lunch break. I mean, you're still going to be able to go out, but I think it will speed things you mean if we go ahead and get your menus.

THE COURT: All right. Ms. Sampson.

MS. SAMPSON: Thank you, Your Honor. May it please the Court.

ISSAC WEATHERS, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MS. SAMPSON:

Q Good morning, Mr. Weathers.

A (No verbal response).

Q You're currently incarcerated.
A Yes.
Q I need you to speak up for me or sit up for me. You're currently incarcerated?
A Yes.
Q You're at the Alvin S. Glenn Detention Center?
A That's correct.
Q And back in 2010 in February, did you live over by Gonzales Gardens?
A Yes, I did.
Q Where were you living at?
A R-8 Gonzales.
Q You're going to have to speak up.
A R-8 Gonzales.
Q So you lived in Gonzales Gardens?
A Yes, I did.
Q On February 13th, did you witness a fight?
A Yes, I did.
Q What did you see and how did it start?
A A young lady and a guy was arguing I guess, and they fell.
Q They fell. I'm going to stop. Did he throw her to the ground?
A Well, they got kind of tangled up. He

didn't actually throw her. They got tangled up and they fell.

Q Did it look to you like they were playing at first. That's what he said.

Q That's what he said?

A Yes.

Q When did he say that?

A When the guy jumped on him.

Q So I'm going to mix it up. I'm going to nothing back a little bit. You said they were arguing and they fell. What happened?

A The guy jumped on him.

Q What guy jumped on him?

A It was a few guys.

Q Who was the first guy? Do you know his name?

A Well, it wasn't a first guy. It was a bunch of guys just went and jumped on him.

Q Did they ask, tell the girl to do anything?

A Well, no. She did hit him.

Q She did hit him?

A Yes.

Q And what did the man do?

A The man that was being beaten?

Q Yes.

A He was saying to tell them that we were just playing.
Q Was he just defending himself?
A He tried to. It was just too many.
Q And after they got through beating on him, what happened?
A He jumped up and ran.
Q He jumped up and ran. What did the people do?
A They didn't do anything.
Q Where did they go?
A They went into the store.
Q They went to the store?
A Yes.
Q But he was able to get up and leave?
A Yes.
Q And after -- after the assault, did you talk to police?
A What you mean, the police came to my sister's house, took me to headquarters.
Q And you made a statement with them?
A Yes.
Q And do you remember what you told them?
A Basically, yes.
Q Okay. Do you remember telling them that

Bloom was the first guy that hit him?
A He was the first one that hit him.
Q And did you remember telling him that Bloom said to the girl "get your licks in"?
A Yes.
Q And did that happen?
A Yes.
Q And she did get her licks in?
A Yes.
Q And they were kicking at him, you said?
A Yes, a bunch of them was.
Q And did Bloom say something when he left like, 'I didn't get him good enough'?
A 'I have didn't get him', right.
Q I didn't get him, right. Okay.
Q And the only thing the victim said is he was just playing?
A That was it.
Q That was it?

MS. CAMPBELL: Beg the Court's indulgence.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:

Q And Mr. Weather, not to get all in your business, but that day were you smoking?

A Earlier that morning I was.
Q What were you smoking?
A Crack.
Q Crack. But were you able to see things?
A I was able to comprehend very well.
Q Okay.
A I was able to competent very well.
Q So you saw everything?
A Yes.
Q You're being truthful with us today?
A I don't have no reason to lie.
Q Even though you're in jail today, ---
A At that time, I wasn't in any trouble.
Q Right.
A I didn't have no charges or anything.
Q Right. And now that you're in jail, we didn't make any deals with you to get you to testify today?
A All I gave is a statement.
Q In fact, me and you have never even talked have we?
A (Negative gesture), at all.

MS. CAMPBELL: No further questions, Your Honor.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. FARLEY:

Q Mr. Weather, you testified just a minute ago that you were living in Gonzales Gardens, and you observed the beginning of this fight?

A That's correct.

Q And I'm just not real clear in what you said that -- I wasn't real clear on how you said they got tangled up.

A It was like, you know, she was telling the guy to leave her alone, but he wouldn't, and he was like touching her and just coming around. He tried to put his arms around her and they fell. The way I seen it, looked like he was really messing with her. They just really tried to go to her rescue. That's all it was.

Q Oh, so he was messing with her and they tried to go to the rescue?

A Because he kept on, kept on. He went too far. She was asking him to leave her along, over and over and over, and he wouldn't.

Q Okay.

A There's some kind of way that he put his hands on her and they got tangled up and she fell.

Q Okay. Did you say he tried to hug her, put his arms around her?
A I guess. I mean, they got tangled -- and he fell. He kind of put his arms around her.
Q Did you know this man at all?
A Not at all.
Q Can you describe what he looked like?
A The guy?
Q (Affirmative nod).
A Yeah, he's a short dark-skinned guy. I guess he is around 5'8", 5'9", probably weighed about 160 pounds, short hair. You know, he was very groomed. She was groomed.
Q Did you have any idea of how old he was?
A Older than her.
Q When you say older than her, were you able to ---
A I mean, years apart.
Q Years apart?
A Yeah, she was a young, a teenager and he's a full grown man. I guess in his late 30s.
Q Oh, in his late 30s?
A Yeah.
Q Did you know Lucy?
A Did I know ---

Q Did you know Lucy or Melquanna S
A The young lady?
Q Yes.
A I'd seen her around, kind of like knew her from the neighborhood.
Q Did you know how old she was?
A Basically, yeah, like fifteen, sixteen, fifteen years old.
Q Would it surprise you to learn at the time that she was thirteen?
A I would be very surprised. She is a big girl.
Q And you said that after they got tangled up because he tried to put his arms around her, you thought the other ---
A I thought those guys basically was going to her rescue, basically.
Q Did you know the other guys?
A I mean, do I know the other -- I know quite a few of them.
Q So you -- there was quite a few guys. How many guys do you think there were total?
A Four or five.
Q Four or five?
A Yes.

Q And then you said that they were punching and kicking the guy?
A Yes.
Q Did they all leave together?
A After the guy jumped up and ran, yes, all of them went across to the store, including the young lady.
MR. FARLEY: Okay. Well, thank you, Mr. Weathers, please answer any questions Mr. Chaplin has.

CROSS EXAMINATION

BY MR. CHAPLIN:
Q Good morning, Mr. Weathers.
A Good morning.
Q Mr. Weathers, you live in Gonzales Gardens?
A Now? No.
Q But I mean, have you ever listed there?
A I lived there quite a while, my mother, uncle.
Q Okay. Your Honor, I'd like to go to the board?
THE COURT: Go ahead.
MR. CHAPLIN: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Mr. Weathers, I just want to ask you some questions about this diagram. Can you see it pretty well? We've identified this as Forest Drive.

A Okay.

Q This is McDuffie?

A Okay.

Q These are the stores that I think you said people went to?

A Okay.

Q This is the ---

A J building.

Q J and O and stuff is up here, right. Okay. All right. Way down here is F and G, okay?

A. (Affirmative nod).

Q Well, we know it's down or okay. You're okay with that?

A I'm okay with it.

Q All right. You've may have to speak up a little bit for the court reporter. All right. So what you saw occurred in this area?

A On McDuffie.

Q On McDuffie?

A By the L building.

Q By the L building. I got it. And then

what you saw was -- put a big X right here. So what you saw was -- first you saw a guy on top of a girl. Did you see that?

A Yes, I did.

Q Okay. All right. So let's say that's the first attack. Then you saw Bloom knock the guy off the girl?

A I seen a bunch of guys knock the guy off the girl.

Q Okay. So then you saw a bunch of guys. How many guys?

A About four. Everybody was out there at the same time.

A At the same time.

A Yes.

Q So it wasn't just one person knocking them off. It was a lot of people?

A Four.

Q Four people. Okay. So four people tackled the guy and knocked him off the girl?

A That's correct.

Q Okay. Then you saw these people kicking the guy.

Q So after he got knocked off the girl you saw another attack where it was kicking and

punching.
Q And then at some point I think you saw the man get slapped or get hit by the girl?
A Yes.
Q Okay. So you've got another attack up here?
A All that went on at the same time.
Q At the same time, okay. All right. I'm just trying to break it down, but I don't mean to put words in your mouth. All right. And I think you gave -- thank you very much. I'm going to step down. I think you gave a statement to the police wherein you said in general what you saw occurring up there was that the victim was getting kicked, beaten with fists, kicked and stomped?
A Yes.
Q Correct. All right.
Q Now, you also said these guys kind of travel together?
A Well, as old as I am ---
Q Sir?
A As old as I am, I hang with them myself. I mean, everybody in the Gardens is a family.
Q Okay.

A We're all hanging together. We were all out there that day when that occurred.
Q Okay.
A It wasn't nothing special about us hanging together. We do it every day.
Q And Marcellius Brooks Brooks was part of that group?
A He was there.
Q Okay. Can you tell me who else was there. If you know nicknames, I'm okay with that?
A Yes, I do.
A Go ahead.
Q I guess we all gave statements anyway, Trigger.
Q Trigger?
A Little Ricky.
Q Okay?
A Juve. And I don't know the other guy.
Q I'm sorry. I'm a little -- and then Juve. All right. So the other people that you know were there were Trigger, Little Ricky and Juve.
A That's correct.
Q Okay.
A All of them would be interviewed by the police.

Q All of them were interviewed by the police?
A Yes, they were.
Q Okay.
Q Now, you said when this was finished, this group went to the store?
A Yes.
Q Okay. So all of them kind of went as a group?
A They all went to the store.
Q You all went to the store?
A Everybody was going their way when that alleged -- when this allegedly happened. They were going to the store anyway.
Q Right. Did you go to the store anyway?
A I was already heading to the store.
Q So you ---
A When we got to the store, they were all in the store together.
Q So who'all was in the store together?
A Same names.
Q Same names: Marcellius Brooks, Trigger, Little Ricky and Juve.
A Yes.
Q What were they doing in the store, do you know?

A First they took the young lady to her mother. Her mother was at the store.
Q Right.
A And I loaded my stuff and I left out.
Q Okay.
A I left out. I mean, I didn't have nothing to do with it.
Q I understand.
Q Did you ever see my client, Henry Gray, up there?
A No, sir.

MR. CHAPLIN: All right. I don't have any further questions. Thank you.

THE COURT: Any redirect?

MS. CAMPBELL: No, sir.

THE COURT: All right. You may come down. You're excused. Thank you very much.

(WITNESS STEPS DOWN)

THE COURT: Next witness.

MS. SAMPSON: May it please the Court. The State would call Dr. Bradley Marcus.

(WITNESS TAKES STAND)

BRADLEY MARCUS, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MS. SAMPSON:

Q Doctor, where are you employed?

A I'm employed at Professional Pathology Services here in Columbia, South Carolina.

Q What do you do there, sir?

A I'm a private practice pathologist. I also work as the coroner and as the chief medical examiner for Richland County.

A Yes, sir -- yes, ma'am.

Q As chief medical examiner Richland County, what do your duties include?

A I perform autopsies for the coroner's office.

Q Typically those are for homicides, suicides and suspicious deaths?

A Yes.

Q Yes. Can you tell the jury about your education and training?

A Yes, I have an M.D. degree from medical school. After medical school, I did specialized training in pathologist at the Medical University of South Carolina for four years in that; did a fellowship in Pathology, where I did one year specialized training in pathology where

after that I sat for a board exam by the American Board of Pathologists. I'm board-certified in Pathology. I did more training as a pathologist where I did pap smears, so forth, so I'm actually Board-certified in Anatomic Pathology, Clinical Pathology, Forensic Pathology. From there, in 2008 I moved to Columbia and have been working here in Columbia, South Carolina for my private practice and for the coroner's office since 2008.

Q And let me back up. You used terms I don't quite understand. When you talk about you were -- actually, pathology is a general field?

A Yeah.

Q What's the definition of pathology itself?

A Pathologist is the study of disease in human tissue, causes of disease.

Q You mention that you have extensive training in several different areas. You're board certified in four different areas encompassed in the field of Pathology; is that correct?

A That's correct.

Q One of the areas your mentioned is anatomic pathologist?

A That's correct.
Q What else the definition of that in order to become board certified for it?
A Anatomic Pathology is the study of diseases in all the organs in the body: lungs, different types of cancer -- all the organs of the body.

In general there are many different aspects of Pathology. For instance, GI Pathology is the gastrointestinal and - in general there's many different aspects of pathologist.

I specialized in anatomic pathology in order to be able to work with blood issues, transfusions, blood banking issues, etc.

Forensics Pathology is the study of the causes of death, disease or injury that brings about death. As a forensics pathologist, your job is to determine that in people who die subbedly and unexpectedly, your job is to determine the cause of death, the disease or injury that can bring about deadly and the manner or the circumstances that surround the death -- which can be either accident, homicide, suicide, natural deaths due to exclusively the disease processes such as cancer. Or sometimes undetermined causes of death. You don't know

what caused their death.

That's -- there are many different aspects of pathology we can get into here beyond this trial.

Q Just as far as board certification, in addition to Clinical, Anatomical, Forensic Pathology, you also said cite -- something?

A Yes, which is the study of pap smears. I can look at a hundred pap smears a day. Every woman knows about pap smears. They do it yearly.

Q In order to be qualified in Forensic Pathology, you don't have been qualified in all those different areas?

A No.

Q That's just additional education and training you choose to do?

A Yes.

Q Are there any other areas of pathology you actually can be board certified in if you want?

A Yes, there are.

Q Those are the areas that you chose?

A Yes, those are the areas that I choose. The board only allows you four. You can't get any more than four certifications. They

consider that too many, so you're not allowed to hold more than four.

Q So you are at your limit?

A Yeah, I'm at my limit. I can't get any more board certifications.

Q Specifically as to Forensic Pathology, did you do any kind of specialized training as far as forensic pathology?

A Well, basically that is my specialty. I worked with a forensic pathologist one year and that's my specialized training.

Q In addition to that, you've actually been the chief medical examiner for Richland County?

A For about a year now, yes.

Q For about a year. Your duties there, are there other people that perform autopsies in your office, as well?

A Yes, there is one other. I have one other colleague that works with me.

Q In that capacity you also perform autopsies at the request of the coroner or the sheriff's department?

A Yes.

Q And have you ever been qualified before as an expert in the area -- specifically today

we're focusing on Forensic Pathology.
A Yes, I have.
Q Approximately how many times have you been qualified as a Forensic pathologist?
A. Approximately twenty-five times.
Q And currently you're the chief medical examiner?
A Yes, I am.

MS. SAMPSON: Your Honor, at this time I'd offer him as an expert in Forensic Pathology.

THE COURT: Any *voir dire* or objection?

MR. FARLEY: No objection, Your Honor.

MR. CHAPLIN: No objection.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:
Q Doctor, all your training and everything has been in the last ten or fifteen years, as far as your medical training?
A Yes, ma'am.
Q So do you take any effort or attended any additional training to make sure you are up to date and current with your expertise in the field of forensics pathology?

A Yes, my board certification requires approximately seventy continuing education hours per year. I have to go to meetings and so forth to keep my board certification. Every ten years I have to take an exam, every ten years to recertify. That's a new requirement as of 2006. That's the way it is.

Q And I want to turn your attention to the victim, Kenneth Mack. Were you asked to perform an autopsy in this case?

A Yes, I was.

Q And where did that autopsy actually take place?

A I performed this autopsy at the Palmetto Health Richland morgue.

Q And performing any autopsies, do you try to get a history as far and what is important to you to know what to do look for?

A Yes, yes, get a history from the coroner's report.

Q Both a history, somewhat, of what may have happened to them as well as the medical procedures that may have been performed?

A Absolutely.

Q In this case, did you get such a history?

A I did.
Q What information was provided to you initially?
A I was notified of a death and notified that a victim had sustained some blunt head trauma in an assault and was notified that an autopsy was to be performed.
Q Had the victim actually been transported to the hospital and had lifesaving efforts been made with him?
A Yes, yes, they had.
Q Was he transported actually to Richland Memorial Hospital?
A Yes. He was.
Q That's the actual hospital you work out of; is that correct?
A That's correct.
Q Were life saving procedures performed in an effort to save his life?
A Yes, they were.
Q Were they successful -- obviously?
A No, they were not successful.
Q In fact, was he declared -- when was he actually declared to be deceased?
A He was declared brain dead on

February 13th, 2010.
Q So that was shortly after his admission to the hospital?
A That's correct.
Q And, in fact, did he remain on life support for a period of time?
A Yes, he did remain on life support for a period of time.
Q Is that normal?
A Yeah, and I'm noting here why he was on life support.
Q Why is that?
A Some of his organs were donated to Life Point. His family had allowed some of his organs to be donated here and they were procured following his brain death status.
Q And when all the life support equipment in order to keep his organs alive that were to be donated, when were those actually removed?
A I don't have the actual time when that was here. I don't have that.
Q But you performed the autopsy on the morning of what date?
A I performed the autopsy on February 16th, 2010, so it would be in his actual medical

record when that was, so it was before the 16th.
Q And the time period between when he was declared brain dead on the 13th and you performed an autopsy on the 16th, and he had been removed from life support the night before, would that affect your ability to perform an autopsy in any way?
A Absolutely not.
Q Is that standard?
A That's standard. That's standard.
Q And any area(s) which sustained injuries would have been kept intact?
A Absolutely.
Q Yes. Was that done in this case?
A Yes. That was.
Q When you performed this autopsy on this young man -- when you first come in contact with a person who is deceased to perform the autopsy, what do you initially do?
A Initially what we do is basically what -- well, what we do is we photograph the body. The body is photographed. As soon as the body is opened, the body is photographed and I back up the photographs with -- I make diagrams just in case something happened to the photographs, so

that we have diagrams. Either the coroner of officers from the sheriff's department or the Columbia police -- and I don't remember who the investigating officers were -- but they will take the photographs, and they took the photographs. We backed it up.

We start with the external body, document any injuries or lack of injury, on the external body.

Q Okay. In this case, can you tell the jury what kind of injuries you observed when you initially came in contact with Mr. Mack?

A Sure, sure. I can. I have my diagrams here. Based on the external injuries, I -- can I ---

Q Would it be helpful for you to look at your diagrams blown up?

A. Yes, it would be.

Q Would these assist you in explaining things to the jury?

A Yes. It would.

MS. SAMPSON: Your Honor, at this time we offer Exhibit 86 and 87 into evidence.

THE COURT: Any objection?

MR. CHAPLIN: No objection.

MR. FARLEY: No objection, Your Honor.

(SO ENTERED AS STATE'S EXHIBIT 86)

(SO ENTERED AS STATE'S EXHIBIT 87)

MS. SAMPSON: Your Honor, may the witness step down?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:

Q State's Exhibit 86, can you come over to this side so the court reporter can hear you.

A Yes. I have a long pointer. Okay. So this is my diagram I made during the autopsy. It's very crude but it works. So. Okay.

So again the label on the case, all right.

These are just my standard measurements what we have here.

So basically what I have here, basically I'm going to give you a couple terms here that I think you just need to know, all right. Keep it real simple.

Right here is a contusion. A contusion is basically a black and blue mark. Everyone gets a black and blue mark. They may bump their leg or -- all children have black and blue marks where they run and bump into things. It's blunt

trauma, they bang their knee into something. If you hit something, you get a bruise. Black and blue mark, the medical term is "contusion."

That's what you see on my diagram, I have a contusion. It is a 2.0 by 1.0-inch. All right. It was around the right area of this space here, okay.

A laceration here, that actually is a line here -- it's not supposed to be there. It is 0.5-inch. That's right over here on the left eyebrow. A laceration. A laceration is a break in the skin, okay? It's a break in the skin, again due to blunt trauma, okay.

If something is hit hard enough and it's got a tensile strength, it will tear open. It will tear open, okay. That's called a laceration. Any type of soft thing, hit hard enough, will tear open. We call that a laceration.

He's got a laceration right here just lateral to the side at the left eyebrow. Okay.

He's got some sclera hemorrhage, which is the white of your eye so right up here again due to some trauma there.

Q When you say the word "hemorrhage", does

that mean ---

A Just some blood in the white of the eye, just some blood.

Again, the rest of these marks here -- the endotracheal tube in his mouth.

The rest of this is just the medical therapy here.

Q When you say the endotracheal tube in his mouth, what is that?

A That's just to help him breathe.

Q And that would be ---

A In an effort to keep him alive.

Q -- an effort to save him?

A Yes. There is an abrasion right here -- 0.3 inch abrasion right there. I can't really relate that to trauma. A lot of times when people are in the hospital, one of the things they do is try to pinch them, try to get a response out of them, so I can't say like that's trauma. I will not go there. It could be but in my opinion I'm not going to say that to you guys.

Then a scar there. So really basically some trauma to his head. That's what we have there, okay. I'll change the diagram.

Q And I show you State's Exhibit 87, I believe. Yes. What does this diagram show?
A Now, we completely -- now we start the autopsy, we do all the internal work. Some of the internally organs were absent for procurement of organ donation.

We concentrate on the head. The way we do the head is, to preserve the body for the funeral, we make an incision along the back of the scalp here. We very carefully reflect the scalp. We pull the scalp over this way. You just literally just pull it over and that's what you're actually seeing here. That's a side view of the head, just pull it over and pull it back here. We can actually put it all right back together and you can't tell in the funeral home.

It actually makes it very nice so that you can see trauma. What we have is we have the scalp and it is reflected. The skull is here, the scalp is here. We can see here, we've got some pretty good -- and this is just my markings -- scamp. We call it reflective. The skull is here. The scalp is here. We can see here weave goat some pretty good -- these are just my markings showing hemorrhage along the scalp

here. Think of it being the right side here, where that bruise I explained to you was -- right here. Underneath the skin there is corresponding hemorrhage there, confirming my findings from the outside underneath there. Confirming what I saw. That all confirms that.

There is also some hemorrhage back here on the skull area here. I call it this pericranial. Peri means surrounding the skull, "peri" surrounding the skull. It's back here.

Now there's also some hemorrhage on the back here of the skull, also on the back of the scalp back here.

Also there's some more hemorrhage, not a lot, on the other side of the head -- on the left side. So, again, he had some sort of traumatic event that occurred right here. You can't see anything on the outside but he had some traumatic injury over here. Okay?

Q When you're saying the term "traumatic injury", some sort of blunt force trauma to his head.

A Some sort of blunt force trauma to his head there.

Q You mentioned it wasn't a significant

amount of blood that you saw on the other side of his head?
A Right. Clearly there was more injury here on the right side, but he had blunt trauma. No question about this. This confirms there was blunts trauma to his head.
Q And that's the extent of your findings?
A Yes, that's the extent of the external findings on his head.
Q I want to show you what else been marked as State's Exhibit 51 through 57 and first ask you to look at those?
A Okay.
Q Were those photographs taken at the autopsy, actually after the autopsy was completed?
A These photos were taken I believe before the autopsy.
Q Okay. These were actually taken -- I'm sorry, before the autopsy?
A Before the autopsy, yes.
Q And these illustrate some of the injuries you have demonstrated to the head area and also the eye area and some of the lack of injury to the back.

A Yes.

MS. SAMPSON: Your Honor, at this time we'd offer 51 through 57 into evidence.

MR. CHAPLIN: I would like to see them.

MS. SAMPSON: Sure, (tenders).

MR. CHAPLIN: (Upon review), Your Honor, I would object to the admission of these documents.

MS. SAMPSON: May I approach?

THE COURT: What grounds?

MR. FARLEY: Well, Your Honor, before we approach I'm also going to join with him in the objection. I think they are highly prejudicial to our clients, and I think his testimony can illustrate the autopsy without necessarily ---

MR. CHAPLIN: Your Honor, I would just add ---

THE COURT: All right. Ladies and gentlemen of the jury, let's take a short morning break. Let me take this up with the attorneys. Don't discuss the case among yourselves. Just relax for a minute. Have a cup of coffee. Thank you.

(JURY OUT @ 10:21 A.M.)

WITNESS: Could I use the restroom?

THE COURT: All right. Probably should have been been done out of the presence of the jury, but there was no objection.

MS. SAMPSON: May I hand these up?

THE COURT: Absolutely.

MR. CHAPLIN: Would you like us to look at it in ---

THE COURT: Yes, tell me what you want.

(OFF RECORD BENCH CONFERENCE)

MS. SAMPSON: While we're here should we show the rest we intend?

THE COURT: Yes.

MS. SAMPSON: If I could just put on the record.

THE COURT: I want the -- go ahead.

MS. SAMPSON: Cause of death is an issue in this case, and also, we have to show malice must be the basis of it.

THE COURT: Of what?

MS. SAMPSON: We have to show malice, as well, but cause of death is definitely an issue. They have hired two past pathologists to dispute the findings. The jury needs to have a

clear understanding in this case, perhaps more than any other, about what the injuries were.

THE COURT: Have you seen these?

MR. CHAPLIN: I have not.

THE COURT: Why didn't you see these?

MR. FARLEY: I have.

MR. CHAPLIN: There's a CD of them, but I didn't know these were the actual ones.

THE COURT: You didn't give them those?

MS. SAMPSON: What?

MR. CHAPLIN: The CD was provided but actual ones they were going to show today we didn't see until now.

MS. SAMPSON: We gave them all the pictures.

MR. CHAPLIN: You gave us a CD of a lot of pictures but you didn't tell us which ones you were going to use.

MS. SAMPSON: These are the ones we are going to show.

THE COURT: All right. Do your proffer with these photographs.

MS. SAMPSON: With all of them?

THE COURT: Well, I don't know which ones you intends to offer.

MS. SAMPSON: Doctor, as far as the ones I have just shown you, 51 through 57, do those show some of the injuries, including the contusions, the inner lip, ---

THE WITNESS: Yes, they do.

THE COURT: Hold on a minute. Approach the bench.

MR. FARLEY: I'm sorry.

(RECEIVED NOTE FROM JUROR)

(OFF RECORD BENCH CONFERENCE)

THE COURT: All right. What photograph did you start with?

MS. SAMPSON: I believe I started with 51 -- through 57, Your Honor.

THE COURT: And I will let the doctor testify as to what the significance of those findings is with regard to his diagnosis of his cause of death diagnosis.

MS. SAMPSON: Can I ask him a question?

THE COURT: Yes.

MS. SAMPSON: Do these illustrate some of the areas of injuries, as well has the areas of lack of injury that you noted in your diagram?

THE WITNESS: Yes, they do.

MS. SAMPSON: Were those helpful in determining the cause of death in this case as far as what you observed?

THE WITNESS: Yes, they do.

MS. SAMPSON: Then I'll go to the next set. Doctor, I'm going to show you State's Exhibits 80 through 83. Were those photographs that you actually picked out that went through these that show significant findings as to the cause of death in this case?

THE WITNESS: Yes, these photos depict the cause of death. I can't diagram this.

MS. SAMPSON: And these would be crucial?

THE COURT: What numbers?

MS. SAMPSON: Eighty-one (81) through 83 -- to illustrate to the jury what you're talking about.

THE WITNESS: Yes.

THE COURT: Three photographs?

MS. SAMPSON: Four.

THE COURT: You said 81 through 83.

MS. SAMPSON: Maybe I misstated it.

THE COURT: Yes.

MR. FARLEY: Your Honor, my objection would just -- they are saying that all of the photographs are necessary or some of the photographs are superfluous and some just more essential than others? I guess they want all the trauma to come in. Dr. Marcus is saying it's necessary to have every single one of those.

THE COURT: You want to ask him? You want to ask hypothetical?

MR. FARLEY: Yes. Dr. Marcus, you're saying you must have every one of those photographs or are some of of those photographs unniece for your demonstrate.

THE WITNESS: I'd like to have every photograph.

MR. FARLEY: I didn't ask you what you'd like to have, I said are they necessary?

THE WITNESS: I feel they're necessary, yes.

MR. FARLEY: Thank you, Your Honor.

THE COURT: Mr. Chaplin.

MR. CHAPLIN: Yes, Dr. Marcus, ---

THE WITNESS: Yes, sir?

MR. CHAPLIN: As far as those photographs are concerned, what they show is the trauma that you just discussed, correct?

THE WITNESS: Yes, sir.

MR. CHAPLIN: All right. But you can't testify as to the cause of that trauma?

THE WITNESS: I can testify that blunt trauma caused the trauma.

MR. CHAPLIN: Okay.

THE WITNESS: Blunt trauma.

MR. CHAPLIN: But you couldn't say specifically when the trauma occurred?

THE WITNESS: No. I can't say when it occurred.

MR. CHAPLIN: You can't say the location that it occurred?

THE WITNESS: I can't say the location, no.

MR. CHAPLIN: You just know that it is blunt force trauma?

THE WITNESS: Yes, blunt force trauma.

MR. CHAPLIN: And that would be the extents of your presentation?

THE WITNESS: I believe so, yes.

MR. CHAPLIN: Okay.

THE COURT: All right. The objection is overruled.

MS. SAMPSON: Thank you, Your Honor.

THE COURT: Bring the jury.

(JURY IN @ 10:31 a.m.)

BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you. You may continue.

MS. SAMPSON: Thank you, Your Honor. May the witness step back down?

THE COURT: Yes.

DIRECT EXAMINATION RESUMED

BY MS. SAMPSON:

Q Doctor, first of all, I want to show you -- taking these in order, we noted in the diagrams you talked about some different photographs showing basically the absence of any type of external trauma; is that correct?

A Yes.

Q I'm showing you State's Exhibit No. 57 and 56. Other than the scar you noted on the leg and things of that nature, those areas don't have trauma?

A That's correct.
Q In addition, you also talked about some areas on the head which did note some significant trauma?
A Yes.
Q I show you State's Exhibit 51 and 52. What do those show?
A Okay. So this photo, 52, shows the contusion or the black and blue mark around the right face area that I will described on the diagram for you guys due to blunt trauma.
Q And this ---
A That is a head on view of that injury.
Q We also noted that there was actual laceration over the eye in Exhibit 53?
A. Yes, that's the lacerations over the left area of the eye.
Q The left area of the eye?
A Yes.
Q And then you also mentioned some hemorrhaging in the eye?
A The white area. The sclera hemorrhage that we talked about.
Q And finally there is some injury, State's Exhibit 55, of ---

A Yeah, there was an inner lip. There was some hemorrhage right in there.
Q And all that is consistent with blunt force trauma to the head?
A Yes.
Q Once you noted all the external, you mentioned that you then start performing your actual autopsy?
A Uh-huh.
Q And based only this case and based on your observations I think you said you were focused on the head area?
A Focused on the head area. We did the remainder of the autopsy in this area.
Q Just the remainder of the body and looking at the internal organs that had to be removed and all that, was there any other causation of death other than head trauma?
A No. The cause of the death was the head injury.
Q I'll get back to that. Once you actually, I believe you said, reflected the skull and actually started making your observations, what did you observe once you were able to observe the actual underneath the skin?

A Under the skull, under the skull, so once -- this is the one where we reflected the scalp. The next step of the autopsy is that we actually use a -- we remove the skull cap, what we call, and look at the brain and that's where we found a significant injury and the ultimate cause of his death.

Q Tell this jury what you found when you remove his scalp and looked at his brain.

A The brain had a significant injury to it. There was a massive amount of subdural hemorrhage, a massive area of blood around the left area of the head.

Q When we're talking about the scalp versus the skull, the scalp is actually the skin that covers the skull?

A. Yes, the skin where your hair grows out.

Q What is the skull made out of?

A The skull is made of bone.

Q In this case, when you actually did your autopsy, were there any significant findings in your opinion as to any injury to the skull itself.

A Yeah, there was a skull fracture also.

Q Where was the skull fracture located?

A The skull fracture was located in the right parietal area, right about here.
Q Towards the back of the head?
A Towards the back of the head and I'll show you on the diagram where it was, right about where this hemorrhage was.
Q Kinda behind that ear right there, in the back of the head?
A Yeah, the parietal area.
Q What kind of force does it take to cause a skull fracture?
A Significant amount of force.
Q And we're talking about a significant amounts of force. Would that be consist with someone saying having their feet swept out from under them and landing on their head?
A Absolutely.
Q Would that be consistent in this case with what could have caused the skull fracture?
A Absolutely.
Q In addition to that, once you actually removed the skull and were able to look at the brain, were there other findings which backed up your conclusions in this case?
A Yes.

Q What were those?
A Well, he had a massive amount of subdural hemorrhage on the left side, he had subarchnoid hemorrhage which is another area of hemorrhage. He also had cerebral contusions, which is actually hemorrhage in the brain itself, which again is due to usually blunt trauma to the brain itself.
Q And the cerebral hemorrhage to the brain itself, what kind of trauma or force are we talking about?
A Significant, significant amount of trauma. Again that hemorrhage was right around this area of the brain where the skull fracture was, right around that area.
Q When you say significant, what types of accidents or causation have you seen cause the type of injury you see in this case?
A Blunt trauma. I see -- the brain usually floats in a spinal fluid. I see cerebral contusions when the brain bangs up against the skull itself. That's when you get cerebral contusions. Normally the brain is in a sludge liquid, floating.
Q Is this something you often see, shall we

say, in car accidents?
A Yep.
Q High impacts?
A Yes.
Q Falls from running?
A Yes.
Q Doctor, I want to show you what's being marked State's Exhibit 80 through 83. Are these photographs that actually illustrate what happened to this man's brain?
A Yes.
Q Would these aid you in describing the injuries to the jury?
A Yes.

MS. SAMPSON: Your Honor, at this time we'd offer 80 through 83.

THE COURT: Over the objection of the defendants.

(SO ENTERED AS STATE'S EXHIBIT 80-83)

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:
Q Starting with State's Exhibit 82, does that show the laceration to the ---
A Yes.
Q These are graphic.

A. Okay. Again -- this just showing I'm working here. Again, this is just another photo of the way that the scalp looks when we expose the brain. Okay? This shows some of the area of hemorrhage of the area of the brain.

Q And you're referring to State's Exhibit number?

A Eighty-one (81)

Q And that is what you found when you moved the scalp?

A No, that's what we -- yeah, the scalp. That is showing some of the hemorrhage area. That area should be clean with no hemorrhage or anything to that area at all.

The next part we do is actually removing the skull cap itself and that's showing all the hemorrhage in the brain that should not be there, having the brain hemorrhage like that is incompatible to life.

Q And in order for the brain itself to suffer this kind of hemorrhage, is that more significant than ---

A Yes, yes. You can live with trauma on the scalp. You cannot live with that hemorrhage on the brain. That's incompatible with life.

That is just a closeup showing that it's been there -- it's probably been there about three days when it's like that. It's been there about three days in my experience, about three days.

Q Would that be consistent with the medical history that you received?

A Yeah, about three days old.

Q If it were not that ---

A Yeah, about three days. If was only about a day, it'd just fall off, falls right down.

Q You mentioned that the injuries you observed to the brain, the areas surrounding the brain, those are incompatible with life?

A Yes.

Q Could he have have survived these injuries?

A If he had received -- with just the subdural hemorrhage, I think he might have received -- could have, possibly. It's hard to tell with a brain injury. It's very difficult to tell. It really is. It's hard to say. I'm not a neurosurgeon. I can't say, but the cerebral contusion that he had was very bad. But I'm not in a position to say.

Q And the cerebral contusion that you

observed was in the same area where you observed the skull fracture?

A That's correct.

Q And those would be corresponding ---

A. To that fractured area. It was a very significant skull fracture.

MS. SAMPSON: Your Honor, permission to publish?

THE COURT: Yes, ma'am.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:

Q Doctor, are you able to tell any kind of time lines specifically on how long or when exactly these injuries occurred?

A I can tell you that subdural hemorrhage looked about three days old, based on it's not falling down. If it just occurred, it would usually -- like a day old, it would just fall out of the skull cap, fall like right to the floor. But because it is here like that, it is about three days old -- generally.

Q So that would be consistent with these injuries having been inflicted on the afternoon of the 13th?

A. It's consistent, yes.

Q And in making your determinations as to the cause of death, what was the cause of death in this case?
A The cause of death was a closed head injury.
Q And that was due to?
A Due to blunt head trauma.
Q During the course and after -- before and after performing this autopsy, were you given updates on the history in this case?
A Yes, I was.
Q Did you become aware that there were two separate assaults that occurred fifteen to twenty minutes apart?
A I was.

MR. CHAPLIN: Objection, Your Honor.

THE COURT: What's the objection?

MR. CHAPLIN: I suspect this witness is about to testify to hearsay evidence that I don't think is admissible under the exceptions to the hearsay rule.

THE COURT: Approach the bench.

(OFF RECORD BENCH CONFERENCE)

THE COURT: The objection is overruled.

MS. SAMPSON: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. SAMPSON:

Q Doctor, in consulting with police, is it important to you to find the history of what may or may not have happened that day?

A Yes.

Q And was information provided to you not only prior to doing the autopsy but as information developed in this case?

A Yes.

Q Did you become aware that there were two different assaults that occurred fifteen to twenty minutes apart in this case?

A Yes.

Q And did the police consult with you as to your opinion as to the cause of death and which or if both assaults could have contributed to that death?

A Yes.

Q And do you have an opinion based on the information also -- did you become aware after the second assault the victim never get up off the ground again?

A Yes.

Q And was never conscious?

A Yes.
Q E.M.T.s said when they got there that he was posturing?
A Yes.
Q What does posturing refer to?
A He's in a condition like this.
Q That's indicative of what kind of injury?
A Central nervous system injury, brain injury.
Q Would that be consistent with the type of injury you observed in the brain during your autopsy?
A In my opinion it's a severe brain injury, in my opinion.
Q Once a person is posturing as in this case he never got up again and was declared dead shortly thereafter?
A That's correct.
Q Was that consistent with the type of injuries you found from your examination in this case?
A Yes.
Q Can you say which injuries absolutely were done in the first assault versus the second assault, because you mentioned some not so

severe injuries to the outer scalp. Can you ou say which injuries occurred at exactly which moment?

A No, I cannot.

Q Do you have an opinion as to whether or not ultimately the second assault was a contributing if not the only causation factor of his death in this case?

A The second assault certainly contributed to his death in this case, certainly, in my opinion.

Q And the injuries you observed that caused his death may have been sustained in the second assault alone?

A Absolutely.

Q No doubt about that?

A No doubt about that.

Q But for the second assault, even if he had sustained some injuries on the first assault, those may not have necessarily caused his dead?

A May not have.

Q And there is no question, though, that the second assault definitely contributed to and/or caused his death?

A Yes, absolutely.

Q And then finally for the final anatomical diagnosis in your report, what specific findings as to injuries to this man's head?
A I put his cause of death -- the final anatomical diagnosis as blunt head trauma which resulted cerebral hemorrhage, subdural hemorrhage, edema/swelling to the brain as a result of bleeding on the brain; herniation, which is again swelling of the brain due to the bleeding on the brain. Subscalp herniation, resulting in more bleeding on the brain. Scalp hemorrhage. Pericranial injury, skull fracture, facial contusions and lacerations. The cause of death I put as a closed head injury due to blunt head trauma sustained in a physical altercation.
Q And the most significant injury that you saw to his brain, talking about cerebral hemorrhage, ---
A Subdural hemorrhage, subarachoid subcranial, cerebral contusions.
Q Were those all over or ---
A The subdural was on the left side and the subdural contusions were located on the right.
Q And the significant skull fracture that you found was where?

A On the right side.
Q On the right side, on the right side towards the back of his head?
A Towards the back of his head right about here.
Q And again would that consistent with someone falling from some higher area to the hard ground, gravel or concrete?
A (Affirmative nod).
Q And the resulting of bruising to his brain was in the same area where you found that skull fracture?
A Yes.
Q Thank you, sir.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. FARLEY:

Q Thank you, Dr. Marcus. Just to clarify, you said the scelera were unremarked in one part of your report and in another part it said that they were hemorrhaging?
A. Yes, that's on external examination -- and that's a typographical error there. I -- the Evidence and Injury is too far apart and I -- go to the other Injury area, down there

(indicating).

Q Okay, I just wanted to clarify that. Thank you. I know you testifies that the injury was consistent with falling or with significant force?

A That's correct.

Q But you also said that you were unable to determine where all of the injuries may have been received, whether in the first beating or the second beating?

A That's correct.

Q I mean, how many injuries. Totality?

A That's correct.

Q So you are not here to determine if some were in the first beating, some in the second beating, things of that nature?

A That's correct.

Q But you did say, and I am just trying to be clear, that the force require would be force that is quite significant?

A That's correct.

Q So it would something that would existing, as the Solicitor said, with a fall or a car accident? Strong force?

A Significant force. That's correct.

Q And I know you said earlier something about a toxicology report?
A Yes, that's in the report here.
Q And what were the results of that toxicology report?
A There was some marijuana and some Lorazepam .125mg.
Q I'm sorry, can you tell me what the second was again?
A Lorazepam.
Q Lorazepam.
A Yes.
Q Can you tell me, is there a laymen's term or marketing term for that?
A Ativan.
Q I am just not familiar with that name.
A. There's multiple names of these drugs. There's multiple different names.
Q What does that drug do? I just don't know.
A Ativan is a -- it can be used as an anti-anxiety agent, a sleep agent. It's part of the benzo -- another name for it could be benzodiazepine, a Valium-type drug that relaxes you.
Q So is it fair to say it's like Valium?

A That's exactly right, that's exactly right.
Q That's a handle for me. I understand Valium.
A Valium has very long, like an 18-hour half life in your blood, it's a little longer than for benzodiazepine. They'll use that for a medical procedure like a colonoscopy because it wear off in like an hour.
Q Is it fair to say that it is a Valium light?
A That's exactly right.
Q Is it possible to determine from your diagnosis if they were under the influence of these drugs at the time of either incident? A He was under -- well, it was admission blood that was drawn. So as soon as he came into the Palmetto Richland, they pulled blood from him. So he had marijuana in his system, so he had smoked marijuana probably earlier in the day at some point.
Q So he could have still been under the effects of that?
A Yeah. Well, I'm not a toxicologist so I can't ---
Q Right, right?

A I can't, you know, really testify to the total effects of this on him, so I don't really want to go there. I can just tell you'll what's in this.

Q That's fine.

A I can just tell you that in his admission blood this was in it -- The Lorazepam level in his blood was in the therapeutic levels, it wasn't elevated. It was in the midrange therapeutic.

Q Now, can you explain that, when you say therapeutic level.

A The expected range of treatment.

Q Correct me if I get this wrong. I'm just trying to understand. Would that be like a prescription type of level?

A. Yes, that's correct. Prescription level. If a doctor prescribed it to you, that would be the dosing level to ease anxiety.

Q But a level that would be sort of the akin to one that was supervised by a medical person?

A That's correct.

Q Not like ---

A Exactly.

Q But he was under the influence of a type of

Valium?
A That's correct.
Q If through the Valium was a prescription -- can I just change it to that word and say prescription level?
A That's fine.
Q Is there -- I just have one last question really. Is there any -- I know you said earlier that there was a significance force that would have to be against Mr. Mack in order to create that injury.
A (Affirmative nod).
Q Is there any other -- is it possible for you to have an opinion about any other thing in that significant force. I mean, that has to be something akin to, as I said, falling from a great height and striking your head; is that correct?
A Well, I really, you know, I can't -- you give me scenarios. It's hard for me to just pull out an example for you. It's hard for me, you know. You give me a scenario and I could tell you could that cause an injury, yes or no. Your skull is very thick. It's an extremely thick bone and you need a significant amount of

injury to it. It's your last line of defense until your brain is injured.

Q Right.

A You know, everyone gets hit in the head at some point in their life. Everyone doesn't get a skull fracture.

Q Right.

A I don't know what else I will can say. I don't know what else I can say.

Q No, no, that's fine. I think you have answered my questions quite well, especially to help me understand the Valium part. Thank you very much. Please answer any questions Mr. Chaplin has.

CROSS EXAMINATION

BY MR. CHAPLIN:

Q Dr. Marcus, ---

A Yes, sir.

Q --- good morning. How many reports of this nature have you done for Richland County?

A Hundreds.

Q Hundreds, how many times have you testified on behalf of Richland County?

A Let's see. Probably about fifteen times down here in Richland, maybe a few more, a few

less. The lag time, you know, about two years, going to court. You know. Who knows?

Q Now, you stated that in your examination of the body, you notice contusions?

A Yes, sir.

Q Can you say specifically how they were caused?

A Well, contusions in general are caused by blunt trauma.

Q Can you be any more specific?

A Well, any time you've got a force onto a body, a force that breaks the little blood vessels in your tissues you can get a contusion.

For instance, okay, all right. For instance, older people, older people have very very thin skin. From my instance, my grandfather. If I grab his arm, he is going to get a contusion on his arm very easily. I don't do it on purpose, but he may get a contusion on his arm. That's call an ecchymosis. We don't call it contusions on older people. That's what a contusion is. You know, a bruise, a black and blue mark. Basically the blood vessels break and the blood goes into the tissues and causes that coloration -- at first it's blue and then

it changes color. The blood breaks down over that numerous days until the yellow and then disappears about a week to seven days, eight days later.

Q Thank you. Let me ask you a different question?

A All right.

Q When you examined the contusion, could you tell whether it occurred as something from the top or the first attack or the second attack that you alluded to?

A No, I can't tell that. Absolutely not.

Q Okay. All you know is it appears as if it occurred on the 13th of February, three days before -- you said you'd examined the body on the 16th, right?

A Right. I examined body on the 16th.

Q You testified it looked like it was around a three-day old contusion?

A No, I testified that about the subdural. I didn't testify to the contusion.

Q Did you have any reason to think that it occurred before? That it was there for more than three days?

A No, I do not.

Q Okay.
A I only testified to the age of the subdural because -- I'll tell you why. Subdurals are pretty, pretty accurate. Contusions are not. I don't date contusions.
Q Okay. So the contusion could have occurred any time before you examined body?
A Well, it definitely occurred before I examined the body, the contusion.
Q But a month earlier?
A No, no absolutely not.
Q Two weeks?
A No, because it would have healed by then.
Q A week?
A No, it wouldn't have been that color.
Q Three days?
A Possible.
Q Now, you also said you noticed there were lacerations?
A There was a laceration.
Q A laceration?
A Yes.
Q Now, where was that laceration?
A That lacerations was right here, sir.
Q Okay.

A Right there.
Q Now, based on your examination, could you tell whether that laceration occurred -- in your examination, could you tell whether the laceration occurred at the second attack or at the first attack?
A No, I can't tell when that occurred, sir.
Q Okay. My questions about the other injuries are pretty similar. What about the sclera hemorrhage in the eye. Could you tell whether that occurred at the first attack or the second attack?
A I can't tell.
Q Okay. And then the bruise on the side of the head. Could you tell you tell if that occurred at the first attack or the second attack?
A I can't tell.
Q Now, you indicated that there was something going on the right side of the skull?
A That's correct.
Q And that's where you say that you saw something that was caused by a great impact?
A That's correct.
Q And I think the State asked you a follow-up

question, something about a sweep. As far as that injury to the right side, let me ask you this. Could it have been caused by four to five men kicking, stomping and beating the victim?

A That's possible.

Q Okay.

A That's possible.

Q Now, when you did this autopsy, you were -- I guess you said that you were informed at some point that there was a first attack and a second attack?

A That's correct.

Q How did you learn of that?

A The subsequent police investigation, one of the coroner deputies notified me.

Q Okay.

A I follow up with the cases afterwards because I don't sign these cases out right away. I like to get all the information together before I sign out the cases. I usually have thirty days to get the cause of death statements written.

Q Basically what you got was something from the police?

A Well, yeah, we work with the police.

Q I understand?
A We get all the facts together and we then, you know, get the police together and sign the autopsy report out on the cause of death.
Q So the information with regards to the different attacks that you received is as reliable as the report that you got from the police?
A Right, right, that's correct.
Q And you were just doing your job by reading what you got?
A Well, I don't actually get the actual -- I just get information. That's correct, that's correct, sir.
Q Okay. Now, you indicated that the victim was under the influence of marijuana and also maybe a prescription doze of Lorazepam, Ativan?
A That's correct.
Q What's the street name for that?
A I don't know street names, sir.
Q What's your medical opinion as to the effect that would have on someone taking marijuana and Lorazepam at the same time?
A I -- I'm not a toxicologist so I don't feel -- I don't feel I'm an expert in this area,

and I don't feel I have the expertise to answer that question. I'm sorry.

Q Is marijuana a stimulate or a depressant?

A In my opinion it's more of a depressant.

Q Depressant?

A But again, I don't have the expertise to answer these questions about the exact effects of all of these drugs. I'm not a toxicologist.

Q Okay. I can accept that. I think you based some of your assumptions on the fact that you were told that the victim got up and walked away from the first attack?

A I got that information that the victim got up walked away from the first altercation, yes.

Q Were you told how the person might have walked away?

A No, sir.

Q So you don't know whether that meant the person was stumbling and dizzy, falling and tripping, or if the person who was just walking upright as if nothing happened, you don't know?

A No, I don't know.

Q All you know is somebody told you that after the first altercation, the victim left the area, walked away?

A I've got my notes right here. First altercation, punched in the face, kicked in the abdomen, got up, walked away.

Q I'm sorry. I don't mean to stop you. So what you were told with regard to the first assault was a punch in the face and a kick to the abdomen?

A Yes.

Q Okay.

A Several punches to the face, kicked in the abdomen.

Q And nothing else?

A Uh-huh.

Q So your report doesn't say anything about the number of people or anything like that?

A I have nothing about that.

Q Nothing. So a punch and a kick. That's all you were told about the first attack?

A Uh-huh.

Q All right. I think that's all my questions. Let me just look at my notes. (Upon review), thank you. I think that's it. Thank you very much

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. SAMPSON:

Q He asked you a lots of questions about that the toxicology in this case and what effect that might have had on the victim. Did that in any way contribute to the cause of death in this case.

A No, no.

Q You are trained to make that determination, are you not?

A I'm trained, and in my opinion these drugs did not contribute to his death in any day.

Q As far as the amounts that you found in that, those were not significant in any way as far as causing death?

A No.

Q In some cases, such as in cases of suicide or accident overdose, you do make those determinations? So you are trained at least as to that?

A Yes, I am trained to interpret the results in cases of overdoses when you have significant amount of these drugs but in this case -- street names of a drugs, the effects of all these drugs on an individual, I am not going to make those calls here.

Q And in this case you mentioned that you were given information about the first assault and that the second assault occurred; that he had got up from the first one but that he didn't from the second one?

A. (Affirmative nod)

Q And you mentioned that you were told that the first assault was significant, as well as the second assault?

A Yes.

Q As far as any questions they asked you on cross-examination, does that affect your determination about cause of death here today?

A No.

Q As far as your determination, you can't say exactly when each injury occurred but the second assault definitely contributed and/or caused the death?

A Yes.

MS. SAMPSON: Thank you, sir.

THE COURT: Anything further?

MR. FARLEY: I have no questions, Your Honor.

RECROSS EXAMINATION

BY MR. CHAPLIN:

Q Dr. Marcus, earlier I had asked you about the effects of marijuana and Lorazepam on someone and you indicated that you weren't trained to offer that type of response, but just a second ago you clearly said, without hesitation, that you know that that could not have had an impact as to the death of this -- of the victim?

A Right, not in the levels of him.

Q Okay. Well then let me back up. So you do have information with regards the effect that those drugs have on people at different levels?

A At the lethal level, yes.

Q Okay. Well, then I'd like to ask you about that. So at any level would marijuana and Lorazepam cause someone to lose their balance?

A Marijuana, I'm not sure about marijuana. And the effects of marijuana with Lorazepam, I'm not sure about. Lorazepam, probably not.

Q Okay. Well, I asked you -- why do you say Lorazepam, probably not?

A Because Lorazepam is an anti-anxiety.

Q At and -- it's your testimony that couldn't make you drowsy?

A It could probably make you drowsy, a little

bit; at very high levels, absolutely.
Q So it could make you drowsy?
A It could make you drowsy.
Q And you don't know what the impact of the two drugs mixed together would do to someone?
A No, I don't know. I'm not a toxicologist but marijuana, marijuana -- I don't think marijuana would affect these two in my opinion, but again I'm not a toxicologist. Marijuana -- I don't combine -- you can't overdose on marijuana.
Q So when you offer us testimony that marijuana and Lorazepam definitely didn't have an impact as to the cause of death, that's based on your limited knowledge about toxicology?
A Yes. My opinion based on this case.
Q Right.
A That's based on this case.
Q But I think you also said that you really don't know a whole lot about the impact or the effects of these drugs?
A I don't know a lot about the effects of these two drugs on marijuana mixing with Lorazepam; no, I don't.
Q So it's possibly that it could have had an

impact as to his death?
A I guess.
Q Okay. All right. You also stated that -- you testified in your opinion the first attack and the second attack were significant?
A Yes.
Q Is it your medical opinion that a kick and a slap is significant?
A Yes, ---
Q Thank you very much.
A --- it depends on where you are hit.
Q Oh, excuse me. I didn't let you finish. Go ahead.
A Yes.
Q And you were going to say it depends on -- what?
A Depends on -- yes.
Q Okay. Final answer?
A Yes.
MR. CHAPLIN: Thank you very much.
THE COURT: All right. Doctor, you may come down. Thank you very much.
(WITNESS STEPS DOWN)
THE COURT: May this witness be excused?

MR. FARLEY: No objection.
THE COURT: Without objection.
MR. CHAPLIN: No objection.
THE COURT: Next witness.
MS. CAMPBELL: The State would call Sergeant Pegram. I'm sorry, can I switch that?
THE COURT: Yes, ma'am.
MS. CAMPBELL: State would call Campbell Streeter.
(WITNESS TAKES STAND)
CAMPBELL STREETER, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:
DIRECT EXAMINATION
BY MS. CAMPBELL:
Q May it please the Court, Mr. Streeter, where are you employed?
A I am employed with the 5th Circuit Solicitor's office.
Q The 5th Circuit Solicitor's Office. That's where I work?
A Yes, ma'am.
Q How long have you been employed there, sir?
A Right at a year.
Q Okay. Can you tell this jury a little bit

about your training and education in the field of law enforcement?

A Yes, ma'am. I have been in law enforcement for thirty years. Most of the time I was at SLED. I was an investigator, criminal investigator, at SLED, the State Law Enforcement Division.

Also I've headed up the investigations for the USC police department for three years.

Came to work here at that time solicitor's office I think March of last year.

Q At my request, did you contact certain witnesses in this case and interview them?

A I did.

Q Specifically, did you make contact with a Kara Chase?

A I did.

Q And what dates, did you actually make contact Ms. Chase?

A My first contact with Ms. Chase was on the 27th of this month.

Q Twenty-seventh of this month, and did you have any information with you when you went to make contact Ms. Chase on that date?

A I did. I had a subpoena for Ms. Chase, and

I served a subpoena on her, and I also had a written statement that she had provided to the Columbia Police Department back in February -- I think February 16th, 2010.

Q I want to show you what's been marked as State's Exhibit 84. Is that the statement you're referring?

A Yes, ma'am.

Q And in that -- the statement was dated what date?

A Dated February 16th, 2010.

Q And again that was taken by the Columbia Police Department?

A Yes, ma'am.

Q And what if anything did you do with that statement when you made contact with Ms. Chase on the 27th?

A She had trouble -- she couldn't read it. So I read her the statement word for word. Reviewed it with her, asked her if there was anything different she remembered now than she did in 2010.

Q Specifically when she went through that statement, did she indicate to you whether or not it was correct or incorrect as far as

remembering this on the 27th?
A She stated the statement was correct and that's what her recollection was when she gave a statement.
Q When you went over the statement with her -- I believe you read it to her word for word; is that correct?
A Yes, ma'am.
Q Even the part in her own handwriting?
A She did.
Q Did she indicate any of that was incorrect?
A No, it was all correct.
Q And that was the information she gave you when you went through all these pages with her?
A I went through this entire statement with her.
Q Did you give her an opportunity to dispute the parts that were written down?
A I did, and she indicated that it was all correct.
Q Did she tell you that any parts of what she'd written down in her own handwriting, if they were wrong of anything like that?
A. She indicated that it was all correct.
Q Did you have a second statement with you

that you also went through with her, or is that the second statement?

A I went through an additional statement with her were that she -- this would have been on the 29th, yesterday morning. I went through an additional statement. I went through this statement again with her on yesterday morning along with another statement which were the investigator's notes of the interview that he did with her.

Q I show you State's Exhibit 85. Is that the second statement that you went over with her?

A Yes, ma'am.

Q Does that statement also contain details of how she recalled what happened?

A It does.

Q And what was the date of that statement or the date that interview occurred?

A This statement -- this is Investigator McNealy's interview with Ms. Chase. It was February 22nd, 2010.

Q Of 2010?

A Yes, ma'am.

Q And again when you went through the original statement of February 16th and the

additional statement that she gave to the investigator on February 22nd, all the details, -- did you go through all those with her again?

A I read both statements yesterday morning to her word for word, line for line.

Q Did she indicate to you or did you ask her if, in fact, that was correct?

A I did. I asked her if it was correct. If there was anything different in any way she remembered it different now than then. She indicated she did not. That it was all correct.

Q And everything in there was correct?

A Everything's correct.

Q So she didn't change any of her original testimony to you?

A Not to me, no.

Q Prior testimony?

A No, ma'am.

MS. CAMPBELL: Beg the Court's indulgence. Your Honor, at this time we would offer State's Exhibits 85 and 84 into evidence.

MR. FARLEY: Your Honor, I would just object to the introduction of this. Ms. Chase was here. She testified to what she testified to. I believe this would just be superfluous.

She was here to testify.

THE COURT: All right. Let met clear this up on the record.

Ladies and gentlemen, your lunch is not going to be here until 12:30, so we still have a little while to go but I will need to take a short break. This is probably a good time, it's 11:30. I will take this up with the attorneys and we will call you in just a few minutes. Don't discuss the case among yourselves.

(JURY OUT @ 11:22 A.A.)

THE COURT: All right. What's the objection?

MR. FARLEY: Well, Your Honor, I would object on hearsay. I mean, this is certainly an out-of-court statement. She came. She testified. Her testimony is on the record. I don't know if Mr. Mathias (sic).

MR. CHAPLIN: I join in that, Your Honor. I was going to give him ample opportunity to finish and then I am going to ---

THE COURT: Let me hear your objection.

MR. CHAPLIN: Your Honor, here is my concern. Kara Chase came into court. She was sworn under oath and she gave a statement. She

was asked about contradictions, whatever the case might be. She explained those. That's already with the jury. To provide them with statements to bolster what she said previously is not appropriate unless they're going to provide her with a transcript of what she said in court yesterday. We've already gone through all of that. Basically what they're trying to do is impeach their own witness.

THE COURT: Which they can do.

MR. CHAPLIN: Sir?

THE COURT: Which they can do.

MR. CHAPLIN: I'm not saying they can't. I'm just saying she came in and she testified as to what she had to say. The State is not happy with that, so now they want to submit that to the jury.

So then that means that I should be able to submit the same. I mean, the telephone conversations that I have with Marcellius Brooks, because he clearly testified, contradicted himself in his testimony yesterday as to what I have on audio.

THE COURT: Well, you have that. You're going to introduce that, correct?

MR. CHAPLIN: Well, -- and so you're saying. Okay. That means --

THE COURT: Keep that out of it because that's a separate issue.

MR. CHAPLIN: Well, I think it's similar in that I'm not even going send that audio back to the jury panel and say 'play this when you deliberate', but she is able to send back two statements which the woman said she didn't get a copy of. It's not her handwriting. She didn't sign it. The other she said to the best of her knowledge she said some things or whatever but she indicated she went down there with three other women and some other things like that. Uh, ---

THE COURT: She said they're not true.

MR. CHAPLIN: Yeah. Now, the State wants to say 'well, it is true because she said it on this day and we have an officer that will testify to that.' I'm not trying to say that Mr. Streeter is not an impeccable individual.

THE COURT: Well, I understand that. What's the State's position?

MS. CAMPBELL: Your Honor, any impeachment would be under 613(b) it is

extrinsic evidence of a prior inconsistent statement of a witness.

THE COURT: Under 613(b), doesn't the witness have to be on the stand? Don't you have to confront the witness with the statement? And then if she denies it there's sufficient evidence to put it in? While is it not -- it is extrinsic, right?

MS. CAMPBELL: Yes.

THE COURT: It is.

MS. CAMPBELL: We admit it is extrinsic.

THE COURT: The question is does it come in through this witness or does it have to come in when she denies itself, now that you have confirmed -- well, actually who interviewed her to start with? Who took the statement?

MR. CHAPLIN: McNealy, who is not present, and I think -- did you, Mr. Streeter.

MS. CAMPBELL: The original ---

THE COURT: Hold on. I'm asking her.

MS. CAMPBELL: McCracken.

THE COURT: McCracken. All right. Well, for right now we are going to mark it for identification. The only question I have, I

believe it's 613(b). The question -- the only question that I have is whether it comes in through this witness or whether you have to bring her back. I'm not sure about that. I need to look at that.

MS. CAMPBELL: Okay. I don't know anything in the rule that says ---

THE COURT: Well, I will see what it says.

MS. CAMPBELL: I mean, she identified the statement. She admitted it was his. The only thing we were waiting on was to finally show how to make it totally inconsistent with what I went through with her. That's why I waited to offer it.

THE COURT: Well, ---

MS. CAMPBELL: I could bring McCracken back.

THE COURT: Either McCracken or -- I'm not sure this is the proper witness to offer it.

MR. CHAPLIN: Your Honor, I would say that Ms. Chase should come back and I think then it should go in if it's properly impeached at that time.

THE COURT: Well, she has denied the statement. Now, somebody if ---

MR. CHAPLIN: And then -- excuse me.

THE COURT: Somebody took the statement, said she said that. That's the only way to impeach her, because if she gets back up she is going to deny it again.

MR. CHAPLIN: Yes.

THE COURT: I think McCracken is the only one who can put the statement in. All right.

MS. CAMPBELL: I apologize, Your Honor. I was trying to err on the -- to make sure that the entire chain of when she denied it or admitted it ---

THE COURT: I understand. Well, the jury has heard him testify. I mean, that's another -- that's more evidence that she -- she confirmed it to him. I think I would admit it from Mr. McCracken.

MS. CAMPBELL: Okay. I'll get him, Your Honor.

THE COURT: Under 613(b).

MS. CAMPBELL: Yes, sir. And we'll

limit it to that statement.

THE COURT: All right. Do you have other questions of this witness.

MS. CAMPBELL: No, sir, I don't have any others.

THE COURT: All right. Do you have another witness ready to go?

MS. CAMPBELL: Yes, sir.

THE COURT: Okay. Bring the jury.

MS. CAMPBELL: Can we run to the restroom?

THE COURT: Restroom break.

(BRIEF RECESS)

(DEFENDANTS PRESENT)

THE COURT: State ready for the jury?

MS. CAMPBELL: Yes.

THE COURT: Defense ready for the jury.

MR. FARLEY: They are.

THE COURT: Come in.

(JURY IN @ 11:42 A.M.)

(OFF RECORD BENCH CONFERENCE)

BAILIFF: All jurors are present, Your Honor.

THE COURT: Thank you. Ms. Campbell,

you may continue.

MS. CAMPBELL: I don't have any further questions, Your Honor.

THE COURT: Any questions of this witness?

MR. FARLEY: Yes, thank you, Your Honor.

CROSS EXAMINATION

BY MR. FARLEY:

Q Mr. Streeter, just to clarify your last testimony for the benefit of the jury -- we had a little break. You only brought the statement to Ms. Chase; is that correct?

A Yeah. Yes, sir, I had a statement when I interviewed Ms. Chase.

Q But you didn't take the statement?

A I did interview Ms. Chase, but it was based on the information that was in the statement that I give to her.

Q But, I mean, the statement that you carried to her, you didn't take the statement?

A I did not.

Q You were not present when that statement was attention I was not, yes.

Q You just brought a copy to her later on?

A On two occasions.
Q But that was after the incident?
A Yes.
Q But you didn't hear her give that statement and you weren't present at the statement?
A She gave me a statement.
Q Yes, sir, what I'm saying is the statement you carried to her, you weren't present when that statement was taken; is what I'm saying?
A I was not.

MR. FARLEY: Thank you Mr. Streeter.

THE COURT: Anything?

MR. CHAPLIN: Yeah, nothing for Mr. Streeter. Thank you.

THE COURT: Anything further questions?

MS. CAMPBELL: Just a couple questions.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q You did. I show you State's Exhibit 84 and 85, when you went over these statements with her, what did she tell you about what was in these statements?
A I went over this handwritten statement on two occasions for her, and I went over this statement on one occasion with her. She

basically confirmed everything that she had told investigators two years ago.

Q Thank you, sir.

THE COURT: Anything further?

MR. FARLEY: Just one other question.

RECROSS EXAMINATION

BY MR. FARLEY:

Q Just to follow up, when you asked her those questions regarding the statements, do you think she was -- did she appear nervous to you?

A No, she was not nervous when she talked to me. I felt like she was being forthcoming.

Q All right. You didn't sense yourself that she might have been uncomfortable?

A I didn't sense it at all, no.

MR. FARLEY: Thank you Mr. Streeter.

MR. CHAPLIN: Nothing from Mr. Streeter.

THE COURT: You may come down. Thank you very much.

(WITNESS STEPS DOWN)

THE COURT: Next witness.

MS. CAMPBELL: The State would call Investigator McCracken.

(WITNESS TAKES STAND)

ROBERT McCRACKEN, having previously been sworn to tell the truth, further testified:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Investigator McCracken, I'm sorry to have to follow up on this. You actually weren't anticipating being in court today?

A No, ma'am, I was not. That's why I'm dressed this way.

Q I want to show you State's Exhibit 84. Do you recognize that statement?

A Yes, ma'am.

Q Is that a statement you took from Kara Chase back on February 16th, 2010?

A Yes, ma'am.

Q Do you have a copy of the original?

A The original, yes, ma'am.

Q Can I see that.

A. (Tenders)

MS. CAMPBELL: I am marking that as State's Exhibit 88.

DIRECT EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q State's Exhibit 88 is the actual original

of that statement?
A Yes, ma'am.
Q And what's been marked as State's Exhibit 84 is just a copy of that?
A Yes, ma'am.
Q Your Honor, at this time, I would offer State's Exhibit 88 into evidence?
MR. FARLEY: Your Honor, I would object and renew my previous objection that this is inadmissible hearsay.
THE COURT: And ---
MR. CHAPLIN: Your Honor, again I would renew the objection that I've made, as well, and -- I'll leave it at that.
THE COURT: All right. The objection is overruled.
(SO ENTERED AS STATE'S EXHIBIT 88)
MS. CAMPBELL: Permission to publish the statement, Your Honor?
THE COURT: Yes, ma'am.
DIRECT EXAMINATION CONTINUED
BY MS. CAMPBELL:
Q Can you read to the jury the statement she gave you back on February 16th when she came to the station?

A Yes, ma'am. (Reading): *"I saw the victim in between the F and G buildings of Gonzales Gardens having a conversation with another man. The other man grabbed the victim and went to walk him down the sidewalk. The victim snatched back and the other man swept the victim from under his feet causing the victim to hit his head on the pavement..."* -- a few seconds later. Excuse me. *"...hit his head on the pavement. A few seconds later a female runs up the street saying "That's him." She begins kicking the man repeatedly, picking up an old metal chair, throwing it on top of the victim. The other man continued to kick and stomp the man in his face. Once the female stopped, the victim laid on the ground the whole time this was occurring."*

Q That's the first page of that statement?

A Yes, ma'am.

Q In whose handwriting is that in?

A That would be Ms. Kara Chase's handwriting.

Q And then the next two pages, second page of that statement, did you follow up with some questions and answers?

A Yes, I did.

Q In whose handwriting was the question?

A The question was in my handwriting and it was presented to her to answer in her handwriting.

Q Thank you, sir. Go ahead.

A Finish reading it?

Q Yes, sir.

A Okay. (Reading):

Question: *Do you know the victim?*

Answer: *No.*

Question: *Do you know the man that was fighting with the victim?*

Answer: *I know him as "Six" from Gonzales Gardens.*

Question: *Do you know the female that ran up and began kicking the victim and threw the metal chair on the victim?*

Answer: *She is Six's sister.*

Question: *Did you hear any -- did you hear any conversation between the victim and the people assaulting him?*

Answer: *Yes, the victim said, "I am not going anywhere. Just do what you're doing to do to me here."*

Question: *Do you know of any other*

witnesses to this fight?

Answer: *Sanovia, Diane and Donetti.*

Question: *Describe the chair the female hit the victim with.*

Answer: *A metal, rusty old chair (lawn).*

Question: *Where did you last see this chair?*

Answer: *In front of the G-3 building.*

Question: *Anything particular about the clothing of Six or Six's sister?*

Answer: *He had construction boots on.*

Question: *Do you know Six or Six's sister's real names?*

Answer: *No.*

Question: *Did you see the victim fight back or attempt to flee?*

Answer: *No. He didn't have a chance to fight back or flee.*

That's the end of the statement.

MS. SAMPSON: Thank you, sir. I don't

have any further questions.

THE COURT: Any questions of this witness?

MR. FARLEY: Thank you. Confront and cross-examine.

CROSS EXAMINATION

BY MR. FARLEY:

Q Investigator McCracken, ---

A Yes, sir.

Q Again, I was going to ask -- the part where it said, and I believe you read the statement, that she threw the chair on top of the victim; I believe, are the exact words?

A I'll have to find it.

Q It's in the ---

A "Threw it on top of the victim." That's what it says in the statement.

Q But you're not here to clarify what that means because you can't clarify what that means?

A She wrote the statement.

Q She wrote the statement. So you are not exactly sure what that means. You just have the words in front of you?

A From looking at the words I can make my own interpretation, but ---

Q But that could be open to speculation; is that correct?
A That's correct.
Q We're not sure. Because she is here to testify, only she can say what she ---
A Only she could say exactly what that means. She would testify to that.
Q Is it fair to say that that could have several interpretations?
A I can only think of one.
Q That's fine. Well, let me ask you this, later on, I think the second page or so I believe, and please correct me if I'm wrong, you were the one who was asking the questions?
A Correct.
Q So those are your words and you could testify those, what you meant.
A Yes.
Q But it's your words, question, do you know who -- maybe you can make sure I get the sentence correctly, who hit the victim with the chair, something to that end?
A "Do you know the man that was fighting with the victim?" Is that the question.
Q No. Give me one second and I'll --

"Describe the chair that the female hit the victim with."

A Yes.

Q Those are your words, correct?

A Yes, they are.

Q Nowhere else in this statement is it described as hitting the victim?

A "Kicking" the victim.

Q I'm sorry?

A "Kicking" the victim.

Q But with regards to the chair?

A. With regards to the chair, no.

Q The only sentence in here that says the female hit the victim with a chair are your words?

A I wrote that question, yes, sir.

Q Thank you, Investigator McCracken.

CROSS EXAMINATION

BY MR. FARLEY:

Q Investigator McCracken, I just want to back up a little bit. It's true that Kenneth Mack was attacked on the 13th of February, 2010, correct.

A I couldn't tell you that. I mean, that should be published. My case notes started on

the 15th, I believe. I don't have them in front of me. That's when I got involved. I wasn't involved in the initial.

Q Okay. All right, sir. So on the 15th of February, 2010, Marcellius Brooks was arrested for murder?

A I don't know that either.

Q Okay.

A I wasn't -- (pause).

Q And then on the 16th of February 2010, Kara Chase, Donetti Perry and Mary Anderson came to your police department?

A I can testify that Kara Chase did. That's who I took the statement from.

Q Okay. And the statements were taken -- you took the statements from Kara Chase?

A That's correct.

Q Her at the same time at that time said what you just read?

A Correct.

Q But to this day Marcellius Brooks is still charged with murder, correct?

A I'm assuming so. I don't know.

Q All right. Thank you very much.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q Mr. Farley asked you about being "hit".

A. Yes.

Q If I take a ball and throw it at you, could it hit you?

A. Yes.

Q If I take a chair and throw it at you, could it hit you?

A. Absolutely.

MS. CAMPBELL: Thank you, sir.

THE COURT: Anything further.

MR. FARLEY: Just one question.

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. FARLEY:

Q Just to say it again, your words were "hit"?

A I wrote that question.

MR. FARLEY: Thank you.

THE COURT: You may come down. Thank you very much.

(WITNESS STEPS DOWN)

THE COURT: Next witness?

MS. CAMPBELL: Thank you, Your Honor.

The State calls Sergeant Pegram.

(WITNESS TAKES STAND)

WILLIAM PEGRAM, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Sir, where are you employed.

A Columbia Police Department.

Q What do you do there?

A I'm the supervise of the Violent Criems Unit.

Q As a supervisor of the violent crimes unit, what do your duties include?

A Two assign cases to dictate the direction of cases, just to supervise ten people.

Q How long have you been a police officer, sir?

A September is twenty-nine years.

Q How many?

A Twenty-nine (29).

Q Prior to becoming a supervisor over the violent crimes unit, did you actually participate as an investigator?

A I did.

Q Specifically back in February of 2010, were you the investigator that was assigned to be the lead investigator in this case?
A I was.
Q What were your duties involved in investigating a case such as this?
A First to determine whether or not a crime has been committed, then determine who the principle are in that crime.
Q And when you do an investigation, does this all the happen, say, on the day that the body was found or things of that nature or is it an evolving process?
A It's dynamic. I mean, it starts with the location of the crime.
Q In this case, especially in this case, did information evolve through the course of this investigation?
A Yes.
Q Specifically starting with February 13th, how did you become involved in this case?
A I was notified to come to Gonzales Gardens in reference to an assault.

There were questions about where the assault occurred. We had a victim, so what I

did was I responded to the hospital to determine what kind of case we were looking, whether the victim had survived or whether the victim was deceased.

Q Okay When you got to the hospital that day, was the victim already there?

A Yes, he was.

Q So you went directly there rather than going to the Gardens first?

A Yes.

Q What information were you trying to get before you got to the hospital that day?

A The condition of the victim. I spoke with the Neurologist, Dr. Smith. He informed me that, when I got there, the victim was considered brain dead.

Q And you responded directly to the hospital that afternoon?

A I did.

Q So with that information and at that point though, he wasn't being taken off life support; is that correct?

A That's correct.

Q And when did he actually get taken off all life support even though he had been declared

brain dead that afternoon?
A The thirteenth is when he was declared dead.
Q And then he was taken off life support though a day or two later; is that correct?
A That's correct.
Q The autopsy in this case occurred on February 16th, that morning?
A That's correct.
Q Once you had gotten the information from the hospital, what if anything did you do?
A I went back to the crime scene. I started designating certain investigators to handle certain task. Generally what I will do is with ten investigators I split. I keep some investigations out of the investigation just in case we have something else that occurs and then I involve three or four investigators to assist with the investigation. We initially will start canvassing the area trying to locate witnesses. Just whatever information we can gather right from the beginning is where we start.
Q That afternoon, without going into what was said, did you interview a certain witness in the case as far as his observations of an assault

that occurred near McDuffie street.
A I did.
Q You can't say what he said to you, but with that information later that day, did you also get additional information from another source as to a possible participant in one of the assaults in this case?
A I did.
Q And what name was given to you?
A Henry Gray. Actually I think the tip came in as Robert Gray, Jr.
Q And how did you get that information?
A That was an anonymous tip that came in through a telephone response unit.
Q Later that day, did you also interview a Mr. Weathers, Isaacs weathers?
A He was interviewed.
Q Was an interview conduct -- you didn't actually interview him?
A I don't believe I did.
Q But as the chief investigating officer in the case, all the information is forwarded to you; is that right?
A It is. I reviewed all the statements.
Q And that would be Mr. Weathers who

testified earlier today?
A Yes.
Q Was information obtained from him about one of the people that participated in the first assault?
A Yes.
Q At this point, do you know how many assaults had actually occurred?
A No.
Q And tell the jury why that was going on, the confusion that initially presented in this case that was later resolved.
A The way it began is that the information was that an assault occurred near the L building on McDuffie Street. In fact, that's where the crime was actually established. We had no information at the beginning of the second assault.

So what was confusing was the information that came in regarding Mr. Gray and the information about a chair. We went back out to the L building to search for a chair. We didn't find a chair. So that's what we were facing. We had no idea at that point of a second assault and nobody was talking.

We did however take the name, provided a cross reference to that name, get a location and things like that. We tried to identify him just based on the information.

Q Okay. Did you become aware during the course of your investigation that Mr. Gray's father lived at the G building?

A Yes.

Q And that he would stay there sometimes?

A Yes.

Q You were also aware that the body was found, the unresponsive body was found between the F and G buildings?

A That's correct.

Q But at this point you only had eyewitness testimony as to an assault that occurred up at L; is that correct?

A Yes.

Q Is that why the area where the body was found was not processed initially?

A That's right.

Q But the chair was later processed?

A Yes. No one came forward initially about the second assault; is that unusual for this area?

A Not in Gonzales Gardens.
Q Explain?
A If I could back a little bit.
Q Yes, sir.
A. In 2006, I was assigned to the FBI. My job with the FBI was to investigate the GKB, the Gangster Killer Bloods. In fact, there was a documentary on TV about it called the Bloods South. Everything focused on Broad River Road and Gonzales Gardens. Gonzales Gardens was actually identified by the FBI as a hot spot for the Bloods street gang. People in that neighborhood generally will not talk to the police, because -- it's not TV, this is the actual thing. You'll talk to the police in Gonzales Gardens, there is a very good likelihood that you will be killed. That's fact. That's not TV. Generally when we have problems in Gonzales Gardens, people will not talk with the police. That's significant for us.
Q Especially when the police presence is there in Gonzales Gardens, as well?
A Yeah, we had a lot of the marked patrol cars, a lot of uniformed cops. People are not

going to be seen talking to the police. That's just not what they do. In fact, with investigators they -- they're reluctant to talk to plainclothes police, even unmarked cars.

One thing that we do. For situations like Gonzales Gardens is our car, our windows are blacked out. We black them out simply so that people can't see who is in our cars to come back for retaliation later on.

Q Sometimes it's not unusual, once things have quieted down a bit, they may come to headquarters to talk to you or get away from the area and talk to you?

A Yeah. A lot of times they will start by a Crime Stoppers tip or they will make anonymous calls, or they will show up at the police department. They won't talk to you or provide statements generally in the Gardens. They come on their own to the police department. That separates them from that element and people don't know that they're at the police department.

Q In this case, the first tip you got about Mr. Gray was when?

A That was on the first day, on the 13th.

Q And that's not unusual?
A No, it's not.
Q That day, based on information that you were able to get there, did you try to interview Ms. Vallery Goodwin?
A I did.
Q Specifically was she able to give you some information that later became significant in the overall investigation of the case?
A She did.
Q Specifically was -- that information about whom?
A About Bloom.
Q That's Marcellius Brooks?
A Correct.
Q Was she able to confirm information you had about Bloom going to her apartment at some point after the first assault?
A She did. Officer Delage, when he initially responded to the crime scene, he reported -- in his report, he noted that she saw an individual matching this description of one of the suspects go into an apartment. I believe it's S-6. What we did on follow up is Investigator Sumpter and I went back to the apartment to actually

make contact with the resident. We did. I spoke to Vallery. She said she didn't know the person's real name. She said that his name was "Bloom." That's all she could tell us, but she could provide a cell phone number and that was significant. It came into play later on. When we asked reasons why Bloom was there, she told us that she actually called him to come to the Gardens.

Q Okay. You can't give us the substance of what she said.

A Okay.

Q She was able to give you a phone number and a nickname?

A Yes.

Q Were you able too, based on that information, identify Bloom as Marcellius Brooks?

A I was.

Q Either later that day or the next day did you also become aware during the course of your investigation, and you can't say specifically what people said to you, that a thirteen year old female was involved in the initial assault?

A Yes.

Q Were you able to identify her?
A Yes.
Q What was her name?
A Melquanna S
Q Did she have a nickname?
A People called her Lucy.
Q Were you also able to identify who her mother was?
A Yes.
Q What was her mother's name?
A Robin Reese.
Q Did you know anything about Ms. Reese being involved in a second assault, or a first assault?
A No.
Q Did you make any attempts to talk to them?
A I did.
Q Why were you specifically trying to talk to the thirteen year old about?
A I needed the details on what occurred in the assault.
Q Was she actually brought into headquarters?
A She was.
Q What date was that?
A That would have been on the 14th.

Q On the 14th?
A Yes.
Q On that day, did you actually take a statement from her, as well as Ms. Reese?
A Yes.
Q The thirteen year old, was she able to give you information specifically about Marcellius Brooks?
A Yes.
Q Based on all the people you interviewed, you can't talk about what they said to you, all the people you interviewed at that point, were you able to get a warrant that day for Marcellius Brooks?
A Yes.
Q What was that warrant for?
A Murder. No. I'm sorry. It wasn't that day I don't believe -- on the 14th. Let me confirm this, (review of file).
Q Okay.
A No, the warrant was -- I'm sorry, that was cell phone. The 15th was when the warrant was issued for Brooks for murder.
Q And that was Marcellius Brooks?
A Yes.

Q At that point, are you still only aware, other than the tip you got about Henry Gray, of one assault occurring?
A That's right.
Q And you're still investigating?
A Yes.
Q Is this unusual?
A No, it's not.
Q That day did you also get a search warrant for some cell phone records?
A The cell phone records were on the 14th, I believe, and it was a Nextel cell phone search warrant for 319-8124, which was associated with Mr. Brooks.
Q What was that phone call, I'm sorry?
A It's .
Q And whose phone is this?
A That's Mr. Brooks'.
Q And tell this jury how you go about getting cell phone records and why those can be so significant in investigations as far as corroborating or disproving?
A What we do is if we identify a number to a witness, suspect, whoever, one thing if they provide information is we receive information

about the use of that phone. We send a search warrant to the service provider, and they in return send us the subscriber information, the cell phone records, income/outgoing calls, telemetry, things involving the identification of cell sites. It's significant because we can show who called who and who received calls from who. That either proves or disproves information.

Q And that became significant in this investigation at a later time?

A It did.

Q Then the next day, on the 15th, did you and Investigator Sumpter go and look at some video? Try to look for some video?

A We went to the Blue Ocean, the fish market.

Q The Blue Ocean Fish Market?

A (Affirmative nod)

Q What kind of video were you trying to get there and why?

A We were aware of an external camera. We had information that individuals leaving the first assault had gone to the store. They would have had to pass in front of this fish market, so we reviewed the video to see if, in fact,

that was true.
Q I'm showing you'll what's been marked as State's Exhibit 93, the video. Have you had an opportunity to review that video?
A (Affirmative nod)
Q Where was it?
A Blue Ocean Fish Market.
Q About did you review it that day?
A Yes.
Q Does that fairly and accurately reflect what you reviewed that day right there at the fish market?
A Yes.
MS. CAMPBELL: Your Honor, at this time we'd offer State's Exhibit 93?
MR. FARLEY: I have no objection.
MR. CHAPLIN: No objection.
THE COURT: So entered.
(SO ENTERED AS STATE'S EXHIBIT 93)
DIRECT EXAMINATION CONTINUED
BY MS. CAMPBELL:
Q When you reviewed this -- and this will be in evidence for the jury, but when you reviewed this, what did you observe?
A I observed two females walking in front of

the camera with one on the cell phone followed by four or five males.

Q And was that significant in your investigation, specifically as to the two females and four males following them?

A Yes.

Q Why was that significant?

A It corroborated information that after the assault, Marcellius Brooks went to the store, told Ms. Reese about the assault with her daughter and that she had left with her daughter and that she was on the cell phone at the time when she walked out the door.

Q Let me back up. I messed up something. The day before when you took the statement from Ms. S the thirteen year old, the person that ultimately was the victim in this case was she able to identify him to you?

A Yes.

Q How did she know him?

A She knew him by the name "Ken."

Q And that was the information she gave you?

A That's what she gave me, (affirmative nod).

Q When you reviewed the video, you mentioned there were two females. Would that be

consistent with one of the females being Ms. Reese and her daughter?

A Yes.

Q You mentioned that one of those two on the phone?

A Yes.

Q Which one was that?

A It appeared Ms. Reese was on the phone.

Q Did you attempt to actually obtain the video that day?

A I did. There were some technical problems. A lot of these stores that have surveillance cameras usually don't have a tape, a tech there who can download it. The videos, a lot of times you have to download the software down with the video in order for us to play. We were unable to get it when we went to get it so we watched it. We reviewed it.

Q And it had on what you indicated to this jury?

A Yes.

Q Later on that day you mentioned you had already gotten a warrant outstanding for Marcellius Brooks. Were you making any attempts to contact him or get him in?

A Yes.
Q Tell the jury what happened next?
A I know during one conversation, I called him and I told him that we needed him to come in. He stated that he would and he did show up.
Q And when did he actually turn himself in?
A He agreed to come in on the 15th.
Q On that evening, did you actually make contact with him when he turned himself in?
A I did.
Q Where did he turn himself in?
A To the Columbia Police Department.
Q Prior to talking to him, did you advise him of his rights?
A. I did.
Q Is that proper procedure for someone that's been charged with a crime, that's in custody?
A It is.
Q And that was done in this case?
A It was.
Q Did he want to talk to you?
A He did.
Q At any time did he tell you he didn't want to talk to you anymore?
A No.

Q And he talked to you; is that correct?
A Yes.
Q And just for the record, Ms. Reese, Robin Reese had been in the day before, but at that point you didn't know about any of her involvement in this case?
A Right.
Q So she was not given her *Miranda* rights?
A She wasn't a suspect.
Q At that point?
A Right.

THE COURT: All right. Ms. Campbell, let me see you a minute.

(OFF RECORD BENCH CONFERENCE)

(DEFENDANT GRAY LEFT COURTROOM, ESCORTED BY DEPUTY)

(PAUSE IN PROCEEDINGS)

(DEFENDANT GRAY RETURNED TO COURTROOM)

THE COURT: You may continue.

MS. CAMPBELL: Thank you, sir.

DIRECT EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q You mentioned that Marcellius Brooks turned himself in?
A He did.

Q And then you advised him of his rights?
A We did.
Q Did he provide you information about the first assault and also what he heard about the second assault?
A Yes.
Q Was he completely forthcoming?
A No.
Q Has he ever been?
A No.
Q During the time period, were you also trying to reach out to the community to see if anyone could come forward with any information about what had happened that day?
A Yes.
Q After talking to Mr. Brooks that night on the 15th, how did the investigation continue?
A Mr. Brooks identified one person named Little Ricky. We identified him as Angelo "Ricky" Boyd. He was actually picked up and brought to headquarters voluntarily and provided a statement.
Q And was he charged at that time?
A He was not.
Q And why not?

A Because I was still trying to determine what we had and who the principal party was in the case. By law -- in my opinion of the law, everybody involved in this case was guilty but I had to determine the principal parties in the case.

Q And at this point you had charged Marcellius Brooks and you had interviewed Ricky Boyd or Angelo Boyd?

A Yes.

Q What happened next in your investigation?

A Well, after we spoke to Angelo Boyd, he was able to give us the names of Juve, which was Kenneth Archie; Trigger, who is Thomas Joseph; and he gave another street name of Genesis -- and we have not found Genesis.

Also on that day we had people from the community show up at the Police Department.

Q And this was on what day?

A This was the 16th.

Q That morning, did you actually go to the autopsy itself?

A I did.

Q And you were there for at least part of that?

A Yes.
Q And then you mentioned that witnesses started showing up at headquarters?
A Yes.
Q And were some of those witnesses whose names had been provided to you by Marcellius Brooks?
A Yes.
Q And which witnesses were those?
A Kara Chase, Sanovia Thompson, and Donetti Perry.
Q And those three people knew each other and were familiar with each other from the Gardens; is that correct?
A Yes.
Q That morning however another young woman showed up at headquarters wanting to give you information about what she had witnessed?
A Yeah, that lady was Mary Anderson. She was interesting to me simply because she wasn't affiliated with anybody. She basically kept to herself and didn't have any real friends out there. Normally when I talk to people, I have to weigh credibility, and I felt that she was a very credible person.

Q And when she came forward, was she able to give you information that actually corroborated what the other people that were out there that day at the second assault had told you?
A Yes.
Q And each of these witnesses were interviewed independently, right?
A Yes, they were.
Q Each of these witnesses were interviewed independently, weren't they?
A Yes, they were.
Q In this case it appears that different people -- say what Sanovia saw compared to what Kara saw -- they different parts of what happened. Is that unusual?
A No, actually it makes more sense. If you have three people give the exact same statement you can pretty much discount the statements. If you have three people giving independent statements with variations in what they saw, that makes sense. No two people are going to see the same thing exactly alike.
Q And does it depends on where they are, if they are walking, looking back and forth?
A That's correct.

Q If two people just see a car wreck on different corners, are their perceptions sometimes a little different?
A They're almost always a little different.
Q In your opinion, does that make them more credibility?
A It does.
Q In this case, with Ms. Anderson, was she able to give information that totally corroborated what the others said?
A Yes.
Q That day did you also the -- what else did you do?
A Well, because of the interviews, we were able to identify a chair that everyone said was used. As a result of that, I had an officer go to the scene, secure the chair. I instructed Investigator Menendez, who was not a part of this investigation until this happened, I asked her to obtain a search warrant and go to that location and secure that chair. The reason the chair was significant is it was evidence of what we believe was a crime and the chair had to be protected, brought and secured at a secure location in order to be tested for DNA.

Q Was the chair secured on that day, on the 16th, by Investigator Menendez?
A It was.
Q It was then processed by lead investigator Gillian?
A It was.
Q Basically you were trying to get DNA swabs off of it?
A Yeah, I actually asked to look for everything. Anything visible. Anything latent. He processed the chair and, as a result, he ended up using BlueStar.
Q When he used the BlueStar, were you there and saw the positive reaction indicating there was blood on the chair?
A I was.
Q However, he did swab and those swabs were forwarded to SLED for later testing?
A Yes.
Q In the course of your investigation, did you immediately become aware of what the results of the DNA testing were?
A Not immediately.
Q In fact, DNA testing was not done until later that summer; correct?

A That's correct.
Q Is that unusual in cases such as this?
A No, it's not, the backlog is pretty significant with SLED. They have a lot of business.
Q As far as you know, the chain of course custody and everything in this case was properly submitted, or it wouldn't have been tested?
A Yeah, the intake people at SLED, if you have an envelope that is torn or looks like it's been tampered with or they have any indication that any evidence has been tampered with, they refuse to process it. They just won't have anything to do with it.

Now, with us if evidence is tampered with, it doesn't leave our evidence room. It's a really secure system.

Q Okay. What else did you do that day -- we are on the 16th, is that correct?
A Yes.
Q Just for the record, State's Exhibit 72, this chair over here, is that the chair that was recovered and ultimately swabbed?
A Yes, that's it.
Q When DNA did come back, whose DNA was found

on the chair?
A The DNA came back to our victim, Kenneth Mack.
Q But, again, you didn't have those results until later on in the year?
A That's correct.
Q Was that significant, the results of that?
A Very.
Q Why?
A Well, it corroborates the information that Kenneth Mack was there, the chair was there, that the chair was used to assault him, so it connects the two. It connects the victim to that chair, and that corroborates with all of our witnesses have said.
Q What were your next steps in this investigation?
A Well, after I have started developing all the information about both assaults, it -- let me explain this. You've heard a lot about two assaults. The way I'm looking at this in my investigation is that it one event. The first assault occurred -- well, the second assault was just an ongoing of the first assault, so I'm considering it one event.

I did contact Dr. Marcus. I provided him with the information giving him details of both the first event and the second event in order to -- we do keep in touch with him to provide information of what we find. Our thing is we're in the middle. You know, we collect information. The more information we collect and we forward it to the pathologist -- and so he received it at that time. He received information of both events.

Q And you can't say what he told you, but was he able to relay information to you that was consistent with his testimony today?

A Yes.

Q What happened next in the investigation of this case?

A When I was reviewing the cell phone or the statements, there were two telephone numbers on Robin Reese's statement-- if I can go into that.

Q Sure.

A Those two telephone numbers became very important. One telephone number was her cell phone number that she provided as . The other ---

Q And who did that belong to?
A That was Robin Reese's cell phone. The home number she advised, was significant as well. That was .
Q And that was the home number?
A That was the home number.
Q Why was that significant?
A What I did from there, I took -- both of the cell phone numbers I identified in the search warrant. I sent a search warrant to Robin Reese's cell phone provider, which I believe was Nextel. The purpose for that would be to corroborate their information of her own cell phone and who she called. I did receive that information back from Nextel.
Q Okay. At this point to, one thing I skipped over, in addition to taking witness statements from Donneti Perry, Ms. Chase, Kara Chase, Ms. Anderson, did they also -- were they shown photo lineups?
A I wasn't present but yes, they were.
Q That was done on the 16th as well?
A Yes.
Q So at this point you've identified the two people that were involved in the second part of

this assault?
A Yes.
Q And who were those two people?
A Mr. Gray, sitting there at the table with his attorney, dressed in blue, and Ms. Reese who is sitting with her attorney. She is dressed in brown.
Q You mentioned that you were getting more cell phone records at this point?
A Yes.
Q Were there any other cell phone records that you got in during the course of this investigation?
A No. The two significant cell phones that we went after was Brook's cell phone and Reese's cell phone.
Q Have you had an opportunity to review the cell phone records in this case?
A I have.
Q I show you what's been marked as State's Exhibit 75 and 76, which are copies out of certain page of the records out of the cell phone records. They are numbers that are highlighted in red.
A Red.

Q What -- can you just go through each of those with this jury and tell them what is significant?
A Okay. The first number is the customer number. The customer number in this case is the ones . That's Mr. Broke's cell phone number. That is on February 13th, 2010, at 3:11 p.m. That is actually -- that's actually an incoming call to his phone from Ms. Reese.
Q Okay. And that would have been just after or before this assault?
A That would have been after the assault.
Q Okay. Was that significant?
A It was.
Q As far as -- how was it significant in your investigation?
A It showed deception, number one, and it disproved that the two weren't acquainted.
Q Which was?
A Marcellius Brooks and Robin Reese.
Q Because they were trying to distance themselves?
A They were trying to distance themselves and Mr. Brooks minimized everything he told me, so he wasn't forthcoming with any of his

information. He minimized his participation.
Q Did you have also information from an independent witness, a Mr. Kenneth Archie, about that phone call? Do you recall that?
A I do recall something about that.
Q Was that -- you can't say what he said, what was said, but did he give you information about comments made between Ms. Reese and Mr. Brooks after the second part of the assault. You can't say what he said.
A Yes.
Q And we have tried to find Kenneth Archie for this trial?
A Yes.
Q And we have been unsuccessful?
A That's correct.
Q As far as Kenneth Archie, he would have been friends with Henry Gray, Ms. Reese?
A Yes.
Q As far as the phone calls continuing, what was significant as far as your investigation?
A Well, the one phone call that was very significant was receiving the information that when Ms. Reese left the store she was on the cell phone. At that point it was my belief that

she was contacting someone in regards to what happened to her daughter. I identified that call and it's consistent with the timeline. On February 13th, 2010, at 3:07 p.m. there is a call from her cell phone to her home phone.

Q Who lived at that house?

A. Mr. Gray.

Q Her brother?

A That's where he was at.

Q That phone call, as reflected in those records, how long did that phone call last?

A The duration of that call was eleven seconds.

Q And were there any other phone calls that were significant in this investigation?

A Yes, there is -- as I said, again, both records from Mr. Brooks and Ms. Reese show the calls back and forth to each other.

At 6:43 p.m. there is another call from Ms. Reese back to Marcellius Brooks and that shows a continuation of communication after the events between Brooks and Ms. Reese.

Q I may have missspoken. This was the phone call that was referred to as later. It was later in the afternoon?

A Later in the afternoon.
Q Okay. But there was a phone call between Ms. Reese and where Mr. Gray lived?
A Yes, at 3:07.
Q Is that the timeframe about which this assault occurred?
A That would be the timeframe she was leaving the store, shown on the video on the cell phone.
Q Was there also information from eyewitnesses about Mr. Gray being on the phone about the same timeframe?
A Yes, the witnesses -- there was information that when he first encountered the victim that he told him that he had received a phone call. He was, I assume, pleasant based on what I have heard initially but after he received this phone call he flipped. So now he is the aggressor towards our victim.
Q At this time you took the statement from the 13-year-old where she identified the victim by name?
A First name.
Q So that could have been information that was expressed to her mother or would have been?
A That was important information.

Q What happened next?
A After receiving all the information, cell phone records, the witness' statements, I actually presented my case to the solicitor's office.
Q Okay. And were determinations made about charging additional people besides Marcellius Brooks?
A Yes. The determination made to charge Brooks, Gray and Reese with lynching first.
Q At a later date, I believe, there were additional charges added by the grand jury?
A Yes.
Q Is that unusual to go with initial charges and later add charges?
A No, it was not.
Q And that was done in this case?
A Yes.
Q You also mentioned that you had identified several other people that were involved in the first part of this assault that weren't involved in the second part?
A Yes.
Q Were ultimately determinations made as to whether or not a charge, say, the thirteen year

old or the sixteen year old in this case?
A Yeah, the determination was made not to charge them.
Q And who were the principals as far as your investigation went?
A The principals were Marcellius Brooks, Robin Reese and Henry Gray. Brooks is significant for the first assault, he was a principal for that. He continued the assault by going to Ms. Reese. Ms. Reese was significant as a principal when she left and went down to the bottom section and she met up with Mr. Gray, so those -- that's where I believe the fatal blow happened. So that makes those three the principals in this case.

The information of the others involved, there wasn't -- the information was that they participated but it was superficial type things that you would see in an assault but nothing to rise to the level of homicide.
Q During the course of all this going on, at some point did Marcellius Brooks actually call you from jail?
A He did.
Q Did you have a conversation with him?

A I did.
Q And what was discussed in that conversation with Mr. Brooks?
A Well, part of that conversation was that I -- I don't know if I have this word for word but I told him that he should have been straight with me from the beginning. So I'm, in fact, telling him that he's been lying to me -- and I believed that. There was some confusion about the two charges because I initially charged him with murder. With the solicitor's office, we discussed lynching first so that was our conversation about the two charges and how I believe what happened with the two charges.
Q And at that point, were you talking to him about what could happen?
A Yeah, I told him what I thought could happen.
Q And it's ultimately up to like the grand jury and the solicitor's office to decide what charges are appropriate?
A That's correct.
Q Did he also talk to you about some phone records?
A I did. I did. In fact, with the phone

records, I told him I had the phone records, that's when I told him he should have been honest with me. Because I was basically telling him, 'look, you told me something that I actually disapproved.' So, you know, I told him that on the phone.

Q The people that you interviewed in addition to Angelo or Ricky Boyd in this case, was there a Kenneth Archie that you interviewed?

A Yes, Kenneth Archie was a/k/a Juvie.

Q Juvie?

A. (Affirmative nod).

Q He was interviewed and gave you information?

A. He was interviewed him. I did not interview him.

Q That was done, though?

A Yes, that was done.

Q And finally another man with the nickname of Trigger?

A Yes, Thomas Joseph.

Q Was he also interviewed?

A He was.

Q Again, we did not locate him for this trial?

A Excuse me, I didn't hear that.
Q We haven't located him?
A No, we have not located him. That occurred on the 18th.
Q Ultimately, I belief you actually got arrest warrants in this case for Robin Reese and Henry Gray; is that correct?
A That's correct.
Q Were they arrested on these charges or turned themselves in?
A They both turned themselves in on the 19th of February. They turned themselves in to headquarters. They were not interviewed.
Q Did you also meet with a Malik Akbar in this case?
A I did.
Q And what was the purpose of you trying to meet with him?
A He was the controller of the video system, and I was having trouble getting them to find a person to give me the video so ultimately what we did was obtained a search warrant and take his entire system. We took his system from him. We sent that system to SLED to be processed. When we are ready to return the video equipment,

we called him and he came down to headquarters to sign for it.

Q Were you able to actually observe the video that worked yesterday, on the equipment that could actually play it?

A Yes.

Q What did you observe when you saw the video parts of which weren't we were not able to play yesterday? Hopefully we will get better machinery.

A Yeah, the system is set up on a multiplexer with motion sensor cameras. The problem with that type of system is, as he explained it, when you go in front of one camera it activates and turns on the camera and causes the active camera to "blip." Well, so - you see time delays and that's confusing to start with. But on the multiplex when one camera shuts down, the other camera picks it up. You see the entire motion. It's still in that jerking type motion.

Q When you observed it, were you able to see what happened inside the store?

A Yes.

Q And what were your observations?

A Initially you could see the individuals

come in who we believed were the persons from the first entity. You can see Ms. Gray, she is playing video games. Her daughter is in there. The daughter appears to not be distraught. They were just hanging out. At one point, one of the people came up doing something called the Bloods bounce. The Bloods bounce, if you've never heard of it, is -- there is a another dance called "Sea Walk" or the "Crip Walk", associated with individual gangs. This one person was doing what they call the Bloods bounce, which was shuffling their feet.

Q And as far as Ms. Reese's daughter is she affiliated -- there's been questions about gangs by the defense. Is she affiliated with a gang?

A Our information is she is.

Q Which is?

A GKB.

Q Is that for ---

A Gangster Killer Bloods.

Q Isn't she young to be affiliated with that?

A No.

Q That's not young to be affiliated with that.

A Thirteen?
Q Yes
A No, absolutely not.
Q As far as your conspire investigation to this case as to the first part of the assault and the second part of the assault which actually were by separate people, who all was charged?
A Mr. Brooks, Mr. Gray and Ms. Reese.
Q That was appropriate based on your version?
A That's correct.
Q We have some diagrams of the actual areas I've asked you to review of Gonzales Gardens, which have been marked as State's Exhibit 89 through 92. Have you had an opportunity to look at those?
A I have.
Q Look at them again just to make sure. I have them upside down (arranging charts) and then just the general area overview.
Do these fairly and accurately depict the general area.
A Yes.
They may not have been taken that day but it shows the general areas we've been talking

about?
A It does.
MS. CAMPBELL: We'd offer them into evidence.
THE COURT: Any objection?
MR. FARLEY: No objection.
MR. FARLEY: No objection.
(SO ENTERED AS STATE'S EXHIBITS 89 THRU 92)
MS. CAMPBELL: Your Honor, may the witness step down?
THE COURT: Yes, ma'am.
WITNESS: (Complies)
DIRECT EXAMINATION CONTINUED
BY MS. CAMPBELL:
Q If you can come over on this side so the court reporter can hear you.
A (Complies)
Q I'm going to show you this State's Exhibit 92. Does this show the general area of town where Gonzales Gardens is?
A The general area of Gonzales Gardens, (affirmative nod).
Q And where is Providence Hospital in relation to Gonzales Gardens?
A It's across the street.

Q You just circled the general area. What streets?
A Well, it's Forest Drive, Lion and Washington and McDuffie.
Q And there's been a talk about a Building on McDuffie street, is that shown there?
A Yes.
Q Where is that shown?
A Building is right here.
Q And then the open air market, Cousin's Market and Blue Ocean?
A Blue Ocean.
Q Fish store, where are those located?
A Right here.
Q In that lit area?
A Yes.
Q And the first one I believe is Blue Ocean?
A Blue Ocean and the Cousin's.
Q Okay. And then finally we've heard a lot about the area between F and G, are those reflected on there?
A They are.
Q Where are those reflected, sir?
A It identifies/appears those are buildings F and G.

Q Specifically a closer up view is State's Exhibit 91, does that show a closer up view of Gonzales Gardens?
A Yes it does.
Q Apartment complex?
A Yes.
Q As far as the first assault in your investigation, where did the first part of this assault, where did that take place?
A Right in the white area of building
Q Right there on McDuffie street?
A Yes.
Q As far as the area down where the second part of the assault occurred, where did that occur?
A All the way down here.
Q And that's in the white area between that is that in a sandy area?
A Right, sidewalk.
Q And the sidewalk is there, too?
A Right.
Q Specifically as to that area, State's Exhibit 89, does that show the open air market, as well as the sidewalks?
A F, G, and Forest Drive.

Q Forest Drive would be -- you mean there?
A Right.
Q And this is all in Richland County, is it not?
A It is and in the City of Columbia.
Q And the disk that we put in yesterday which was the video from the country or the open air market, whatever you want to call it, the one that we put was malfunctioning, this is 94.
Q And you reviewed that shortly after this happened?
A Yes.
Q And that fair and accurate depiction of
A Yes.

MS. CAMPBELL: Your Honor, at ths time offer State's Exhibit 94 into evidence.

MR. FARLEY: No objection, Your Honor.

MR. CHAPLIN: No objection.

(SO ENTERED AS STATE'S EXHIBIT 94)

MS. CAMPBELL: That's all that we have.

MR. FARLEY: May we approach?

THE COURT: Sure.

(OFF RECORD BENCH CONFERENCE)

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. FARLEY:

Q Investigator Pegram, ---

A Yes, sir?

Q --- I want today ask you, at the beginning of your testimony, you kind of went into some of the gang affiliations and your job at the FBI and what you were doing in 2006 with Gonzales Gardens and the nature of the people that were there?

A That's correct.

Q And I think taking statements from people through the course of your investigation, especially as its relates to gang activities.

A Yes.

Q Is that correct?

A Yes.

Q You also went on to say that you found that they weren't always forthcoming with you, that they were reluctant to speak with police and it was often different to take statements from them?

A That's correct.

Q That was because of fear of reprisals, or violence that could be done to themselves after

you left from other people in the neighborhood?
A Yes.
Q And is -- given the statements that you do receive out of the people, don't you believe it could be possible that those are just given because they think that's what you want to hear?
A No.
Q So you have a hard time getting statements from people in Gonzales Gardens because of their gang affiliation but when they do give a statement, they are always right.
A Well, no. What I said is I have to weigh credibility where I think -- In this situation, the people actually came forward days after, so for me makes them a little more credible because they're taking the effort to get out of the Gardens and come to the police.
Q So ordinarily you discount most of their statements, but if they're not in the Gardens your believe that their statements are completely accurate?
A No, I'm not going to say that I ever believe a statement is completely accurate.
Q So these statements might not be completely accurate?

A The information I have on this case, I belief that the statements are accurate with the exception of Mr. Brooks. I think he has proven some deception.

Q So by your own admissions you said these people are reluctant to speak with the police and you have a hard time getting accurate information out of them, but in these case these statements are accurate?

A These statements are accurate as to how they were obtained. The fact that these people came forward away from the Gardens, I believe them to be accurate. It's not the same if you walk up to a gang member and try to take a statement in front of everybody. It's not the same thing.

Q I understand. So again let me -- well, I'm sorry, not again but, uh, -- let me go into a little bit of what you testified to as far as these phone records. Actually, before I do that, before I do that, one small thing, you do say that you brought in -- (coughing in courtroom).

A I'm sorry, I couldn't hear your.

Q I'm sorry. I believe you said you brought

in Melquanna S to interview? Otherwise known as Lucy?

A Yes.

Q And I believe it's in your report that you took her statement relating to the assault that she suffered?

A That's correct.

Q And that it was from that that you obtained information that she was assaulted and then the resulting incident and that Marcellius Brooks, known as Bloom, took her to the open air market or the Cousin's Mini Mart?

A That's correct.

Q So at the beginning of the investigation, you were aware that there was an assault against Melquanna S

A She was involved in an altercation, that's correct.

Q But you're not willing to say it was an assault even though the same -- I just -- I mean, according to your report, I think you said that he became aggressive, grabbing her jacket she slapped him in the face, and he knocked her to the ground. Is that not an altercation?

A. Yes.

A Yeah, you know, two people involved at that point.
Q Okay.
A Both involved as were aggressors.
Q Both involved as an aggressor?
A They're both striking each other.
Q Right. But -- well, the prosecution asked you earlier if she was a young girl being involved with the GBK, I think it was?
A No. You can't get into the age of anybody who is a member of the GKB. Number one, there's several ways to get into the GKB.
Q I'm not asking you about that?
A Well, if you're asking about age, I'm trying to explain -- you can't put an age on a member.
Q But she is an age?
A Right, and if I can explain.
Q I'm just saying she is a very young age.
A Well, thirteen is not young for that.

THE COURT: Just ask him questions.

CROSS EXAMINATION CONTINUED

BY MR. FARLEY:

Q Same thing. I think you are repeating your answer. You also -- now I was going to ask you

about the phone records. You were speaking about when the phone calls were made and you said at 3:07 she called -- I'm sorry, Ms. Reese called her home?

A She called her number that she provided as a home number.

Q You have that in front of you?

A Yeah.

Q And then you went on to say it was your belief that Mr. Gray was there?

A Yeah, and that's based on the totality of everything.

Q I'm not sure what you mean.

A Well, when the cell phone records came back, it was days later after they were requested. By that time, we had already determined where Mr. Gray was staying. With the information that we obtained to that point, we were certain that he was at that location where she was calling.

Q How were you certain he was at that location?

A Based on the information we received from people out there.

Q Well, I'm just -- I have a lot of

information, as well. I didn't see anything that located. Well, I can't -- I can't testify to hearsay. One thing that was significant was an anonymous tip that came in through TRU, which is telephone response unit, which is our telephone response unit which identified him out there.

Q Out where?

A In the Gardens.

Q I'm asking about Ms. Reese's apartment, though?

A You're asking about a number that she associated with what she placed as a home number.

Q Right. She called her house?

A Right.

Q But it's an suggestion to say that she was calling Mr. Gray?

A That's right.

Q Okay. So I'm just saying I don't know of anything that puts Mr. Gray at the house at that time. She just called back to her house.

THE COURT: Is that a question? Put it in the form of a question.

CROSS EXAMINATION

BY MR. FARLEY:

Q She just called her home. There is no indication who she was trying to call or see who was at her house?

A Based on the totality of the information, I would say that she was calling Mr. Gray and Mr. Gray answered the phone.

Q But that's an assumption on your part. There is nothing to indicate Mr. Gray answered the telephone or that Mr. Gray was there?

A There again you go back to the statements of the witnesses.

Q Yes, I am. I don't mean -- okay. Again, you say then at 3:11 he ---

A 3:07.

Q No, I'm moving to the next call 3:11?

A Okay.

Q Marcellius Brooks was the next number she dialed?

A That's correct.

Q And you said -- in responding to the solicitor, you said you found that noteworthy?

A Yes, very noteworthy.

Q And you found it -- what were your words?

A I couldn't tell you what my words were

exactly. What's interesting to me is this disproves Mr. Brook's acquaintance with Ms. Reese.

Q Well, just -- I thought if I remember correctly, you said it showed deception?

A On his part, (affirmative nod).

Q On Mr. Brook's part showed deception?

A Without the getting into what he said.

Q Okay, but because she called Mr. Brooks, you thought he was deceptive.

A Yes.

Q I am just asking, it struck odd that Ms. Reese called Marcellius Brooks?

A Given the circumstances I had, yes, it was odd.

Q Given the circumstances that her daughter had just been assaulted and he brought her to the air market?

A No, was odd is the information that I received regarding the acquaintance between Ms. Reese and Mr. Brooks.

Q About okay. I'm just saying Marcellius Brooks brings her daughter, who was just assaulted, to the air market, then she makes a phone call to Marcellius Brooks shortly after

that, you found that odd?
A She made a call to Marcellius Brooks after she had left the air market and gone down to the bottoms with Mr. Gray.
Q Well, that's -- we don't know if she went with Mr. Gray?
A I'm certain she was down there with Mr. Gray.
Q What I said is you don't know for certain that she went to bottom with Mr. Gray?
A I do, based on the information with the witnesses.
Q So it's your belief that she traveled to the bottom with Mr. Gray?
A She traveled to the bottom and was with Mr. Gray at the same -- about the time that she is calling Mr. Brooks, which I felt was odd.
Q You felt that was odd?
A Yes, her contacting Mr. Brooks.
Q The person who just brought her daughter back after she was assaulted.
A Yeah.
Q That was odd?
A That was odd.
Q Okay.

Q And is -- let me just ask some final questions here. Why didn't you charge anyone else other than Ms. Reese, Mr. Gray and Marcellius Brooks. I mean, I know there were a lot of other people involved?

A Well, it goes back to the totality of everything that we. Ultimately when everybody was charged. It came down to who the three principle people were. The other people -- and at that point once the decision was made, I didn't feel that the other people in the assault were significant as far as principals. Yes, they did committed an assault, but they didn't commit an assault that those rose to the level of the death of the victim. So those three were the principals who were the people that I determined to be directly involved with the death of the victim. That's how you've got the three people that we have.

Q But that was the totality of the circumstances that led you to assume that Mr. Gray was at the apartment, as well, same totality of the circumstances in these cases?

A There again, it goes back to the collection of statements and investigation, pathologist

report, everything that was presented here to do the with the case. That's with the decision came in.

Q The decision to charge them, you mean?

A Yeah, to go forward with those three as principals.

Q I see. Okay.

MR. FARLEY: Thank you, sir. Please answer any questions Mr. Chaplin has.

CROSS EXAMINATION

BY MR. CHAPLIN:

Q Investigator Pegram, so you believe that Marcellius Brooks is a liar?

A I believe he minimized everything he told me. I believe some of the things he said was accurate, but other things were not. I can't say that 'yes, he's completely believable or yes, he's a liar.' I know for a fact that he gave misinformation.

Q Okay. And Marcellius Brooks is the first person charged in this matter?

A He was.

Q And then at that time, Macellious gave you the names of his witnesses, correct?

A No, I don't know exactly when he gave me

the names of the witnesses.
Q Okay.
A As far as dates go, but he did provide three names.
Q All right. And at some point you and Mr. Brooks had a conversation which you alluded to in which you said that you wished he had been straight with you?
A Absolutely.
Q And in that conversation, you heard Mr. Brooks say that he asked you -- he asked you whether or not he was going to get this murder charge.
A I don't remember that. I'd have to hear that.
Q Okay.
A I'm not saying that question wasn't asked. I'd have to hear it.
Q And then at that time you told Mr. Brooks that after his witnesses give their statements and the autopsy is done, it's very likely that the solicitor would dismiss his charges?
A No. Your taking it a bit out of context.
Q Okay.
A That conversation occurred after the case.

We did a lot of the things that we needed to do. One thing that was important is the determination from an autopsy as to which event caused his death. That was key. I was a little bit confused at first between the lynching-first and the murder charge, because when I charged him initially I was focusing on the first assault. So then as the case began to change, the other two principals becomes involved, there was fleshing out of what had happened along the way. I think the whole gist of the conversation was, 'Yes, it is up to the solicitor's office to make a determination on how we would go forward. They're the only ones that can make a determination.' I was basically telling him how I felt the solicitor's office, that the solicitor's office felt they had to pursue it.

Q And how did you feel?

A I really didn't know. I mean, I know that we discussed a lynching first, but I know I charged him with murder, so I really wasn't sure how that would go with having a murder charge and a lynching first charge. I just didn't know.

Q So you were waiting on the autopsy report

to determine whether or not the cause of death was the first attack or the second attack?

A Yeah, I had actually made contact with the coroner's office a couple of times just to be sure that we knew what assault was what.

You know, it comes down to -- if you have two assaults, it confusing. You have to determine where the fatal fall occurred. I think ultimately we did that and there again, you've got to understand that, you know, I hope you appreciate that, that he called me. My position is I'm neutral. I'm going to talk to whoever calls me and I'm not going to take sides. I'm going to be as honest with them as I possibly can to an extent.

Q I understand. But Marcellius Brooks is still charged with murder, as well?

A That's not up to me. I don't have anything to do with that. I don't make that decision.

Q So were you ever able to determine whether it was a first attack or a second attack?

A Yes, I feel that was proved today.

Q Pardon?

A I feel I can say it was the first attacfh and the second that were the fatal attacks.

Q And you say that based on ---
A. --- the information provided by the pathologist, the witnesses, the fact that the chair was used.
Q Okay. So the -- just one second. Okay. All right. Now, you indicate on the morning of the 16th these witnesses came to you at the police office?
A That's correct, on the 16th.
Q On the 16th. All right. And they all came together.
A I don't know.
Q They were all interviewed within the hour.
A I really don't know. I didn't conduct the interviews. I designated people to conduct the interviews. So how they got there, I couldn't tell you, but they all were there within close proximity at this time from what I understood.
Q Okay. Would I surprise you if I said that they were all interviewed within an hour's timeframe?
A. No, that wouldn't surprise me.
Q Pardon?
A. No, it would not surprise me.
Q Now, on 217 you met with Mr. Brooks again,

did you not?
A I believe I did.
Q Okay. And at that time, you went even further to ask him was he involved in a second attack on the victim, correct?
A I don't recall if I implicated him or not. I don't remember. Unless you've got something in writing, I don't remember that.
MR. CHAPLIN: Beg the Court's indulgence.
CROSS EXAMINATION CONTINUED
BY MR. FARLEY:
Q Do you a copy of your report?
A I do. Where do you want me to go to? Are you referring to the case notes?
Q I am referring to your report.
MS. CAMPBELL: Objection. Your Honor, may we approach?
THE COURT: I haven't event heard a question. What is the question?
MS. CAMPBELL: That's what I need to object to.
THE COURT: I can't object (sic) until a question is asked.
MS. SAMPSON: Your Honor, we have a

matter of law. May we approach?

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Did you ever ask Mr. Brooks was he involved in a second attack?

A Let me look at this it. You said it was the 17th? What date did you say you found it?

Q At any time. I believe it was the 17th?

A It should have a date on there. Okay. I found it. It says I contacted Dr. Marcus. No. That's discussing the second attack with him.

Okay. Here we go. 1300, that would be on the 17th, Marcellius Brooks returned to headquarters, so I apparently did talk to him.

Q Okay. And you inquired as to whether or not he was involved in a second attack?

A I don't see that in my case notes.

Q Let's do it this way.

A I really think your trying to go somewhere where you don't need to go as far as these questions on these case notes, if I understand what you're trying to get at.

THE COURT: Just try to answer his question.

CROSS EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Did you ever get in touch with Mr. Brooks and ask if he was involved in a second attack on Mr. Mack?

A I did not.

Q Did you ever get information back that suggested maybe he was lying to you?

A Okay, this Calls for my opinion. My opinion was yes, I thought that he was lying but then when I got the cell phone records back and compared those with the witness statements from the lower end, I believe at that point he was not there and not involved in the second attack.

Q So based on his witness's testimony, you don't believe he was involved in the second attack?

A I'm basing that on electronic evidence combined with statements from people at the lower end.

Q Okay.

A And just to clarify that for you, that explains why the call at 3:11 was significant to me.

Q Did you ever tell Marcellius Brooks that if

his story panned out that you would speak to the solicitor about dismissing his murder charge?

A I don't recall that.

Q So you don't know if you did or not?

A I don't recall that but now, you know, it's not unusual for -- and I've done this in the past, to say that I would speak to the solicitor about a case.

Q Right.

A But as far as recommending, no, I can't do that.

Q Okay.

A But now you have to understand I consult with the solicitor's office on every major case we have.

Q Now, did Marcellius tell you he kicked the victim once or twice?

A I believe he did.

Q Do you believe that?

A All I can say is I believe he assaulted the victim. As far as the number of strikes I can't say. I mean, I have information that more strikes came in. I got information that less strikes came in. My position is I believe he struck the victim.

I can say that with confidence.
Q In your review of this entire case file, did you go over the statement of Amber Hardy?
A I did and that was one of the reasons why I'm taking the position I am now. I think she -- her position was that she witness a brutal attack, all right. On the other hand, we have other witnesses that claim that it was a simple, simple assault where they left and he got up and ran away.
Q And who were those witnesses that say it was a simple assault?
A Well, Marcellius Brooks for one.
Q Okay.
A You've got Trigger and you've got Juve who say that it was an assault but was not elevated to the crime of murder.
Q Two people that you can't find?
A Well, you've asked me who said that. Where am I going to find them.
Q Can you locate them?
A Remember now, I'm in the middle, I'm not going to take one person's side based on what another ---
Q I understand. But you're not able to

locate Juve and Trigger?
A I haven't located them, no.
Q Okay. And then you also reviewed Isaac Weathers report, correct.
Q Yes, ma'am -- okay. So the only person who says that it was a simple assault is Marcellius Brooks and Angelo Boyd?
A That's not what I said. I said with the information from Juve, the information form Trigger, the information from Miss Amber, and add -- all the information that we received, it's like I said, none of the statements are exactly same.

So my answer to your question is this: Yes, Marcellius Brooks assaulted the victim. I don't know how many sometimes he struck him.
Q Do you have any reason to doubt what Amber Hardy said?
A No, I do not.
Q You indicated that you saw a video of a Bloods bounce.
A Yes.
Q Okay. And that was over at the?
A That was in the Cousin's Mini Mart while they were over by the poker machines where

Ms. Reese was.

Q And why was that significant?

A Well, it was significant to me simply because I work gangs. That is a Bloods area and that is sign distinguishable to the Bloods.

Q Have you ever been aware of the Bloods forcing people to make statements?

A Absolutely.

Q Beg the Court's indulgence.

MR. CHAPLIN: Okay. That's all I have. Thank you very much.

MS. CAMPBELL: A couple of questions, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q Specifically Mr. Farley asked you questions that we couldn't go into this before, as far as people being afraid of the Bloods and everything. Who is affiliated with Marcellius Brooks, the Blood in this case?

A Henry Gray and Robin Reese.

Q If anyone was to be afraid of anyone in this case, who would they be afraid of?

A Robin Reese and Henry Gray.

Q Specifically they talked about Marcellius

Brooks witnesses. What names have they provided you?

A Trigger, Juve/Juvie, -- and Marcellius Brooks provided Boyd.

Q And as far as Ms. Perry and Ms. Thompson?

A (Affirmative nod), and Kara Chase.

Q And my point is, does Mary Anderson have any affiliation with any of these members?

A No, that's what made her interesting. She's not a part of that.

Q She came forward on her own?

A Yes, she did.

Q Do you know why she came forward?

A She was appalled by what she saw.

THE COURT: Anything further?

MR. CHAPLIN: Yes.

THE COURT: Well, hold on.

MR. CHAPLIN: I'm sorry. Go ahead.

RECROSS EXAMINATION

BY MR. FARLEY:

Q Mr. Pegram, whether or not to my client or anyone else might be a part of the Bloods or not, I have no knowledge of. However, isn't it -- wouldn't it be fair to say that those

other witnesses, even if they were gang affiliated or not, could still fear reprisal also just by being in there?

A It's possible, but as I said before it's a different scenario when you have people there on scene in view of everyone else giving a statement as opposed to someone who comes secretly to a police department days later, voluntarily, and provides information. That would be one way for a person who was in fear for their life to come to the police without being concerned about being attacked by people seeing them in Gonzales Gardens.

Q In your experience, would you say that these people don't really like to speak with the police?

A I would say that.

MR. FARLEY: Thank you, sir.

MR. CHAPLIN: Anything else?

MR. CHAPLIN: Your Honor, may I approach?

THE COURT: For what purpose?

MR. CHAPLIN: A matter of law.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. CHAPLIN:

Q Mr. Pegram, you just testified that you have evidence that my client is a member of the Bloods?

A I have information that they're members of the Bloods.

Q What information?

A It's hearsay information.

MR. CHAPLIN: Your Honor, Motion to strike. It's extremely prejudicial and not based on anything that's admissible.

THE COURT: Well, you raised the issue. You've brought it up yesterday. Overruled. All right, sir. You've may come down.

WITNESS: Thank you, sir.

THE COURT: Thank you very much.

(WITNESS STEPS DOWN)

THE COURT: All right. Ladies and gentlemen of the jury, we're going to take our lunch break at this time. You're lunch should be here. We're going to reconvene at 2:30. Just -- you can eat here, you can take it with you. Just be back in the jury room at 2:30. You're welcome to stay. The jury room Lexington County is secure, but if you want to eat and

then go for a walk, it's up to you. All right. Thank you very much. Don't discuss the case among yourself when is you return to the jury room. Thank you very much.

(JURY OUT @ 1:28 p.m.)

THE COURT: All right. Stand at-ease until 2:30.

MR. CHAPLIN: Thank you very much.

(LUNCH RECESS)

(NOTE: Blair hearing in unrelated case.)

(DEFENDANTS PRESENT)

MR. CHAPLIN: Your Honor, may we approach.

THE COURT: I don't know why. There are no jurors.

MR. CHAPLIN: Well, I was just trying to -- Your Honor, we have a scheduling issue wherein I have a pathologist, Mr. Farley has a pathologist. They both need to testify so that they can leave today. We need to go out of order in order to that.

THE COURT: You can go out of order. I don't have any problem with that. I mean, there's no -- there's no order.

MR. CHAPLIN: What I am saying is

that I'm not -- that is not my complete case. I am just going to do and then give us a following chance to put his up.

THE COURT: Any objection.

MS. CAMPBELL: The only thing I have is confusing to the jury as to who is putting up what defense.

THE COURT: Well, I don't know. How many more witnesses does the State have?

MS. CAMPBELL: None.

THE COURT: The State going to rest?

MS. CAMPBELL: Yes, sir.

THE COURT: At least we -- I thought your doctor is from Charleston.

MR. FARLEY: She is, Your Honor.

THE COURT: Is she not available tomorrow?

MR. FARLEY: I don't know. I assumed that we would be calling her today, so I don't know about her availability tomorrow.

THE COURT: Well, y'all figure out how you want to organize your case. It's up to you.

MR. FARLEY: As far as I go first, I don't mind Mr. Chaplin calls his doctor first.

MS. CAMPBELL: Judge, the only other

thing I have is a question about out of order for cross-examination.

THE COURT: What's the question?

MS. CAMPBELL: Say Farley puts up, then do I go and then he goes. I assume he has the right ---

THE COURT: I would assume you.

MR. FARLEY: I don't have no problem with Ms. Campbell going now.

THE COURT: By consent.

MR. FARLEY: What would make Ms. Campbell happy?

MS. CAMPBELL: I'm just asking for guidance.

THE COURT: All right. Who is the first witness?

MR. FARLEY: Dr. Adel Shaker.

THE COURT: All right.

THE COURT: You may cross-examine Dr. -- well, why don't you cross-examine his doctor. Then you cross-examine his there.

MS. CAMPBELL: That's. That's all I want to know.

THE COURT: Same procedure with Mr. Farley's doctor, Mr. Chaplin to go first,

then you'll go.

MS. CAMPBELL: That's fine, Your Honor. Are we putting up both of those this afternoon? I mean, is he going to do his case then.

THE COURT: No, he is asking that it be taken out of order.

MS. CAMPBELL: You will just tell the jury that?

THE COURT: Yes.

THE COURT: All right. Is she available now?

MR. FARLEY: Beg your pardon?

THE COURT: Is she available now?

MR. FARLEY: My doctor, yes, she is in the hall.

THE COURT: Just hold it because I assume somebody is going to make a motion.

MS. CAMPBELL: There should be motions, yes.

THE COURT: All right. The State has advised the court that they plan to rest. Now, I can either bring the jury in, let them announce it and sent the jury back out -- which is just counterproductive. I'll hear any Motions now.

MR. FARLEY: Since the State has rested, Your Honor, for Ms. Reese, we would like to make a directed verdict motion.

And then -- we believe that the prosecution has failed to prove the essential elements of their case, and we would ask that you rule on that motion as well we would like to make a motion to preserve and renew all objections made up to this point.

THE COURT: All right. Does the State have a position on Ms. Reese's motion.

MS. CAMPBELL: Respectfully, Your Honor, I think the light most favorable to the State is we have proven each of these elements in each of this indictments. Respectfully I ask that you deny the Motion.

THE COURT: With regard to Ms. Reese's motion for a directed verdict, I feel the evidence goes beyond that of mere conjecture or suspicious, that there is evidence, either direct or circumstantial or some combination of both, which reasonably tends to prove the guilt of the defendant or from which the guilt of the defendant might be logically and reasonably deduced if that

evidence is taken in the light most favorable to the State, so I must respectfully deny your Motion for a directed verdict. Mr. Chaplin?

MR. CHAPLIN: Thank you very much, Your Honor. On behalf of Mr. Henry Gray, we would make a Motion for a directed verdict, Your Honor, based on the same logic, that the State has failed to prove beyond a reasonable doubt each element of the offenses of murder and lynching. We believe that there is -- we would respectfully ask that a directed verdict be granted.

We also would like to renew all the previously-made objections to preserve them for the record.

THE COURT: All right. As to the Motion for Mr. Gray for directed verdicts, I feel that the evidence goes beyond that of mere suspicious or conjecture which reasonably tends to prove guilt of the defendant or from which that guilt might be logically and reasonably deduced if that evidence is taken in the light most favorable to the state, so I will must respectfully deny your Motion for a director verdict on behalf of Mr. Gray.

All right. Ready for the jury?

MR. FARLEY: Ready for the jury, Your Honor.

MR. FARLEY: Yes, sir.

THE COURT: Why don't you go ahead and call your next witness.

MR. FARLEY: Thank you very much, Your Honor.

THE COURT: Oh, I need to advise -- let me talk to your client, Mr. Farley. Have your client stand.

MS. REESE: (Standing).

THE COURT: Ms. Reese, at this time I am going to explain certain of your rights to you. If you do not understand anything I say, please let me know. If you want me to explain anything in detail, please let me know. Do you understand?

DEFENDANT REESE: Right. Yes, sir.

THE COURT: We have now reached the stage of the trial where you present your defense. You have the right to claim the protections given to you by the 5th Amendment to the Constitution of the United States. That amendment provides in no part no person shall be

compelled in any criminal case to be a witness against himself or herself. This means that you cannot be required to testify in this case. You have a right to testify on your own behalf. However, no one can make you testify. This is a personal right. No one can waive this right except you. Do you understand.

DEFENDANT REESE: Right. Yes, sir.

THE COURT: If you decide to testify, you will be governed by the same rules that govern other witnesses. You may be examined or cross-examined on any relevant issue in this case. In addition, if you have any convictions involving dishonest or false statement or for crimes punishable by imprison for more than one year and this court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, this decision on your part must be freely and voluntarily made with the knowledge and protections given to you by the 5th Amendments of the Constitution and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they are not to give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you whatsoever because you did not testify. It's left entirely up to you whether or not you testify.

You may talk with your attorney, your family or friends or anyone else, but the final decision will be left entirely up to you. Do you understand what I've explained to you?

DEFENDANT REESE: Yes, sir.

THE COURT: Do you have any questions about what I have explained to you?

DEFENDANT REESE: No, sir.

THE COURT: Have you discussed with your lawyer whether you should testify or not.

DEFENDANT REESE: Yes.

THE COURT: All right. Well, at this stage of the trial, Ms. Reese, since the order of testimony is going to go a little out of order, I'm not going to ask you whether you choose to testify at this time. I just need to advice you of your rights with regard to testifying. Do you understand?

DEFENDANT REESE: Yes, sir.

THE COURT: All right. Thank you very much, ma'am.

Mr. Gray, ---

DEFENDANT GRAY: (Standing)

THE COURT: --- at this time, I'm going to explain to you certain of your rights. If you to not understand anything I say, please let me know. If you want me to explain anything in more detail, please let me know. Do you understand?

DEFENDANT GRAY: Yes, sir.

THE COURT: We have now reached the stage of the trial where you may present your defense. You have the right to claim the protection given to you by 5th Amendment of the Constitution of the United States. This amendment states in part no person shall be compelled in any criminal case to be a witness against himself or herself. This means you cannot be required to testify in this case. You have the right to testify on your own behalf. However no one can make you testify. It's a personal right. One can waive that right except you.

If you decide to testify, you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case. In addition if up have any convictions involving dishonesty or false statement or crimes punishable by imprisonment for more than one year and this court determines that the probative value of admitting this evidence outweighs the prejudicial effect to you, the Solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, the decision on your part must be freely, voluntarily, intelligent made with knowledge of the protections given to you by the Fifth Amendment to the Constitution and the consequences of your decision to testify.

If you decide not to testify, I will tell the jury that they cannot give the fact that you do not testify any consideration whatsoever. That there is to be absolutely no prejudice to you because you did not testify. It's left entirely up to you whether or not you wish to testify. You may talk with your

attorney, your family and friends, or anyone else but the final decision will be left entirely up to you.

Do you understand what I've explained to you?

DEFENDANT GRAY: Yes, sir.

THE COURT: Do you have any questions about what I have explained to you?

DEFENDANT GRAY: No, sir.

THE COURT: Have you discussed with your lawyer whether you should testify or not testify?

DEFENDANT GRAY: Yeah.

THE COURT: I'm not going to ask you any further questions at this time. You may be seated.

DEFENDANT GRAY: (Complies).

THE COURT: Ready for the jury?

MS. CAMPBELL: The State is ready.

THE COURT: Defendant ready for the jury?

MR. FARLEY: Yes, Your Honor.

MR. CHAPLIN: Yes, sir.

THE COURT: Bring the jury, please.

(JURY IN @ 2:46 P.M.)

BAILIFF: All jurors are present, Your Honor.

THE COURT: All right. Thank you very much. Ms. Campbell.

MS. CAMPBELL: May it please the Court, the State would rest at this time.

THE COURT: All right. That's it ladies and gentlemen. The State has rested their case. As I indicated to you at the time of the beginning of this trial, the defense has the opportunity to present a defense to you but need not do so. They can rest on their position that the State has failed to prove their case.

I'm not sure exactly what's going to take place right now so I'll call on counsel to inform me, does the defense wish to present a defense?

MR. FARLEY: Yes.

THE COURT: All right. Mr. Chaplin?

MR. CHAPLIN: At this time the defense for Mr. Henry Gray calls Dr. Adel Shaker.

(WITNESS TAKES STAND)

THE COURT: All right.

ADEL SHAKER, being duly sworn to tell

the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION:

BY MR. CHAPLIN:

Q Good afternoon, Dr. Shaker?

A Good afternoon to you.

Q For the record, would you spell your name.

A My name is Adel Shaker.

Q And Dr. Shaker, what is your business or profession?

A I'm a medical examiner, forensics pathologist.

Q Okay. And do you have a specialty within the field of medicine?

A Yes.

Q Okay. And what is that specialty?

A I specialize in pathologist -- in anatomic pathologist and subspecialize in forensics pathologist.

Q And where do you practice your profession?

A At the moment I'm an independent medical examiner.

Q And where do you live?

A In Alabama.

Q Would you please explain to the jury your

educational background in preparation for becoming a forensics pathologist?

MS. CAMPBELL: I hate to interrupt but is there any way you can move so I can see him. Either way is fine. I apologize.

MR. CHAPLIN: No problem.

DIRECT EXAMINATION CONTINUED

Q Would you like for me to restate?

A I got my medical degree and law degree. I have an M.D. and an L.L.D. as well as a J.D. degree from overseas. When I came to the United States, in the '50s, I had to repeat everything -- from the individual, go through the residency and fellowship and studying for my board exams as a requirement of the American Board of Pathologist to be a board-certified forensic pathologist. I did that.

Q So does that mean you earned a degree as a medical doctor?

A Yes.

Q Please state what you did in the medical field after you've earned the degree?

A I've been all my life involved in the branch of forensics pathologist, for approximately twenty-seven plus years, on a

national and international level.
Q Did you attend law school?
A Yes.
Q Where?
A That was overseas in Egypt.
Q Okay. And what is forensics pathologist?
A It's simplest definition, forensics pathology deals with the cause and manner of death.
Q And how does being a forensics pathologist different from being an ordinary pathologist?
A An ordinary pathologist is a general one who can just be employed by the hospital, do exploratory pathology, tests. But a forensic pathologist is specialized to determine the cause and manner of death. We have to attend more training in that subspecialty.
Q Okay. Do you have any medical specialties certifications from any boards?
A Yes. In anatomic pathology and forensics pathology.
Q Okay. And what were those requirements to become certified?
A You have to finish a residency program and a fellowship program in that subspecialty and

you have to sit for two different exams to be qualified as a diplomat of the American Board of Pathology.

Q Dr. Shaker, do you have any teaching activity?

A I used to teach when I was working for the State Law Enforcement Division, staff and medical students.

Q Are you licensed to practice medicine?

A Yes, I am.

Q In what states?

A I'm licensed to practice medicine in Alabama, Mississippi, Texas, Oklahoma, New Jersey, New York, Virginia, Pennsylvania and California.

Q Do you belong to any medical societies?

A Yes. I'm a Fellow of the College of American Pathologists, a Fellow of the National Association of Medical Examiners. I'm a Fellow of the American society of Chemical Pathologists. I'm a member of the American Medical Association, associate member of the American academy of Forensics Scientists, and many other societies.

Q Dr. Shaker, have you performed and

witnessed any autopsies in your career?
A Yes, on a regular basis I do that.
Q How many autopsies have you performed on your career?
A In my career I performed over eight thousand-plus cases.
Q Have you ever testified in legal proceedings?
A On a regular basis, yes.
Q And what kind of proceedings have you testified in?
A Criminal and civil, both.
Q How often have you testified for the Government and how many times have you testified for a defendant being prosecuted by the government?
A Because of my former job as medical examiner for the government, I used to take the stand for the District. Now, when I started recently to be in the business of medical examiner, this is one of the few cases to take the defense side.
Q Do you also evaluate cases for attorneys?
A Yes, I do.
Q What amount of time would you estimate you

spend in medical legal practice as opposed to medical examiner's activities?

A It was like seventy to fifty percent approximately.

Q When you perform an autopsy, how do you decide what to do?

A Basically we receive the deceased.

We take photographs of the deceased.

We have to make a label with a ruler and put the name of the deceased, the date of the autopsy and the medical examiner's number and put that label on the body of deceased.

After that we have to examine externally the deceased.

We may need to do some x-rays or blood tests. If so, we do that prior to starting performing the autopsy, which is basically opening the three cavities: the cranial cavity, chest cavity and the abdominal cavity.

Then I compose my report and I submit.

Q Thank you. Dr. Shaker, what were you asked to do in this case?

A I was asked to review the investigative report, police report, autopsy report. In fact, I reviewed the autopsy report but all the

medical reports pertaining to the deceased, that led to the deceased.

Q And what were your findings?

A My finding was consistent with the final cause of death written in the autopsy report, blunt force trauma to the head was the main cause of death.

MR. CHAPLIN: Your Honor, at this time I present Dr. Adel Shaker as an expert in the area of forensic pathologist?

THE COURT: Any *voir dire* or objection?

MS. CAMPBELL: No *voir dire*.

MR. FARLEY: No objection or *voir dire*.

THE COURT : You may proceed.

DIRECT EXAMINATION CONTINUED

BY MR. CHAPLIN:

Q Dr. Shaker, as a forensics pathologist, have you ever done any work with DNA.

A Sometimes, yes, I do that in one of the high profile cases where I work for the American government and for the federal government overseas. It was for the former regime of Saddam Hussain, where I did pull the mass graves for purposes of identification and reaching the

cause and manner of death.

Q So Dr. Shaker, what is transferable DNA?

A In its simplest definition you can get, contact somebody, Person A and Person B, they can shake hands. So if Person A is a good shedder -- and what I mean by that is the flaking cells from his hand -- he can transfer his DNA to Person B.

Similarly, if Person B touches another object, he can transfer the DNA for Person A to Object C.

Q So?

A Just simple definition, so this is called a primary transference. A more and beyond complicated theory is called secondary transference, but it's beyond the scope of this honorable court.

Q So if I shook your hand and then touched this podium, is it possible your DNA might end you mean on this?

A If I am a good shedder.

Q I am not quite sure what that word is.

A Shedder?

Q Would you please spell that word?

A Shedder, s-h-e-d-d-e-r.

Q Thank you very much. Now, when you evaluated the records in this case, did you review any toxicology reports?

A Yes, I did.

Q Okay. Tell us about that.

A I reviewed the toxicology report and I found that the deceased had two medications in his blood. One is a legal drug which is called benzodiazpam, which is similar to Lorazepam or Ativan, some type of antianxiety medication, which people use to sleep at night.

The other one is marijuana, which we call THC, tetrahydrocannabinol, which is an illegal medication -- drug in South Carolina. It is not a medication.

A Yes.

Q Can you tell approximately what timeframe the marijuana was taken in?

A This is an active ingredient which means it was recently smoked to still be in his bloodstream.

Q So you mentioned that there was marijuana and there's ---

A. Ativan.

Q Ativan -- or another word is Lorazepam?

A. Yes.
Q So what's the medical effect of combining those two drugs at the same time in your system?
A Each drug has a central nervous system depressant effect, so basically the first one, we'd call it a "downer" on the street, or a "nerve pill." It will depress the central nervous system.

The second one, of course we are all aware of, marijuana of course can be a depressant on the central nervous system.

Combined, it would increase the depression of the central nervous system, especially on the respiratory center and heart center.
Q Would combining these two drugs or maybe even just one of them alone make you unable on your feet?
A It can.
Q It can.
A (Affirmative nod).
Q Tell us how?
A I mean, losing the balance.
Q Now, did you do the autopsy in this particular case?
A No, I did not.

Q Okay. But you did review the entire file in order to come here today and testify?
A Correct.
Q Why don't you go through for the jury the records that you reviewed to prepare for today's testimony?
A I have gone through the medical records, the emergency room, the C.T. and x-rays performed on the deceased and all the medical records at the operative theater performed to him and the investigative report including the police report and the three autopsy reports, the provisional one, the first one and the amended one, and all the autopsy photographs.
Q Speaking of the autopsy photographs, when you reviewed those photographs did anything strike you as out of the place?
A Yes. It's one thing only, which is not according to the manual of procedures or the standard of procedures set by the National Association of Medical Examiners. We have to have a label, a ruler, which at first will identify any injury in terms of measurements. Number two, identify the deceased in the form of his name, date of the autopsy, the case number,

so there was no ruler. So there -- this pertains to the deceased, but I could not really tell that it pertained to that autopsy case. That's the only exception. Otherwise there are beautiful pictures and good ones.

Q Now, the report mentioned closed head trauma. Tell us about that?

A Simply closed head trauma, if somebody falls down or is involved in a motor vehicle accident or falls from a high place or is hit by any blunt force object like a baseball bat or anything like that, it leads to injury inside the cranial cavity without exposing the internally cavity to that vehicle. What I mean is that there is no extensive lacerations or wounds. There is no depressed fractures or comminuted smashing of the skull or anything like that. It was contained inside the cranial cavity. That is what is meant by closed blunt force trauma to the head.

Q Now, I may get you to go back over that a little bit more in a minute but let's try to move on. Now, as far as the blunt force trauma, based on the reports that you received, can you tell what caused that trauma?

A I cannot say a specific object because on here to present to the honorable jury there are no facts nor fiction. I am not doing a C.S.I. like on TV, I cannot say what was the cause of that. It could be anything.

Blunt force injury means somebody is knocked down, punched, kicked, stomped on, in a motor vehicle accident, fall from a height, -- there are lots of possibilities.

Q So are you saying that the appropriate standard is to review the facts only?

A Yes.

Q On something like that?

A I'm a fact finder, so I have to review that and say it's a blunt force trauma, yes.

Q Did you'll notice if there are any abrasions in the area?

A Yes.

Q Tell us about that?

A There were very small abrasions on the front area of the deceased. That means he was involved in an altercation with somebody and some also lacerations upon on the left upper frontal scalp with some contusions on the right side.

Q Could you tell what caused those abrasions?
A Again, abrasions would be like finger means or stretches against the surface of a concrete or prior surface and bruise and lacerations due to blunt force trauma to the head.
Q Okay. Now, did you notice any evidence in your examination of this report of something -- of injuries consistent with something like a metal chair?
A I did not see that, simply because if a metal chair was used to cause this blunt force trauma it would have led to extensive lacerations of the scalp and depressed fracture of the cranial cavity, smashing it like a bowel or extensive lacerations inside the cranial cavity to that area. I did not note anything, and the C.T. and x-ray did not show any lacerations to the brain, extensive lacerations to the scalp or multiple commuted fracture of the cranial cavity.
Q And how certain are you of that analysis?
A My diagnosis and evaluation is beyond any reasonable doubt.
Q Thank you. Now, you said that -- I think when you reviewed the report, did you notice

anything as far as injuries to the back of the victim's head?

A There was contusions on both sides.

Q On the sides?

A On the sides, yeah.

Q Okay. So if someone fell on their side, that might cause the contusion?

A It can be due to any blunt force, yes.

Q Any blunt force?

A Yes.

Q Now, you also noted -- did you notice any small linear fractures?

A Yes, that was located at the right post posterior parietal skull bone, the small bone.

Q So when you reviewed these photos, you notice most of the injuries were in this area?

A On the side, yes.

Q Could kicking cause those injuries?

A Yes.

Q Could being stomped cause those injuries?

A Yes.

Q Dr. Shaker, is it possible for someone -- and I'm going to walk up here to the board. There's some writing on it already -- but for someone to have been injured here and actually

make their way down here and actually die as a result of those injuries?

A It could have happened in one situation. We call it lucid interval, which might lead the doctor who performed the autopsy mentioned in his autopsy report and the other medical doctor in the medical records mentioned it.

What I mean, by loose interval, it is defined between an attack that can happen to a certain person and he collapses. During that time, the deceased (sic) can walk, can talk, can do regular activities for a few minutes, up to a max of half an hour to one hour. Lucid interval.

During that time, the lucid interval, the blood would have accumulated on the surface of the brain. Because the cranial cavity is a limited area, it cannot expand, the blood which is accumulating on the surface of the brain will press on the brain stem, damaging that vital symptom on the brain leading to what we call herniation.

That happened to the deceased. He had herniation leading to stopping of the respiratory and cardiac activity.

Q And you referred to that as a lucid interval?
A Yes.
Q And you said that that terminology was used in the reports that you reviewed, as well?
A In both the autopsy report and in the medical records that he was lucid -- that he was in a lucid interval, yes.
Q Now, what would happen at the end of that lucid interval?
A Simply anybody who is experiencing bleeding inside that cranial cavity, because of the restricted space inside the cranial cavity, the blood would damage the vital cells from brain, also for lung and heart. Eventually it would lead to the demise of that individual.
Q Earlier you'll said marijuana and Lorazepam could affect your balance. Could the end portion of a lucid interval, could someone be unsteady on their feed?
A Of course, they could be unsteady because there is bleeding inside the cranial cavity.
Q Your testimony is, after reviewing the reports, that there is no way for you to determine when these different injuries

occurred; is that true?
A The sequence of injuries, I cannot -- with reasonable medical certainty, I cannot say that.
Q You can guess at it?
A I can say -- you're asking me a question about using a metal chair, and I said beyond a reasonable doubt it never happened. It would have lead to other injuries, so this is not consistent with that one.

But other forms of beating, kicking, stomping and falling down, it's consistent with this one.
Q When you do these autopsies and different examinations, and I think you've said you've done over eight -- eight hundred?
A Eight thousand ---
Q Eight thousand. Have you noted a danger in relying on police reports?
A I rely number one, upon my facts, my findings, what I see with my eyes.

Then I review the medical records because those are the witnesses who should not lie. I'm not biased to doctors, but medical records should not lie and I have seen those.

But relying upon other witnesses, if they

have a hidden agenda, it can compromise my approach to rely on such witness.

Q So if I had asked you to come here and testify that the only way but for a certain attack he would have died, would you have done that?

A No. That's fiction, not facts. I cannot say which attack led to his demise.

Q Would you have problems doing that ethically, as well?

A Of course.

Q But you did point out that you're self-employed, right?

A Yes.

Q But -- now, I did retain your services to come here today and provide this report?

A Correct.

Q But had you ever seen me prior to today? I mean, prior to last night, had you ever seen me?

A No.

Q Okay. And prior to maybe a month ago, had you ever spoken to me?

A No.

Q And you may not ever talk to me again after today?

A Yes.
Q So it's your goal to be as objective as possible when you do these reports?
A This is the role of any physician or pathologist.
Q So let's talk about possible ways that unfortunately the victim in this case could have fallen or lost balance or maybe hit the ground. He could have lost his balance and hit his head at that time?
A Yeah.
Q He could have fallen as a result of a lucid interval?
A Yes.
Q Somebody that has sustained numerous kicks and different injuries to their head could eventually pass out and fall?
A Yes.
Q Okay. He could have -- these injuries could have been caused by the metal chair?
A Not by a metal chair, but punching is acceptable because the medical record shows, the C.T. shows, fracture of the nasal bones consistent with somebody punching him here. He has hematoma, collection of blood in this area,

so the fracture of the nasal bones is consistent with somebody punching him, yes.

Q And he also could have fallen as a result of the mixture of the Lorazepam and the marijuana?

A Combined effect.

Q And you also said he could have fallen because somebody punched him?

A Yes.

Q Okay. But you don't know how this man fell?

A No.

Q But you just list maybe like maybe five different -- well, you ruled out the chair?

A Yes.

Q You listed like five different reasons why that might be possible?

A Correct.

Q To include him being punched?

A Yes, kicked, punched, stomped.

Q Now, did you see anything in your examination to suggest that the victim received a single attack? I mean, can you make that statement?

A No, I cannot make that statement.

Q Can you say that the victim sustained two attacks?
A I can say multiple people were beating him, but I cannot say one or two.
Q And you say that based on the different types of lacerations and contusions and hematomas and everything else that you see?
A Correct.
Q And that could have all been done by one person, too, though; right?
A Could be, yes.
Q Okay. And again if I were to ask you to give me a "but for" analysis in this case, "but for the second attack", Kenneth Mack wouldn't have died; but for the first attack, the second attack wouldn't have eventually occurred. Is that your place to do that?
A No, I cannot say which one. If there is a second, third or only first, it is impossible scientifically to say that.
Q And you're just being objective?
A Yes.
MR. CHAPLIN: Okay. All right. Answer any questions that counsel for the State or Ms. Gray (sic) might have, and I think you'd

like to go first.

THE COURT: Mr. Farley.

DIRECT EXAMINATION

BY MR. FARLEY:

Q Mr. Shaker, I'll be brief. I just have a few followup questions I'd like to ask you. In your opinion, do you believe that this autopsy was thorough?

A I'm sorry?

Q Was this a thoroughly done autopsy?

A I think it was a hospital autopsy, not a forensics one.

Q I'm sorry, you said hospital. Yeah.

A Done by a general pathologist.

Q And?

A Not a forensics pathologist.

Q Can you elaborate on what the difference is between a hospital and a forensics?

A Yes, there is a great difference. The forensics one would be a detailed one. Even when they approached me for vital organs to be harvested in a homicide case, I object. I said 'No, don't touch him. Do not retrieve eyes. Do not retrieve heart, or anything' because this might make a great difference.

Q Do you think those internal organs and things that were taken away by life source would have been important to your analysis or diagnosis?
A Yes.
Q So just to be clear, this in your opinion was a hospital autopsy and not a ---
A --- forensic.
Q A forensic?
A It is not a forensic. It's a hospital.
Q And you define a hospital autopsy as being less detailed?
A Not only less detailed, it does not address the whole issue. It's a homicide case. No one can deny that, so a forensics pathologist would be in a better position to handle this matter.
Q So this would be more like a run-of-the-mill autopsy that could have been done on anyone no matter what the cause of death?
A It's different from our manual of operation's standard of procedures for medical examiners and forensics pathologists.
Q But still your conclusion, if I remember your previous testimony correctly, was that it

was -- that the cause of death was a result of the a blunt force trauma?

A There is no doubt, blunt force.

Q But you're not here to speculate on how that occurred necessarily.

A No.

Q You said that -- well, let me ask you this. In your field, is it fair to say a laceration can be explained to the jury as like a tear?

A Yes.

Q A tear in the skin?

A A tear in the skin and the subcutaneous tissue. The skin contains seven layers, so it tears through all of the those layers.

Q So -- and, of course, that's different than a bruise which has black and blue?

A Yes.

Q And it's different than an incision?

A Yes, correct.

Q Because in an incision it's cut precisely. In a laceration, the skin is actually torn?

A Exactly, yes.

Q Okay. And I remember from your previous testimony, you were saying in your opinion if a chair had been used, then -- and you -- it's

your opinion that that chair could have caused a great deal of lacerations on the head and neck; is that what you testified to?

A Yes, not only lacerations. Lacerations and the type of the fractures would be specific. We call it comminuted, like when you smash a ping-pong ball or depress the fracture. You depress that fracture of the area and it creates a brain laceration. There was no brain lacerations. No extensive lacerations to substantiate or say this was consistent with beating with a metal chair.

Q I guess you anticipated my next series of questions, was there was no lacerations indicative or that nor any depressions that would have put lacerations on brain?

A Correct.

Q All right. And one last topic I wanted to cover. You were speaking of DNA -- transferable DNA or DNA transference.

A. Right.

Q The term that I guess is a term of art in your field is if a person is a good shedder?

A Yes.

Q They shed DNA?

A Yes.
Q Is it fair to say, then that different people shed in different manners?
A Exactly and different tissues -- it's beyond the jurisdiction of this honorable court to go into that, but it is transferable, yes.
Q Was there any way to determine from the information that you were provided what kind of DNA shedder that a patient may have been?
A It would be epithelial cells from the hands, or -- he could have transferred some of his superficial skin to other objects.
Q But what I am saying is, is there any way to determine from the information that you had what level of shedder he may have been?
I mean, would you be able to determine from your information whether he had a high rate of shedding or a low rate?
A. No, no, with shedding, it is a positive or negative. It happens. It happened. It happens on a regular basis.
Q All right. And due to that shedding, it would have been possible to get some DNA transfer to another object?
A Correct.

MR. FARLEY: Thank you Dr. Shaker. Please answer any question it is State may have.

THE COURT: Ms. Campbell.

(OFF RECORD BENCH CONFERENCE)

THE COURT: Ladies and gentlemen, just stay seated for a minute. I have an important phone call. Shouldn't take me just a minute.

(PROCEEDINGS PAUSED - JURY REMAINED IN BOX)

THE COURT: Thank you. Solicitor.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Dr. Shaker, when were you first contacted on this case.

A That was November last year.

Q November of last year, so that was approximately three months ago?

A Yes.

Q And who were you contacted by?

A I was contacted by TAMPA, Technical Advisor Group for Persons of America.

Q And were they able to find you through the internet, as you advertise as an expert witness?

A Yes, I do.

Q So anyone can go on the internet, get your name and you will render them services; is that

correct?
A No, that's not correct. I evaluate the case and it must have merit.
Q Merit?
A Yes.
Q Is that what you do for a living?
A For the last couple of months.
Q Last couple of months -- since I believe the first of December or so?
A Yes.
Q So in order for you to make a living, you have to give opinions and basically charge for it because that's how it works?
A I charge for my time.
Q For your time, yes, sir, and I don't mean to -- and in this case, how much time have you put insofar in reviewing these records from this medical examiner in South Carolina?
A Approximately fifteen hours.
Q Approximately fifteen hours?
A Yeah, approximately.
Q And how much do you charge an hour for that?
A Approximately $200 to $250.
Q Two hundred ($200) to two fifty ($250) an

hour?
A Yeah.
Q That's just the review. You put in fifteen hours, correct?
A Yes.
Q You mentioned you reviewed police reports?
A Yes.
Q Medical records?
A Yes.
Q The autopsies pictures?
A Yes.
Q Autopsies themselves?
A Yes.
Q Anything else I left out?
A Yes, toxicology.
Q Toxicology?
A Yes. DNA.
Q Everything in this file and you were able to review all of that in just fifteen hours and come to these conclusions?
A Yes.
Q And do you get paid for your time when you get here?
A My air ticket and car rental.
Q And you get paid for your time?

A Yes.
Q So how much more time are you going to get paid for in this case?
A I have not put my hours yet.
Q So the fifteen hours is just what you did back home?
A Yes.
Q And is that's at probably $250 an hour?
A Yes.
Q Then, of course, the entire time it takes you to come here from Alabama?
A No, just my time in the court.
Q Your time in the court.
Q So all your time today and any time you spent preparing for that; is that fair?
A No, only or today and the fifteen hours including preparation for the case.
Q And in that fifteen hours you're able to come to conclusions but, in fairness, you get paid more if you come to court?
A Not more.
Q You get paid for your time to come to court, don't you?
A For the time I will spend in the court and as a physician, I ---

Q I understand, but you don't get paid if you don't put the time in. Is that fair to say?
A Correct.
Q Okay. And in reviewing all this, has any -- you were talking about professionalism and medical doctors and what you do?
A Yes.
Q I didn't get a copy of your report?
A I did not compose a report.
Q So there is no report reflecting your findings that are pretty crucial in this chase because cause of death is an issue?
A It is not an issue. I agreed with my colleague that the cause of death was blunt force trauma, so I did not disagree with him to put something in writing.
Q So you didn't find a need because you agreed with everything in his findings?
A Yes.
Q And that's in reviewing the autopsy and everything else?
A Correct.
Q And you have testified as an expert in anatomic pathology?
A Anatomic and forensic.

Q And forensic -- I was getting to that.
A Yes.
Q And then you've also testified about toxicology and the effect that has on people; is that correct?
A Yes.
Q That is within your purview, is that right?
A Yes.
Q You've also testified about DNA?
A Correct.
Q That's also within your purview?
A Yes.
Q And in those different areas, taking them one although a time, you came up and talked to this jury about transferred DNA. Say if someone shakes someone's hand and then go and touch another object, that it could be transferred that way?
A That's correct.
Q Say if someone were hitting somebody in the face over and over and they went and grabbed that chair, would that DNA be transferred?
A Yes.
Q In the same way it would in a handshake on touch DNA?

A Correct.
Q And you're aware of the presumptive tests for the presence of the blood?
A Yes, it was negative in this case.
Q That's your ---
A It was negative in this case. I've gone everywhere in your file.
Q Did you read the presumptive test that was done by the man who collected the swabs?
A It was negative.
Q So you don't know anything about any BlueStar treatments that were positive?
A There were no blood traces or blood elements on that metallic chair.
Q Anywhere on any of your findings, is your testimony?
A I have seen that. That was negative. That's why they sent it for DNA.
Q That's your testimony?
A Yes, ma'am.
Q Do you need to review any reports?
A You can show me any report.
Q We'll get back to that in a minute.
You would agree with me, however, -- I mean, when you talk about transferring DNA, it

has to go from one object to another. It doesn't just float through the area.

A No.

Q We agree with that.

A Yes.

Q As far as the toxicologist, you were talking about the marijuana in this man's system?

A Yes.

Q And there are active ingredients for marijuana; is that correct?

A Yes.

Q If I were to tell you that I have talked with toxicologists and what is present in Tetrahydrocannabino, THC, one of the inactive metabolites; you would agree with that, too?

A That's his opinion.

Q It could have been there for within one week to thirty days prior to this event occurring?

A One week to ten days.

Q No, to thirty days.

A Ten days.

Q That's your testimony?

A Yes.

Q And that is as an inactive ingredient that wouldn't have any affect on him. It would just show that he'd had it at some time in the past. Do you agree with that now?
A That's your opinion as a toxicologist?
Q No, sir. I don't have opinions. I'm asking if that's your opinion?
A No, that's active.
Q You want it to be active.
A (No verbal response).
Q You also talked about the Ativan that was I his system.
A Yes.
Q You're aware that's well within the normal range for therapeutic effect?
A I agree.
Q There are people probably in this courthouse right now walking around having that amount or maybe even more of Ativan in their system, functioning well.
A Correct.
Q And that that amount alone should not make anyone stagger or fall or just suddenly pounce o the ground head-first.
A Yes.

Q But your testimony to this jury, that you are being paid for today, your time, is that the combination of these inactive ingredients of marijuana and the Ativan could cause him jut to fall down anyway?

A. In combination. Because if anyone in the court is taking Ativan with marijuana, they could fall down as well.

Q That would be ---

A If it is prescribed and not a street medication, because they can sell Ativan on the street as well.

Q Where are we going now -- to the street?

A It's street drug. If it was not prescribed for the deceased, then the source for getting it would be a street source.

Q Got it. But the amount, whether it be a street source or a prescription, -- for which you have no evidence one way or the other, do you?

A There is no evidence and I can see that beyond any reasonable doubt that collection of the blood was not the standard forensics. What we do in the standard forensics, we collect settled blood and different blood to do

comparison. Unfortunately the heart was harvested prior to that, so the operation of blood collection was not an accurate sampling. If they collected from two different areas, it could have shown both high and low; that would have been more precise to show the level ---

Q So in addition to this autopsy being done incorrectly, now the blood was collected in correctly by all these medical people in South Carolina?

A. I did not say incorrectly. I said it was not in accordance to the standard of procedures adopted by the National Institution of Medical Examiner.

Q What standard or procedures allows you to get up there and testify to anything beyond a reasonable doubt. Isn't it beyond a medical certainty. Isn't that the terminology you are supposed to use?

A This is law and I leave it between you and other lawyers.

Q So you're doing this now as a lawyer?

A No, I'm saying you fight together, you and the other lawyers, not with me. I'm saying facts to the honorable jury.

Q Okay. Let me get back to the facts as far as the medical stuff in this case, okay.

Your statements to this jury and what you want them to believe is these inactive ingredients from the marijuana that had been there a while combined with a therapeutic level, whether it be street or otherwise, amount of Ativan man would cause this man just to go head first at any moment?

A Can you repeat that?

Q No. Can you answer it?

A Well, ---

MR. FARLEY: Objection, Your Honor.

WITNESS: Please.

CROSS EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q Is that what your testimony is?

A I said ---

MR. FARLEY: Objection.

THE COURT: What is your objection?

MR. FARLEY: She is badgering the witness.

THE COURT: He's doing, okay.

MR. FARLEY: Okay.

WITNESS: --- they may have effect

individually but the combined effects of both, the illegal and the legal, could lead to somebody being dizzy. I did not say he fell down because of those drugs. But it would affect his equilibrium.

CROSS EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q Would you agree with me, though, as was testified to earlier, that these drugs had nothing to do with the cause of death in this case?

A No.

Q No bearing?

A No.

Q So there's nothing about that that would have caused death?

A I agree with you.

Q You also mentioned that you reviewed the police records in this case and then you talked about how at the end of your testimony you can't consider how anyone may have told you that he died. Then why did you review them?

A I was given that in the file. I have to read everything I was given in that statement.

Q And any medical doctor, be it a pediatric,

internist, or a cardiologist, you don't think it's important to get a history about what happened?

A Yes.

Q And that was done in this case?

A That was not done because he was unconscious. Every medical doctor says we could not get a history because he was unconscious. There was no history.

Q Is it not important as a medical examiner to get information what about might or might not have happened so you can say whether or not your findings are consistent or inconsistent with what happened? Isn't that part of your job as a forensic pathologist?

A I listened to the police and investigators but I make my own determinations on a nonbiased basis.

Q Yes, sir, but that's information that you would want as a forensics pathologist, if you're still one?

A Yes.

Q And in this case, you also talked about this lucid interval, that it was all through the reports?

A Yes.
Q Where in the report is it? Where are the records you got? Maybe I have different one?
A I don't know. I have it. Give me a couple of minutes.
Q Yes, sir. Specifically the term I'm looking for is "lucid interval"?
A Yes, I will show it to you'll in the autopsy report and the other medical records.
A There is one here, autopsy report page number two.
Q Can I just see -- do you mind if I see?
A Here, (indicating).
Q Yes, that's exactly it. He got up and was lucid?
A Yes.
Q Not to say he had a lucid interval having already sustained an injury?
A So I'm explaining lucid that he was walking and talking and interacting during that interval.
Q Yes, we all agree to that. Not that he was having a lucid interval, already having sustained an injury?
A He had a closed blunt force trauma and he

had a lucid interval.
Q That's your testimony?
A Yes, ma'am.
Q Not what's in the autopsy report?
A I showed you.
Q That he was lucid after the first assault and that he wasn't after the second.
A Yes. And usually the first attack -- if you're going to discuss this, if there is a first, second, third, for example, the first one somebody will be lucid. That period is enough time for the blood to accumulated, compressing one the brain, leading to their demise unless there is operative intervention to release the blood from the brain.
Q I'm just asking for the term "lucid interval", which you said is all through the reports.
A Yes.
Q And it is not.
A It is here.
Q The word "lucid" is there.
A Yes.
Q Let me get back to the Ativan for one second.

A Okay.
Q And you did review all the medical records in this case?
A Yes, ma'am.
Q I just want to show you the highlighted part about Ativan.
A (Upon review), yes.
Q Is that something you reviewed?
A Yes, I reviewed this.
Q Okay. So that means that he didn't get the Ativan until he was seizing when the EMT's got there?
A Yes.
Q So the amount that was in there would be consistent with what the EMTs gave him that day?
A Yeah, it is written he was given it when he started to seize.
Q Let me just make sure we understand what was written?
A Yes.
Q That, (reading): "following intubation the patient had good breathe sounds bilaterally. He was given a dose of Ativan as he did seem to begin to seize just before he was intubated and paralyzed." So that's the Ativan in his system

that you're talking about. It was given by a doctor that was treating him?

A According to this, yes.

Q So does that affect your testimony in any way?

A It states he had Ativan in his system.

Q After he was unconscious and had been beaten?

A But the blood which was collected was collected in the hospital before giving him that Ativan.

Q No, sir.

A It was written.

Q He was intubated at the scene.

A He ---

Q The EMTs.

A I know, but the blood was collected by the EMTs.

Q You're saying the blood was collected by the EMTs?

A Yes, here it is. I have proof of what I'm saying. Before they give him that one. The pathologist says that, toxicology, the "admission blood is obtained, it was obtained prior to giving him Ativan."

Q Admission blood means when he was at the hospital?
A When he was admitted to the hospital, immediately. They always collect the blood from anybody prior to giving them medication. Think overdose, you'd be giving medication -- so you take blood from anybody before giving him a single injection. They sent it with him to the hospital, and it revealed these drugs prior to them giving him Ativan. This is the evidence.
Q Yes, sir. I'm showing you where the doctors gave him Ativan when he started seizing, prior to being intubated. Isn't that what it says?
A That's what you showed me, yeah.
Q Or the medical personnel, I should say. In this case you said it would be improper for you to give any opinion about what happened; is that correct?
A I did not say that.
Q What did you say?
A I said any object could have led to the blunt force injury to the head.
Q And you gave a number of examples?
A Yes.

Q Such as a motor vehicle accident?
A Yes.
Q A fall from a high building?
A Yes.
Q What were some of the other ones you gave?
A Kicking, stomping, hitting his head on pavement or a concrete surface, anything.
Q Anything?
A Anything, yeah.
Q Anything such as that?
A Yes.
Q But you would agree with me the skull is a pretty thick bone?
A Yes.
Q And that it takes a very significant amount of force to crack a skull?
A I agree.
Q So we aren't talking about just whatever. It would have to be some significant force?
A Yes.
Q Moreso than -- like a high speed motor vehicle accident?
A Yes.
Q Or a fall from a tall building, up several stories?

A Yes.
Q That type of thing is the type of force that we are talking about. Would it be consistent with someone having their feet swept out from under them and them falling down head first?
A No, from falling the fracture would not happen.
Q But your testimony is it could have happened from a fist but it wouldn't have happened from falling in that matter?
A No from stomping, kicking, because he has something consistent with that.
Q Stomping and kicking, so kicking would do but cutting someone's feet out from under them and causing them to fall ---
A. He was stomped and kicked, according to that police report.
Q Are you also familiar with the fact that after getting -- in the first part of the altercation that he got up and was walking around?
A Yes.
Q And that's the lucid interval that you were referring to?

A Yes.
Q By your own testimony, based on your review of the records, he was lucid, able to walk, talk, function, everything?
A Correct.
Q At that point, are you also aware that as soon as his feet were swept out from under him in the second one that he never moved again. He have never was conscious and that he was actually posturing when the EMTs got there?
A Correct.
Q And what is posturing?
A Posturing meaning extension/flexion/ extension. This is a neurological spasm term that means that the blood accumulating on the surface of the brain already resulted in irreversible damage.
Q And that would be significant that that occurred right at the same time that he went down and was beaten in that second attack?
A No, not second. I'm not saying first or second. Scientifically, I can't say. If you are beaten, was lucid, fell down, started to have blood compressing on the brain.
Q So your testimony is you can say that the

second attack didn't cause any injury that would have led to his death.

A If there was a second or a third, I cannot say. The object, as suggested by the lawyers, -- whatever it was, it's not consistent with the injuries sustained by being hit with a metal chair.

Q Well, what was suggested to you by the lawyers?

A I mean, 'could it have been a metallic chair', and I said no.

Q It couldn't occur with this metallic chair but it could occur if they were kicking him and stomping him and hitting him and he fell to the ground from an upright position when his feet were pulled out from under him rapidly?

A Yes.

Q And then the fact that he goes down and he never moves again, he's bleeding from the mouth profusely, he's seizing when the EMTs get there, that has no affect on your opinion?

A This is a result, not affect. As a result of the beating, of the attack, he's seizing because of the blood compressing on the brain.

Q And you agree with his findings. You just

think that the medical examiner that we have in county does a substandard job?
A I did not say that.
Q What did you say? I'm sorry.
A I say it's not consistent with our manual and protocol for procedure on a national level.
Q Then you talked about it would be bad to take the eyes or the brain or -- but none of those organs were harvested in this case. You're aware of that?
A No, they were harvested. The heart, the lungs, they were harvested.
Q Some organs were harvested. I'm talking specifically about the brain and the eyes.
A Heart, liver, kidneys, lungs, everything that was useful. If they had approached me, I would have said 'no.'
Q So your testimony is all the donatable organs were taken from him?
A I read what is written here: heart, left lung, liver, right and left kidney have been harvested prior to the autopsy.
Q Okay. And yet this medical examiner was able to come to a conclusion which you totally agree?

A I agree with him, yes.
Q But you just would have done it better?
A According to the standard, not better.
Q And you weren't there for the autopsy?
A No.
Q You weren't there to observe any of the injuries firsthand?
A No.
Q You would agree with me that of course it's always better to be able to observe it first hand or to be privy to it?
A Correct.
Q Did you review any slides or any of the tissue in this case?
A No.
Q Did you request any of that?
A No, because everything was already explained here and I assumed that my colleague is writing everything meticulously and thorough.
Q So it was a meticulous and thorough autopsy?
A Yes.
Q And he is Board-certified by the same people that certify you, is that correct?
A Should be.

Q It's just that he doesn't get paid for his time *per se*, that is his standard job, just like yours used to be?
A No, he is paid by the government.
Q By the government, just like you used to be?
A Yes.
Q And now you're out on your own?
A Yes.
Q And you actually advertise your services through the internet?
A I do.
Q And do you remember approaching a colleague of mine earlier today?
A Yes.
Q And you actually gave her your card, here it is?
A Yes, I wanted to talk to you because I already missed my flight.
Q Oh, I'm sorry. I didn't know. I apologize. On it you've got this -- this is your --you are an AL State Medical Examiner?
A I was working for Alabama. This is on old card.
Q You don't work for them anymore?

A Right, but I it has all the information on the front.
Q This is your card, though, that you gave her?
A Yes.
Q Do you remember walking up to her and you were trying to ask her if she was the one trying the case -- because she is about my age?
A Not trying to.
Q Do you remember approaching Ms. Spears and asking her if she was trying the case?
A Yeah, I asked because I want to leave early to catch my light. I don't know that ---
Q Then she had a conversation back with you and said no and then she asked if you were working for the state or a witness for the State, -- but she is not involved in this case.
A Right.
Q And then you said you were working for the defense?
A Yes.
Q She said, 'good for you.' And your reply was, 'Do you think so? But you know how it is in these hard economic times.'
A Yes.

Q Thank you, sir.

MS. CAMPBELL: I have nothing further.

THE COURT: Redirect?

MR. CHAPLIN: Thank you.

REDIRECT EXAMINATION

BY MR. FARLEY:

Q Dr. Shaker, you're not trying to suggest that you are here voluntarily, are you?

A No, I'm not.

Q And you're not saying that the autopsy report that you received from Richland County is horrible, are you?

A No, I did not say that.

A Okay.

Q But you did say that there are no labels on any of the pictures?

A Correct.

Q And those pictures will go back and the jury will get to see them?

A Correct.

Q Now, you're trying to get out of the here so that you can go to another appointment tomorrow?

A Correct.

Q And there are hard economic times going on, correct?
A Sure.
Q All right. So you don't have the ability to sit here overnight and wait to do this tomorrow?
A I have a deposition tomorrow. Some people are coming from out of state.
Q Okay. And you're self-employed?
A Yes.
Q Okay. Now, you said you agree with the report. The report says the cause of death is blunt head force trauma.
A Correct.
Q And you agree with that?
A Yes, I do.
Q Okay.
Q But what -- could you say beyond a reasonable doubt that Kenneth Mack died as a result of a particular attack?
A No, there is no way. This would be fiction, nonscientific.
Q Okay. You talked about a metal chair, right?
A Yes.

Q I think what you said to me was if you picked up a metal chair and just slammed it down on somebody or whatever, you'd see a huge like crack or opening or ---

A I would see multiple extensive wounds, I call it lacerations. I would see extensive comminuted cracking over the skull. I would see lacerations of the brain. I'd see that in the autopsy report or possibly in the photographs. So I've excluded beyond a reasonable doubt that there was death resulting from strikes by a metal chair.

Q So you have a web page, do you not, on the internet?

A Yes.

Q Okay. All right. The autopsy report referred to the fact that based on something this doctor thought that he got up from the first attack and was lucid?

A Yes, lucid.

Q Did you see anything in the report to support that?

A Yes.

Q Okay. Go ahead?

A Number one, the bleeding on the surface of

the brain, which my colleague had seen, is consistent with that lucid internal. It accumulated and it compressed over the surface of the brain, leading to herniation and damage to the brain. Eventually he succumbed to brain damage due to that bleeding.

Q Yes. So you're saying that all of the attacks that he experienced earlier, they didn't just disappear and go away without leaving an impact on the victim?

A No. They resulted in the final result.

Q As far as DNA being transferred, you never said that DNA could float in the air, did you?

A I did not say that. This would be "C.S.I.", which I don't do.

Q All right. You did use a word that I didn't understand at first, but you said your word was shedder?

A Yes.

Q Okay. So basically all you said was that you could touch -- I could shake your hand, and then I could shake the bailiff's hand and your DNA might be on the bailiff's hand.

A It could be.

Q Okay. It also could be that if you punched

somebody, if I punched the bailiff and then shook your hand, his DNA could be on your hand?
A Correct. Then I will be prosecuted.
Q But you're just saying -- you're not ruling it out as possibilities. You're saying that's how it moves?
A Yes.
Q Whether it is a handshake, a punch, a kick or whatever the case might be?
A Correct.
Q You're just being objective?
MS. CAMPBELL: Objection to the amount of leading. It's his witness.

REDIRECT EXAMINATION

BY MR. CHAPLIN:
Q And finally you didn't come here to give anybody the impression that South Carolinians don't know how to do an autopsy, did you?
A There is no way.
Q You just came to assist the defense to understand and to report to the jury, right?
A To give facts.
MR. CHAPLIN: Thank you very much.
MR. FARLEY: No further cross, Your Honor.

MS. CAMPBELL: Just briefly.

RECROSS EXAMINATION

BY MS. CAMPBELL:

Q You were talking about the testing that wasn't done for the blood. Would you look at those reports.

A Yes, (review).

Q And those tested positive for blood?

A Yes. It is a sensitive test, not a specific. That's why we reverted to the DNA. What I mean by "sensitive" is that it can give false positive results to us. That's why. If he was confident, he would not have sent it for DNA testing. This is a high sensitive test that can give false positives to semen, to blood, to anything. Because of that he sent it for highly specialized DNA testing.

Q And his DNA was there.

A Yes.

Q Okay. And that sheet that I showed you earlier talking about the Ativan, is that the record you reviewed?

A Yes.

MS. CAMPBELL: Your Honor, at this time we would offer it into evidence.

THE COURT: What is it? For the record?

MS. CAMPBELL: One page out of the number of records that he reviewed for today.

THE COURT: May I see it?

MS. CAMPBELL: Sure, (tenders).

MR. FARLEY: I would like to ask a follow-up question on that but no objection.

MR. CHAPLIN: No objection.

THE COURT: All right. Without objection.

(SO ENTERED AS STATE'S EXHIBIT 95)

RECROSS EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q It talks about what happened and then at the end it talks about when the trauma labs would be ordered.

A Yes.

Q Thank you, sir. Have a good trip.

A Thank you.

THE COURT: Mr. Chaplin, I'll allow it re-redirect.

REDIRECT EXAMINATION RESUMED

BY MR. CHAPLIN:

Q Dr. Shaker, ---

THE COURT: Confine it to that.

MR. CHAPLIN: Yes, sir.

REDIRECT EXAMINATION RESUMED

BY MR. CHAPLIN:

Q Dr. Shaker, as far as the blood, it's your testimony that what they tested, what they presented to the court is not an analysis of blood BUT it's an analysis of what?

A What I said the test, they did an ultraviolet test ---

MS. CAMPBELL: Objection, Your Honor, beyond the scope. He just ---

MR. CHAPLIN: I don't think so. I think --

THE COURT: There's a document. I don't know what this document is she just showed. I said you could ask questions about that the document. Look that the document.

MR. CHAPLIN: I am looking at the document.

THE COURT: You can't just start over.

MR. CHAPLIN: I apologize.

THE COURT: I thought that had something to do with the Ativan.

MR. CHAPLIN: Your Honor, during her redirect, didn't she ask him about blood, as well?

THE COURT: Yeah, but that's -- she can't -- this is the third time.

MR. CHAPLIN: All right.

THE COURT: You know, this is the third bite at the apple. I said that it is restricted to whatever she brought up in that topic, that you could ask him about it. That's what you asked me to do and I said fine.

MR. CHAPLIN: Okay, sir.

EXAMINATION CONTINUED

BY MR. FARLEY:

Q Dr. Shaker, when was the blood sample drawn for the victim?

A They usually collect the blood on the way to the hospital before giving anybody any medication, so it will show and reflect true medications whether legal or illegal in the blood system of any victim.

Then they start to do resuscitation or do whatever they -- when someone starts to seize, they give them Ativan.

But that blood was prior to admission,

prior to arriving at the hospital and colleague relied upon it. My pathologist who did that did not draw blood from the deceased. They would not. So he reviewed or sent the blood collected by the emergency technicians en route to the hospital, prior to giving him Ativan.

MR. CHAPLIN: Thank you.

THE COURT: All right. Doctor. You might be able to make your plane. Have a pleasant trip back.

WITNESS: Thank you, Your Honor.

(WITNESS STEPS DOWN)

THE COURT: Do you wish to call a witness at this time?

MR. FARLEY: Yes, Your Honor.

THE COURT: All right. Go ahead get your witness. Ladies and gentlemen of the jury, normally one defendant would present its case and then the other defendant would present its case. Because we've got doctors here, I see the nurse smiling, we're taking them out of order a little bit so that they can get back to wherever they practice. There will be other witnesses for the defense, but I've allowed them to take these witnesses out of order to accommodate

their schedule. Mr. Farrell.

MR. FARLEY: Your Honor, I'd call Dr. Sandra Conradi.

THE COURT: Come around, Doctor.

(WITNESS TAKES STAND)

SANDRA CONRADI, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MR. FARLEY:

Q Thank you, Dr. Conrad. Can you please tell the court what it is that you do?

A Yes, I'm a forensic pathologist. I retired from the Medical University in 2001. I was a professor of Pathologist there and I have been in Charleston as medical examiner for Charleston County and a forensics pathologist since 1973.

Q And can you quickly just tell us the difference between -- is there a difference between forensics pathologist and general pathology?

A Yes, sir, general pathologist deals with autopsies on people that die of natural death and forensics pathologist deals with unexpected or unnatural deaths like accidents, suicide,

homicide and anything that is unusual or unnatural falls into our purview.

Q And you specialize in that field; is that correct?

A Yes, sir.

Q And can you tell me a little bit about your education and where you went to medical school?

A Yes, sir, I went to the University of Cincinnati, Ohio, graduated there in 1953. I spent three years in Germany working with the pathology department while my husband was a soldier there. I came back -- well, I finished my residency in Pathology in 1968. Then went to Germany for three years, came back and worked in the Pathology Department of the Jewish Hospital in Cincinnati, then we relocated here in 1983, in Charleston.

Q Is there any more of your training internship and residencies you would like to include?

A I taught the course in forensic pathologist at the Medical University to medical students for many, many years. We have a thirteen-week course for them. I did autopsies on a regular basis. I probably had done, although I haven't

kept count, somewhere between three thousand and five thousand autopsies in my career.

Q Is that largely here in South Carolina?

A Well, mostly but also in Ohio.

Q Okay. And you're currently in -- where do you currently practice?

A I retired, as I mentioned, from the Medical University of South Carolina in 2001, so I do private consulting now and volunteer different places and mainly my -- I don't have a job as such. I just consult on cases mostly for defense attorneys these days.

Q Are you based here in Columbia?

A Charleston.

Q You're based in Charleston?

A Yes.

Q But you live here in South Carolina?

A I do.

Q Can you tell us some of your professional affiliations?

A I was president of the National Association of Medical Examiners from 1998 until 1999. I am a member of the America Academy of Forensic Scientists. We just had our meeting in Atlanta. And I belong to the A.M.A., American Medical

Association.

Q Also are you a member of the College of American Pathologists?

A Yes, I am. I forgot that one.

Q Dr. Conradi, you also mentioned that you were part of the staff of the University of South Carolina Medical University. Did you publish in that position, as most professors often do?

A Yes, I had a two publications. Yes.

Q So you've been published in your field?

A Yes, in my field.

Q And do you have any other certifications, Board-certifications that you would like to tell us about?

A I'm Board-certified in general pathology and forensics pathology.

Q Okay. And I'm sure you can tell the jury what you've done in order to maintain those board certifications throughout the years, continuing education and that sort of thing?

A Yeah, we have to have a certain number of hours of training. That's why I go to these national meetings, because they give you C.E. credit. Continuing medical education credits.

You need that to keep up with your certification so I like to do that, and I have done that.

Q And I think you said before three to five thousand autopsies, approximately?

A Somewhere in that range, yes.

Q And have you ever testified in a court of law regarding that?

A Yes, I have.

Q Do you know how many times?

A Hundreds, hundreds of times both in Ohio, Kentucky, Georgia and South Carolina, North Carolina.

Q And did you receive information regarding this case?

A Yes, sir, I did.

Q And did you form any opinions regarding that?

A I did.

MR. FARLEY: All right. Your Honor, I would like to tender Dr. Sandra Conradi as an expert in the field of Forensic Pathology.

THE COURT: Any *voir dire* or objection?

MR. CHAPLIN: No *voir dire.*

MS. CAMPBELL: No objection.

DIRECT EXAMINATION CONTINUED

BY MR. FARLEY:

Q As a result of that information that you received regarding this case, again, I was going to ask you if you formed any opinions?

A Yes, sir, I have.

Q Can you tell me what you reviewed and what exactly the conclusions that you came to?

A I had access to the autopsy report, the coroner's report, the investigative reports from the sheriff's office of Richland County, the laboratory report, photographs and I think that was -- that was all that I had, but I reviewed everything that was sent to me, which was virtually everything.

Q Did you form any -- after reviewing the photographs and the medical reports and what not, did you come to any opinions regarding the autopsy that were performed?

A Yeah, I have to preface my statements with the fact that we don't work in a vacuum. We have to have all the information to make a correct decision on our cases. It's not just sitting in the autopsy room or standing there doing an autopsy. We try to get all the

assorted information that we can regarding the case to form an opinion as to the cause and manner of death.

In this case, as I'm sure you've heard, there were two fights. Mr. Ward -- I believe his name is Kenneth Ward.

Q Kenneth Mack.

A I'm sorry. Mr. Mack was fatally injured in the second fight and in my opinion, he struck his head on a hard surface, fractured his skull, suffered very severe head injuries including bleeding between the scalp and his skull, bleeding under the skull, between the skull and the brain and he had bruising or contusions of his brain along with the other fractures and associated abrasions and contusions of his face and mouth, which were not fatal. The fatal injury was the brain injury. He suffered that from falling and being propelled onto a hard surface on the back of his head.

Q I know that was your analysis but is there an official form that you put the cause of death in or a label?

A Yes, as I mentioned, accident, homicide, undetermined and suicide, of which I made

mention, and this would fall into the category of homicide.

Q I mean, would you consider it then -- just going on your description, would you consider that a blunt force trauma?

A Yes. It's a blunt force injury as compared to sharp injury which would be a stab wound or a cut.

Q And given the information that you had and the photographs that you looked at, was there any determination you made about any lacerations about the face or anything of that nature?

A Yes, he had a number of injuries to his face. He had bruising to the inside of his lips. He had a laceration, which is a cut, I think it was about an inch long to the left side of his eyebrow. He had a bruise on his right forehead. He had a lot of injuries, particularly around his face.

Q But you don't think that was the cause of death?

A No, the cause of death is the brain injury.

Q You felt you would characterize that as a blunt force trauma?

A Yes, sir, that's what it is, blunt force

trauma.
Q And if you could just once again, tell us how a blunt force trauma could be received?
A In the case of the head, if the head impacts a hard enough object or like the floor or concrete or something of that nature, then the head when it's being propelled or falling hits hard and stops, that can cause a fracture of the skull, bleeding under the skull between the brain and the skull -- as I mentioned before -- and can cause swelling of the brain, bruising of the brain and can cause death as it did in this case.
Q And one final question, really, it would have to be significant force that was wielded in order to create an injury of that nature?
A Yes, in order to fracture the skull it takes a good bit of force. Rather than just falling backwards or falling on your rear end and hitting a hard surface that way, you have to be propelled very hard to fracture the skull as this Mr. Mack did on the right side of his head and causing the degree of brain bruising and bleeding that he had. It's quite a severe force.

Q Thank you, Dr. Conradi. Please answer any questions counsel or the State may have?

THE COURT: Mr. Chaplin.

MR. CHAPLIN: Thank you.

DIRECT EXAMINATION

BY MR. CHAPLIN:

Q Dr. Conradi, you just stated a minutes ago you said to the jury 'as you are aware, there were two attacks.' What are you basing that on?

A The information that was provided to me.

Q So your testimony is only as credible or as accurate has the information that you were given?

A Exactly.

Q Okay. So. You real don't know how many attacks there were?

A No, sir, not from my own knowledge.

Q Okay. All right. Could there have been three?

A There could have been any number. I am just going by what I was provided.

Q What you were told?

A What I was told was two, yes.

Q By the police?

A By the material that Mr. Hedley (phonetic)

provided me, and part of it was in the police report. I'm sorry, I called you Hedley several times, Mr. Farley. I'm sorry.

Q And you said that the trauma you notice was not in the back of the head but was on the side?

A That's correct.

Q Okay. I think that's all I have. Thank you very much, Doctor.

THE COURT: Cross-examination

MS. CAMPBELL: Thank you.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Basically for the lastly ten years you've been consulting for the defense?

A I have consulted with the defense on most of those cases, yes, ma'am.

Q In this case you were hired by Ms. Reese specifically?

A I'm not familiar with that name.

Q Defendant Reese?

A Yes, that's correct.

Q Mr. Farley?

A Mr. Farley, yes.

Q Okay. And in your conclusions and your review of everything, based on what you

reviewed, you would agree that the trauma that was incurred in the second assault that was provided to you, your findings were consistent with the fatal injury having been inoccurred there?

A That's correct.

MS. CAMPBELL: Thank you, ma'am. I don't have anything.

THE COURT: Redirect?

MR. FARLEY: I have no other questions, Your Honor.

REDIRECT EXAMINATION

BY MR. CHAPLIN:

Q Dr. Conradi, earlier you said that you weren't sure how many attacks that there were.

MS. CAMPBELL: Objection, Your Honor.

THE COURT: She's -- no further questions. You may come down. Thank you very much.

(WITNESS STEPS DOWN)

THE COURT: Have a good trip back to Charleston. Approach the bench, Counsel.

(OFF RECORD BENCH CONFERENCE)

THE COURT: Mr. Farley, call your

next witness.

MR. FARLEY: Your Honor, I'd like to call Melquanna S I believe that she's in the hall.

THE COURT: Go get her.

MR. FARLEY: Your Honor, I apologize to the court. She is on her way. It just happens to be at this moment she chose to the go to the restroom.

THE COURT: She is in the restroom.

MR. FARLEY: She is on her way right now.

THE COURT: Do you need a short break?

THE JUROR: Yes.

THE COURT: Yes. I have at least one yes. Take a short break. Sir, are you okay?

JUROR: Not really, but I'm going to get through it.

THE COURT: Okay. I don't mean you.

JUROR: I've been fighting it all week.

THE COURT: Whatever you've got I don't mean you fight, giving it to everybody else.

JUROR: I'm better than I was.

THE COURT: Well, all right. We're

fine to take a short break.

(BRIEF RECESS)

(DEFENDANTS PRESENT)

THE COURT: All right. Be seated. Let's go. State ready?

MS. CAMPBELL: State's ready.

THE COURT: Defense ready?

MR. FARLEY: We're ready.

THE COURT: Bring in the jury, Mr. Dessasure.

(JURY IN @ 4:43 p.m.)

BAILIFF: The jury is present.

THE COURT: Mr. Farrell, you may continue.

MR. FARLEY: Your Honor, I'd like to call Melquanna S

THE COURT: Come around.

(WITNESS TAKES STAND)

MELQUANNA "LUCY" S being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MR. FARLEY:

Q Can you tell us, do you have a nickname.

A Yes, sir.

Q And what is that nickname?
A Lucy.
Q People call you Lucy?
A (Affirmative nod).
Q And is your mother here in the courtroom?
A Yes, sir.
Q Can you point her out for me?
A (Indicating).
Q Okay.

MR. FARLEY: I would ask that the record reflect that she pointed to my client, Ms. Robin Reese?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. FARLEY:

Q And Ms. S let me ask you, do you recall the day of February 13th, 2010?
A Yes, sir.
Q And how ---

THE COURT: She is going to have to speak up.

DIRECT EXAMINATION CONTINUED

BY MR. FARLEY:

Q Ms. S can you speak into the microphone. See the microphone in front of you?

A (Affirmative nod).
Q Can you speak loudly and clearly so that everyone can hear you?
A (Affirmative nod).
Q I know that you haven't done this before so -- that's a court reporter, she is taking down everything you say. So you have to speak in a very clear and concise manner so that she can catch everything that she is typing right now. Okay?
A Okay.
Q All right. Now, do you recall the day of February 13, 2010?
A Yes, sir.
Q Okay. And can you tell us what you were doing that afternoon?
A Going to get my nails done.
THE COURT: Ma'am, you have to speak up all the time, okay. I can't hear you.
WITNESS: I was supposed to be going to get my nails done.
DIRECT EXAMINATION CONTINUED
Q Okay. Thank you. Well, were you at the open it air market?
A Yes, sir.

Q And were you with your mother?
A Yes, sir.
Q And when you say you were supposed to get your nails done, you weren't having them done at the open air market, were you?
A No, sir.
Q So where were you going to have your nails done?
A It's a nail shop right next to the open air market.
Q It's a nail shop right next door?
A No, it's a liquor store and then a nail shop and hair salon.
Q So it's a little ways away?
A Yes, sir.
Q How old were you at this time?
A Thirteen.
Q You were thirteen years old, so you are fifteen now, is that correct?
A Yes, sir.
Q Lucy, I wouldn't rest my hands. You want to sit up and speak clearly, okay? It's just for a little while.

Now, can you tell us what happened when you left the nail shop? Did you leave by yourself

or with somebody else?
A I left by myself.
Q You were on the way to the nail shop?
A I was knocking on the door. A dude walked by. He was like 'you can...' ---
Q Hold on a second. Let me stop you. What door?
A The nail shop door.
Q So you had already walked to the nail shop?
A Yes, sir.
Q Okay. Did you pass anyone when you walked to the nail shop?
A No.
Q All right. So. You're knocking on the nail shop door. It wasn't opened?
A No, sir, it was locked. It's locked all the time.
Q Okay. Continue?
A And then a dude walked by and he was like 'you can come in my house'.
Q Okay. Hold on a second. When you say a dude, who do you mean?
A Mr. Mack.
Q Did you know him at that time?
A No, sir.

Q But you know who he is now?
A Yes, sir.
Q Okay.
A And then that's when the lady came and was like they'll be closed until Tuesday. I went back to ---
Q Let me stop you a second. They were closed until when?
A Tuesday.
Q Okay. So they were closed for the day?
A Yes, sir.
Q What did you decide to do then?
A Go back to the store and tell my mom I couldn't get my nails done and bought some chips.
Q Okay. So what happened after that?
A I then was walking home and a dude -- I mean, Mr. Mack stopped me and said could he have some of my chips. I told him to leave me alone and that's when he was standing in front -- well, we was walking like he was already in front of me where he had already started walking ahead and then he turned around and was like -- I don't know. I was like trying to avoid having a conversation with him, but he stopped me in my

tracks and was like, just jerking me around and stuff. What's when he picked up a snowball and threw it at me. I was, like, I was going to get my mom. He grabbed me with his right hand.

Q Wait, he grabbed you with his right hand?

A Uh-huh, grabbed my jacket.

Q Okay.

A And then I hit him with my right hand. That's when he picked me up, threw me between two bushes. We was tussling.

Q Tussling?

A Uh-huh.

Q Okay.

A That's when is Mr. Marcellius came, got him off of me, hit him a couple of times and then some dudes came and jumped on him.

Q So Marcellius, as you say, got him off of you?

A Yes, sir.

Q Did you do anything after that?

A Sir?

Q Did you'll do anything after that?

A Yes, sir. I got me some licks in, too.

Q Can you tell the jury what that means?

A I hit him a couple of times.

Q Why did you do that, Lucy?
A I was upset.
Q You were upset?
A Yes, sir.
Q And you were upset because -- tell the jury why you were upset.
A I felt I was being harassed.
Q Okay. And then what happened -- so you were angry. What happened after that?
A Marcellius took me to the store to my mom.
Q Mr. Marcellius took you to the store?
A No. Well, we all walked to the store.
Q Who is we all?
A Everyone that was there.
Q So do you remember who it was?
A Not at this time.
Q Do you recall who it was now?
A No.
Q Okay.
A It was just people that we knew.
Q Do you recall Mr. Brooks walking you to the store?
A Who is Mr. Brooks?
Q Bloom?
A Oh -- yes, sir.

Q Okay. And what happened then?
A We told my mama and then we left.
Q Okay. When you say we, I mean, you told your mother?
A Me and my mom left.
Q You told your mother what happened then?
A She took me home.
Q Okay. So do you recall when you've been -- when you say we told my mother, who is we?
A Me and Bloom told my mother.
Q Okay. So you told your mother what happened?
A Yes, sir.
Q And then what happened after that?
A She took me home.
Q She just took you to the house?
A Yes, sir.
Q Is there anything else you'd like to add?
A No, sir.
Q Okay. All right, Lucy. I think that's probably all the questions I'm going to have for you, okay but Mr. Chaplin is going to have some questions for you and the State is probably going to have a few more questions so don't get down until they've asked their questions, okay.

Just sit tight for a minute.

THE COURT: Mr. Chaplin.

MR. FARLEY: I have no questions for Melquanna.

THE COURT: All right. Ms. Campbell.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Ms. S 'I don't think we've ever met?

A No.

Q I just have a couple of questions for you. You pointed out your mama. Is that your uncle also sitting at the table?

A Yes, ma'am.

Q And you went and you talked to the police right after this happened?

A Yes, sir -- I mean, yes, ma'am.

Q When you gave a statement to the police you told them that you did know the name of the person was who was harassing you, that his name was Ken; do you remember that?

A No, ma'am.

Q Would you like to see your statement? Would that help? See in here where he's named Ken?

A I told him that I had heard someone say his name was Ken so they could put it in there.
Q So is your testimony here today you did know his name was Ken or you didn't?
A No. I told them I heard someone say his name was Ken at the time. I didn't say I knew his name.
Q Do you remember giving them a recorded statement there you that day, as well?
A No, ma'am.
Q That in that one you said that you knew his name was Ken?
A No.
Q Okay. And you testified earlier that he grabbed you, I believe, by the arm and then you punched him; is that correct.
A Um-humm.
Q Do you remember giving in your statement that you -- that he grabbed although your jacket and then you punched him?
A Yes, ma'am.
Q Is that correct or that he grabbed your arm?
A No, he grabbed my jacket.
Q Your jacket, okay. Do you remember telling

about three or four other guys that came that were around in the area?
A Yes, ma'am.
Q Do you remember telling the police that you not only punched him but that you kicked him a time or two?
A Yes, ma'am.
Q And then your testimony was that your mom took you home?
A Yes, ma'am.
Q Where was your home?
A Gonzales Gardens.
Q It was in Gonzales Gardens?
A Yes, ma'am.
Q In what building, I'm sorry?
A N.
Q N. That's where she took you that day?
A Yes, ma'am.
Q Did you know Bloom?
A No.
Q Do you remember living next door to him for about two years?
A Yes.
Q And his girlfriend was next door to you?
A Yes.

Q And y'all were all good friends; is that correct?
A We spoke.
Q Okay. So you did -- you had known him for several years when all this happened?
A Huh?
Q You had known him for several years when this happened?
A I wouldn't use the word "known" but we spoke.
Q He's the one who came to your aid that day?
A Uh-huh, (affirmative nod).
Q So when you got back to your mom, were you upset about what happened to you?
A Yes, ma'am.
Q Were you crying?
A Yes, ma'am.
Q Did you explain to her that this man had kinda attacked you?
A Yes, ma'am.
Q So at that point did y'all call the police?
A No, ma'am.
Q Okay. Y'all went home; is that correct?
A Yes, ma'am.
Q And everything was okay. Your mom wasn't

upset about what had happened to you?
A Any mother would be upset.
Q That's true. And then did y'all stay at home the rest of the day?
A I stayed at home. My mom went back to the store.
Q What store?
A Open air.
Q Did she stay there playing poker the rest of the afternoon?
A Yes, ma'am.
Q So you don't know what she was -- but you stayed at the house?
A Yes, ma'am.

MS. CAMPBELL: Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. FARLEY:
Q Ms. S I know you said earlier that your mom took you back home. Did you -- are you positive you knew where she was going when she left?
A Sir?
Q Are you sure you knew where she was going when she left the apartment after she dropped

you back at the house?
A Yes, sir.
Q Okay. Thank you Ms. S
THE COURT: Mr. Chaplin.
MR. CHAPLIN: Nothing for Ms. S
THE COURT: Thank you very much young lady. You may come down. You're free to go, ma'am.
(WITNESS STEPS DOWN)
THE COURT: Next witness.
MR. FARLEY: Your Honor, I'd like to call Robin Reese to the stand.
THE COURT: All right.
MR. FARLEY: Your Honor, may we have one moment?
THE COURT: We just had a break.
MR. FARLEY: If I could just beg the Court's indulgence -- (pause).
(WITNESS TAKES STAND)
ROBIN REESE, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:
DIRECT EXAMINATION
BY MR. FARLEY:

Q Ms. Reese, you're here today under the charges of murder and lynching; is that correct?
A Yes, sir.
Q Okay. And I'm sure your probably a little nervous?
A Yes.
Q Okay. And it's -- can you tell us us where you live?
A I live at Gardens, Apartment - Columbia, South Carolina.
Q And that's in a place known as Gonzales Gardens?
A Correct.
Q And can you tell us if you remember or recall the day, February 13th, 2010?
A Yes.
Q And do you recall that afternoon?
A Yes.
Q And I don't want you to have to recall the entire day for me, but do you recall being at the open air market?
A Yes.
Q Can you tell us if you were there by yourself or were you there with someone else?
A Well, other people were in the store. I

was in the back playing games. It was a kind of Treasure Chest these little animals they had in the machines. You could play on them and win prizes and stuff, so I like that, so that was where I spent a lot of my time at.

Q Was your daughter with you?

A At first, but she was actually out on punishment that day.

Q What was she being punished for?

A Because of her grades.

Q Okay.

A So I told her she still could be my Valentine. Being my Valentine, she wanted to get her nails done. She asked me could she come to the nail shop. She had to get the money from me anyway. Instead of going to the nail shop, she came straight to me. I gave her the money. She went next door to the nail shop but she came back saying that she didn't ---

Q Is the nail shop right next door?

A It's separated by a liquor store. It's the open air market, the liquor store and then the nail shop.

Q How far down do you think the nail shop is?

A From where I'm sitting to probably that

stand right there.

Q Okay. Tell us what you you remember after that?

A She didn't get -- she said that she went but she couldn't get her nails done because they were closed. So I told her to go back home. She wanted some potato chips, so I bought some potato chips. She left.

I continued to stay back there and play the game, maybe like twenty to twenty-five minutes, I know I was there like -- it takes like two a half minutes, three minutes, to get from that store to where I live.

So I looked up and her a short guy and a tall guy, they was coming towards me. me, so I was raising Cain. I wanted to know why she had disobeyed me and she'd come back in the store, that was before I knew what happened.

So Bloom, which is Marcellius Brooks he was like he had just pulled a man off of my daughter.

Q Let me stop you for a moment. You said there was a tall guy and a short guy.

A A short guy.

Q Did you recognize him?

A I know the short guy, but I've seen the tall guy, but I don't really know him.
Q Okay. Who is the short guy?
A The short guy was Marcellius.
Q Was there anybody else?
A It was another guy with a gray sweeter, a hoodie or whatever.
Q Do you know who he was?
A No, I don't really know him but I have saw him. He was probably about 6'2", or 6'3".
Q And you've seen Marcellius Brooks before?
A Yeah.
Q How had you seen Marcellius Brooks. How were you associated with him?
A He used to live next door. I only know him from the neighborhood, not being next door. I had never been in his house. He had never been in mine. You know. We speak. That's what you do in a neighborhood. You'll speak to other people and you mind your own business. So I knowed him from the neighborhood.
Q So he was coming towards you with Lucy. Then tell us what happened then.
A So I was raising Cain with her, you know, asking her why she wasn't home.

Q I'm sorry, what? Raising what?
A I had done got upset.
Q Okay.
A I'm hot on her why she is not in the house, she was supposed to be in that house over twenty minutes ago. So Mr. Brooks said, 'I just pulled this guy up off of your daughter.' I was in disbelief. I looked at my daughter. She was all wet and she was crying, and -- so that wasn't enough detail. I wanted to know what happened and what do you mean "pulled off."
Q I don't mean stop you. I just want to remind you. I know this is very emotional but bear in mind that the court reporter has got to take everything down? When you get too fast, it's hard for her to keep up.
A Okay.
Q Do you know where you left off?
A That wasn't enough information.
Q What Mr. Brooks had told you?
A Yeah, he had just gotten a man off of my daughter.
Q And you said that you were upset?
A Yes. She is thirteen. Her size might fool a lot of people, but she was thirteen. She's

big.
Q At the time of the incident?
A Exactly. So I had games on the machines -- which they came to me. I just grabbed the ticket out of it.
Q Can I stop you for a second, because I am not sure what that means. You said you had games on the machine?
A Yeah, the only thing I had to do was hit a button, get the tickets, go to the counter and cash out, and then me and my daughter left.
Q Okay. So you were finish with your game on the machine.
A Yeah. It didn't matter. I just went and got my money off the machines.
Q I understand.
A. It didn't matter.
Q You went to the counter and what happened next?
A I got my money and me and my daughter left. I did make a phone call. I was trying to get in touch with my brother, but I called my dad. I called my house by mistake and -- and it answered because my answering machine picked it up. Then I called my --

Q Can I ask you, was Henry Gray staying there?
A No. That's where my dad lived.
Q When you called your house, was Henry Gray staying at your house?
A No, he never stayed at my house.
Q You said you called your dad's house?
A Yes.
Q Why did you call your dad's house?
A I wanted to tell them what I just heard. I just found out that some grown man was on top of my daughter and somebody had to get him off of her, so I couldn't -- I didn't get my brother, he was somewhere eating. He'd went to Lizard's Thicket or somewhere to eat. My daddy was very intoxicated, so I really was getting nowhere with him.

I still wasn't satisfied. The only thing I know at this time was a grown man on top of my daughter. So I called Marcellius and asked him what happened. He said that he really didn't know, that he'd just seen that the guy was tugging at her. He knew that was Lucy but he didn't know that grown man.

So after he seen it, they told me that it

happened like two or three times that he had pulled on her coat. She'd turned around and hit him. He scooped her up and was on top of her and that's when he came to her.

I was never a part of this. This is what came back to me.

Q This is what you understood?

A Yeah.

Q And let me ask. At any time did you try to call Ms. S father?

A No. He's -- I called her stepdad, which was my husband at the time.

Q I mean, is he around Gonzales Gardens?

A No.

Q Does he have any contact with Lucy?

A No.

Q Does he have any contact with you?

A No.

Q All right.

A I'm a single mom.

Q I understand. Okay. Please continue. I'm sorry?

A So me and her walked. We first took off up Forest Drive. I took her home. I just got between the building, because there was so much

going on where all this had just happened at. I took her in the house and I scolded her about cutting between the buildings. I didn't want it to be misunderstood. She wasn't between any building, this was across the street. She did just what I told her to do.

After I talked to her to make sure her hadn't been touched in any way, just the fact that he held her down and he was on top of her. I told her that I was going back to the store. I left out the door, and she already had told me what he had on or whatever, so I want to know what grown man was on top of my daughter. So instead of going -- they said that he had ran down the street. Instead of going back to the store, I went down the street which -- I seen some people out there. Somebody was like --

Q Why did you do that?

A Because I wanted to know who was on top of my baby. I really want to know, you know. I thought it was make some horseplaying or something but when they said a grown man -- now, I know kids do things but a grown man and a thirteen year old, that don't set good with me.

Q I understand. I know. So please continue?

A So I went down towards G building, which that's where my dad lived. Like I told you, I had already tried to talk to him but he was intoxicated. So my brother had already told me that he would be back, they was on they back from Lizard's Thicket.

Q Okay.

A But by the time I got around there, around the corner, the guy was laying on the ground and he had his hands like this right here covering his face or whatever.

Q And can I clarify, where was this?

A This was in the front of G building.

Q Okay.

A So I'm running up. His feet was --

Q Does your father live in G building?

A Yes, ma'am, he does. He's in a wheelchair. He have lives on the other end.

So his feet was facing me as I came around the corner. I never saw his face. I just know from the description: green shirt, blue jean pants and be a blue jean jacket.

Q Can I clarify just for one second. You said you came around the corner. Which corner did you come around?

A I came like ---
Q Is this the corner next to Forest Drive or is this away from Forest Drive?
A This is away from Forest Drive.
Q Which end does your father live on?
A He lives on Forest Drive side.
Q I'm sorry. Please continue?
A So I was raising hell, excuse me, excuse me, and I just wanted to know, you know, 'Why was you on top of her? Why would you even be have a conversation or anything with a thirteen year old.' But he was just laying there. When I ran up, I tried to kick him but I slipped and fell because, you know, the ice and stuff.

So instead of getting back up, I just reached over and I slapped him across his face and told him 'you stay away from my kid, you need to round grown women, there's grown people out here that you can be around.'

And there was this chair -- well, my brother, that's when I seen him and he ---
Q When you say "him", who do you mean?
A Henry.
Q Okay.
A I don't know if he came around the corner

or whatever. Probably everybody was out there. I didn't see anybody except this man laying on the ground.

Once I tried to get up after I lad done slapped him across his face, my brother pulled me, pulled me. He grabbed me by my arm and did like that. I'm standing there raising hell with him and, you know, he already understood but he was like 'let the police handle it.' So there was this chair sitting right in front of - I was upset, so I grabbed the chair and I just slung it. I didn't pick it up. I slung it. It just bounced and rolled. It didn't even come in contact with his body or nothing.

Still upset, I walked -- I didn't even look back no more after -- he wasn't even moving. I just walked up to my dad's house and went in there to see about my man, because he was so intoxicated that I could not talk to him. I went out his back door, went back home and talked to my daughter.

About four or five minutes later, my brother came to my house and we sat there and talked and he asked her all kinds of questions. He was scolding her. You know, making it seem

like, you know, in her eyes that it was her fault. I didn't want her to think it was her fault, because all the time that I thought that it was my fault for being so bad and it'd happened to me -- (emotional).

Q Ms. Reese, -- there's some Kleenex right here Ms. Reese.

A It got twisted all around, made it seem like it's these kids. It's not these kids.

I was fifteen and I thought somebody was playing with me, held me down and took my virginity from me, so I -- in my eyes, that's what I felt was going on with her. I was appreciative that somebody had pulled him off of her, because he had no business being in her face and on top of her anyway.

It's not like I'm a bad person. I was upset. Who wouldn't be upset, it's a grown man on your kid. I'm trying just to protect her.

Q Ms. Reese, the chair that you said you grabbed is that here in the courtroom?

A Yes, sir.

Q Is that it?

A That's it right there.

Q And you said you flung the chair?

A I flung it. I promise to God, I put my hand on that Bible when I say that chair did not touch that man at all. It just tumbled over, went down on the other side. I kept on trucking, raising hell going up my daddy's ramp.
Q Why did you fling the chair Ms. Reese?
A I was upset, I was upset. I just flung it. Why was he on top of my daughter?
Q I understand.
A And I just flung the chair. I didn't mean that. I didn't even think nothing about it. I just flung it. It was right there, sitting right there. When he pulled my arm and he was like 'let the police handle it', I just throwed it.
Q Because you were angry?
A Because I was upset.
Q And you said at that point you returned to your apartment?
A I went back to my apartment, talked to my daughter. My brother came. We all talked and about probably twenty minutes after that, we were standing in the kitchen, and I see Mr. Brooks -- he was walking up the sidewalk. My brother, you know, he didn't know who it is. I

wanted him to see the guy that pulled the grown man off of my daughter, so my brother came to the door, and I wanted Mr. Brooks to tell him what had happened, you know, just tell him what happened. He said he didn't really know what happened. He'd just seen the guy tugging at my daughter's jacket.

She had on a tight little sweater. It wasn't no loose jacket where he could have just grabbed it. He had to grab more than that because of the clothes these teenagers wear today.

But, anyway, he'd seen that. It was a grown man. He was aware it was my daughter and when she turned around to hit him, he kept tugging at her -- and when she hit him, he slammed her to the ground. Just like he said, there's bushes right there -- and what if they wouldn't have been there, what would have happened? Would he have thought that she was playing and continued to do something else? So I just wanted him to tell my brother what had happened.

Q Marcellius Brooks, you mean?

A Yeah, exactly. So, you know, he took him

to it. My brother stood in the door, Marcellius was on the sidewalk, and he told my brother how they -- they never had no words, they got in no beef, but that he appreciated what he did by getting this man off my daughter.

Q Ms. Reese, did you, prior to this day, prior to February 13th, 2010, had you ever seen Mr. Kenneth Mack?

A I don't know him. I still haven't seen his face yet.

Q You didn't know him at all?

A No.

Q Haven't seen him around?

A I don't know him.

Q Is there anything else you'd like to add to your testimony today?

A No. Just you got to put yourself in my shoes. That's my baby. That's my kid. You know, kids should be with kids and grownups should be with grownups. If you want to play, play with grownups. They make it seem like a snowball ball. Grown man and a kid, (negative gesture), I don't understand that.

Q I understand. Ms. Reese, we talked about you taking the stand today?

A Yes, sir.
Q Why did you want to take the stand today?
A Because I want them to know the truth. They have taken it and twisted it and made it seem like I am not raising my kid appropriately, or that she's got these grown friends or she knows this man from somewhere. None of these are facts. This is stuff that they done came up with to build the cases with. They need to know the truth.
Q Yes, ma'am. Let me just ask you one or two other questions, okay. Ms. Reese, did you lynch Kenneth Mack?
A No, I didn't lynch him.
Q Ms. Reese, did you intentionally murder Kenneth Mack?
A No.
Q Was it ever your intention?
A No, it wasn't. I wanted to know who was on top of my daughter. It was never my intentions to touch him, to lynch him, to murder him or nothing. I just want to know why 'you were on top of my daughter.' Why was she your type? That's it. I didn't get any answers so when I can't get no answers, what I did, I told you I

tried to kick him. I fell. Once I fell, I was already down, and I was already -- I'm cursing at him but he's still got his hands like this right here. I just slammed him across his face. You know, you got to feel my pain too. That's my baby and I'm a grown woman. You want to play, you could have rolled in the hay with me or whatever but you don't take that right from a kid.

Q Yes, ma'am.

A So in my mind that's what was going on. About the time I hit that corner, I put myself in her shoes. She was thirteen. I was fifteen when it happened to me.

Q Yes, ma'am.

A And it wasn't playing, he didn't stop until he got what he wanted from me.

Q Yes, ma'am.

A So all of this was in my head when I seen him.

Q Yes, ma'am. But you didn't intend to ---

A I didn't intend to do anything but ask him why. That's all I really wanted to know was why, what was it about her that, you know, came to your attention. Was it that she was by

herself? I live in a community that's full of children. They should have the right to walk through their neighborhood without being touched. Our neighborhood is being taken over by all these grownups that's coming in the area.

Q One last question, you did not intend to murder Kenneth Mack?

A No, I did not intend to murder him.

Q Ms. Reese, I know it's been very difficult for you, it's been very emotional. Mr. Chaplin is going to ask you a few questions and the State is going to ask you a few question. Thank you for sharing your story with us today.

THE COURT: Mr. Chaplin.

MR. CHAPLIN: No questions for Ms. Reese.

THE COURT: Solicitor?

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Ms. Reese, you and I have never met, have we?

A No, ma'am. I've seen you around here.

Q Where is your dad's house?

A -

Q So that would be in the area we're talking

about where this assault occurred you just referred to.
A Yes, ma'am.
Q And that day when you got down there, your testimony was your brother was there?
A Yeah.
Q And your testimony was earlier that you made a phone call to your father at his house, that your father answered but he was intoxicated; is that correct?
A Yes.
Q So it is your testimony here today that it wasn't your brother you called that day to tell him about what had happened, you perceived, to your daughter?
A Yes, I tried to call my dad.
Q But your testimony is that it wasn't your brother answered the phone, that you talked to your dad, who was too intoxicated to do it. Is that your testimony?
A Yes, ma'am.
Q And did you know Bloom?
A Not personally.
Q Okay. Did you live next door to him for two-and-a-half years?

A I lived next door to him and I knew the other neighbor also, but I can't tell you anything about her either. That's been five years.
Q That's his girlfriend?
A No. That's the lady that lives on the opposite side of me.
Q You got to know him -- as neighbors are, this is a close knit community -- I think somebody described it earlier as kinda almost a family? People know who live down there.
A It don't work that way.
Q It doesn't work that way?
A No, ma'am.
Q So you don't get to know your neighbors?
A You try to. I am just saying that it -- it isn't that you don't know how your neighbors are going to react.
Q But you at least knew what his nickname was.
A Bloom. That's the name I knew.
Q Bloom. And you knew that name at the time, right?
A Yes.
Q And that day, you were playing video poker?

A No, I was playing Treasure Chest.
Q I'm sorry. I don't mean to -- I mix it up, one of those games?
A Yes, ma'am.
Q Is that correct?
A Yes, ma'am.
Q It's a game you've got to go get your tickets cashed out but it's different from video poker -- video poker, I guess, is illegal now?
A Right, exactly.
Q It's one of those games where you cash out tickets and things like that.
A (Affirmative nod).
Q Do you do that a lot?
A Yeah, if I have the change, I sure do.
Q And, in fact, on a daily basis that's kind of your thing to do?
A Probably then.
Q But not so much?
A Yeah, because I don't have a job anymore.
Q And that day you said you knew who Bloom was, he'd lived next to you a couple of years but you weren't that close to him?
A Yes.
Q Did you know who Little Ricky was?

A No, I don't know him.
Q Do you remember him coming in the store with Bloom that day?
A No, it was a tall guy, brown skin, had on a gray hoodie, about 6'2 or 6"3 who came in the door with Bloom that day.
Q Do you remember seeing Little Ricky in the store.
A (No verbal response).
Q You don't know?
A No, I don't.
Q But you saw him up here?
A Yeah, he wasn't the one that walked in the store that day either.
Q That you noticed either?
A Exactly.
Q And then Kenneth Archie, did you know him?
A I have no idea.
Q Juve, Juvie, Trigger or something like that?
A I have no idea who that was.
Q Do you remember whether or not your saw him in the store that day?
A If I can't place who he is, how do I know if I saw him?

Q I'm sorry. I'm just asking.
A I don't know them by nicknames and all that. Like if I'm playing the machine back there, I don't know who those people is.
Q How many guys came in with your daughter that day?
A I only remember two, that was Bloom on one side and another guy on the other side which I said was taller than Bloom. He was like 6'2", 6'3". He was brown skinned. The guy that got up here on the stand was too dark. That was not him. I don't know him. He could be a friend of my daughter or whatever, but I don't know him.
Q You don't know why your daughter would have said they all came in the store?
A It was the two standing beside her and that she was in the middle.
Q It's fair to say that's the two you noticed?
A Yes, ma'am.
Q Whoever else was there, you didn't notice?
A I didn't pay them any attention.
Q And so you didn't know a Thomas Joseph either?
A (Negative gesture).

Q I'm sorry. You just have to answer out loud.
A No.
Q And that day you said your daughter was wearing a tight jacket?
A Yeah.
Q Howl would you describe it just a jacket like this that fits closely or tailored?
A Yes, that's what I mean.
Q Do you know why she would have told the police she was wearing her big black jacket with her hood on that day?
A Who?
Q Your daughter, when she was interviewed.
A When my daughter came and I saw her, she had on a gray jacket. I'll never forgot because she has the pants to go with it.
Q So you don't know why she would have told the police that?
A No, ma'am.
Q You were sitting there, minding your own business, playing games that afternoon.
A Yeah.
Q Your daughter was on punishment but you let her go get her nails done because it was a

special occasion?
A Valentines.
Q And she was supposed to go straight home because she was on punishment?
A Yeah.
Q Do you remember her buying potato chips there in the store?
A Yeah, I bought them. That's when she came back.
Q You're still minding your own business and the next thing you know, she's coming in with two people -- that you can remember, the tall guy and the guy that you knew as Bloom?
A Yes.
Q Do you know why -- you went down and talked to the police the day after this happened?
A The day after it happened, yes, ma'am.
Q And you remember doing that?
A Yes, ma'am.
Q Do you know why you didn't identify Bloom by name? You just described him to the police in your statement?
A I thought I said his name was Bloom.
Q Okay. The statement that you -- we'll get back to that in a minute. Then you come in and

you find out -- and who tells you -- your daughter tells you or was it Bloom that tells you what happened?

A Bloom told me what happened. He just got some man off the top of my daughter.

Q And obviously based on your experience, I mean, even without, it's a horrible thing to hear about having happened to your daughter?

A Yes, ma'am.

Q How did you describe her?

A She was wet.

Q Was there snow on the ground outside?

A Yes, ma'am.

Q And she was wet, and she was upset?

A Yes.

Q And as soon as you found out what happened to her, obviously you were upset?

A Yes, ma'am.

Q So at that point you found out this man had possibly tried to violate your daughter, perception wise, Marcellius Brooks/Bloom had had to intervene physically?

A Yes.

Q And that there had been a physical altercation between the two?

A Yes.
Q Then she came and told you that.
A (Affirmative nod).
Q And this upset you, understandable. I mean you described it earlier?
A Yes.
Q It's very upsetting, very.
A Yes.
Q So at that point did you jump up and call the police?
A No, ma'am.
Q Why not?
A Because I have wanted to see this guy myself. I wanted to know who this grown man was that was on top of my daughter. It's hearsay.
Q It's hearsay?
A It could have been a kid, you know what I'm saying. They're saying it's a grown man.
Q Even if it's a child, this child, this teenager, this grown man in his thirties or whatever, ---
A Exactly.
Q --- has attacked your child, you find out about this and your immediate reaction is to do what?

A Go see who he was.
Q But you continued to play your machine?
A No, ma'am.
Q The video?
A No, ma'am.
Q According to all the witnesses, you finished your game. And according to you, you cashed out your tickets?
A I went -- I was halfway up the store, and when they came in the door, I had to go back and get my tickets and go to the counter. I have never said I sat back down to finish the game or nothing. That was irrelevant to me at that time. I left out of the store.

Now, your witness can come out here and say whatever they want, but I'm trying to tell you the God's own truth what happened.

Q I understand. I'm just asking some questions about what other people perceive. Do you know why Ricky Boyd would tell the police that when Brooks told you about the man messing with your daughter that you jumped up and said "Hell, no."
A I don't even remember seeing him, so I don't recall that at all.

Q Then Brooks told you he had already taken care of it?
A He didn't tell me that then.
Q And then he gave him his licks?
A He didn't tell me that either.
Q Do you know why Boyd would have told the police that you stayed in the store another four minutes and finished playing your game?
A Maybe it's to make them look good, ma'am. I have no idea. I don't know.
Q Did Mr. Boyd have a dog in this fight?
A Who?
Q Ricky Boyd.
A He testified the other day that he kicked him in his head and he hit him one time. From my understanding, as time done passed, it wasn't just Bloom that knocked that man off my daughter, it was quite a few of them.
Q Depends on who you talk to?
A Exactly, so -- you know.
Q So do you know why Kenneth Archie would have told the police that when the little girl was explaining what happened, ---
MR. FARLEY: Your Honor, I'm going to how about. That calls for speculation.

MS. CAMPBELL: I'm asking.

MR. FARLEY: If she knows why Kenneth Archie told anybody anything.

WITNESS: I don't even know these people.

THE COURT: I'll sustain the objection.

CROSS EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q Do you remember saying there at the scene, that was overheard by other people, "this nigger ain't put his hands on my baby" right before leaving?

A No.

Q Do you remember coming back after the assault, which you've admitted to, and saying "that's what the motherfucker gets."

A No.

Q And you don't remember staying there after finding out what happened to your daughter for several minuting continuing to play your game and cashing out?

A No, that's not true.

Q You testified earlier that you then found out what happened to your daughter. You're

upset so you take her home?
A Yes.
Q At that point you start to chastise her because you thought she had cut between the buildings?
A Yes.
Q But she had actually don't what you'd told her to do?
A She did.
Q At that point you said you decided you were going to go searching for this guy?
A No. They said he ran between the buildings down the street so I went down that way looking to see if I saw him.
Q Who told you'll that?
A Marcellius.
Q Bloom?
A Yeah, they say he ran out.
Q And then they were able to give you a detailed description?
A My daughter told me what he had on. She said he had on a blue jean jacket, green shirt and blue jeans.
Q Blue jean jacket and blue jeans, is that unusual -- was this on a weekend?

A It was on a Saturday.
Q It is unusual for people to wear that in Gonzales Gardens?
A I have no idea what's usual and unusual.
Q And you lived in building N, I believe?
A Yes, ma'am.
Q Where is that in relation to building
A N is right here, O is here, and L is up here.
Q Okay. Is it closer or further from this Forest Drive?
A Forest Drive would be closer that way by two buildings.
Q If I show you a diagram and give you a second, could you point it out for me?
A Yes.
Q Okay. Showing you State's Exhibit 91, if this is Forest Drive and this is McDuffie, this is Building L, where would your building be?
A Right there.
Q And this is Forest Drive?
A I live right here. This is the middle part right here.
Q Yeah, this goes towards the other end. This is down where you ended up, down here?

A So I live right here.
Q In one of these two?
A Yeah. Near L.
Q Right. At this?
A Yeah.
Q So right there near L?
A See, this makes it seem like it's short but it's further up that street.
Q But it definitely is within walking distance?
A Yeah.
Q All the housing in there is pretty close, I would say?
A Yeah.
Q So you're walking her home and you get upset and you're going to look for this guy?
A Yes.
Q What is the purpose of you going to look for him?
A To tell him to stay the hell away from my daughter.
Q At any point during this timeframe, from the time you found out what happened to your daughter, did you ever consider calling the police?

A I wasn't thinking.
Q Okay. That wouldn't be the responsible thing to do?
A It probably would but in midst of it, if somebody is on top of your daughter, you're trying to find answers. I probably should have called the police or whatever, but the only thing that was on my mind is seeing who this was that was on top of her.
Q You weren't bent on revenge at that point?
A No, ma'am.
Q You didn't make a phone call that your brother answered and told him what happened?
A No, ma'am. I told my brother what happened but I didn't make up a phone call saying, 'oh somebody did this, let's go get him.'

I did what any family member -- if something happens to your family member, you call somebody else. That's what I did. It wasn't out of the ordinary. I wasn't doing anything to see what was going to happen next. The only thing is I wanted somebody else to know what happened. I would have talked to my dad hadn't he been intoxicated. That would have cured that.

I called quite a few people. I wanted everybody to know what had happened. Especially in that neighborhood everybody needs to watch out for him because at that the point, to me, that's a predator.

Q He's a predator?

A (Affirmative nod).

Q And you were going after him?

A I wanted to know who he were.

Q At that point, you testified earlier, that you called your father. You didn't talk to your brother until you got down to where you found the man on the ground. Is that wrong?

A Say that again.

Q When did you talk to your brother?

A Probably about two minutes before I got around there.

Q So you did make a phone call to your brother and told him what happened?

A He was at my dad's house then.

Q Okay. So you did make the phone call to your brother and told him what happened to your daughter?

A I called my dad.

Q I am just confused. I'm sorry.

A Yeah, you're confusing me also.
Q I'm sorry. Let me start over. Who all did you call after you've found out that your daughter had been violated or attempted to be violated?
A Okay. I called my house on accident. My answering machine picked that up. Then I called because-- because I didn't have no answers. The only thing I know at this point was that some man was on top of the her.

I think I called Bloom, to ask him what happened. I don't know if he answered his phone or whatever.

I call my dad and he was intoxicated. I could tell from talking to him right then that he couldn't talk to me right then. He was just very intoxicated.

I don't know if my brother came in or whatever, I just know that my brother was around there when I got there.
Q What phone number did you call your brother at?
A His number his -- at the time, ---
Q Do you want to look at your phone records?
A Sure.

Q Do you remember what his number was?
A He had so many numbers.
Q Your number was ?
A Yes, that's my number and that's my home number under there.
Q There you go, ma'am.
A (Upon review), the number, that was my dad's number.
Q Okay. So whatever before you got down there, your testimony is you called your brother; is that correct?
A Yeah, I know I called him.
Q And then you went out?
A I just don't know what number I called. This is my dad's number.
Q I'm just asking.
A Yeah.
Q So the phone call was made to your brother prior to your getting down there. What all did you tell him?
A I just said this dude just told me that he just got some grown man off my daughter.
Q Okay. Did you give him a description?
A I told him that some man down here, yeah, with a green shirt, a blue jean jacket and blue

jeans on.

Q Did you tell him his name is Kenneth?

A No. I didn't know that at that time.

Q Okay. Your daughter knew his name?

A My daughter didn't know his name. That's hearsay. That's what you heard. By then I should have known this man because that's how people talk in that naked. Somebody had to know him, for her to come up with Ken. I doubt very seriously if she knowed him. I really do doubt that.

Q I'm sorry, ma'am. I'm just referring to what's in her statement.

A Somebody else wrote her statement. She was slow on reading and she couldn't write and somebody else wrote it and she signed it. I was not in the room so I'm not aware of none of it.

Q Okay. Did you hear the recording of her talking about it?

A No, I never heard none of that.

Q Okay. Then you go -- let's get it straight. You've made the call to your procedure. You've told him. You given him a description the person who did it.

A. Right.

Q Then you proceed and go into the general area where someone said they last saw him running between the buildings. What buildings did they say that he was running between?

A Nobody never told me what building he was running to. He just took off running between the buildings, whenever that he had the altercation -- you mean by the L building.

Q How did you know where to go?

A I just walked out there. He had to go down the street, he ran down the street.

Q Okay. So you ran down the street and, lo and behold, you come upon him and he is already laid out?

A No, I didn't run. My feet go like this right here. I didn't run at all.

Q Okay. I'm sorry. I don't mean to put words in your mouth. Explain it to me. You went down the street; is that correct?

A I went where -- by the time I hit the building, that's where I saw him.

Q And it just happens to be you go exactly to where your brother is where you've just called him and your father lives?

A I didn't just call him. When I first got

the information from -- when we left out the store, I went to make a phone call right then to let him know. I done went home since then. I have took my daughter in the house, sit down and talked to her. I told her that I was going back to the store, which I have didn't go. I walked down the street. That's quite --

Q Did you go down to the area that just happens to be between F and G?

A Yes.

Q And that's when you see this man who happens to match this description of someone with a green shirt, blue jeans and a blue jean jacket?

A Yes.

Q And he's laid out?

A Yes.

Q By you know that's the guy?

A Yeah, I was just seeing his feet from the there. I had to come all the way up to where he was.

Q How did you know that was the guy?

A Because he was all blooddied up.

Q Do you know who dumped him on the ground?

A No, I wasn't there for none of that.

Q Where was your brother when you first ---
A I didn't see my brother until he grabbed my arm.
Q So your testimony is that you walk up and the man is just lying there with his hands over his face and no one is around him?
A Like this, (illustrating).
Q I'm sorry. Like this?
A Yeah.
Q No one is anywhere near him?
A I'm not saying -- there was probably quite a few people out there. I didn't have a vision of none of that.
Q And then your recognized him to be the guy that matched the description?
A Correct.
Q And you were so sure of it that you went over to him and I believe you said you kicked him once?
A I tried to.
Q You tried to and fell?
A (Affirmative nod)
Q Then when you felt down, you decided to slap him once across the face?
A Yes.

Q Did you slap his hands away?
A No, ma'am.
Q Was he moving?
A I have no idea.
Q Did you see the blood pouring out of his mouth?
A Yeah, he had blood on his face.
Q Did you see the convulsions that he was going through?
A No.
Q At that point you slammed him or hit him, I can't remember?
A I slapped him. It was cold.
Q And then your brother, that's the first time you see your brother?
A That's the first time that everything is coming clear to me. He pulled me off of him.
Q Okay. Just to be clear. Up to that point, the only person that you have seen out in that area is that one man, who is on the ground, bloody.
A That's the one I focused only.
Q Then your testimony is that you went and you'll pick up this chair?
A (Affirmative nod).

Q All right. And you threw it at him?
A I threw it, yeah.
Q And then your brother grabbed you?
A I swung. Like I swung it.
Q Okay. You swung it at him?
A Yeah.
Q And it missed?
A Yeah, I know it didn't touch him.
Q And then you proceeded to go to your father's house?
A I kept on raising Cain. I went up the inside, went in there, my dad was siting in the chair, feeling no pain. I said a few things to him. I walk out the back door and went back to my house.

Talked to my daughter.

My brother came around there about four or five minutes later. We stood in the kitchen. He was bawling her out about that, you know, being in the neighborhood 'these people around here', whatever.

She was sitting there crying. I told her to not to go between the building, always take the long way around.

Q Where did you go?

A After that?
Q Yeah.
A After thirty, forty-five minutes, I went back to the store.
Q What did you do?
A I went to play the game.
Q How late were you there that night?
A I can't really say, because I was back and forth. I left the store four or five times.
Q Do you remember telling the police you were there until 11:35?
A Yeah, that's last time I went but I had done been back and forth quite a few times.
Q After all this happened, when did you find out this man had died as a result of his injuries?
A The next day when the police came to my house.
Q When they came and asked you to talk to them, didn't they?
A Yes, ma'am.
Q At that point they had no idea about what all had happened; is that correct?
A Correct.
Q So you went down to be headquarters and you

talked to them?
A Yes.
Q Investigator Sumpter, I believe, talked to you it?
A Yes.
Q You testified that he was a nice man.
A I can't put a face with him. There was quite few of them in the room that day.
Q And you gave them a statement about what you knew?
A Yes.
Q But you're didn't tell them what you just told the jury here today, did you?
A Okay. No, I didn't have a chance to tell them that. The guy that was sitting right there was in there hostile and -- when he was asking me to write a statement, he gave me the pictures of the Marcellius Brooks and he was, like, 'just like I got a call about you threw a chair.' I looked at him. Before I had time to collaborate, he told me, "I don't want to know about the chair. I want to know about this guy right here." So when he said that, that's all I gave him information on.
Q Well, you're saying that the police didn't

know about you at all at that point?
A No, he told me -- that guy right there told me that he had got an anonymous I had threw a chair at somebody. But he didn't want to know about that. He just wanted to know about the picture that he put before me.
Q So you just didn't tell him that part?
A I told him what he asked me.
Q You wrote this, is this your handwriting?
A Yes, ma'am, it is.
Q And you wrote about what happened, your daughter and a grown man fighting? He took off running.
A That's what was told me, and that's what they wanted to know, what I had heard. I didn't see any of that.
Q So now you're at the police station and they know about what's going on, this man has attacked your daughter, so this is your opportunity to report this assault and all you say was "She was okay, just upset and wet. I got off the poker machine, took her home, made sure she was fine and went back to the poker machine until about 11:35." That's what you told the police in your handwriting?

A Yeah, I know what it is.
Q And then when they asked you about the guy that brought your daughter to you, you don't -- you give them a description?
A Exactly.
Q And then you talk again about what your daughter told you happened?
A Correct.
Q Why didn't you tell them about the assault?
A Excuse me?
Q Why didn't you tell them about what you did, how upset you were. It had to be hard to control those emotions?
A When he first said something about me, the chair, me throwing this chair, I was going to elaborate on that. He didn't want to hear about that. I'm at the police station. I'm already nervous from the junk.

Mr. Pegram, he didn't want to hear that. He wanted to hear about the picture that he put before me, which was Marcellius Brooks. It was like 'I get calls all the time, right now I don't want to hear that. I want to hear about this.' So I told him what he wanted to hear.

If he had asked me anything about this

chair, then that's when it would have came about but he was focusessed on a Blood.

Q Okay. You don't remember in the statement that it says you were talking to Clarence Sumpter?

A That's who I was talking to. He was sitting right beside him.

Q Okay.

A I'll never forget that to this day.

Q So you didn't think it was important to tell them what you had observed about the person or anything like that?

A (No verbal response).

Q You're saying they wouldn't listen to you?

A No, I'm not saying they wouldn't listen. It's just that I wouldn't really think much of it. And when he told us that he had died or whatever, I already know that that chair didn't touch him when I throwed it and a slap didn't kill him. I wasn't going to put myself out there to make it seem like I had did anything wrong.

Q You weren't protecting you or your brother, were you?

A No, I wasn't protecting nobody but my

child.
Q Because you knew what had happened and what you had done?
A No, I hadn't -- no, I didn't.
Q Then you found out they had a warrant for your arrest?
A Yes, ma'am.
Q And you turned yourself in?
A Yes, ma'am.
Q At that point did you tell them the truth about what happened?
A Nobody ever talked to me. I went to jail. I went on bond. I went and looked for an attorney. I have never been questioned by an investigator, nothing. Nobody talked to me anymore.
Q This is the first time you've ever told anybody this story?
A Yes, ma'am.
Q That day Bloom, who you don't really know that well, you made a cell phone to him?
A Uh-huh, (affirmative nod).
Q So even though you lived next to him two-and-a-half years, but you knew his number to call?

A I got his number from this girl named Dorothy Chapman, an old friend of mine. Her phone didn't come on until nine o'clock. I remember making a call because I got his number from her, but she would use my phone to call him, too, and any other number that I don't know.

Q So he was your automatic dial?

A Who?

Q Bloom?

A No.

Q But you were able to call him that day because that's on those records?

A I had to get his number from somewhere, ma'am. I just told you Dorothy Chapman gave me his number.

Q And when your daughter talked to the police, you don't know why she didn't mention when you came back or when her uncle came back or anything like that?

A I have no idea.

MS. CAMPBELL: Okay.

THE COURT: Redirect? Anything?

MR. FARLEY: Thank you, Your Honor. Yeah, just briefly.

REDIRECT EXAMINATION

BY MR. FARLEY:

Q Ms. Reese?

A Yes.

Q Like I said, you didn't mean to withhold anything from the police, did you?

A No, sir, he just kept asking me about a specific person. When he first mentioned something about he got an anonymous call, when I went to collaborate on that, he killed all that by saying he just wanted to know about this person right here, and he had that picture in front of me. So I wasn't withholding that. I have just gave him the information he asked me about.

Q Yes, ma'am. Ms. Reese, did you come here today to tell the truth?

A The whole truth and nothing but the truth, so help me God.

Q You came to share your story?

A Yes, sir.

Q And what you just shared ---

A Is the God's heaven's truth.

Q --- is as close as you remember it, correct?

A Yes, sir.
Q I just want to ask you one more time, did you intended to hurt Kenneth Mack?
A No.
Q Did you intend to kill Kenneth Mack?
A No.
Q To murder Kenneth Mack?
A No.
Q Lynch Kenneth Mack?
A No.
Q What did you intend to do when you went that day?
A I just wanted him just to stay the hell away from my daughter. Just stay in grown people's place and not in a kid's place. That's it.

MR. FARLEY: Thank you Ms. Reese.

THE COURT: Anything?

MR. FARLEY: No, sir. I'm fine. Thank you very much.

THE COURT: Anything further?

MS. CAMPBELL: No, sir.

THE COURT: All right. You may come down, ma'am. Thank you very much.

(WITNESS STEPS DOWN)

THE COURT: All right. Ladies and gentlemen of the jury, that will conclude the testimony for today. How about nine o'clock tomorrow, everybody okay with that?

Got another big day ahead of us. All right. You're now dismissed for the evening. Again, don't discuss the case among yourselves when you return to the jury room or with anyone else over the evening hours. Please don't do any research on this case. If you'll hear it live and in person right here. Thank you very much.

(JURY OUT)

THE COURT: Mr. Farrow (phonetic), can I inquire about the remainder of your case?

MR. FARLEY: Your Honor, that concludes my case and if you don't mind my saying it's Farley.

THE COURT: Sir?

MR. FARLEY: Farley.

THE COURT: I'm sorry. Mr. Chaplin, do you anticipate you will finish tomorrow or -- I've got to tell how to plan for this jury that is going to come in here Monday.

MR. CHAPLIN: Well, I anticipate

on calling two people tomorrow morning.

THE COURT: Okay.

MR. CHAPLIN: And unless something unforeseen happens -- like we may get a surprise from the State tomorrow morning, I don't know.

THE COURT: Well, just anticipate it. So we may finish tomorrow? All right, let me ask you this, Madame -- in the event that we can finish, I'll expect any suggestions for requests for charge in the morning.

MS. CAMPBELL: Yes, sir, I'll have those.

THE COURT: From all parties.

MR. FARLEY: Yes, sir.

THE COURT: Deliver them to my law clerk first thing in the morning. We'll have a proposed set of the charges for you after I have read and review what you have requested, okay.

MR. FARLEY: Yes, sir.

THE COURT: See you at 9:00 o'clock.

(COURT IN RECESS)

(TRANSCRIPT CONTINUED NEXT PAGE)

MARCH 2, 2012 9:00 a.m.

(DEFENDANTS PRESENT)

THE COURT: Is the State ready to proceed?

MS. CAMPBELL: Yes, Your Honor.

THE COURT: Defense ready to proceed?

MR. FARLEY: Ready.

MR. CHAPLIN: Ready, Your Honor.

THE COURT: Any matters of housekeeping that need to be addressed before we bring the jury?

MR. CHAPLIN: The requests to charge.

MS. CAMPBELL: I'm sorry. We need to get the requests to charge.

THE COURT: Hand them up.

MS. CAMPBELL: Do you have copies for us?

MR. CHAPLIN: Oh, are we supposed to provide them copies?

THE COURT: Yes.

MR. CHAPLIN: Okay. I didn't make them copies.

THE COURT: Fair is fair.

MR. CHAPLIN: Okay. Well, then I need

to make copies.

MS. CAMPBELL: We can get somebody to make copies for him. Give it to me. We'll get copies made.

MS. CAMPBELL: And ours are coming.

THE COURT: Ms. Sampson, how about me?

MS. SIMPSON: Oh. I apologize, Your Honor. Oh, this is what you already have.

MS. CAMPBELL: I just gave you that. They're bringing in Mathias'.

THE COURT: All right. Bring the jury, please.

(JURY IN @ 9:16 a.m.)

BAILIFF: Your Honor, the jury is present.

THE COURT: Thank you very much. Mr. Whittle, you may want to the kind of guard that back door. Do you mind? Good morning ladies and gentlemen.

As you probably noticed, there's quite a bit of activity in the adjoining courtroom. I've asked the bailiffs to try to keep it quiet over there. I'm not sure whether it is transfer -- yeah, it is transfer court, isn't

it. That's sort of a lesser crimes court, sort of like a magistrate's court or small claims court. It's all criminal stuff, so there are a lot of people over there who are going through that process. It will dwindle during the day. I'll try to keep it from interfering too much. All right. Counsel, you may proceed.

MR. CHAPLIN: Thank you very much, Your Honor. At this time, the defense for Henry Gray calls Tyeshia Kiki Burns.

(WITNESS TAKES STAND)

KIKI BURNS, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified, as follows:

DIRECT EXAMINATION

BY MR. CHAPLIN:

Q Now, Ms. Burns, did you witness an incident on the 13th of February, 2010?

A Yes.

Q Okay. And did you subsequently give a statement to the Columbia Police Department?

A Yes.

Q About that, what you saw?

A Yes.

Q All right. Now, Ms. Burns, tell me, what

were you doing when you saw this incident?
A I was working at the B.P. gas station right across from whatever that complex is.
Q Yes.
A Working.
Q So I'm going to walk up here to a little diagram I have. This is the Blue Ocean Seafood and this is Forest Drive?
A Uh-huh.
Q Where is your gas station at in relation to this?
A It's right across the street from McDuffie. Yeah, right across the street from the complex.
Q So right here?
A No, it's in front of it. If you're coming across the street it's right in front of it. It's like right beside Bojangles.
Q All right. So tell me when I'm getting close to?
A No, you're on Forest Drive. You're going to be right this. If this is Forest Drive right here, ---
Q Yes.
A --- Bojangles is right here and ---
Q Yes.

A --- the gas station is there.
Q So further. I'm going to ask you to stand up, if you would, please. Can you?
A (Complies) -- this (indicating) is McDuffie.
Q Yes.
A The gas station.
Q The -- excuse me?
A That the gas station would be like this is Forest Drive, this is McDuffie.
Q Yeah?
A The gas station would be here.
Q Uh-huh.
A Bojangles would be like right here.
Q And how close are you to the Ocean Seafood?
A We're right across the street from it.
Q And this is Ocean Seafood?
A Yeah.
Q If you're right across the street from Ocean Seafood, you're up here?
A Yes.
Q I'm sorry if the diagram is kinda bad.
A Yeah, we're diagonal from it.
Q From Ocean Seafood. Got it. Now, while you were at your job that morning or that

afternoon, rather, tell me what you saw?
A The only thing I saw was, I was waiting on some customers and I about four or five people running up the street. One guy was in front of them. He run to his left. He must have tripped over a chain or something and he fell. All I saw was black hoods on them. That was it and after he went to get up, he stumbled back down and I went to turn around and look and he was gone.
Q Okay?
A So.
Q So you saw a man running?
A (Affirmative nod).
Q And you saw some people chasing him?
A (Affirmative nod).
Q And then you saw the man fall?
A Well, he -- yeah, he tripped over something.
Q Tripped over something?
A Yeah.
Q And then you saw the people chasing him, then beat him?
A Yeah.
Q Okay. And I think he -- in your statement

you said that there was kicking and stomping?
A I just seen him all just getting on him.
Q Okay.
A And when he went to get up, he stumbled back down.
Q You also saw a female?
A I don't know where she appeared from.
Q Okay.
A I don't know if she was with the group of people or if she was trying to help him.
Q Yeah.
A So.
Q And where did this group of people -- I think you said in your statement these people, group of people were walking towards the seafood restaurant when they left?
A Yeah, when they walked back toward the seafood but I couldn't focus on them when I had a store full of people.
Q Okay. So then after they walked away, the man that was on the ground tried to stand up?
A He tried to stand up and he stumbled back down. After that, by me working and trying to focus on that, I don't know where he went.
Q I see. So if this is the seafood

restaurant here, you saw the group of --
A They're walking in front of -- (indicating).
Q Walking in front of this area?
A Uh-huh.
Q When they were leaving the attack?
A Yeah.
Q Okay. Now, do you still work at that B.P. station?
A No.
Q You just decided to leave?
A Uh-huh.
Q Any particular reason?
A Well, no. I stayed there a couple of months afterwards, but a couple of incidents happened after that and I just left.
Q What type of incidents?
A One was getting ---
MS. SAMPSON: Objection, Your Honor. Relevant.
THE COURT: What does that deal with this? I'm going to sustain that.
DIRECT EXAMINATION CONTINUED
BY MR. CHAPLIN:
Q So you no longer work at that location.

A No.
Q Are you under subpoena here today?
A Yeah.
Q So you don't really want to be here?
A No.
Q Okay. But you're doing your duty as a citizen?
A Yes.
Q And testifying?
A Yeah, but I don't know why because it's like I can't put a face with a name.
Q Okay.
A I don't know why.
Q Okay. But you did see what you just testified to?
A Yeah.
Q Okay. Do you have any doubt in your mind about that?
A No, I don't.
Q All right. I'd like you to answer any questions that the other attorneys may have of you in this matter?
THE COURT: Mr. Farrell?
MR. FARLEY: I have no questions for Ms. Burns. Thank you.

THE COURT: Ms. Sampson.

MS. SAMPSON: Thank you.

CROSS EXAMINATION

BY MS. SAMPSON:

Q Good morning, Ms. Burns. Now, I just want to be clear where your store exactly is, because I'm pretty familiar with the area. Your standing at your cash register at the B.P. station when all this occurs. Correct?

A Yes.

Q When you walk out of your store there's two rows of gas pumps; correct?

A No, there's no two rows of pumps.

Q There's one row here and one row here, correct, where people can get gas.

A Yeah, but it's more than two rows.

Q There's more than two?

A Uh-huh.

Q And then there's more asphalt where people can kind of park?

A Uh-huh.

Q And there's four lanes of traffic.

A (Affirmative nod)

Q Then there is the parking lot for the market?

A Yes.
Q Then there is the market?
A (Affirmative nod).
Q And beside the market is McDuffie street?
A Yeah.
Q So in order to see this fight, you have to look past all of that in order to see the fight, correct?
A No, because it's' clear view.
Q It is a clear view but there's traffic, there's cars going back and forth on the street.
A Yeah.
Q And there's four lanes of traffic?
A Yes.
Q And a turn lane in between those rows of traffic?
A I don't know about the turn lane.
Q You don't know about the turn lane?
A No.
Q And people can turn right into -- left onto McDuffie street or right depending on which way they're coming from?
A Yeah.
Q And they can also turn right beside you, between you and the hospital?

A Yes.
Q And the fight is definitely across from you across Forest Drive over there on McDuffie Street?
A Well, it's not on McDuffie street. It's like whatever that complex is, the Gardens or whatever, there is like a little open space right there and then some chains that -- from the road to the grass or whatever.
Q Correct. That's where it was?
A Yeah.
Q And you said you saw a female, correct?
A Yeah.
Q What does she look like?
A The only thing I can tell you, she is a black male -- black female.
Q Did you tell the police she looked like she was in her late twenties?
A No.
Q You don't remember telling them that?
A No.
Q Would seeing your statement help refresh your memory?
A Might, but -- (pause).
Q Ms. Burns, I'm going to ask you to take a