VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRELL ARTIETH SMITH,

APPELLANT

APPELLATE CASE NO. 2017-001178

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State of South Carolina)
)
County of Charleston)

In Circuit Court of the
Ninth Judicial Circuit
2014-GS-10-05999, 06000
06001, 06002

The State,

Plaintiff,

vs.

Terrell Artieth Smith,

Defendant.

Transcript of Record
(VOLUME I)

Charleston, South Carolina
September 19-22, 2016

B E F O R E:

The Honorable Kristi L. Harrington

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bias of the witness, the prejudiced of the witness. The opportunity for the witness to have seen the matters and things about which the witness testifies as well as the way the witness acts on that witness stand. You have the right to consider anything that is in the record. It will help you evaluate the testimony of the witnesses. That means it's your duty to pay close attention. Please do not let your thoughts wonder. So at the end of the testimony after you've heard closing arguments on behalf of counsel and I have instructed you on the law applicable to this case, you will be in a position to determine what the true facts are and applied those facts to the law as I give it to you and render a verdict based only upon those things.

Ladies and gentlemen, please give your strict attention, Mr. Patrick?

MR. PATRICK: Thank you, Your Honor. May it please, the Court?

Darryl Bennett has lived every parent's worst nightmare. He witnessed the death of the son inside his home. The murder of his son inside of his own bed by this man, Terrell Smith. On June 10, 2014 Darryl Bennett was watching a game of basketball with his son and a friend. They went to sleep. The next morning Darryl wakes up around 7, 7:30, checks in on his son. They live in the same house about right down the hallway from each other.

Checks in on his son, then goes about his morning finds him sleeping in his bed, goes by this morning uses the restroom, starts getting ready for his day. And then sometime later between ten and thirty minutes hears a shuffling noise in the next room. He checks in and to his surprise there's a man over his son and what appears to be punching, in kind of a fist motion, he cries out, the man turns and to his surprise he sees a knife in his hand and the man attacks him and now he's fighting for his own life. They start to wrestle. They fall into this back storage room behind the bedroom. They're wrestling on the ground and his son, Brandon Bennett, with his last dying effort, reaches out and tries to intervene, tries to help his father. That effort may have saved Darryl's life because he's able to gain the upper hand. He's able to bite on to Terrell Smith's arm and get him to release this knife right there, bite, a big bite mark. Get's him to release the knife, is able to gain the upper hand. But before he does that Terrell Smith's bites his neck, there's a big fat mark right there. Terrell flees out in front of the house. Darryl follows. Follows him down the street before he decides to turn back. He tells his neighbor to call the police. Runs back into the house and start tending to his son. His neighbor calls the police. EMS arrives. The fire department arrives. The Police Department arrives.

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EMS takes his son to the hospital and they take Darryl to the police station so they can find out just exactly what happened. While Darryl is up at the police station, he's interviewed by detectives but the entire time he has his phone, he's getting constant up dates from his family. It's during that time that he learns that his son has died. Meanwhile, the police are beginning their investigation. They're taking photographs of the crime scene. They're collecting evidence. They find a bent steak knife with blood on it. They find blood spots. They fine fingerprints. They find they a hat at the crime scene. And through their investigation they develop, Terrell Smith, as a suspect. Several days later Terrell Smith is found in Birmingham by US Marshal Service. The Marshals locate him, approaches him on the street and he runs, but is apprehended. Charleston Police Department detectives asked the US Marshals, ask Birmingham jail officials to photograph the defendant. Examine him. And what did they find, but a bite mark exactly as Darryl would have left when bit him to released that knife. They also sent some of that physical evidence off to the State Law Enforcement Division. The hat, the blood spots, a swab of Terrell Smith's mouth for DNA purposes and they confirm that we already know. The hat that was found at the crime scene matches the DNA profile of Terrell Smith. But, more

importantly, the swab from the bite of Darryl Bennett's neck matches the DNA profile of Terrell Smith.

Ladies and gentlemen, Darryl Bennett lived every parent's worst nightmare. He watched his son get murdered inside of his own house. And he was attacked himself. He was nearly killed. I want you to listen very closely to the testimony that's going to be presented today. I want you to look at every piece of evidence. I want you scrutinize every single word because I know that when you do, you'll come to the verdict that justice demands. The verdict of Terrell Smith is guilty of burglary in the first degree. The verdict that Terrell Smith is guilty of possession of a weapon during the commission of a violet crime. The verdict that Terrell Smith is guilty of the attempted murder of, Darryl Bennett. And the verdict that Terrell Smith is guilty of the murder of Brandon Bennett. Thank you.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Your Honor. May it please, the Court? Counsel?

Good afternoon, ladies and gentlemen. The world is not flat. That's something we all know now because we've been taught that. Like if you stand out in the middle of street and you look out, the world appears to be flat. That's how it comes across. You have to step back from it

to be able to see what the truth actually is and that's what you have to do here. If you believe that, there wouldn't be a trial. There's always more to the story. This case, tragically enough, it's about something that's minuscule and seemingly insignificant as dice. Terrell and Brandon Bennett, Darryl, were friends. They hung out lots of times before. They like to talk about girls. They like to talk about other things and do other things but they also like to play dice. They were both teenagers. Both were seventeen at the time. Brenda was eighteen. They were friends. There was no bad blood between them at all. The night that Terrell Smith went to see his friend in the early morning and I'll get to that. The night for Terrell, actually started out with him working at Juanita Greenberg's. It's a nacho restaurant downtown on King Street. So he got done at work, made a couple of extra dollars helping out the bartender, and then headed back to his mother or his grandmother's house, 30 South Tracy Street. It's about two blocks away from 142 Congress where this all occurred. Went home. Was hanging out there for a little while and then decided hey, I want to go see my friend. I want to go see Brandon. So he went over to Congress Street to hang out with his friend like he had done many times before. Some kids, some young men decided they wanted to take part and smokes some marijuana. That's

what Terrell wanted to do. He didn't have any on him. He thought that maybe he and Brandon could do that together. So he went over there. Once he got there, he went around and you'll see the exhibits later, I don't have them up there in front of you right now, but you'll see the front of the house. He went to the right side which would have been the east side of the home to where Brandon Bennett's bedroom was. Knocked on the window. Brandon then let him in the front door of the residence. The State will likely show you a point of entry, they will call it, where someone climbed through a window to sneak into this house. Terrell didn't need to do that. He was visiting his friend so like anyone would do when they visit their friend, they knock on the window or the door, this is a teenager so he knocked on the window, and then you get let in the front door. Once inside, they started hanging out, talked about girls, thinking maybe we'll try to get some marijuana. But when they started to plan that, when Terrell was going to make a phone call and try to call the weed man, his dice, that he keeps on him, fell out of his pocket. Now, I certainly have to admit I knew absolutely nothing about dice when I first started investigating this case. Never played it before. Don't know anything about it. But Terrell educated me. He taught me about the game of craps and that's what they were doing. When the dice fell out on the

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floor when he reached for his phone to call the weed man, he said, "hey man, shake them up." I didn't know what that meant. That means, let's play. And to Terrell that good was news because if someone else ask you to play, you're going to win. It's a superstition that some people have. After those dice hit the ground, they started playing craps and because Terrell won something call pee wee which I will talk to you about throughout the trial. It's, basically, if you flip a coin in other sports but that means you get to go first, that means you get to throw the dice. So Terrell was in charge, he's throwing the dice and he's winning. This makes Brandon mad. What really made Brandon mad was when he thought that Terrell had crapped, he thought that he's rolled a seven when he hadn't. Terrell keeps going, not wanting his mojo messed with because sometimes people try to mess with you, get you off your game. It's all rolled from dice anyway so I don't think you can control that, that's what he thought was going on. Brandon got mad and Terrell could feel that, that was happening so he said man, "I quit." Grabbed up the money that he had won. Grabbed up the dice and quit. This made Brandon very, angry enough that he would use a knife that he already had in his bedroom, to come at Terrell and Terrell had to do what he had to do which was to save his own life from his friend. This is a tragedy for everyone that's in here.

None of us want to be in here I promise you that. The Bennett family desperately doesn't want to be in here. The Smith family doesn't want to be in here. He wishes his friend was still alive. But Terrell did what he had to do to save his own life. There's another charge that you heard about, it's the attempted murder of Mr. Darryl Bennett. Darryl did what every father should've of done. When he saw someone fighting with and hurting his son, he attacked him. What Darryl did is exactly what I would've done if I saw someone hurting my child that's because Darryl was seeing the earth as flat. He didn't know the whole story but he came in on the most horrible thing he could've ever imagined and he reacted accordingly. He did what he should've done. Terrell fought. He fought for his life. Didn't feel that he had a choice. It was this horrible. You've heard that there was biting, to parties biting each other. There's blood. It's not what anyone expected when they went to hang out with their friend. It's not what they wanted to happen. But it is what happened. Afterwards, Terrell was able to save his life, fighting these two men and was able to get away. And he kept running. It's the fight of his life that you hear about in school. You fight. Some people fight. Some people flee. Some people do both. Terrell did both. Because he was scared about the repercussions that would

come, not scared about facing you guys, scared about what might happen to him in the community. That he heard himself. So Terrell fled to Birmingham. He was caught and brought back here. That doesn't mean that his actions weren't done to save his own life because they were over something as trivial as a dice game amongst friends. Again none of us want to be in here. This is a tragedy. I know that we're sorry for what's happened. We wish it would've never happened but he didn't have a choice. He's allowed to save his own life and because of that we ask that you find the only possible verdict that you can based on someone visiting their friend, having to defend himself against the attack, not guilty on all charges. Thank you.

THE COURT: All right. The first witness.

MR. SIMPSON: Your Honor, the State calls officer Jason Shepherd with the Charleston Police Department.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and during the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. SHEPHERD: I do.

CLERK: Please have a seat. Please state your full name and spell your last name please.

MR. SHEPHERD: Corporal Jason Michael Shepherd, S-h-e-p-h-e-r-d.

MR. PATRICK: Thank you.

JASON SHEPHERD, first being duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Officer Shepherd, how are you? Good afternoon.

A. Great. How are you, sir?

Q. Doing well. I'd like to start by introducing you to this jury. Again you've given your name and for what agency do you work?

A. The City of Charleston Police Department.

Q. And how long of you been with that agency?

A. Ten years, sir.

Q. And what is your current job with the Charleston Police Department?

A. Currently, I'm a supervisor for the ACU Flex Squad?

Q. What's a flex squad?

A. What we do is we, basically, we supplement the patrol units and our main goal is looking for guns, drugs and we react to hotspot areas in the downtown region.

Q. What was your job with the Charleston Police Department in June of 2014?

A. I was under the direct command of Sergeant Gregg Sink. I was his assistant supervisor for Squad F.

Q. And what is Squad F?

A. It's one of the six quads we have in the team one

patrol division.

Q. And is team one sort of a subsection of the Charleston Police Department?

A. Yes, sir.

Q. And does - - how are those broken up, the different teams?

A. They're divided into, we have nine teams now, team one is anywhere from Calhoun Street which is our cut off north to Pittsburgh Avenue.

Q. So those are geographical extension?

A. Yes, sir.

Q. And as a team one area, if you want to call it that, that's in Charleston County?

A. Yes, sir.

Q. And in fact the entire Charleston Police Department is within the jurisdiction within Charleston County?

A. Yes, sir.

Q. And you mentioned that you were employed in that capacity in June of 2014?

A. Yes, sir.

Q. Do you respond - - do you recall in so working responding to an incident on June 11, 2014?

A. Yes, sir.

Q. And if you could, I may interrupt from time to time, I'm just going to start out how your morning would have

begun that day.

A. That morning we report in at 0700 and at 0730 we normally have a security briefing which is known as roll call. We get briefed by the prior shift commander and or the supervisor from the midnight shift.

Q. Let me stop you. This is foreign to me too and it may be foreign to some of the jurors, but when you say 0700, most of us use a.m./ p.m. what are we talking about here?

A. Oh, I'm sorry.

Q. No problem.

A. It's 7 a.m. in the morning.

Q. And where would you check in at 7 a.m.?

A. We would normally go to our substation or if need be go to the police department at 180 Lockwood Boulevard, are our substation is located at 645 Meeting Street.

MR. SIMPSON: May I approach the witness, Your Honor?

THE COURT: You may.

Q. Let me show you what's been entered by consent as evidence as State's 69, can you take a moment and look at that?

A. Yes, sir.

Q. I'm going to ask you, do you think you can locate that substation on that? First of all, what is that exhibit?

A. This is a picture of Google maps where Congress Street.

Q. And you mention your substation, can you locate that on that map?

A. Let's see here.

Q. Or approximately? That's a bit small.

A. It's right about this area right there.

Q. Okay. If you could just circle the area of your substation with the pen there.

(Whereupon, the witness complies)

Q. We'll make it a little darker, is that okay?

A. Yes, sir.

Q. Is it fair to say when we look at State's 69 that, that's sort of right in the heart of your area, near King's area there?

A. Yes, sir.

Q. And you mentioned a meeting that would've taken place at around what time?

A. About 7 o'clock, we all gathered together and then at 7:30 we get our security briefing.

Q. And you did that on the morning of the 11th?

A. Yes, sir.

Q. And what happened after this briefing?

A. We got notified about certain areas that we had to watch out for during our day shift, our day shift at that time, ah, still is runs from 7:30 in the morning until 5:30 in the evening. Upon, at that time, we also gather our

necessary equipment that we would need for the day. For example, our laptop, our AR 15's, any, like, radar guns, stuff like that. In the process of getting our equipment we heard our tone out on the radio which is a series of beeps signifying that something either a felony is in progress and/or something had just occurred. At which time, we were notified by our dispatcher that there is an apparent stabbing inside a resident at Congress Street.

Q. And you mention Congress Street marked on State's 69 it is view?

A. Yes, sir.

Q. Is that a fair and accurate representation of where that address is?

A. Yes, sir.

Q. And about how far was that address from your substation?

A. It was approximately about ten blocks, ten to twelve blocks.

MR. SIMPSON: May approach the witness, Your Honor?

THE COURT: You may.

Q. I want to show you what's been marked and admitted into evidence as State's 68, is there an address marked on that map?

A. Yes, sir, Congress Street.

Q. And is that an accurate depiction of where

Congress Street is?

A. Yes, sir.

Q. So you said roughly ten blocks from where your location is when you get the call?

A. Yes, sir.

Q. Would you respond to that kind of call for a stabbing, would you be responding quickly?

A. Yes, sir. We, any type of stabbing or anything of that nature would be a priority one call, so we were running lights and sirens.

Q. Lights and sirens and time of essence in that kind of response?

A. Yes, sir.

Q. From when that call came in to when you arrived at Congress Street, best guess?

A. I'd say about anywhere from a minute to a minute and fifteen.

Q. And in your line of work, verily prompt and quick response, would you say?

A. Yes, sir.

MR. SIMPSON: Your Honor, may approach the witness again?

THE COURT: You may.

Q. I'm showing what's been marked and entered by consent of State's 20 and 21, if you could take a look at those

exhibits.
A. Yes, sir.
Q. What do those photographs depict?
A. The one is the picture of the front of the house of Congress Street and the other is a picture at an angle of the side of Congress Street.
MR. SIMPSON: Your Honor, permission to publish?
THE COURT: You may.
(Whereupon, counsel publishes pictures to the jury)
THE COURT: And again, ladies and gentlemen, those will go back to the jury room with you.
Q. Now, obviously, not, you know, meaning to make any judgment or anything like that but would you describe Congress Street as a large home or a small home?
A. It's a relatively small house compared to the standards of most houses in downtown Charleston.
Q. Let's go to just right at that moment, you pull up, are you pulling up with some speed?
A. Yes, sir. I took the most direct route from our team office which would've been from Huger Street going west towards the Citadel and taking a left onto Rutledge Avenue.
Q. Given the size of Congress Street, did you feel like you had a good view of the front of the house?
A. Yes, sir.
Q. And the sides of the house?

A. Yes, sir.

Q. And are you trained when you get out, you're sort of scanning the area at that time?

A. Yes sir. We're trained through the South Carolina Criminal Justice Academy to park a block away from the residence.

Q. Let me ask you right there. A group of people, do you see any group of people scattering as you're pulling up?

A. No, sir.

Q. What time of the morning is this about when you arrive again?

A. I believe, it was approximately around 7:45, 7:50.

Q. Any sign whatsoever that maybe like a gambling party had just taken place at this house?

A. No, sir.

Q. Was there a lot of people running?

A. No, sir.

Q. Anyone at all running in any direction or scattering in any direction?

A. To my recollection I did not see anybody - - -

Q. Okay.

A. - - - on the sidewalks and/or streets.

Q. And please explain to the jury, how you did it respond when you arrived at Congress?

A. Upon arrival, as I stated earlier, we park normally a

block before the residence which is standard procedure for most response in this type of situation. At which time, we carefully do not slam our car doors when we get out of our CP unit. At which time, we admittedly scanned the area. We look left. We look right. We look down the street. We look up the street. Just in case, you know, the offender or the defendant is still on scene. At which time, we make our careful approach to the front of the residence.

Q. And how did the - - what transpired then as you approach the residence on June 11th?

A. When we approach the residence, at that time, I was training officer who was in training, officer O'Leary, we walked - - -

Q. Let me stop you there, was officer O'Leary riding along with you in the same car?

A. Yes, sir. He was in the passenger seat of my unit at the time.

Q. And when you pulled up to Congress, were you the first unit to arrive?

A. Yes, sir. And then officer Adam quickly responded probably about five seconds to ten seconds after we arrived.

Q. Okay.

A. At which time, the first known observation we made was the front door of the residence was opened. At which time,

we carefully approached before making our approach we looked at any windows, anybody, if there was any movement at any windows or we if we could locate any type movement inside the residence. At which time, we got to the screen door of the front of the residence and made our presence known by yelling several times Charleston Police Department, Charleston Police Department. At which time, we didn't, all we heard was screaming inside the residence. At which time, we announced ourselves again and we at this time we said Charleston Police Department, officer so-and-so and so-and-so.

Q. And can you describe a little more to the jury at what sort of sounds you were hearing at that point?

A. At which time, I believe the only, aside from the victim, the only other occupant inside the residence, the only voice we heard was a single male voice and he was screaming for help. He stated I'm over here. I'm in here. He kept screaming. And, basically, he guided us to where we located the victim at.

Q. With his voice?

A. Yes, sir.

Q. Let me show you what's been marked and entered by consent of State's 1. To the best of your recollection understanding, obviously, that you didn't live here, does that appear to you to be an accurate representation of the

interior of Congress?

A. Yes, it does.

MR. SIMPSON: And, Your Honor, may I ask the witness to step down?

THE COURT: You may. Just make sure you keep your voice up because you're going to have your back to us and I need for my court reporter to be able to hear you.

A. Yes, ma'am.

Q. If you would, officer Shepherd, you mention your entrance to the house as sort of being led to by a voice, first let's start with, do you recognize the street side?

A. This would be Congress Street right here.

Q. Where is the front?

A. The front door would be here.

Q. And when you - - is this like a porch?

A. Yes, sir. It's like a little porch landing.

Q. And when you entered the home, where were you led to by the voice?

A. When we entered the home, we came in through the front. We stopped here with the screen door was and made an announcement, that's where we announced ourselves several times. We made entry through the front door which is took us directly into the dining room. At which time, we had our guns drawn. We had no idea given the totality of the circumstances what we were running into. At which

time, we did a three-man stack formation which is basically an officer lines up behind each other. At which time, we stacked at the door, announced, made injury and at the time we kept hearing the voices. Went through the dining room. I guess, that's a living room, through the kitchen, and this was the rear bedroom where the father was standing on the door way between the kitchen and the bedroom. At which time, I told officer O'Leary to separate the father and get him away from his son. At which time, his son was laying, was sitting upright of one of the doorframes.

Q. On the doorframe and the doorframe here?

A. Yes, sir.

Q. And what - - do you recall anything about this room here?

A. It should've been like - - it looked like a closet but they had a bunch of items so it looked like a storage closet.

Q. Okay.

A. Or a storage room.

MR. SIMPSON: You can return.

Q. You said you asked officer O'Leary to do something, what was that?

A. At the time, on scene I was the senior officer and the first thing we have to do is separate the, secure the scene, the father was, obviously, frantic and hysterical.

We couldn't get him to leave which I understood, but at the same time, we wanted to separate them so we could get the basic who, what, when, and how, the basic information. And the second thing we have to do, at that time, is once we secure the scene, as we have to secure the crime scene, secure any evidence that may have been located inside the house are specifically inside that room.

Q. And are you given some first-aid training in your field?

A. Yes, sir. I'm certified through the City of Charleston Police Department in CPR.

Q. And is rendering aid to somebody, in the younger males condition, part or a priority of yours at that time?

A. Yes, sir. Our departmental policy states that our citizens given in any type of injury, we are to render as much medical aid as possible until EMS or fire arrive on the scene.

Q. And did you understand, at that time, that EMS and fire were on the way?

A. Yes, sir.

Q. And so how did you - - did you proceed to render aid?

A. When we located the victim, like I said earlier, he was sitting upright on one of the frame, doorframes, he had shallow breathing but he was alert and conscious. At which time, I noticed there was a punctured wound on his arm and

a punctured wound in the center of his chest near his heart. The puncture wound on his chest did not look, it was not bleeding profusely. At which time, I began to make contact with the victim just by simply talking to them, keeping him calm until the fire and EMS paramedics arrived on the scene.

Q. Was he responsive to you at that time?

A. At that time, he just could shake his head, you know, up or down or left or right. At that time, upon our arrival the victim made a gurgling noise which I recognized through my training in ten years of experience as a severe wound and that maybe his lungs were filling up with blood. At which time, I instructed the officer Adam's to put a tourniquet on the wound on his arm. At which time, we then, officer Adams grabbed the victim's legs and I grabbed him and secured his neck and we laid him on the floor at which time I perform CPR.

Q. You said you grabbed him and laid him on the floor and so you moved him?

A. Yes, sir.

Q. And can you describe to the jury, where to you would've moved him?

A. We, basically, moved him from the upright position, sitting upright position and laid him flat onto the wooden floor of the closet.

MR. SIMPSON: May I approach, Your Honor?

THE COURT: You may.

Q. Officer Shepherd, I'm showing you what's been marked and admitted by consent of State's 33 and 34 - - Court's indulgence. Take a moment to review those photographs. Do you recognize those photographs?

A. Yes, sir.

Q. Does those depict the area where you describe the victim initially being and where he was moved to?

A. Yes, sir.

Q. And if you could, which describes where he was initially, the number?

A. Initially, this one, he was posted up, sitting upright on that pose.

MR. PATRICK: Permission to publish, Your Honor?

THE COURT: You may.

A. I'm sorry.

Q. Please continue.

A. The victim, when we initially walked in to the room, he was laid up, he was sitting up on the side of the doorframe.

(Whereupon, counsel publishes pictures to the jury)

Q. Showing State's 33, is this the doorframe you're referring to where he initially was?

A. Yes, sir.

Q. And the area inside was described sort of like a storage closet?

A. Yes, sir.

Q. And then on 34?

A. On 34, as you can see he was, what we didn't realize when we initially got there, we didn't realize he was actually sitting on a pool of blood.

Q. Okay.

A. So when we - - we didn't realize he was bleeding profusely until we actually physically, myself and officer Adams, moved him. At which time, when we moved him you can see his, I guess his bottom, his butt, was dragging on the ground and you can see where the pool of blood was. At which time, we moved him into this area where you can see that white shirt where we took one of his T-shirts, cut it up to use as a tourniquet and that's where we laid him and that's where I began to do CPR.

Q. Okay. Is it fair to say, officer Shepherd you mentioned some of your jobs, but is rendering aid the top priority at that point?

A. At that point, once the scene was secured and the crime scene was secured, rendering aid is the next top priority.

Q. And by security, you just mean, safe for everyone?

A. What we would do in that situation, was we would send

one officer to a protective sweep around the house to make sure the suspect and or the defendant wasn't hiding in a closet or under a bed.

Q. But I guess the point I'm trying to make, officer, is assuming everything is safe, helping this young man would've been your number one priority other than that?

A. Yes, sir.

Q. So, you know, things being moved and things would be all subservient to that purpose, is that correct?

A. Yes, sir.

Q. And in a major case like this, is it your job to go around and mark and collect evidence, is that your role in this investigation?

A. No, sir. If any of the initial crimes screen is touched it is then my responsibility once everything calms down and once the central detectives arrived on scene, I make immediate notification saying, "hey sir, the knife was laying here but because we had to conduct medical aid, we had to move the knife and this is where the rest, the final resting place of the knife was, after we moved it so."

Q. Well, I guess, since you bring it up and I should note that, did you observe a knife - - -

A. Yes, sir.

Q. - - - at the scene? Okay. And did you observe the other items that were going to stay on these pictures?

A. Yes, sir.

Q. But, I believe, you've testified though that things did get moved around in order to help this young man, is that correct?

A. Yes, sir.

Q. Did EMS eventually arrive?

A. Yes, sir, they did.

Q. Was their arrival fairly prompt?

A. I can't remember the exact time frame but I do recall that I was doing CPR on the victim probably about roughly two to three minutes.

Q. And then once they would've come on scene, would you have handed over that care to them?

A. Yes, sir, I would have. But like I said earlier, they probably were in the hallway but I wasn't really paying attention to the hallway.

Q. Did you observe any dice or game cards on the scene or anything of that nature?

A. Not to my recollection.

Q. But again documenting the scene would've been someone else's responsibility?

A. Yes, sir. It would've been our crime scene.

Q. And, if you could again, I know it was rather obvious that he's a human being, but could you describe the overall demeanor of Brandon's father when you arrived on the scene?

A. At first when we showed up on scene, as I stated earlier, he was screaming, yelling for help. Upon arrival when he guided us when we heard his voice we located the victim, he remained on scene. He was giving officer O'Leary a hard time. He didn't want to leave his son. He continued to be hysterical and very emotional which is very understandable in that type of situation.

Q. He didn't want to leave Brandon, is that right?

A. Yes, sir.

MR. SIMPSON: Court's indulgence. Officer Shepherd, thank you. Please answer any questions that Ms. Lewis ask of you.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Your Honor.

Cross Examination by Mr. Lewis:

Q. Good afternoon Corporal Shepherd.

A. How are you doing, sir?

Q. Doing all right. Haven't seen you in a while. So you said your initial response time was 7:45 to 7:50?

A. Yeah, approximately, from my recollection, sir.

Q. And you responded to a 911 call that's gone out?

A. Yes, sir.

Q. That's what sends it to dispatch, that's what tells you guys that you need to respond?

A. Actually, the way our consolidated dispatch works now,

it when you call 911 it goes to our call taker, that call taker gets the information and then they dispatch it to our dispatch center and, then our dispatch centers then dispatches up to us so the call can be anywhere from five to ten minutes behind.

Q. Oh, before it gets to you guys?

A. Yes, sir.

Q. And you had O'Leary with you at that point?

A. Yes, sir.

Q. You said you went in through the front door?

A. Yes, sir.

Q. And went straight back to where Darryl was with his son?

A. Yes, sir.

Q. And I know you're not scene, it's not your responsibility of document things that you see, right?

A. Yes, sir.

Q. But you have eyes, you are able to see what's around you?

A. Yes, sir.

Q. You had said today, that he was leaning up against the doorframe?

A. Yes, sir.

Q. Are you sure that he was not leaning up against some bags of items in the storage room?

A. It was the doorframe and on his right shoulder, excuse me, his left shoulder was on the doorframe and there were bags and items like there was little box on his right side.
Q. So he's leaning against both, right?
A. All right. And you said today that he was able to shake his head. So you said today he was able to communicate with you?
A. Non-verbal responses only.
Q. But so he was able to give you non-verbal responses?
A. Yes, sir, when we first met up with him.
Q. Do you remember preparing an incident report in this case?
A. Yes, sir.
MR. LEWIS: Your Honor, permission to approach the witness?
THE COURT: You may.
Q. If I may direct your attention to right there, can you read that to yourself and then see if that changes how you remember what happened?
A. Yes, sir.
Q. Does that change how you remember what took place?
A. Yes, sir.
Q. How did it actually happen?
A. Theat was my mistake. He was not awake throughout the whole incident.

Q. Okay.
A. That was my fault.
Q. That's fine. But by the time that you responded, his wounds had enough impact on him that he could not respond to you?
A. Yes. He had, at the time, he had shallow breathing.
Q. And while you observing things throughout, the State ask you if you saw any signs of gaming, I get that you didn't, did you see any blood at all on his bed?
A. No, sir.
Q. None?
A. None.
Q. And then you conducted CPR as you were trained to do to do whatever you could to help him and then EMS arrived?
A. Yes, sir.

MR. LEWIS: One moment, Judge. Thank you. No further questions, sir.

MR. SIMPSON: Nothing from the State, Your Honor.

THE COURT: You may step down. Thank you. Feel free to stay with us. Just leave that right there. Thank you. Mr. Patrick, is this your final witness for today?

MR. PATRICK: For today, Your Honor, yes.

THE COURT: Ladies and gentlemen, I typically try to stop as close to five as possible and so we have reached, there's no further witnesses for today. Please

you. So if you see an attorney or one of the participants witness and they are, looking away or look down and don't acknowledge you, please do not think they are being rude, there simply following my instructions. Ladies and gentlemen, please give your strict attention. Please call your next witness.

MR. PATRICK: Thank you, Your Honor. The State calls Timothy O'Leary.

CLERK: Please raise your right hand and your left on the Bible. Do you swear or affirm that the testimony that you shall give the Court and during the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. O'LEARY: Yes, ma'am.

CLERK: Please have a seat. Please state your name and spell your last name please.

MR. O'LEARY: Timothy Joseph O'Leary, O-l-e-a-r-y.

MR. PATRICK: May it please the Court?

TIMOTHY O'LEARY, first being duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. Good morning, officer O'Leary.

A. Good morning.

Q. Where are you employed?

A. The Charleston City Police Department.

Q. How long have you been with the Charleston Police Department?

A. Just under three years.

Q. Let's go a little bit on your background, where are you from, originally?

A. Billerica, Massachusetts.

Q. What did you do before you were at Charleston Police Department?

A. Middlesex Sheriff's Department inside the prison system.

Q. Can you speak up a little bit, I'm sorry?

A. Inside the prison system for Middlesex House of Correction.

Q. What brought you to Charleston?

A. Military, Coast Guard. Went to training in FLETC for the Coast Guard.

Q. And then you join the Charleston -- do you remember when you joined the Charleston Police Department?

A. My hire date was January 24, 2014.

Q. And how did you get involved with this case?

A. It was my third day on the job. I was training with officer Shepherd and we responded right after roll call.

Q. When you say you were training with him, what does that entail?

A. We have to do sixteen weeks of FTO training. Just

learned the ropes of, you know, police officer so I was riding with him.

Q. You would just ride along as a passenger?

A. Yes, sir.

Q. But you still have duties while you're doing the riding?

A. Yes, sir. We're sworn police officers. Graduated the academy May 30th.

Q. Let me go back to, you said you were just leaving roll call, what does that mean?

A. Every morning before our shift we meet at the office to get all of our equipment for the day and then the call came out. We just get briefed on the events that happened the night prior.

Q. Did you know what kind, what kind of incident you were responding to?

A. It just said a stabbing had just occurred.

Q. You know where it was?

A. On Congress Street.

Q. So you and officer Shepherd - - describe your travel to the crime scene and what happened when you got there?

A. The office is pretty close to Congress Street. Once we arrived on scene, we clear - - we entered - - went to the front door and announced ourselves as the Charleston Police Department. Entered the residence. Clear the

residence. And we heard Mr. Bennett yelling, we're back here, we're back here.

Q. When you say clear the residence, what you mean by that?

A. Make sure that the suspect is still not on the scene as it poses danger to us so we have to go into the residence to make sure no one else is there.

Q. Did you see anything that indicated the suspect was still on the scene?

A. No, sir.

Q. All right. So you came in and you spoke to Darryl, what was his demeanor at the time?

A. He was very, very, upset.

Q. Did you see the victim?

A. I did.

Q. The stabbed victim?

A. I did.

Q. Where was he situated?

A. He was in the bedroom in the back room leaning up against the wall.

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

Q. I'm showing you what's been pre-marked and admitted as State's 33 and State's 34, do you recognize those rooms?

A. Yes, sir.

MR. PATRICK: Your Honor, may I publish these?

THE COURT: You may.

(Whereupon, counsel publishes the photos to the jurors)

THE COURT: State's 34.

Q. Where would you say the victim was situated at this time?

A. Propped up against the wall on the right-hand side there.

Q. So where was the legs facing?

A. The legs were facing in the room, more to the room.

Q. What was his condition at the time?

A. I didn't - - it was a very glimpsed moment. I was tasked by officer Shepherd to take Mr. Bennett out of the room so that they can perform - - -

Q. Where did you take him?

A. I was tasked to take him outside of the residence which was very unsuccessful. The furthest we got was the living room.

Q. You said as far as you got, was he trying to get back to him?

A. Yes.

Q. And on State's 33, what does that photograph represents?

A. The bedroom that we went in.

Q. At any time was the victim moved from that back

storage room?

A. When I was there, he was not.

Q. He was not. Do you recall if he was moved at any point after that?

A. I didn't see it if he was.

Q. But that was because you were tasked with taking care of the father, correct?

A. Yes, sir.

Q. Without saying exactly what anything told you, just described to me how he was trying to get to his son?

A. Just wanted to make sure that his son was okay and I was trying to calm him down and say, "hey, we're working on him, EMS and fire are on the way here." Just preserve the crime scene, per se.

Q. And at some point did EMS arrived?

A. Yes, sir.

Q. And does that complete your involvement with this case?

A. No.

Q. What else happened? What else did you do?

A. At that point, once EMS got there, he eventually, removed himself from the house and I was tasked with the crime scene, standing by the gate to make sure I documented anybody who came into the crime scene, what time they came in, what time they exited.

Q. How many people would you say came and went as you were - - -

A. Fifteen to twenty people.

Q. Are most of these law enforcement?

A. Yes, sir.

Q. Detectives and sergeants?

A. Detectives of crime scene.

Q. Just to clarify really quickly, you said your first day on the job was in January, correct?

A. No.

Q. Okay.

A. Well, first day - - we do pre-academy for eight weeks prior to going to the academy.

Q. Okay.

A. So my first day was January.

Q. So when were you at the academy?

A. I don't know the exact dates. I know May 30th I graduated.

Q. So your graduation date was May 30th?

A. Yeah.

Q. So this was your third day on patrol?

A. On patrol, yes.

Q. Okay. But your hire date was back in January?

A. Yes, sir.

Q. As far as emergency response when y'all first got

there, I know you didn't perform any kind of CPR or anything, correct?

A. No, sir.

Q. Did you see officer Shepherd perform CPR?

A. No, sir.

Q. Is that because you were in that front room trying to take care of Darryl?

A. Yes, sir.

MR. PATRICK: Your Honor, I have no further questions of this witness.

THE COURT: Mr. Lewis? Your witness.

MR. LEWIS: Thank you, Judge. One moment. May I approach the witness, Your Honor?

THE COURT: You may.

Cross Examination by Mr. Lewis:

Q. I didn't introduce myself, I'm sorry. I'm Ben Lewis. I'm from the public defenders office. I don't think I've met you before. Let the record reflect I provided the witness with a copy of State's Exhibit 69. On there can you please mark where you responded from? I know that there is a substation - - -

A. Yeah, 649 Meeting Street.

Q. Yes. Can you circle where that was where you would've been responding from that morning?

A. Can you pull it up?

Q. I can try. How about this, can I - - let me just borrow it from you for a second. Yeah, I mean, I'm blind as a bat so - - yeah.

MR. LEWIS: May I approach?

THE COURT: You may.

(Whereupon, the map was visible on the screen in the courtroom)

Q. Does that help? I know it doesn't help me much but maybe it will help you.

A. I'm just trying to find - - -

Q. I would imagine that this up would be coming in from Mount Pleasant?

A. Yep. That's King Street right there, two blocks over. That's even blurrier.

Q. Huh?

A. I can't even tell.

Q. It's fine. I'll move on. You did say that you were able to go into Brandon Bennett's bedroom for a brief moment?

A. Yes, sir.

Q. When you were there, I know, like you said it was very brief, did you see any blood in the bed itself?

A. In the bed itself, no.

Q. Did you see any blood on the wall where you said he was leaning?

A. I don't believe so.

Q. Okay.

MR. LEWIS: No further questions, Judge. Thank you.

THE COURT: Redirect?

MR. PATRICK: Very briefly, Your Honor.

Redirect Examination by Mr. Patrick:

Q. Substation is on -- - what's the address that the substation is on?

A. 649 Meeting Street.

Q. And the address of the crime scene?

A. Congress Street.

Q. What you think the travel time is to get to those places?

A. Lights and siren at 7:30, probably a minute, less than a minute.

Q. So you got there pretty quickly?

A. Yes.

Q. As far as the crime scene goes, did you see a weapon?

A. I did not.

Q. Did you see any type of debris at all?

A. No.

Q. Were you able to notice anything particular about the crime scene at all besides the victim and the father?

A. No. I guess it was so chaotic that I just went in and

was tasked to take Mr. Bennett out of there. So I said, all right.

Q. All right.

MR. PATRICK: Thank you, Your Honor. No further questions.

THE COURT: Mr. Lewis?

MR. LEWIS: Nothing further, Judge.

THE COURT: You may step down, sir. You may stay with us but you're also free to leave. Call your next witness?

MR. SIMPSON: Thank you, Your Honor. At this time, the State calls Darryl Bennett.

CLERK: Please raise your right hand and Place your left hand on the Bible. Do you swear or affirm that the testimony that you shall give the Court and during the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. BENNETT: Yes, ma'am.

CLERK: Please have a seat. State your full name and spell your last name please.

MR. BENNETT: Darryl Lamar Bennett, Sr., B-e-n-n-e-t-t.

MR. SIMPSON: May it please the Court?

DARRYL BENNETT, first being duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Mr. Bennett, good morning.

A. Good morning, sir.

Q. Let me offer my personal and State's condolences what brings us here this morning.

A. Thank you, sir.

Q. Is this a difficult thing to talk about?

A. Today is his birthday. It's very difficult.

Q. As we discussed, that was unintentional mistake on our part?

A. Yes, sir.

Q. I want to ask you first, have you to introduce yourself to this jury. Talk a little bit about you. How old are you, Mr. Bennett?

A. Fifty years old. I'll be going on fifty-one in November. I have taken some time off with my job. I'm a night auditor but right now I'm doing some renovations with my brother just to keep busy and ....

Q. To keep your mind occupied?

A. Pretty much, yes, sir.

Q. You mentioned being a night auditor, were you so employed back in June of 2014?

A. At that particular time, I was the night auditor, guest service representative, and a concierge.

Q. Okay.

A. So my schedule would've changed probably two, sometimes three times a week.
Q. And have you lived in Charleston your whole life?
A. Yes, sir.
Q. Please don't take any offense to this question but in your fifty odd years have you had any problem with the law or criminal convictions or anything like that?
A. No, sir.
Q. Are you currently -- let me ask you, tell me a little bit about Brandon and how he came into your life?
A. Twenty-one years ago Brandon came into this world at 5 o'clock and I was the first one to hold him, took his first breath. And that day in June, I was the last one to hold him when he took his final so....
Q. And who is Brandon's mother?
A. LaTrease.
Q. And are you guys still together?
A. No, we're not.
Q. But do you still maintain an amicable relationship?
A. Yes, sir, we do.
Q. And again, don't take offense to the phrasing of the question but are you an active father to Brandon?
A. Pardon, sir?
Q. Are you an active father to Brandon? An active part of his life?

A. Yes, sir.
Q. And where did Brandon live?
A. Congress Street.
Q. And is that your residence, as well?
A. That was my residence, yes, sir.
Q. And tell the jury if you could a little bit about your relationship with Brandon in 2014, were you guys close as a father and son?
A. We were close since his date of birth.
Q. Close his whole life?
A. Close his entire life.
Q. Did you believe that you had a relationship where you freely communicated with one another?
A. About anything.
Q. And again you were kind of, you guys live together, right, at the Congress Street?
A. Yes, sir.
Q. Brandon also remained close with his mother, is that true, as well?
A. Yes, sir. That's true.
Q. Both of you remain, I guess, put into the modern parlance, co-parents, both active in his life?
A. Yes, sir.
Q. You wanted the best for him?
A. Definitely.

Q. And try to lead him in the right directions, right?

A. As much as we could, yes, sir.

MR. LEWIS: Objection.

THE COURT: What's the bases?

MR. LEWIS: Leading.

MR. SIMPSON: Understood.

THE COURT: Thank you.

Q. How long had you live at Congress Street?

A. Twenty-one years.

Q. And how long had Brandon live there with you most of his life?

A. His entire life.

Q. I want to bring you now, Mr. Bennett, to the night before the incident, if I can.

A. Yes, sir.

Q. Explain to the jury sort of what happened, you know, what were you and Brandon up to the night before?

A. I got off that particular day around 5 o'clock. Took a walk home. And then - - I work right on the market so there was no need to drive or catch the bus just trying to clear my head after work so to speak. Got home and a typical day just, relaxed a bit. Brandon got home maybe an hour later. Probably there for thirty odd minutes. Then he said, dad I'm going out. "Going out" usually meant going to a friends house or going to the basketball court,

you know, things he loved to do. He did mention that he may have walked, he and his friend maybe walking to the market. His favorite spot was Waterfront Park and he just loved to be around the water and even, not an ill will kid, I mean, he never met a stranger. Everyone that he came in contact with he considered a friend. The kind of guy that would do anything that he could for a friend.

Q. And do you recall the evening before, did Brandon come back to the house and hang out with you?

A. Yes, sir. Yes, sir.

Q. What did you guys do together later that evening?

A. Well the basketball playoffs were on so, you know, as we were wanting to do he would make fun of my team, and I would make fun of whoever he root for. I made a quick little something to eat. We had some chicken wings, French fries and you know watching the game.

Q. And just had a little father-son venture, that sort of thing?

A. That's - - you know, a friend of his was over there and after I would say the fourth quarter is when his friend went home.

Q. Let me just be clear. Let's just get this out of the way, you see this individual seated here?

A. Yes, sir.

Q. Is that the friend that was there the night before?

A. No, sir.
Q. The by the fourth quarter the friend that was there went home?
A. Yes, sir.
Q. And what happened then?
A. About, I guess, fifteen minutes later just before the end of the game Brandon said all right dad he just said good night, went to his room, you know, - - -
Q. What did you do?
A. I watched the after, well, the talking, let's talk about the game and then I turned in.
MR. SIMPSON: Permission to approach the witness, Your Honor?
THE COURT: You may.
Q. Mr. Bennett, I'm showing you what's been marked and entered as State's Exhibit 1.
A. Yes, sir.
Q. I just can have you take a look at this.
A. Yes, sir.
Q. Do you recognize that?
A. That would be a diagram of 142 Congress.
Q. And again this was your home for, I believe, you said about twenty-one years, correct?
A. Yes, sir.
Q. Is that a fair and accurate, pretty fair

representation of at least the floor plan of your residence?

A. Yes, sir.

MR. SIMPSON: May I ask that the witness step down?

THE COURT: Mr. Bennett, you may step down. I'm having a hard time hearing you even with the microphone so I will need you to speak loudly because your back will be to my court reporter and so if I ask you to speak up it's just because I need everything to be written down accurately. Thank you. Please step down.

(Whereupon, the witness complies)

Q. Mr. Bennett, we may have you step down more than once during your testimony but I wanted you to explain, take a moment if you need, to look at the floor plans here. Where would you and Brandon would've been watching the game?

A. Right there.

Q. And you mentioned that Brandon went to bed, where's Brandon's bedroom on this? Right here?

A. Yes.

Q. And what is this sort of wide room here?

A. That was a living room - - -

THE COURT: All right. Mr. Bennett, I - - Mr. Simpson, I can't hear him. So could you repeat what you just said?

A. Yes, ma'am.

THE COURT: Thank you.

A. Brandon and I were watching TV in the living room. My bedroom would be the first room on the right. Brandon's bedroom was the next to the last room in the house.

Q. And the rear room if you could just direct that toward the court reporter, what was the rear room used for?

A. Storage.

Q. You can return to the witness stand. You may have to come down again.

A. Yes, sir.

Q. Mr. Bennett, I'm going to take you now to the morning of June 11, 2014?

A. Yes, sir.

Q. And again I may interrupt you frequently, could you explain to the jury what occurred? How did your day begin that morning?

A. I woke up about five minutes til seven that morning, got up and went to the bathroom. After I wash my hands I went in the direction of Brandon's room and stopped in the kitchen.

Q. Okay.

A. I looked into Brandon's room, Brandon was laying on his bed, asleep. Laying on his bed, asleep.

Q. Yes, sir.

A. I had intended - - I'm sorry.

Q. Sir, let me just ask you to stop there. I want to show you what's been marked and entered by consent State's 26, 27 and 28.

A. Yes, sir.

Q. Have you take a look at these. Do you recognize those images?

A. I do, sir.

Q. Relevant to what you just explained to us I'm going to have them put up right behind you.

A. Yes, sir.

Q. In State's 26, and again best you can describe, where will we go to get to your room in this picture?

A. Where you see the, the green wall, where the white door trim in the blue?

Q. Uh, huh.

A. You can see the bathroom right there, my room was just off of the bathroom.

Q. Okay.

A. So as you're walking in there you would take a right turn to go into my bedroom.

Q. And where's the kitchen?

A. The kitchen would be straight ahead where the book rack is that doorway.

Q. And Brandon's room?

A. The doorway that you see beyond the kitchen entrance.

Q. State's 27, you mentioned that you went into the kitchen, is that correct?
A. That is correct, yes, sir.
Q. And looked into where?
A. Into Brandon's room.
Q. And is that a fair and accurate view of what you, you would've had an unobstructed view of his bed, is that correct?
A. An unobstructed view of his bed and him, yes, sir.
Q. And again just briefly, State's 28.
A. Yes, sir.
Q. Is that a fair depiction of the view you had a Brandon and his room?
A. His head would've been on that pillow there and he was in a reclining position just asleep, yes, sir.
Q. On his back?
A. On his back, yes, sir.
Q. And did you see - - was there anybody else in the house?
A. There was no one else in the house, no, sir.
Q. Did you hear any talking?
A. There was no talking.
Q. Any rolling of dice or laughing or arguing?
A. None of those things, no, sir.
Q. So what did you do? How did your morning proceed from

there?

A. I had intended to go and wake Brandon up but I decided to make us a little breakfast first of all. I went to the bathroom and I was in the bathroom, I was checking my emails. I was on the phone. I checked my emails and a short time later - - -

Q. Well, let me stop right there, to the best you can, understanding that our minds don't work like a clock.

A. Yes, sir.

Q. From when you looked into Brandon's sleeping.

A. Yes, sir.

Q. To when you're back in your bathroom checking emails.

A. Yes, sir.

Q. And I probably should let you proceed, what happened then when you were in the - - you were saying a short time later, what were you going to say?

A. I heard like a shuffling sound.

Q. Okay. And I'm sorry.

A. Yes.

Q. I keep interrupting you. I should let you talk but about how long to the best that you can recall today, from when you saw Brandon sleeping - - -

A. Yes, sir.

Q. - - - to when you heard that shuffling sound?

A. I would estimate maybe three, four minutes.

Q. Say that again?

A. Maybe three or four minute.

Q. Okay. And what occurred then? You're the shuffling sound and what occurred then?

A. It was like in my mind I thought you know, hey, he was killing a bug or something but then I heard, you know, it sounded more like, you know, more than that.

Q. Okay.

A. So I left the bathroom. Went to see and I'm getting ready to say what the heck are you doing? When I see the defendant on top of my son doing something like this, "Didn't I tell you I was going to get you. Didn't I tell you I was going to get you." I'm thinking who in the hell is this man and how did you get in the house. And I go over to rip him off of Brandon and he swings wildly at me and that's when I seen this guy has a knife. He's not fighting Brandon. He's stabbing Brandon.

Q. Okay. I know this is hard but to the best you can describe or even show if you can what - - seen the view, we're not talking great spaces here, are we?

A. No, sir.

Q. When you turn and look in and investigate the shuffling sound - - -

A. Yes, sir.

Q. How is Brandon? What position is Brandon in?

A. Brandon was in the same reclining position that I said he was asleep in.

Q. Okay.

A. But his eyes were opened and here's this guy standing over him stabbing him saying "Didn't I tell you I'm going to get you."

Q. And Mr. Bennett - - -

A. "Didn't I tell you I'm going to get you."

Q. And Mr. Bennett, when he, you did, of course, what any father would do and came - - talk to me about body positions and what occurred then?

A. I attempted to go in grab him, you know, my son is asleep what are you even doing here. And what are you doing? So I was go to grab him on his right shoulder is when he spun around with the knife.

Q. And what occurred then?

A. As I backed up he's coming towards me and I try to regain my composure. As he's coming at me, thankfully the door had some give.

Q. Okay. And what were you referring to?

A. The storage door. The storage room door.

Q. Okay.

A. So I fell into the back room, he falls on top of me. And I'm struggling with him like, its still not clear to me what is going on.

Q. And I imagine that is an incredibly shocking difficult experience for you.

A. I'm actually struggling with him and it's in my mind to make sure Brandon is all right so I'm trying to look past him to Brandon.

Q. And what do you see then?

A. I see Brandon struggling to get to the doorway. The same wide-eyed look on his face like what is going on.

Q. And does he get to you and the defendant?

A. Brandon actually touches him and slumps down in what I said to him was, "you killed my son." It just came to me like Brandon came into the room and just touched him and he turned around briefly and I'm able to hold his arm and I'm like you killed my son.

Q. And how did he respond to you?

A. Can I say what he said?

Q. Yeah. I know it's tough in this kind of setting but I want you to say exactly what he said?

A. He laughed and I can still hear his laugh, "I'm going to kill you too motherfucker."

Q. And you said that Brandon slumped over, what did you interpret was happening with Brandon at this point?

A. I'm processing this in my head, you have a knife, it is evident things or just running, running, running. Its evident that he stabbed my son and he's actually trying to

kill me.

Q. Okay. And at this point I believe you're saying you're sort of on your back into the door of the store room?

A. I'm on my back probably on a box that was in the store room, it seems. I don't remember being against the doorway at all.

Q. Okay. You sort of fell through the door?

A. Yes. Yes.

Q. Brandon has, at least you would, come to your aid, he has slumped over inside the door?

A. Yes, sir.

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the basis?

MR. LEWIS: Starting to lead again.

THE COURT: Watch for leading questions. Thank you.

Q. What is the defendant doing at this point in reference to you?

A. He's trying to get the knife in my side, in my neck, he's trying to stab me in the face.

Q. Do you recall we spoke about this before and sort of did a demonstration?

A. Yes, sir.

THE COURT: Your Honor, Matt I asked the witness to

step down?

THE COURT: You may.

(Whereupon, the witness complies)

Q. Mr. Bennett, as best you could using me, you're going to have to just put me in the position as best as you can remember. I realize this is chaotic. I am Terrell Smith. You are you sort of backed into the store room.

A. I'm backed into the store room.

Q. What happens physically at this point?

A. He's all - - he's trying to - - and I'm trying to lock on the knife.

Q. Okay.

A. And he gets - - and when Brandon comes in the room and touches him and I told him I said "you killed my son." He was laughing behind me and "I'm going to kill you motherfucker" and he swung - - -

(Whereupon, counsel and witness are demonstrating for the jury)

Q. Okay. That's fine.

A. And I'm like this.

Q. Okay.

A. And could feel him switching hands with the knife so I'm holding this arm trying to keep him like this.

Q. Okay. At this point, at this point, what happens? Let me ask you this, is there a time that you get him to

drop the knife?

A. I did.

Q. I got his arm and again he's trying to get around me so I bit him but I didn't get a good bite because the knife is still in his hand.

Q. Okay.

A. And I just grabbed him again and I did, (witness demonstrates again), and he dropped the knife and I'm trying to pull him across so I can flip him and then he bites me.

Q. And where does he bite you at?

A. Right here.

Q. And you're certain were in the position were in now?

A. Yes, sir.

Q. He has access to the back of your neck?

A. Yes.

Q. Okay.

A. And I'm going like this and that when he spun and did the hold.

Q. So at that point does he get separated, you caused him to drop the knife?

A. As soon as he drops the knife like the coward he is, he runs.

Q. Okay. The allowed, does he get some separation from you at that point?

A. He does.
Q. And what is your first instinct?
A. Brandon.
Q. Okay. You can return to the witness stand. Thank you. I know that's not an easy thing to do. Mr. Bennett, would you like a moment or are you okay? May we proceed?
A. Yes, sir.
Q. Anytime you need a moment or you just want us to stop for just a few minutes just let me know, okay?
A. Thank you, sir.
Q. You say your first instinct when the separation happens is to go, is to do what?
A. Just to see about Brandon. I swore that he said "dad."
Q. Okay.
A. I can swear that he said - - I can still hear it.
Q. And what kind of - - -
A. So I'm getting ready to run behind him - - no, I couldn't - - and in that instant he's probably in the dining room.
Q. I mean, is it fair to say that you have a bit of anger this point as well, correct?
A. Yes, sir. It's very fair to say that.
Q. And after checking with Brandon, what do you do?
A. I immediately light up behind him. By the time I get

to the front door he's on the porch and my neighbor was standing outside. What he does is pull his T-shirt over his head, flies out the gate.

Q. Now when you say he does, is that what the defendant does?

A. That's what the defendant did, yes.

Q. You observed him pulling a T-shirt over his face?

A. Yes. Pulls a T-shirt like over (the witness demonstrates what the defendant did).

Q. And then what happened?

A. In the only part of his face that was showing would be this.

Q. And then what happened?

A. He runs down in the direction of Coarondolet which is a street just off of Congress Street. He's going down there, my focus is back on Brandon. I happened to look and see my neighbor. I said, "Art, call the police. This guy just killed my son."

Q. So you know from your neighbor someone is calling the police?

A. Yes, sir.

Q. And what you do?

A. I go back to Brandon.

Q. And what kind of condition is your son in at that point?

A. His eyes were closed. -- I could feel him breathing, though. He was breathing and then I heard this like something was in his throat and like maybe he was choking on something but he never made that sound again. That was the last, the last noise I heard from my son.

Q. Did the police arrived shortly thereafter?

A. Yes, sir.

Q. Did they try to remove you from the proximity of your son?

A. Yes, sir.

Q. Was that difficult for you?

A. Yes, sir.

Q. Again I know this is tough and I know you're probably ready to move on but I want to go through a few things that you've already testified about again.

A. Yes, sir.

Q. Okay? Can you do that?

A. Yes, sir.

MR. SIMPSON: May I asked the witness to step down again, Your Honor?

THE COURT: You may.

Q. You talked about that morning.

A. Yes, sir.

Q. Where did you walk into and first seen Brandon sleeping?

A. I was coming through the kitchen, standing next to the stove, there's Brandon on his bed, asleep.

Q. Okay. And then you said you went back to your bathroom?

A. I took a couple of items out of the cabinet, like I said, I was going to make some breakfast but I had went to the bathroom.

Q. And that is here?

A. That's here. Yes, sir.

Q. If I could get you to just stand to the side. Is that an accurate position about where you are when you heard this noise?

A. Actually, I was there next to the scene, yes sir.

Q. There?

A. Yes, sir.

Q. And this is Brandon's room here?

A. Yes, sir.

Q. Now aside from a single wall how forward you think that is?

A. From where that was?

Q. Right.

A. Ten feet.

Q. And you heard feet scuffling, is that accurate?

A. Yes, sir.

Q. Did you hear dice rolling?

A. No, sir.
Q. Did you hear conversations?
A. No, sir.
Q. Did you hear laughter?
A. None.
Q. Did you hear argument?
A. None.
Q. Did you hear - - ever see - - is this an open view here into this living room here?
A. Yes, sir, it is. The dining room actually.
Q. Did you see Brandon come up here and maybe go to the front door?
A. No, sir.
Q. Did you see Brandon and somebody come back the other way?
A. No, sir.
Q. There's no way that he could've gone that way and I wouldn't have heard. There's no way they could've been a knock on the door or a window and I couldn't hear them because the bathroom is there and his window is right here.
Q. Did you - - -
A. With the bathroom window open.
Q. Show the jury your path when you heard scuffling sound?
A. My path was from the sink coming around to his

entrance way to his bedroom.

Q. And you describe to this jury a lot of this interaction taking place in sort of the closet store room?

A. Yes, sir.

Q. And in that doorway?

A. Yes, sir.

Q. And where is that?

A. That's the entrance to the store room right there.

Q. Thank you. If I could get you to return back. I appreciate that.

(Whereupon, the witness complies)

Q. Mr. Bennett, you mentioned earlier that you had a pretty open close relationship with your son, is that correct?

A. Yes, sir.

Q. How would a typical morning go when your son woke up and you were in the house, what would your son do?

A. Brandon would come in like "dad what's for breakfast."

Q. Okay. But we come speak to you?

A. Yes, sir.

Q. Was there any problem with him having a friend over at any time?

A. No, sir.

Q. Any reason he would say sneak somebody in?

A. No, sir.

Q. Would coming to speak with you what he typically something he would do right when he got up?

A. Yes, sir.

Q. And did he and this morning, come speak to you?

A. No, sir.

Q. I want to go back to another difficult point because I think it's important. When you first approach this individual attacking your son you testified that he was saying something?

A. Yes, sir.

Q. What was that again?

A. "Didn't I tell you I was going to get you. Didn't I tell you I was going to get you."

Q. And when the only other phrase you heard him say according to your previous testimony, you said something to him and he responded and what was that again?

A. When Brandon slumped down I said, "you killed my son." And I heard that cackle of his and he said "I'm going to kill you too motherfucker."

Q. And was that statement accompanied by more sort of the attacks with the knife?

A. That was going on the entire time.

Q. Now did you realize you mentioned the bite, did you realize at this time as this was going on that you sustain any other injuries?

A. No, sir.

MR. SIMPSON: Your Honor, May I approach the table?

THE COURT: You may.

Q. I'm showing you what's been marked and entered by consent is State's 16, 17, 18, and 19, just take a moment to look at those.

MR. SIMPSON: Your Honor, permission to publish for the jury?

THE COURT: You may.

(Whereupon, counsel published the photos to the jury)

Q. Photograph sixteen, is that an accurate photograph of you that morning?

A. Yes, sir.

Q. What are we looking at on seventeen? I know it's kind of flushed out on the screen.

A. What we're looking at there, sir, is where he bit me on the back of my neck.

Q. Do you recall any action being taken later regarding that spot by the police?

A. One of the officers or medical tech, I'm not sure which, photographed it and took I think a cotton swab to the back of my neck or something.

Q. And eighteen?

A. That's my right pinky. I can only - - I don't remember but I can only assume that when I was wrestling

with the knife that the blade did get me.

Q. Okay. And again?

A. Yes, sir.

Q. And this is - - -

A. As I mentioned to you, he had the knife all around and was trying to stab me in my side and my face. He was just - - he was trying to accomplish what he said he was going to do.

Q. And you said - - obviously this is a situation with adrenaline?

A. Yes, sir.

Q. You didn't realize any of these injuries were happening when they did?

A. None. No, sir.

Q. But where any of these injuries present prior to this altercation?

A. None.

Q. Okay. And it appears for the most part you were successful in keeping that knife away from your body?

A. Yes, sir.

Q. I want to go, Mr. Bennett, to a point that we haven't covered. When you confronted this person attacking your son and he turned, did you know who that was? Had you seen that person before?

A. Yes, sir.

Q. Please explain to the jury how you had seen that person the before that was attacking your son?

A. The first time I saw him he was standing on my porch. He had come to the house to see Brandon. I've never saw him before. But the first time I saw him there was just something about him, my blood ran cold.

MR. LEWIS: Objection, Your Honor.

THE COURT: What basis?

MR. SIMPSON: We'll move on.

THE COURT: All right. Thank you.

Q. Without - - I would like to avoid saying anything about how you felt about him.

A. Yes, sir.

Q. Okay. Had you seen him on prior occasions your son?

A. Before that day he came by, no, sir.

Q. I mean before the day of your comment the morning that were discussing, you've seen him - - -

A. Oh, yes, sir. Yes, sir.

Q. You say you've seen him any times before?

A. Many times, yes, sir.

Q. Did you know his name that morning on June 11th you saw him, did you know his name?

A. On that morning I couldn't even think of his name. I just knew of a nickname.

Q. And what was that?

A. Little Rell.
Q. But you recognize him?
A. Yes, sir.
Q. And how certain were you that, that was the person you had seen?
A. I was positive.
Q. Okay. You mentioned earlier Brandon made friends easily?
A. Yes, sir.
Q. Did you have a lot of friends come and hang out the house?
A. Yes, sir.
Q. Was this person somebody who had been to your house before?
A. Yes, sir.
Q. Just once or twice or on many occasions?
A. Many occasions.
Q. Had he been there recently?
A. Prior to that?
Q. Yes.
A. I hadn't seen him in a few - - well I had seen him on the street but at the house, no.
Q. Okay. So he had interacted with your son before?
A. Yes.
Q. You describe that as a few or many occasions?

A. Many occasions.

Q. But not in a while?

A. Not in a few weeks, no, sir.

Q. Okay. Mr. Bennett, for this next part I would like this is sort of on behalf of your community to apologize but after experience this, experiencing this where did you have to go? Were you allowed to go to the hospital with your son?

A. No, sir.

Q. And where were you taking instead?

A. I was taken to the police station.

Q. And what occurred at the police station?

A. I was there I believe with Detective Burckhardt and I forget the other gentleman's name but they were trying to ascertain what exactly happened that morning and we went over maybe a couple of times.

Q. Let me ask you this question, did you know when you got to the police station and were take into that room, did you know the condition of your son?

A. In my heart I did but I didn't want to believe it because I saw his condition. When the medical responders got there I'm kind of thinking, you know, it's all gonna be good. It's going be good. It wasn't. I got a call from the folks who were at the hospital, what's going on? How is he? No one had heard anything. And the last call I got

was from his mother and she said Brandon passed.

Q. And you learn this while in an interview?

A. While I was at the police station.

Q. Now, again this is just a silly question but what was your response to that when you found that out at the police station?

A. I was grief stricken. That's my baby boy.

Q. And is it fair to say - - -

A. I knew he had passed out on the floor.

Q. Is it fair to say that this had just happened and you're just getting this news at the same time police are trying to extract details from you?

A. Yes, sir.

Q. Where's your head at, at this point?

A. I was actually thinking how cruel can they be. I just - - my son just passed away and you guys won't even let me go to the hospital. Well, will let you go in just a little bit.

Q. Did you nevertheless try your best to get the police - - -

A. I did everything I could to help them.

Q. Okay. Was it difficult to get every minutiae detail considering what you just experience and considering the news you just received?

A. Yes, sir.

Q. So if some inconsistencies is pointed out in that statement that morning and now, could it be due to the high level of emotion at that time?

A. It would. I would have to contributed to that, yes, sir.

Q. Again, about how long after you experience this horrible event you described, about how long later was it when you were in that police interview?

A. I was probably in that interview for about twenty more minutes.

Q. But you were taken directly from the incident to that interview?

A. I was taken from Congress Street to the police station, yes, sir.

Q. And it was in fact during that interview that you received the news?

A. Right.

Q. These later accompanying you back Congress Street on that day?

A. After taking me to the hospital because his mom she had already gone back to see him but she wanted me to see him and they didn't want me to. We had to practically beg the chaplain to let me go and see my son.

Q. Now, Mr. Bennett after that did the police go with you to your house at Congress Street?

A. Yes, sir. Yes, sir.

Q. And do you recall, I know it's difficult, do you recall if you were able to kind of point out some things you notice later that were somewhat unusual?

A. Yes, sir.

Q. Okay. I want to show you some pictures - - should we take a few minutes?

A. I'm fine.

MR. SIMPSON: May I approach, Your Honor?

THE COURT: You may.

Q. Let me show you what's been marked and admitted as State's 22, 23, 24, 36 and 37. Just take a minute and look through those.

A. Yes, sir.

(Whereupon, the witness complies)

A. Yes, sir.

Q. I want to show you, as well, what has been marked and entered as State's 35, I want to talk about that in a few minutes, okay?

A. Yes, sir.

Q. Beginning with State's 22, what are we looking at here, sir?

A. You are looking, sir, at the left side of the house where the brick pattern is would be the front that window, those windows actually were connected to the living room.

Q. You remember if there's anything about this alley here that you pointed out to police?

A. Yes, sir.

Q. And what was that?

A. You see that white object that's near that tree that's right under the window?

Q. Yes, sir. Let me move on to State's 23.

A. That's a doghouse.

Q. Okay.

A. Which was not there. It was actually, if you could move the picture back you can see the spot where it was next to those blue crates.

Q. Okay. And you pointed out - - -

A. As a matter of fact, the impression is still down there.

Q. And you pointed out to the police that you thought this was the first time you notice that had been moved under your window?

A. Sir, that was the first time that was ever there.

Q. Okay. And going back to twenty-two, where does this window go into, enter?

A. That window goes into the living room, sir.

Q. We can see here that it appears something is going on with the screen here?

A. Yes, sir.

Q. What is that?

A. Sir, the screen was cut and someone came in through that screen, into that window.

Q. But let me point out that you were, you know, - - were you honest with the police about that screen cut though?

A. Honest about the screen cut?

Q. Yeah. What did you tell the police about the screen?

A. I told the police that the screen was cut previously.

Q. Okay.

A. Yes, sir.

Q. But the doghouse was - - -

A. The doghouse was - - no, sir.

Q. Now you said that window is going to your living room?

A. Yes, sir.

Q. I want to show you what's marked as State's 34?

A. Well, to that picture that what you had where the screen was cut?

Q. Mmm, hmm.

A. It was sliced like right along the bottom and certainly not pushed in the way that, that was.

Q. Okay in that photograph it appeared different to you then?

A. Yes, sir. The screen was pushed in.

Q. Okay.

A. And that's the sofa - - the doghouse was on the

outside of that window right there.

Q. Okay. And we see here that drapes on this side appear, sort of - - -

A. Pretty uniform.

Q. Right.

A. Yes, sir.

Q. Was this unusual?

A. That's very unusual, yes, sir.

Q. And there is this just a closer view?

A. That's a closer view of the left side of the couch, yes, sir.

Q. And still closer?

A. Still closer, yes, sir.

Q. And what do we see here?

A. If I were to venture a guess and I'm not a guess a man that's debris - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: Sustained. Hold on one second. Rephrase your question, Mr. Simpson.

Q. Any of this matter here was that ever observed to you on that sofa the night before?

A. No, sir.

Q. Was this were you watching the NBA - - -

A. That's exactly where we were watching the NBA game.

Q. Were the drapes like that the night before?

A. The drapes were not like that, sir.
Q. You mentioned the screen had been previously cut?
A. Yes, sir.
Q. Did the screen appear different to you the next morning?
A. Pushed in, yes, sir.
Q. Was the doghouse in a different position than it was the morning?
A. Yes, sir.
Q. And I don't believe I asked you, pretty nice weather the night before?
A. Yes, sir.
Q. Were you in the habit of locking your front door on Congress Street?
A. Always.
Q. What about the windows the night before, were some open?
A. Some of the windows were opened.
Q. Can you remember exactly which ones were opened?
A. My bathroom window was opened just a bit. My - - the living room windows were opened. The window with the doghouse side that's the living room that window was opened.
Q. So that would've been open the night before?
A. Yes, sir. And the two front windows facing the

street.

Q. I want to show you, Mr. Bennett, what has been marked and entered as State's 35, does this carpet appear consistent with any room in the house?

A. Yes, sir.

Q. And what room is that?

A. That's actually the - - I think that was the carpet - - -

Q. I have a better picture.

MR. SIMPSON: The Court's indulgence.

THE COURT: Take your time.

Q. Let's start out with this, State's 44, take a look at that.

A. Yes, sir.

Q. Do you ever recall wearing that hat?

A. No, sir.

Q. Do you ever recall your son wearing that hat?

A. No, sir.

Q. To show you what's been previously marked and entered as State's 34, you know what room of the house this is in?

A. That's the storage room, sir.

Q. Okay. What do we see here in that photograph?

A. This hat that you just showed me.

Q. And also in thirty-five?

A. It's the same hat.

Q. And a better view in State's 44, you have that logo on the front, correct?

A. Yes, sir.

Q. Is that your sons hat to your knowledge?

A. No, sir, it's not.

Q. Is that your hat to your knowledge?

A. No, sir, it's not.

Q. Do you recall that all this activity an action if your sons attacker was wearing a hat or - - -

A. I don't recall him wearing a hat.

Q. Might he have been?

A. He could have very well have been.

Q. Might he not have been? Okay. You just don't recall?

A. I don't recall a hat.

Q. You did get a view of the knife the attacker was wielding?

A. Yes, sir.

Q. Anything unusual about that you remember, pointing out to the police at that time?

A. About the knife?

Q. Yeah.

A. It was bent.

Q. Large knife or a small knife?

A. A four-inch, five-inch blade.

Q. Four or five-inches, okay. Mr. Bennett, did Brandon

have a functioning phone at that time?

A. No, sir.

Q. I should draw the distinction, did he actually have a physical phone?

A. Brandon had a couple of phones. One that he used to listen to music with.

Q. Mmm, hmm.

A. I don't know why you have the other one, there was no service on it.

Q. And so my next question is, did either those phones have service on them?

A. No, sir.

Q. There was no phone service, okay. And who pay for the service when he did have service?

A. I would have.

Q. Okay. So you knew that the service have been disconnected?

A. I knew that.

Q. I want to go back and I'm almost finished, Mr. Bennett.

A. Yes, sir.

Q. I want to go back to this you recognizing of this person.

A. Yes, sir.

Q. You said you were certain that you recognized the

attacker?

A. Quite.

Q. And did you share that certainty with the Charleston Police Department?

A. I did.

Q. And did you share with them that you didn't know a name?

A. I did not know the name at the time.

Q. Did you tell them you certainly knew who it was?

A. Yes, sir.

Q. You just didn't have a name?

A. Yes, sir. As a matter of fact when folks started gathering I may have mentioned to his friends "look amongst you, see who's missing."

Q. Okay. Did you tell the Charleston Police Department that you could identify the person?

A. Yes, sir.

Q. Okay. Are you certain then that you would be able to do that?

A. Yes, sir.

Q. Are you certain today that you would be able to?

A. Yes, sir.

Q. Okay. Later that very same day, did you ever come to provide the Charleston Police Department with a name associated with the attacker that you viewed that morning?

A. Yes, sir.

Q. And what was that name?

A. Terrell Smith.

Q. And if you could please explain to the jury how you came to that morning although you were certain that you recognized him?

A. Yes, sir.

Q. How did you come to associate a name with that person?

A. I gave - - -

Q. You started mentioning how you went about doing that, just continue?

A. I gave the description to his friends. You know the height, who he even resembled, when the last time I saw him, was he with them, you know.

Q. And - - -

A. One of my neighbors - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: Basis?

MR. LEWIS: Hearsay.

THE COURT: Is there an exception?

MR. SIMPSON: No, Your Honor, will work around it.

THE COURT: All right.

Q. All right. Without mentioning what anybody told you.

A. Yes, sir.

Q. Did you come to view a photograph?

A. I did.
Q. And where was his photograph?
A. This photograph was on a telephone.
Q. Okay.
A. Yes, sir.
Q. All right. And did you recognize the person in that photograph?
A. I recognized the person and then that same person gave me a name.
MR. LEWIS: Objection, Your Honor.
Q. At the following - - -
THE COURT: One second. What is the basis?
MR. LEWIS: Hearsay.
THE COURT: Overruled.
Q. In that person you positively identified the photograph on the phone?
A. Yes, sir.
Q. And the person gave you the name?
A. Yes, sir.
Q. And did you pass that name onto the Charleston - - -
A. To Detective Burckhardt.
Q. Okay. And what name was that?
A. Terrell Smith.
Q. And when you were shown that photograph, were you certain that was the same person you had seen that morning?

A. I was positive.

Q. Okay. Did the police, after given a name, follow-up with you at your residence that afternoon?

A. Later on that after - - yes, sir.

Q. And what occurred then?

A. The detective said that he was going to show me some photos and what I'd be able to identify the suspect from the photographs.

Q. And do you remember how many photos it was? More than one?

A. I think it was more than one sheet and he was on the second sheet.

MR. SIMPSON: The Court's indulgence.

THE COURT: Take your time.

Q. Did the detective explain anything to you before showing you the photographs?

A. He told me that the photos that I was about to see a or may not contain a photo of him.

Q. Mr. Bennett, I'm showing you what's been marked for ID only as State's 67, take a moment and look at that. If you could read that first page just to yourself and let me know when you finish reading that.

(Whereupon, the witness complies)

Q. Is that basically what the detective explained to you that day?

A. Yes, sir.

Q. And then did he then show you the photographs on the next page?

A. Yes, sir.

Q. And how many individuals are depicted in that photograph?

A. Six.

Q. Were you able to pick out your attacker from that morning from those six photographs?

A. Yes, sir.

Q. And did you identify on that sheet which one that is?

A. Yes, sir.

Q. Is that person that you picked out from that lineup present in the courtroom today?

A. Yes, sir.

Q. Mr. Bennett, early you demonstrated a pretty heated face-to-face struggle, did you get a good look that morning of your sons attacker?

A. Yes, sir.

Q. Were you in close quarters of one another?

A. Very close quarters.

Q. Did you recognize that person right when you saw him?

A. As soon as I saw him.

Q. And you recognize as a person you've seen before?

A. Yes, sir.

Q. Did you recognize that person when you saw him in the photo lineup later given to you by the Charleston Police Department?

A. I did, sir.

Q. Mr. Bennett, is that individual who attacked her son and you that morning present and in the courtroom?

A. He is, sir.

Q. And where is he?

A. Sitting right there, sir.

MR. SIMPSON: Court's indulgence. Mr. Bennett, I am going to ask you to pay attention to Mr. Lewis and answer any questions that he has for you.

A. Yes, sir.

MR. SIMPSON: Thank you so much. I know this is not easy.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge. May it please the Court?

Cross Examination by Mr. Lewis:

Q. Good morning, Mr. Bennett.

A. Good morning.

Q. Just like yesterday and just like the State, I do also want to begin by apologizing to you for the loss of your son. I know that had to be incredibly traumatic experience for you.

A. Yes, sir.
Q. I want to talk to you about some of the specific you said today. Typically when the State asked what time you woke up that morning?
A. Yes.
Q. You said that you woke up at 6:55, well actually you said five till seven, what time is five till seven?
A. Are you asking me, sir, 6:55.
Q. So that would be 6:55 in the morning?
A. A.m., yes.
Q. You then said that you went into the kitchen and saw that Brandon was sleeping. How long did it take you to walk from your bedroom when you woke up to check on Brandon?
A. Sir, I went to the bathroom first of all.
Q. Okay.
A. Then I went to the kitchen and I observed Brandon sleeping.
Q. How long did that total process take you?
A. Just a couple of minutes.
Q. A couple of minutes. All right. So were meaning a couple minutes meaning about two?
A. Yes.
Q. So were now at 6:57 a.m.?
A. Yes.

Q. After that, you said you went with three or four minutes to go check your email and use the restroom?

A. Yes.

Q. So that would take us to 7 o'clock?

A. It would actually take us a little past seven because as I mentioned I went to the kitchen and I took some items out for breakfast.

Q. To 7:02, 3?

A. Five.

Q. Sure, 7:05. So 7:05 at that point. From then on you went to get ready for the day is what you've testified to here today?

A. Yes.

Q. Back to your bedroom?

A. Back to the bathroom.

Q. Okay. You keep your toiletries in the bedroom right beside your door?

A. Pardon, sir?

Q. Your toiletries? Shaving cream, things like that?

A. I don't shave, sir.

Q. Can you turn the thing on for me? Can you tell me what this is? It's been previously marked as Defendant's Exhibit 2?

A. Yes.

Q. What is this?

A. Sir, that's my bedroom.

Q. Okay. And what is that right your door?

A. That's a fan.

Q. And that fan was on blowing air into your room?

A. That night, yes.

Q. And you never turned it off? It's still running, right?

A. Yes.

Q. And these items right here, are toiletries, are they not?

A. They are.

Q. And that's where you kept your toiletries? You did not - - -

A. Well, some of them were, the remainder would be in the bathroom closet.

Q. Okay. But none of them were out on the sink as if you have been getting ready?

A. No.

Q. Today in court you testified three times at least you said "didn't I tell you I was going to get you?"

A. Yes.

Q. An incredibly powerful statement?

A. Yes.

Q. You met with Detective Burckhardt?

A. Mmm, hmm.

Q. Several times on June 11, 2014?

A. Yes.

Q. You never told him that?

A. Yes, I did.

Q. You did?

A. I did.

Q. Okay. You met with him on June 12, 2014, you never told him that then?

A. That's your contention but I did.

Q. June 26, 2014, met with him again, never told him that then?

A. That's your contention, sir, but I did state that on that day, June 11th.

Q. Okay. Then again on July 1, 2014, never told him that day?

A. That's your contention, sir.

Q. So you are saying in fact each of those days you told him that?

A. I'm not saying each of those days I said that but you're saying that I didn't tell him, I did.

Q. Okay.

A. I told him that in the police interview.

Q. In the police interview - - -

A. That day.

Q. When you were in the - - -

A. That morning.

Q. Before you collapsed, you told him that statement specifically?

A. I would say the object of them getting me there was to get my whole statement on what went on that morning.

MR. LEWIS: We may need to approach briefly. Your Honor, may I approach?

THE COURT: You may.

(Whereupon, a bench conference was held off the record)

THE COURT: Ladies and gentlemen, it's appropriate time for us to our midmorning break. Do not begin your discussions. You may leave your notepads right where they are or take them with you. Please rise for the jury, Mr. Bennett.

(Whereupon, the jury exits the courtroom 11:00 a.m.)

THE COURT: Thank you. Please be seated. Do you have a statement, Mr. Lewis?

MR. LEWIS: I do, Your Honor. We need our computer.

THE COURT: All right. You don't have a printed statement?

MR. LEWIS: No, Your Honor.

MR. SIMPSON: We have a summary and if it saves this court's time I can I've reviewed it many times and on the video portion this is not going to what he said he told

MR. LEWIS: Thank you, Your Honor.

Q. Mr. Bennett, we just had a brief conference. I want to direct your attention to one specific time I know you talked to Detective Bennett, I mean, Detective Burckhardt a series of time?

A. Yes.

Q. But regards to the one time that you just said would've been on the video you acknowledge that you were mistaken that you never said on the video I told you I was going to get you?

A. I did acknowledge that.

Q. So you did not say that?

A. On the video, no?

Q. I will move on. Now, we've gone over the specific dates the five different times that you spoke with Detective Burckhardt, correct?

A. You did mention some dates, sir, I can't say those are accurate or not, excuse me.

Q. But how about this you know that you met with him a series of times?

A. I did.

Q. During two of those meetings he actually had you reenact what had taken place?

A. I remember maybe one reenactment. I don't remember a couple of reenactments, no.

Q. So the way you remembered it there's only one reenactment and not two?
A. As I remember, sir, I remember one may have been two but I don't recall.
Q. That's fine. And he had you do that because he obviously wasn't there and couldn't see what had happened and needed your side of it. You describe watching the NBA finals game, the championship, the night before then you went to sleep around 1 a.m., is that accurate?
A. Yes, sir.
Q. And obviously I know this sounds like a silly question but I have to bring it up, when you're asleep you don't know what other people are doing, right?
A. That's correct, yeah.
Q. So you slept then into you woke up until 6:55 a.m.?
A. Yes, sir.
Q. So you can't say what Brandon may have been doing or whom he may have been interacting with between 1 a.m. and 6:55 a.m., correct?
A. That's correct, sir. Yes.
Q. After going to sleep you did not -- I know you said you locked your door, I personally have a little bit of obsessive compulsive I locked doors a lot, but you never check again, did you, to make sure that the door, the front door was locked?

A. Did I check again to make sure the front door was locked? When I went to bed I locked the front door.

Q. So again between 1 a.m. and 6:55 a.m. you have no way of knowing if Brandon unlocked that door?

A. No, sir, I don't.

Q. I want to direct you a little bit to talk about Little Rell, you said that, that morning you knew his nickname that morning as Little Rell?

A. As Rell, Little Rell, yes.

Q. So you didn't know, not a full name, but a name?

A. Yes.

Q. You actually said you went over it couple of times with Detective Burckhardt, correct?

A. Correct.

Q. I'm not talking about all at once I'm saying over a course of days and you know that Terrell or you acknowledge that Terrell was one of your sons friends, one of Brandon's friends?

A. Yes.

Q. He ate your food, play games with Brandon?

A. Yes.

Q. Had been in your house many times before?

A. Yes.

Q. As many as fifty times?

A. Perhaps, yes.

Q. And you had never seen any problem previously between Terrell and Brandon?
A. I've never seen Brandon with problems with anyone whatsoever. I mean, - - -
Q. I'm talking about - - go ahead. Like many of Brandon's friends he was welcome in your home that you allowed him to hang out there?
A. Yes.
Q. You actually called him nephew?
A. I called them all nephew.
Q. I know I'm jumping around a little bit but also want to talk to you about the hat that the State has shown to you?
A. Yes.
Q. You never described having seen anyone wearing a hat. You didn't know where it had come from?
A. No. It wasn't one of mine and it wasn't one of Brandon's.
Q. In addition to "didn't I tell you I was going to get you" statement that you made today, three times, you also said three times today that my client said after you said "you killed my son:, he laughed at you and "I'm going to kill you too motherfucker?"
A. Yes.
Q. And that's another one of the things that you're

saying that you had previously told Detective Burckhardt the case agent?

A. Yes.

Q. You said today that he was stabbing, trying to stab you in the side, the neck, and the face?

A. Yes.

Q. Another one of those things that you previously told the case agent, Detective Burckhardt?

A. Sir, I said we were struggling with the knife.

Q. So you had not ever told him that specifically the side, and neck, and the face, that's something that came out today for the first time?

A. That's something basically that came out today for the first time, yes.

Q. Today you said when you and Mr. Simpson were demonstrating that he had switched knife hands?

A. Yes.

Q. So you then had to show they got back to his right hand to then bite his arm?

A. Yes.

Q. You're saying that he switched knife hands, had you also ever told that two Detective Burckhardt?

A. Sir, I said we were struggling with the knife.

Q. So again you never told the lead investigator on any of the five times that you met with him those details?

A. I told him that I was holding his left hand because the knife was in his left hand. I told him I bit him on his right arm because the knife was then in his right hand.

Q. But today you said he had actually switched the knife in one hand to the other?

A. Sir, he was trying to actually stab me.

Q. And at that point obviously you were also trying to hurt him because he had hurt your son?

A. Sir, I'm not trying to hurt him I'm trying to divide his attack.

Q. Wanting to bite him somewhere obviously?

A. Just trying to get the knife out of his hand.

Q. And as you said as soon as you bid him he dropped the knife, he didn't try to pick it back up to try to stab you?

A. No.

Q. He ran. You actually said he ran like a coward?

A. Yes.

Q. So you tried to get away?

A. Yes.

Q. As soon as he was able?

A. Yes.

Q. You said specifically that there was never any problem with having any friends over at your house that they would've been welcome?

A. Yes.

Q. Would Brandon have woken you up specifically if you were asleep to say hey I've got someone in the house?
A. Sir, first of all, they would've not to gain entry. They would not have entered without even acknowledging me. All of his friends would come over, "hey Mr. Bennett", good morning, good evening or whatever the time was.
Q. But again you said they would've woken you up to do that?
A. If they would've woken me up to tell me good morning, no, sir.
Q. That's - - that's - - -
A. Is very atypical for anyone to even be there in the morning.
Q. And this is the time that you would normally be getting up to start your day?
A. Depending on what time I got off work the previous day, yes.
Q. And timing wise and you may not know it and if you don't you can simply just say so. You know what time 911 was actually called from your home or by your neighbor?
A. No, sir.
Q. But you are sure of the time that you woke up at 6:55?
A. That's the approximate time, yes, sir.
Q. Today, you said and I'm sure this was very traumatic and would've stuck out for you, you said I swear he said

dad and I can hear?
A. Yes.
Q. Did you ever tell that to Detective Burckhardt any of the five times that you met with him?
A. Yes, sir.
Q. You did?
A. I told him that's the reason why I did not immediately go behind the suspect.
Q. So you specifically said that Brandon said that?
A. I'm sure that, yes.
MR. LEWIS: One moment, Judge.
Q. Previously you had said that Brandon and was stabbed in his bed while he was sleeping?
A. Yes.
Q. Did you see that he was bleeding?
A. No.
Q. You did not?
A. Not on his bed, no.
Q. I don't mean that. I just mean that he was bleeding?
A. Did I see him bleeding? Sir, actually after I pulled your defendant off of Brandon my focus was on, you know, I was in survival mode. Did I look to see if Brandon was bleeding, I noticed Brandon was bleeding when he came into the doorway.
Q. Right. And you told Detective Burckhardt - - -

A. I didn't see if he was bleeding on the bed because when I pulled him off of Brandon my focus was on him.
Q. Right. That's not what I'm asking you. What I'm asking you is, did you tell Detective Burckhardt that he was bleeding profusely when he was in the bed?
A. No, I didn't.
Q. All right. Did you describe that Brandon's head was at the foot of the bed?
A. At the foot of the bed?
Q. Yes.
A. I guess it would depend on where the pillow was but Brandon's head was on his pillow.
Q. Okay. I want to talk to you a little bit about noises. Today you testified that the screen was in a different position than it was from the previous incident, the previous time that it'd been cut, correct?
A. Yes. Correct.
Q. Did you ever hear the sound of someone pushing a screen in to come into your home?
A. I would've heard anything because - - no, I didn't hear a sound of the screen being pushed in, no.
Q. Go ahead and finish. You would've heard anything because what?
A. There was nothing to push. It could've easily flapped as far as that and coming in. What noise would - - no I

didn't hear a screen make any noise, no.
Q. Okay. What about the blinds that was down over the screen as well, did you hear the sound of those being pushed out?
A. I did not.
Q. So no sounds at all?
A. No.
Q. From someone coming into the home?
A. None.
Q. As you've testified today you were awake the entire time and you should've heard that?
MR. LEWIS: Objection. Argumentative.
THE COURT: Sustained. You don't have to answer.
A. Thank you.
Q. Did you hear any sounds at all of someone coming into the home?
A. No, I did not.
MR. LEWIS: One moment, Judge. Sorry, Judge. Just one moment.
THE COURT: Take your time.
MR. LEWIS: No further questions, Judge.
THE COURT: Mr. Simpson, any redirect?
MR. SIMPSON: Yes, Your Honor. Thank you.

Redirect Examination by Mr. Simpson:

Q. Mr. Bennett, in your previous discussions with

Detective Burckhardt did you indicate to Detective Burckhardt that your sons feet was pointed south, southwest in a certain direction as it goes with the compass?

A. Directional, no, I gave him a description of where Brandon was laying.

Q. You did - - my point is, of course, you didn't. Did you do your best to give a full and honest statement to detectives that were investigating?

A. Yes.

Q. Have you done your best today to give a truthful and honest description of the event to these twelve - - -

A. Totally - - totally truthful and honest. Totally, truthful, and honest.

MR. LEWIS: Objection.

Q. Was June - - -

THE COURT: Hold up one second. Counsel, approach.

(Whereupon, a bench conference was hold off the record)

Q. I want to go back again and again I don't do this to be hard on you today, Mr. Bennett. How is it make you feel when we treat June 11, 2014 as though your head should've work like a computer, how does that make you feel - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: Counsel approach.

(Whereupon, a bench conference was hold off the record)

THE COURT: Thank you, Mr. Simpson.

MR. SIMPSON: I'll withdraw and rephrase, Your Honor.

Q. Mr. Bennett, Mr. Lewis ask you a lot about times, do you remember that?

A. Yes, sir.

Q. And when asked about times from two years ago did you do your best to approximate?

A. That's all I was trying to do, sir, approximate. I wasn't trying to give a specific time and being held to what happened at this particular time.

Q. Okay.

A. You know, 6:55 and forty second. I don't know that, sir.

Q. Do you - - are you doing your best?

A. I'm doing my extreme best, sir.

Q. But did you on the morning of June 11th, are you focused on noting the moment you woke up - - -

A. No, sir.

Q. - - - the moment you walk into the kitchen?

A. No, sir.

Q. The moment you did that?

A. No, sir.

Q. I want to ask you a little bit about Brandon, I think you heard you telling this with Mr. Lewis.

A. Yes, sir.

Q. Brandon's eighteen?

A. Yes, sir.
Q. Does he often on a day where he doesn't have the school and doesn't have to work, is he up at 6 a.m. in the morning?
A. No, sir.
Q. I remember when I was eighteen. What is sort of a typical time on a day with nothing planned that Brandon would've - - -
A. Brandon, 10 o'clock.
Q. All right. And I believe you used the word "atypical" that someone be over there at that time?
A. Yes.
Q. Is this a time early in the morning that Brandon would've been entertaining social guest and having a gambling - - -
A. No, sir.
Q. - - - casino night?
A. No, sir.
Q. Have you ever been to a casino?
A. I took a one night cruise on a casino boat.
Q. Would you say a casino is allow place or a quiet place?
A. Loud.
Q. By the talking and interaction?
A. Yes, sir. Yes, sir.

Q. Yelling? Laughter?
A. A lot of laughter.
Q. Any of that, do you remember hearing that, that morning?
A. None. No TV was on. No radio was on.
Q. Now want to get to something very important. Did you do your best with all of the investigators to give them all of the information?
A. Everything that I can think of that would help the case. Everything.
Q. Did you do your best today with the jury?
A. Yes, sir.
Q. Did you hear the entire attacker of your son say, "did not tell you I was going to get you?"
A. Clearly.
Q. And you said you shared that with the detective?
A. Yes, sir.
Q. Even if it's not on the video?
A. Even if is not on that video.
Q. Did you have interactions with a lot of law enforcement about these events?
A. Specifically Detective Burckhardt.
Q. Other law enforcement officers at your house that day?
A. That day, yes, sir.
Q. Mr. Lewis said you never said you were, you never said

you were stabbed and cut, you never said that to Detective Burckhardt, right?

A. That's what he said, sir.

MR. SIMPSON: Briefly, Judge, may we approach?

(Whereupon, a bench conference was hold off the record)

Q. I'm showing you what's been marked for ID only of State's 67.

A. Yes, sir.

Q. You mention in your direct that was the lineup that you did?

A. Yes, sir.

Q. Were you given an opportunity in that lineup to comment in writing, in fact, on what occurred to you?

A. I did, sir.

Q. Did you note to Detective Burckhardt on here that you were cut and stabbed by the person?

A. And bitten.

Q. And bitten?

A. Yes, sir.

Q. So that was clearly something that you you've indicated to the detective?

A. Yes.

Q. Okay. Again, these times that you've given our approximate, is that correct?

A. That is correct, yes, sir.

Q. The attacker said, "did not tell you I was going to get you", to your son?
A. Yes, sir.
Q. And what again did he say to you?
A. "I'm going to kill you too motherfucker."
Q. And that you did say on video, something to that affect to the detectives that day?
A. Yes, sir.
Q. Again as we sit here, not scrutinizing your testimony, but scrutinizing all of these previous times that you talked to law enforcement is almost offensive to ask the question, emotionally and mentally in your head what was June 11, 2014 like for you?
A. It was the worst day of my life.
Q. And is the day that you, to be, are you kind of having a hard time dealing with this even today?
A. Sir, today is Brandon's twenty-first birthday.
Q. And so when we - - -
A. I'm in court testifying to try to put his murderer away.
Q. Was this - - -
A. On his twenty-first birthday.
Q. Was it difficult for you moments after experiencing this being in a little room at the police station and trying to get to share every detail of what had occurred?

A. Yes, sir. My emotional state was getting to where my son was. I didn't want to be there, honestly.

Q. Right.

A. You know, we can ask these questions later and I'm sure I told them that a couple times.

Q. Right.

A. And you said it there, you can answer these questions later, right?

A. Yes, sir.

Q. Is today an opportunity for you to answer a lot of these questions?

A. Sir, I'll do whatever it takes.

Q. And have you done your best to do that?

A. To the best of my ability, yes, sir.

Q. Okay.

THE COURT: Mr. Lewis?

Re-cross Examination by Mr. Lewis:

Q. Today, you just said I'm sure I told him that a couple of times?

A. What specifically, sir.

Q. I told you "I was going to get you", laughing, those statements?

A. Yes, sir.

Q. All right. And you met again at least five times, June 11th, June 12th, June 26th, July 1st, twice actually on

June 11th, with Detective Burckhardt?

A. Yes, sir.

Q. Thank you.

MR. LEWIS: Nothing further, Judge.

THE COURT: Mr. Bennett, you may step down. Thank you.

MR. BENNETT: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, I try, again, brake is close to noon as we can and so it would be a enough time to put a witness up so were going to take our lunch break a little early today. Please use this clock please be back in your jury room at 1:30 p.m. Please remember all my admonitions. If you would take your notepads with you will lock them during our lunch hour. Thank you. Please rise for the jury.

(Whereupon, the jury exits the courtroom at 11:39 a.m.)

THE COURT: Thank you. Please be seated. 1:30?

MR. PATRICK: Yes, Your Honor.

MR. LEWIS: Yes, Your Honor.

(Whereupon, the Court broke for lunch at 11:40 a.m.)

(Whereupon, the Court started at 1:36 p.m with a bench conference off the record)

THE COURT: Bring the jury. Who's your next witness?

MR. PATRICK: Arthur Bailey.

duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. How are you doing, Mr. Bailey?

A. I'm doing fine.

Q. Thank you for being here. If you could just tell us a little bit about yourself. Where are you from?

A. I'm from Charleston.

Q. Where are you currently employed?

A. At St. Michael's Church.

Q. That's the church right across the street?

A. Yes.

Q. Where you live currently?

A. On Congress Street.

Q. Congress Street?

A. Yes.

Q. Is that where you lived on June 11, 2014?

A. Yes.

MR. PATRICK: Your Honor, May I approach the witness?

THE COURT: You may.

Q. Limit show you what's been previously marked and admitted as State's 20, do you recognize this photograph?

A. Yes.

Q. What is it?

A. It's my house and my neighbor's house.

MR. PATRICK: Your Honor, may publish the photo to

the jury?

THE COURT: You may.

(Whereupon, the attorney publishes the photo to the jurors)

Q. Which house is your house?

A. The house on the left.

Q. The house on the left so the middle one would be, Congress Street?

A. Yes.

Q. On the morning of June 11, 2014, what were you doing?

A. I was getting ready to take my car to the shop. My daughter was going to follow me.

Q. What time do you think it was, just an estimate?

A. Probably about twenty till eight.

Q. Who all was at home?

A. Just me and my daughter. I had just dropped my wife off to work.

Q. And were you inside or outside when these events started all occurring?

A. I just walked out, off my porch and I was at the foot of my step.

Q. And who did you see?

A. I didn't see anyone at that time.

Q. So how would you say you got involved in this case?

A. I heard commotion. I walked to the edge of my house next to my neighbor one and that's when I saw someone ran

out the house and ran down the street.

Q. Could you tell us what he looked like or any kind of description?

A. He was about 5'7 and 140 pounds.

Q. Do you recall what he was wearing?

A. It was a red shirt and blue jeans.

Q. So you saw him run pass, what did you see next?

A. The next thing I saw was Darryl running out the house behind him and he yelled at me to call the police.

Q. And what did you do next?

A. I called 911.

Q. What did you tell them?

A. I told them that my neighbor told me that his son was attacked in the house.

Q. Did you see Darryl do anything else after that?

A. No. After he chased him for a little while, he went back in the house to his son.

Q. Did you follow him?

A. Not until the 911 operator asked me, to talk to him, so I took the phone in there, called them gave it to him.

Q. When you say you took the phone in, how far did you get inside the house?

A. I went in, probably just - - I hadn't went far yet and I yelled down the hall for Darryl.

Q. Did you ever going to the back room area?

A. No.
Q. Did you see anyone else in the house besides Darryl?
A. No.
Q. Did you subsequently come get the phone from you?
A. Yes, sir. And he took it back to where his son was.
Q. Without saying exactly what he said, what was the condition of Darryl Bennett?
A. Well, he was panicking. He was yelling. After he chased down the fella down the alley, he came back, he ran pass me, didn't say anything, ran into the house.
Q. Would you say he was distraught?
A. He was.
Q. So after you got your phone back, did any emergency personnel arrived?
A. Yes, the police came first, then EMS.
Q. Did you talk to any of them?
A. I talked to the police, the detective.
MR. PATRICK: Court's indulgence, Your Honor.
THE COURT: Take your time.
MR. PATRICK: I have no further questions for this witness. Thank you.
THE COURT: Mr. Lewis?
MR. LEWIS: Thank you, Your Honor. May it please the Court?
Cross Examination by Mr. Lewis:

Q. It's good to see you again, Mr. Bailey.
A. Thank you.
Q. If you remember, after you spoke with the detective he asked to look at your phone so you could see what time you called 911?
A. Yes.
Q. And that was 7:51 a.m.?
A. I think it was.
Q. And the only other question I wanted to talk to you about is, about the distance between Darryl Bennett and the person he was chasing. You had a meeting with me talking about that?
A. Yes.
Q. Stop me when I'm close enough as you said the distance was between the two of them as their running - - -
A. About there.
Q. About this far?
A. Yeah.
Q. As their running, out of the house, down the street?
A. Yes.
MR. LEWIS: No further questions.
MR. PATRICK: No redirect, Your Honor.
THE COURT: You may step down. Feel free to stay with us but you're also free to leave. Call your next witness.

MR. PATRICK: The State because Detective Richard Burckhardt.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. BURCKHARDT: I do.

CLERK: Please have a seat. State your full name and spell your last name.

MR. BURCKHARDT: Richard Burckhardt, B-u-r-c-k-h-a-r-d-t.

RICHARD BURCKHARDT, first being duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. Good afternoon, Mr. Burckhardt.

A. Good afternoon.

Q. Tell me, where do you work currently?

A. I'm currently employed in the federal court, court security officer for the United States Marshal Service.

Q. And what was your occupation prior to being employed at the federal courthouse?

A. Retired last November after twenty-seven years with the CPD in Charleston Police Department.

Q. Is that where you began your career in law enforcement?

A. Yes.
Q. And what was your - - what was your most recent position at the Charleston Police Department?
A. For the last seventeen years I was a member of the Violet Crime Unit in the investigations.
Q. And what is that - - what do the duties entail?
A. So the Violet Crime Unit, we would respond to all of your homicides, crimes of violence as far as aggravated assaults on people, suicides as well, pretty much anything that involved a weapon.
Q. And that was within all of CP's jurisdiction?
A. Yes.
Q. How many violent crimes you would you estimate you've covered over your career in the Violet Crime Unit?
A. As far as homicides, I investigated nearly four hundred.
Q. Well, let me walk you back to June 11, 2014, how did you become involved in this case?
A. So this particular incident I was on my way to work actually to headquarters that morning and I received a telephone call from one of my associate detectives that they wanted me to respond to CPD headquarters to meet with the father of a victim that had been assaulted at his residence to conduct an interview.
Q. Did you first - - were you first - - you said you were

heading to the station?

A. Yeah. I was actually headed, I was going to go to the scene first and the information that was relayed to me that the one witness to this incident was on his way to headquarters and they wanted me to conduct the interview with him.

Q. Walk me through a little bit of that interview. At this point, did you know the subject or the victim was deceased?

A. I knew the victim was deceased but - - -

Q. But did the witness - - -

A. Mr. Bennett had no idea.

Q. Earlier we discussed that he had a cell phone with him, is that the usual practice for the Charleston Police Department for him to have it?

A. You know, I typically in an interview and would prefer that cell phone not either be turned on or not on somebody's person mainly for distractions or mainly from calls that could interrupt what we were trying to accomplish. However, also had knowledge that Mr. Bennett's son was in a grave position and seriously injured and that he may need to be communicated with while we interviewed him.

Q. Was anyone in the interview room with you?

A. Detective Krasowki sat in with me.

Q. Now not saying exactly what was said, what was - - what was his condition at the time?

A. Mr. Bennett's condition - - -

Q. Mr. Bennett, yes, sir.

A. - - - He was visibly, obviously, very, very upset and concerned.

Q. And at some point you said he learnt that his son was deceased, what was his reaction to that?

A. He took it, obviously, you know, I'm not going to scale it down, he was very, very upset. We were seated in my interview room at a table and he pretty much lunged to the floor.

Q. At that point, did you conclude the interview or did you ....

A. We went to Mr. Bennett's aid while he was on the floor, myself and Detective Krasowski, we try to console him best we could. We got back to the chair but he pretty much started to fall apart at that point for us to really move a whole lot further. To his credit, he was able to some more of our questions.

Q. Where did you go next?

A. As I, I think, I kept promising him I would get him to the hospital to see his son and to get him there I felt that was very important and that's what I did I took him in my car and we drove to the Medical University where he

could meet with family and be with his son.

Q. Did you speak with him at the hospital?

A. I'm sorry. Did I?

Q. Did you - - yes.

A. Yes. So I continued on with my role obviously was the investigation I met with the coroner I think it was Rhoton, Kimberly Rhoton, and she took me to where Brandon Bennett was that was deceased and I made my own observations of wounds and injuries which is what we need to do. And I went back outside that room and I met with Mr. Bennett and there were some other family, friends there. There was a gathering of three or four Brandon Bennett's friends and associates that were at the hospital. What I said to - - I had Mr. Bennett with me and I told him that we needed to do this that I believed through my experience that there is a very good chance that Mr. Bennett would hear information on the possible identity of the person who did this. He had told me in the interview that, you know, he had recognize this person, seen him around his house a number of times and seeming with his son and seen him with some of his sons associates friends and so I told him it was a very good chance. And also made that information very clear to the young men that were there at the hospital that there's a good chance they would hear something and that they needed to get that information to me as soon as possible or get it

to his dad or get it to somebody but make sure that I got a hold of it so I gave them all the contact information I had.

Q. Did you ultimately get that information?

A. Yes, sir.

Q. Through your investigation and through Mr. Bennett, did you learn of a name a suspect?

A. I did.

Q. And what did you do with that information?

A. After learning the name of the suspect it came through a phone call from Mr. Bennett to myself approximately 1 o'clock later that afternoon. I gave that information to our Central Intelligence Unit. We have a group of civilians that were working in this unit and at the time had access to various databases. They were able to take the name, same physical parameters that I had knowledge of, I gave him that information as well and with that they produced the individual that was named to me and they also produced a photograph of him. And from that point I asked them to also construct a six person photographic lineup which was pretty much standard procedure.

Q. Are those lineups automatically generated?

A. It's a random. Detective ourselves go hands-off so that we don't really have a whole lot to do with actually selecting the pictures themselves. We submit the target

individual to the intelligence unit and we let them randomly search their computer-based and they give us the finished product.

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

Q. This I'm showing you is State's Exhibit 67, you mind opening that envelope for me.

A. Sure.

Q. Do you recognize this form?

A. I do.

Q. What is it?

A. This is the original photographic lineup form, six person photo ray with the front page being the admonition form.

Q. You say admonition, what you mean by that?

A. Admonition is basically the kind of procedural rules that you go through when you reading somebody, how to view a lineup. After you're done, if you recognize somebody and then I ask you to tell me who that is, what position there in, in the lineup. I'm going to ask you to please not to discuss this with any of the witnesses or people in the case.

MR. PATRICK: Your Honor, at this time I would move State's Exhibit 67 into evidence, it's a lineup.

MR. LEWIS: One moment, Judge.

THE COURT: Any objection?

MR. LEWIS: I think we've discussed what will be appropriate. No objections.

THE COURT: All right. Thank you. State's 67 into evidence without objection.

(Whereupon, the Photo Lineup W/Miranda Card has been marked and entered into evidence as State's Exhibit No. 67)

Q. I want to walk you back little bit. Prior to the administration of this lineup, did you go to the crime scene?

A. I did.

Q. What did you see there?

A. So my first visit to the crime scene was when I left the hospital and Mr. Bennett had some bio matter on his clothing which I wanted to collect for evidence. I also suggested that would be a good time to go to his house to collect that article and give it to crime scene who was still at the house processing and he could kind of show me where everything took place.

Q. Was it this time that he gave you a reenact?

A. Yes.

Q. Did that reenactment accurately reflect what he told you in the interview room?

A. Yes.

Q. In terms of positioning of where everyone was?

A. Yes.
Q. Let me go back to the lineup that you administered. When you administered that lineup to Mr. Bennett was anyone with you?
A. I carry Detective Jackson with me.
Q. And describe - - describe the process? Describe the procedure you went through?
A. On this particular showing, I told Mr. Bennett that I would be on my way to his house that we needed to further the investigation and I grabbed Detective Jackson and I said you need to along, I requested that he come with me. We met Mr. Bennett at the house, I believe, we met in his living room. We were in close quarters, Detective Jackson I believe, sat on the couch. I carried the lineup correction with me and read the admonition to Mr. Bennett, he said he understood the rules and how it's supposed to work and flip the page, he observed the pictures and it was an immediate identification of the individual in position number two, the defendant. I asked him to initial and date that particular picture.
Q. When you say immediate, I mean, immediate?
A. Immediate.
Q. Was this the same day as the crime?
A. Yeah. Yes, I mean, so we started CP Headquarters at approximately 8 a.m. in the morning. I received a phone

call from Mr. Bennett about 1 o'clock that afternoon with a name and then I would estimate soon after that, as soon CIU was able to develop a lineup, I drove straight to his house and his house is five minutes from CP Headquarters.

Q. So on the course of June 11th, would that be for individual meetings you had with Darryl Bennett?

A. I'm trying to count. There was an initial - - -

Q. If you need to count - - -

A. There was the CPD when I first met him in the interview.

Q. The hospital.

A. I carried him to the hospital, that could be continuous because we never broke away from each other. Went to the house, and then there was the, he did the walk through the house for me, left, came back that afternoon with a lineup. I went back on another occasion and it was after the interview that there was some, where the actual assault took place in his son's bedroom, a lot of times things get moved around and we wonder where things are in place. And in this particular crime scene, I was trying to understand where certain articles were found in the room and that's when I ask Mr. Bennett if he could help me with that. What is classic in all my experience is, we run into this quite a bit, is certain things are moved and altered from the scene and a lot of times it's somebody from

emergency personnel. It's just something you can avoid. It's something that you have to deal with because those things happen.

MR. PATRICK: Your Honor, may I approach?

THE COURT: You may.

Q. Showing you what's been pre-marked and admitted as State's 33, do you recognize this photograph?

A. I do.

MR. PATRICK: May I publish this, Your Honor?

THE COURT: You may.

(Whereupon, the attorney publishes the photo to the jury)

Q. When you say, objects have been moved around, which objects are you referring to when you were trying to figure out what had been moved?

A. Well, what jumps out is there was a cooler, it's not, I don't know if you have it in this picture, but this cooler. There's some broken ceramic. There's some bio matter on the floor which appears to have been smeared and what you would get from that, from my experience, is somebody being moved, the victim is being moved or dragged, you know, it was very close quarters. From where you see the edge of the bed to the left, if you will, the left side it was just a couple of feet so any movement in there I would imagine would've, any movement by a couple of people, a number of people, would've moved things around. A knife

was kicked around, I believe.

Q. Can you see that knife in that picture?

A. Yes. It's at the bottom, it has a black handle and a bent blade to the right kind of angled.

MR. PATRICK: Your Honor, may I approach?

THE COURT: You may.

Q. Showing you what's been pre-marked and entered as State's 29, do you recognize this photo?

A. Yes.

MR. PATRICK: May I publish this photo, Your Honor?

THE COURT: You may.

(Whereupon, the attorney publishes the photo to the jury)

Q. This was just talked about what you were just discussing, the cooler.

A. Yes.

Q. In your experience, I think already said this but, items get moved around a lot?

A. Yes.

Q. At the scene, EMS?

A. Yes.

Q. When you say close quarters, your best estimate, how far do you think it was from that wall to the doorframe? I know you weren't doing crime scene?

A. No. Now, the wall you're referring to - - -

Q. The wall would be that yellow corner right there.

A. The yellow, so, yeah, you know, it's to the next room as you're coming this way?

Q. To that storage room?

A. All right. Well, the storage room, this cooler here is on the - - as you enter into the room it would be to the right in this photograph. And from that yellow corner of the room down to the left eight feet maybe, you know.

Q. Okay.

A. To an average size room. It's probably smaller than average size room.

Q. So after you administered the lineup, you met with Darryl a couple of times, y'all developed the suspect, what did you do next?

A. So the next order of business was to, after obtaining a positive identification for the suspect, was to get warrants issued for his arrest and we did that and get them on file. And then the focus, then the investigation moves towards the apprehension phase and it's with that, that we had learnt that the defendant had fled the area, fled the state.

Q. Did you subsequently hear that he was located?

A. Yes. So any time this type of an event happens when the suspect flees the area we utilize the services of the, a lot of times, the marshals, the United States Marshal's who track wanted felons from day-to-day. They had the

technology that's able to assist in that.

Q. When you found out he was located, did you direct authorities in Alabama to do anything?

A. Yes. So in my interview with Mr. Bennett it was learnt that during his encounter and in that room, the close quarters, that to defend himself bit the suspect in the arm which relieve the knife from the suspect's hand and then he fled the house. So Mr. Bennett told me, he said look, if you can find this guy pretty soon - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the basis?

MR. LEWIS: Hearsay.

THE COURT: Is there an exception?

MR. PATRICK: We'll rephrase the question.

THE COURT: Thank you. Sustained.

MR. PATRICK: Or free to rephrase his statement.

Q. So you told them to photograph the defendant?

A. Yes.

Q. Did they find anything?

A. Yes.

Q. To your recollection, what did they find when they photographed him?

A. I found a bite mark. Well, looked to me to be a an, obvious, dental impression on the defendant's arm.

Q. And I believe a short time later, you traveled to

Alabama yourself, is that correct?
A. I did.
Q. And did you bring him back?
A. No.
Q. You did not bring him back yourself?
A. No, I didn't.
Q. How did he get back?
A. He went through an extradition process.
Q. And real briefly, sometime later I know you submitted or at least through your office, submitted some items to the State Law Enforcement Division, is that correct?
A. Yes.
Q. One of the, in your submitted swabs, did you collect a swab from Darryl Bennett?
A. Our crime scene technician would have swabbed his neck.
Q. Were you present - - not his neck, I'm sorry, from a buccal swab?
A. Detective Bailey took a buccal swab from the defendant - - -
Q. I'm sorry from Mr. Bennett, from the victim, from the father?
A. Yes, I did do his swab. Yes, I did it at the residence.
MR. PATRICK: Your Honor, may I approach?

THE COURT: You may.

Q. Showing you what's been marked as State's Exhibit 7, do you recognize this?

A. Yes. This is my handwriting and it is a buccal swab retained from Mr. Bennett. I conducted this at a residence that he was staying away from downtown. I went to do that.

Q. When did you collect this?

A. It was, it was a little while after the incident had occurred.

Q. Can you tell us why you collected it?

A. Yes. So there was a bite mark on the victim, on the defendant's arm and I wanted to conduct a DNA match.

MR. PATRICK: Your Honor, at this time I moved State's 6 into evidence.

THE COURT: Any objection?

MR. LEWIS: No objection, Your Honor.

THE COURT: State's 6 into evidence. Without objection.

MR. PATRICK: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon, the Darryl Bennett's Buccal Swab has been marked and entered into evidence as State's Exhibit No. 6)

MR. PATRICK: Court's indulgence. Your Honor, I have no further questions from Detective Burckhardt. Please answer any question the defense may have.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge.

Cross Examination by Mr. Lewis:

Q. Good afternoon.

A. Good afternoon.

Q. You were the case agent that handled this homicide investigation, were you not?

A. Yes.

Q. And as you testified today, you've handled over four hundred homicide?

A. Nearly four hundred.

Q. Well, don't play yourself down. You are incredibly experienced by the time you retired from CPD?

A. I have a lot of experience.

Q. You said seventeen years specifically with SVU for, sorry, the Violent Crime?

A. Mmm, hmm.

Q. Many murder investigations?

A. Yes.

Q. And so, obviously, you know if you hear something important you have to document it immediately?

A. Yes.

Q. Make sure that it's preserved for them?

A. Right.

Q. God forbid any of us get hit by a bus, someone else

could still have the information to provide it to the church?

A. Correct.

Q. In the event you heard something important, you would document it and, in fact, in this case you prepared a series of supplemental reports?

A. Yes.

Q. I want to direct your attention specifically to the times that you met with this to Darryl Bennett, all right? As you testified you met with him several times, at least two, depending on where you break it down on June 11th, correct?

A. Mmm, hmm.

Q. You met with him again on June 12, 2014?

A. Yes.

Q. And again on June 26, 2014?

A. Yes.

THE COURT: What's that?

MR. LEWIS: I'm sorry.

THE COURT: She needs to take it down. What was your response?

A. Yes, if that's my supplementals.

Q. Again on - - sorry, again on July 1, 2014?

A. Okay.

Q. Does that - - I mean, do you remember or if you don't

remember - - -

A. You know, I don't remember the exact day.

Q. All right.

A. So to throw a date at me, I really can't answer. If it supported by my paperwork then, yes.

Q. Would it help you if you were able to see your paperwork?

A. Sure.

Q. I'll come back to that.

A. Okay.

Q. I want to talk to you specifically about the knife that was found in the residence. You actually, as case agent, directed crime scene to document the knives in Bennett set, correct?

A. I asked them to take a look at it to see if it had any likeness to the knife that was on the floor.

Q. And you actually got information that directed you there?

A. Yeah. We couldn't say for sure it actually came from that set of knives. There's just no way to tell.

Q. But in your report you said that there was some that matched and some that didn't match?

A. Right. It was standard - - it looked to anybody to be a standard, belong to a standards set of knives.

Q. And the reason that you were directed there was Darryl

actually believed that it was one of his?

A. Yes.

Q. I want to direct you to several specific statements, as we're getting those reports so you will have them available to you. Never did Darryl Bennett ever tell you - - -

MR. PATRICK: Objection.

THE COURT: What's the basis?

MR. PATRICK: Hearsay for impeachment purposes.

THE COURT: All right. Counsel approach.

(Whereupon, a bench conference was held off the record)

MR. LEWIS: Thank you, Judge.

Q. Darryl never told you - - -

MR. PATRICK: We just ask that the question be rephrased inform of a question, Your Honor.

MR. LEWIS: Okay.

THE COURT: I'm not sure that you need to but - - you may continue, Mr. Lewis. Thank you.

MR. LEWIS: Thank you.

Q. Darryl never told you in the five, actual six meetings now that you had with him - - I'll rephrase. You gave him your personal cell phone number?

A. I did.

Q. So that he can contact you with any information that he may have?

A. Yes.
Q. You also spoke to him at least six times about this case?
A. If that number is correct, yeah.
Q. He never told you during the incident that my client told the victim, "didn't I tell you I was going to get you"?
A. The only comment I documented, was during and the assault was in progress on his son, that he turned to Mr. Bennett and he said, "I'm going to 'f' or I'm going to kill you as well."
Q. That's the only comment?
A. That's the only comment I remember.
Q. So then from this, to the best of your recollection and nowhere in your documentation, did he ever say that?
A. Say what?
Q. "Did not tell you I was going to get you"?
A. Coming from?
Q. Terrell Smith to the deceased, Brandon Bennett?
A. I don't recall that.
Q. He never told you that Terrell Smith laughed at any point during this?
A. I'm not sure. No.
Q. You didn't document it anywhere?
A. No.

Q. You don't remember?
A. If it's not in my supplementals then no, I didn't.
Q. He never told you that Brandon spoke to him and said, "Dad"?
A. Yeah. There was some conversation, some brief conversation, but I think during the time of the assault he was seriously injured and he was making utterances that may or may not have been clear.
Q. Okay. And did you document that anywhere in your reports?
A. Not that I'm - - I'm not sure, not at all.
Q. He never gave you the name, Little Rell or Rell, that's a nickname?
A. Who is that?
Q. Mr. Bennett. Did he ever give you the name, Rell or Little Rell, as a nickname for the person that committed the crime?
A. During our interviews when the name was produced - - well, he received the name from his source I believe that may have come up.
Q. So you think he brought the nickname - - -
A. May have produced it, yeah. He gave me the name which was produced by a source as Terrell or Rell, we went over that. Whether he said Little Rell or Rell, at that point he produced the actual real name - - -

Q. The full name Terrell Smith?
A. Yeah. I would've imagined that a Terrell and Rell would probably go together.
Q. Right. But you don't have specific knowledge of him previously before giving you the full name, Terrell Smith, had he ever named a nickname of Rell?
A. The nickname may or may not have come up in the conversation we had with the identification of Terrell Smith, I can't say for sure.
Q. In its early not anywhere in your documentation?
A. Not that I have read, no.
Q. I want to direct your attention back to why you spoke with Darryl Bennett and I'm not judging you for this, I know what you did it, but why you didn't tell him that his son had died, why was that?
A. Yeah. Quite frankly, it's also been through my experience, that had I inform Mr. Bennett that his son had died we probably would've not gotten anywhere in that interview. We had a violet crime that had just been committed. And my duty and my job and my responsibilities would've been stalled at that point and I would not have been doing his family any justice taking time out.
Q. Right. So you were trying - - -
A. I intentionally kept it from him, yes.
Q. Like I said, I'm not judging you about that I know

why. Because it allows you to get the best possible information?

A. Yes.

Q. In other words, if he already knew he's not going to be able to give you any good information.

A. It would be difficult.

Q. I want to talk to you briefly about the alleged point of entry. I know that you are able to see the whole scene. We'll hear from crime scene at another time but from your interpretation of the case and as the case agent - - -

A. Right.

Q. I hope believed to be the point of entry.

A. Right.

Q. Just to be blunt, this is sort of based on your speculating. You don't have any forensic evidence that corroborates that?

A. Don't.

Q. Nothing specifically how the damage was caused or when the window may have been opened or anything like that?

A. No.

Q. At some point, you were actually contacted through by crime scene, with a significantly lift from that location?

A. Yes.

Q. But it is not tied in any way to Terrell Smith?

A. No. It's someone else's fingerprint.

Q. Not Brandon's and not Mr. Bennett's?
A. No. It actually came from an associate of the defendant documented through State's CPD reports.
MR. LEWIS: Judge, I have to object to this portion. It's beyond the scope of my question and also inadmissible.
THE COURT: Overruled.
Q. So again you met with Darryl again for the second time on June 12, 2014?
A. Okay.
Q. Again for the third time you conducted the second reenactment on June 26 - - -
A. Yes.
Q. 2014?
A. Yes.
Q. You again had him reconstruct what took place?
A. Not entirely. I do recall that meeting. The pictures aren't up but as I explained earlier several articles appeared that, that may have moved during the altercation and I wanted to see if Mr. Bennett recalled possibly original location. Those were - - that was pretty much the just of that meeting. He was directed towards those, the cooler and the knife and the ceramic that was broken and the hat, specific articles like that. That's what it was. It was information already knew. I asked him if he could

do it again for me and he did.
Q. Okay.
A. It wasn't - - he didn't take me through the entire assault we already had that documented.
Q. But you didn't silence him. If he wanted to say something to you, you would've listened to him, right?
A. Sure.
Q. He had the opportunity to speak with you as the case agent?
A. Sure.
Q. Let's talk about some of the photos that you received from Birmingham and were able to look at and as well confirm his injuries, you saw also that Terrell had injuries to his face as well?
A. Yes.
Q. But you previously had no explanation as to what the source that wound had?
A. It was a close quarters assault involving three people.
Q. Right.
A. I would imagine you would sustained his injuries pretty easily.
Q. In a fight?
A. Yeah.
Q. I want to talk to you about the blood evidence that

you are able to see when you are able to get back to the crime scene. You saw blood in a variety of different locations throughout the room?

A. Yes.

Q. On the floor? In a cooler?

A. Mmm, hmm.

Q. In the bathroom? Nothing whatsoever in the bed? Nothing on the mattress? Nothing on the sheets?

A. Right.

Q. No signs of any cuts on the mattress, on the sheets, at all?

A. No.

Q. Nothing to suggest, physical evidence wise, that there had been stabbing that took place in the bed?

A. Not that I observed. Not to those particular items you mentioned.

Q. In the - - I didn't have it yet but I was able to see on the buccal swab, you actually met with him a sixth time on February 26, 2016?

A. That's probably when I obtain his buccal.

Q. In order to - - I'm going to ask a silly question but in order to obtain a buccal swab, you have to be physically present with him?

A. Yes.

Q. And he could've adding any additional statements at

that point but he again, did not?
A. No. I went there for the sole purpose of taking a swab.
Q. As the case agent, if you wanted to tell you something, he could have?
A. Yeah. I think we met for maybe five minutes and that was it. It was to obtain the swab.
Q. All right.
MR. LEWIS: One moment, Judge. Sorry, Judge, just one moment. No further questions, Judge.
MR. PATRICK: Just briefly, Your Honor.

Redirect Examination by Mr. Patrick:

Q. We talked about Darrell's emotional state which was obviously distraught, in your experience with someone in a - - -
MR. LEWIS: Objection.
THE COURT: Let him finish his question.
Q. If someone with an extreme emotional state, leave something out of a statement?
A. It's very possible.
MR. LEWIS: Objection.
THE COURT: I overruled your objection. Thank you. Detective, please wait until I rule on my objection before you answer.
A. Oh, I'm sorry.

THE COURT: Thank you.

Q. He went over the knives -- you asked, I guess, crime scene to compare the knife on the ground to some of the knives in the kitchen. You testified that they were similar looking but was there anything them distinguish them or uniquely, those were those knives or they separate?

A. No. I'm basing that on, even what you have here is an assault, the defendant didn't carry the weapon with him to his house so it could possibly, an opportunity where he would've obtain a weapon from and first place I would look for a knife would be in the kitchen.

Q. Was there anything in your investigation that would say that knife definitely came from that kitchen?

A. No.

Q. And I'm not knocking you here for this portion, but they brought up a couple of things that maybe weren't documented such as this Little Rell portion or the victim saying, "dad" to his father, is it possible that there were things that didn't make it in your report?

A. Absolutely. I mean, there may have been some conversation, I think, my understanding was the conversation Mr. Bennett was having with his son was when his son was dying. Because the officers heard his son take his last breath on the scene. When it comes to Mr. Rell or Terrell quite honestly I thought it would be more

significant was the real name of Mr. Rell for Terrell and Rell or Terrell matter. What mattered was, what I was able to produce to our Central Intelligence Unit to produce a real person with a real name.

Q. Mr. Lewis mentioned some photographs taken by the sergeant in Alabama.

MR. PATRICK: Your Honor, may I approach?

THE COURT: You may.

Q. Do you recognize this document or this photograph?

A. Yes. It's a photograph of the defendant taken in custody when he was in Alabama.

Q. And he mentioned some injuries on his face. In your experience with injuries like this be consistent with a fight?

A. I would say so.

MR. LEWIS: Objection, Your Honor. Again, he calls for speculation.

THE COURT: Overruled.

MR. LEWIS: He's not an expert.

THE COURT: Overruled.

Q. Be consistent with a close quarter fight, potentially, after a fight with the father?

A. I would say so.

Q. And finally, Mr. Lewis kept bringing up these six meetings that y'all had, you had with the defendant, or,

I'm sorry, with the victim. You had several meetings on June 11th?

A. Okay.

Q. And that's a series - - -

A. It's continuous.

Q. And then you go and see him again the next day?

A. Yep.

Q. You see him on the 26th, and then sometime later you collected a buccal swab, those distinctive meetings they all had - - did they all have the same purpose or separate purposes?

A. They all had pretty much the same except that of the DNA. The meaning for the swab was for that very reason, putting a Q-tip and rubbing the inside of his gums, putting it in an envelope and saying goodbye. I mean, we talked a little bit about other things not even to this topic but my documentation, I believe, is, you know, the interview, the reenactment is the same, my documentation is on paper. It's in the NRS system so if something was to get lost or whatever it's there. There's a paper trail to it. You know, the video and recording was the first recording that we had at the station, obviously, carry the video and it's typically in the field, we don't record every actual move we do. We like to document it but we don't record every thing we do, audio or video, it doesn't matter. That's the

way it was documented.

MR. PATRICK: Court's indulgence, Your Honor. Thank you, Your Honor. I don't have anything further.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge.

Re-cross Examination by Mr. Lewis:

Q. You've talked about documentation and that's one of your jobs, right, as a detective, especially as a lead detective?

A. Correct.

Q. And that's why you were so thoroughly in this case. That's why you had more reports that anyone else. That's why you wrote down everything on every single day.

A. Okay.

Q. I'm trying to get what you just said about Brandon speaking to his father about, "dad", might not make it into the report, in seventeen years if someone laughed during a murder you would've written that down, right?

A. No. I can't say - - I can't agree with that. Would somebody laugh, that would've been significant to me to write it down, it's hard to say.

Q. All right. If someone claims that the perpetrator says, "didn't I tell you I was going to get you," you would've written that down?

A. That may have been something I would've written down

but I don't recall that statement being made.
Q. Did you ever write it down?
A. It's not in my report, it's not there.
Q. Thank you. And about the knife, like you talked about before, you sort of took the pictures of it or had a documented.
A. Yep.
Q. And as you said earlier on cross you did that because Darryl told you he thought it was one of his?
A. Yes.
Q. And after that you said that it matched, that was your word, you said it matched, in your opinion.
A. It looked like it could've been part of the kitchen set but there was nothing distinctive to say it was and there was a lot of knives in that sink as I recall.
Q. Okay.
A. There were a lot of kitchen articles and that sink.
Q. Nothing distinctive to say that it wasn't?
A. You couldn't say for absolute certainty that it was.
MR. LEWIS: Thank you.
THE COURT: Thank you. You may step down. Feel free to stay with us. Call your next witness.
MR. SIMPSON: Your Honor, the State calls David Youngblood.
CLERK: Please raise your right hand. Do you swear

or affirm that the testimony that you shall give the Court and jury the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. YOUNGBLOOD: I do.

CLERK: Please have seat. Please state your full name and spell your last name.

MR. YOUNGBLOOD: David Youngblood, Y-o-u-n-g-b-l-o-o-d.

DAVID YOUNGBLOOD, first being duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Mr. Youngblood, good afternoon.

A. Good afternoon.

Q. Where are you currently employed?

A. I am employed with the US Marshal Service.

Q. And if you could, could you educate myself and the jury on what the US Marshal Service is, what their role?

A. We're, basically, like the sheriff's office for the federal government with the exception we don't have a patrol division. The Marshal Service looks for fugitives. We serve process. We transport federal prisoners, things of that nature.

Q. Probably a great testimony answer but I like the cool stuff. You guys find people, right?

A. We find people that don't want to be found, yes.

Q. Now, is it in your role and really to get into the actual criminal, who done it sort of aspect or is it more like here's a wanted person and then go get them?
A. No. My current assignment I'm assigned to the Gulf Coast Regional Fugitive Task Force which is based out of Birmingham, Alabama and our job is to look for people that are wanted on felony warrants. We primarily concentrate on violet felony cases.
Q. In the US Marshal Service that's a big federal organization, is that fair?
A. It is, yes, sir.
Q. And in doing the job you just described to the jury, you often share information with other agencies?
A. Yes.
Q. Other federal agencies?
A. Federal, state, local, yes.
Q. And you said you're based in Birmingham, Alabama?
A. That's correct.
Q. And you are aware for what incident case you're here today?
A. I am, yes, sir.
Q. How did you become involved in this case?
A. I received a call from one of my counterparts here in the Charleston US Marshals Office. He said that they had an active homicide warrant for a gentleman by the name of

Terrell Smith. They, based on their investigation, they believe that he was in the Birmingham area. He asked if we could go and try to locate him based on the information they had.

Q. And did that information include an address?

A. Not a specific address, no, just a specific part of town.

Q. Okay. And how did you and your team proceed with that information?

A. We were tied up on another case that morning so later that afternoon we drove over to the Ensley area of Birmingham which is a small suburb located just outside of downtown Birmingham. Myself and about eight or nine other officers went to that area and we establish surveillance in that area and we were just going to sit and watch and see if we saw Mr. Smith in that area. A short time later we did, in fact, see an individual that very closely matched his description. You want me to proceed?

Q. Yes.

A. Three of our officers decided to go ahead and approach that individual and try to make an identification to see if it was, in fact, Mr. Smith. As they drove up to him and got out of their vehicle he immediately fled on foot. They

Q. Do you know - - I'm sorry to interrupt.

A. That's fine.

Q. Do you know if anything was said to him, like, " we're with the marshals" or was this just people getting out of their car?

A. I wasn't there in the immediate area when they did that. They would've been, our normal procedure - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the basis?

MR. LEWIS: Speculation at this point. He said he wasn't arrested.

Q. Were you in the communication with the people - - -

A. Via radio, yes, sir.

Q. Via radio?

A. Yeah.

Q. Okay. And what occurred then, to your knowledge?

A. You want me to go back and explain. Our normal procedure, they would've been wearing a what we call, "body armor", it would've been a black or green bullet resistant vest over there playing close and it would've been marked, prominently with "police" or "US Marshal" or something of that nature.

Q. So would it be readily apparent to anyone that this person was likely involved in a law enforcement sort of - - -

A. Yes. That's why we wear it so people - - because we

dress in plain clothes, blue jeans, T-shirts so we wear something, whenever we get out of our vehicles to try to affect an arrest or even ID someone, we want people to know who we are.

Q. And again how did this person react to seeing someone with this law enforcement type gear on?

A. Again, he immediately fled on foot. He ran three or four blocks maybe and then was apprehended by those three officers.

Q. And, in fairness to Mr. Smith, once caught up with was there any sort of resistance or incident?

A. No.

Q. So a flight attempt but once caught, arrested without incident?

A. Yes.

Q. And did you know from your cohorts and other offices, did you know what jurisdiction he was wanted from?

A. Yes, I did.

Q. And did you have any communication at that point with authorities from that jurisdiction?

A. Yes. My first call was to the deputy marshal here in Charleston to let him know and then he in turn notified, I believe, the detective with the Charleston Police Department.

Q. Okay.

A. That had gotten them involved.
Q. And did you operate, at that point, have any other further activities on this case?
A. After I got back to the office that afternoon I received a call from the investigator wanting to know if we could or asking if we noticed any cuts or bite marks, scratches or anything on Mr. Smith's arms.
Q. And where was Mr. Smith at this point?
A. At that point, he had already been transported to the jail and booked in and so I had not, you know, looked at him or, you know, made note of that at the scene. So I made - - actually had one of our task force officers call the Jefferson County Jail and see if the individual or the booking officer could look him over and if you notice anything, take photographs.
Q. Do you recall who that booking officer was? Do you remember?
A. I believe it was Sergeant Jay Miller, I believe was his name.
Q. And he works at the Jefferson County Detention Center?
A. He did at the time, yes, sir. I'm not sure if he still employed there or not.
Q. Were you provided with any photographs meeting that request?
A. Yes, the next day Sergeant Miller sent over to our

office a CD containing with the photographs that he had taken and I in return - - -

Q. Taken of?

A. I'm sorry.

Q. Taken of?

A. Taking a Mr. Smith.

Q. And what did you do with those photographs?

A. I put them in a FedEx envelope and sent them to the Charleston detective that was handling the case.

MR. SIMPSON: Court's indulgence. Thank you for being here Ms. Youngblood. Please answer any questions that Mr. Lewis has of you.

A. Sure.

Cross Examination by Mr. Lewis:

Q. I think you sought this out that when you say someone is taken into custody peacefully, it means that they didn't have to be tackled or anything like that? No injuries that - - - -

A. He was not combative in any way or he didn't try to fight the officers, no, sir.

Q. So any injuries that he had would've already been there?

A. Yes.

MR. LEWIS: Nothing further.

MR. SIMPSON: Nothing further.

THE COURT: You may step down. Feel free to stay with this but you're also free to leave. Thank you. Call your next witness.

MR. PATRICK: The State calls Sergeant Jay Miller.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. MILLER: Absolutely.

CLERK: Please have a seat. Please state your full name and spell your last name please.

MR. MILLER: James V. Miller, M-i-l-l-e-r.

THE COURT: Mr. Patrick?

JAY MILLER, first being duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. How are you doing, Mr. Miller?

A. Good morning.

Q. Mr. Miller, where are you currently employed?

A. I retired.

Q. You're retired. What you do in your spare time?

A. I drive a school bus part-time.

Q. Is that what your current, like a side job is right now?

A. It's a substitution job, just part-time, yes, sir.

Q. And what was your employment June, around that time June, 2014?
A. For the Jefferson County Sheriff's office in Birmingham, Alabama, I was a sergeant.
Q. What was your role as Sergeant in Birmingham County Sheriff's office?
A. At that time I was the administrative sergeant at the jail.
Q. What would your duties and tell as administrative sergeant?
A. Supervise several administrative clerks. I also handled any kind of unusual occurrences within the jail from the inside or outside such as the ministry tours or any kind of special needs that were unusual that happened at the jail.
Q. Are you originally from Alabama?
A. Sir?
Q. Are you originally from Alabama?
A. Yes, sir.
Q. Is that where you currently live, is Alabama?
A. Yes, sir.
Q. And you're familiar for what case we're dealing with here today, is that correct?
A. Yes, sir.
Q. How did you get involved in this case?

A. On that day, I was the administrative sergeant at the jail and the marshals brought in a subject and they asked me to take photographs, particular photographs of injuries to his arm.

Q. Did they tell you why?

A. They said there was a bite mark on his arm they wanted to take a picture of.

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

Q. I'm showing you a series of photographs, this is not an exhaustive list of all the photos you've taken, there's a couple of duplicates, but do you recognize the documents? See your flipping them over, what are you looking for there?

A. I'm looking for my name, the date and what I took a picture of, those are mine, and what I wrote on the back of them. These are the pictures I took of that subject that day.

Q. In that last one I believe is a photocopy, that's why your name is not - - -

A. That is correct.

MR. PATRICK: Your Honor, may I publish these photos to the jury they been previously marked and admitted?

THE COURT: What's the numbers?

MR. PATRICK: State's 54, 53, 52, and 51 and

Defense's 6.

THE COURT: You may.

MR. PATRICK: Thank you, Your Honor.

(Whereupon, the attorney is showing the photos to the jury)

Q. He said he recognizes these document. What does that represent?

A. That's a facial photograph I took of the suspect when he came in. That's the side view, profile of the right side.

Q. Defense 6?

A. That's a profile for the left side.

Q. Showing State's 53?

A. And that's a photograph of what appears to be a bite mark to the right forearm of the suspect.

Q. Finally, State's 54?

A. It's just another injury I took photograph of on the right arm.

Q. That's the same arm as the last photograph?

A. Yes, sir.

MR. PATRICK: Your Honor, may I approach again?

THE COURT: You may.

Q. On that, on the back of those documents, I believe there labeled what - - can you read what that says for me?

A. Yes. They are all noted the date 6/16/14, at 1730 hour, that's military time, it would be 5:30 p.m.

Q. Would you repeat the day for me?

A. 6/16/2014.

Q. Is it the same date on all of those documents?

A. Yes, it is. It has my name and also the photograph of what it depicted.

MR. PATRICK: Thank you, Your Honor. I have no further questions for Sergeant Miller.

MR. LEWIS: May it please the Court?

Cross Examination by Mr. Lewis:

Q. I know five of those or so that you have, all except one, but there was one that they call Defense's six, that one?

A. Yes, sir.

Q. Missing your marks on the back just because it's a copy, who that have been taken the same day?

A. Absolutely.

Q. In regards to the injuries, you were directed by them to look for injuries to the arms, right?

A. Yes, sir. That's correct.

Q. You also saw some injuries to the face so you documented those?

A. No, sir.

Q. You just took those pictures anyway?

A. To show that there were no injuries.

Q. Okay. So when you looked at this, you didn't see any

injuries?
A. That's correct.
Q. Didn't take any photos anywhere else on his body?
A. Just the arms and the head, that was it, yes, sir.
Q. It's kind of blurry on here and I can give it to you to look at yourself, would you like to see the actual, or can you tell that there may be something there?
A. I'd like to see the actual, yes, sir.
Q. Sure. Do you see - - I'm not saying it's catastrophic but there is an injury to the face?
A. It looks like some kind of mark there, yes, sir.
Q. And like I said, no other photographs of anywhere else on the body to see bruises, anywhere on the torso, on the legs, on the back?
A. No, sir.
Q. All right. Thank you.
MR. LEWIS: Sorry. One moment, Judge.
THE COURT: Take your time.
Q. Sorry, I asked that a little bit in artfully, she fixed me. You weren't asked to look for anything else so you didn't try to take any, it's not that you looked at his torso and didn't see any injuries?
A. That's correct.
Q. You didn't look at his back to check for injuries?
A. No, sir, I did not.

Q. Or his legs?

A. No, sir.

MR. LEWIS: All right. Thank you. Nothing further.

MR. PATRICK: No redirect, Your Honor.

THE COURT: You may step down. Thank you.

MR. PATRICK: Your Honor, may we approach briefly?

THE COURT: You may.

(Whereupon, a bench conference was held off the record)

THE COURT: Madam foreperson, y'all need a break?

(Whereupon, the foreperson indicated they did)

THE COURT: All right. Please remember all of my admonitions. Do not begin discussing this case. You may take your notepads with you or leave them right in your chair. Please rise for the jury.

(Whereupon, the jury exits the courtroom at 2:45 p.m.)

THE COURT: Thank you. Please be seated.

(Whereupon, the Court took at short break)

THE COURT: Bring in the jury. Please rise for the jury.

(Whereupon, the jury enters the courtroom at 3:00 p.m.)

BAILIFF: All jurors are present and seated, Your Honor.

THE COURT: Thank you. Please be seated. Call your next witness.

MR. SIMPSON: Thank you, Your Honor. The State calls Sarah Senn of the Charleston Police Department.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MS. SENN: I do.

CLERK: Please have a seat. Please state your full name and spell your last name.

MS. SENN: My name is Sarah Senn, S-e-n-n.

SARAH SENN, first being duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Ms. Senn, good afternoon.

A. Good afternoon.

Q. And how are you today?

A. I'm good. How are you?

Q I'm good. Where are you currently employed?

A. I'm currently employed at the Charleston County Coroner's Office.

Q. And in what capacity?

A. I'm a deputy coroner.

Q. What was your former employment before becoming deputy coroner?

A. I was a crime team technician with the City of

Charleston Police Department.

Q. And how long were you with the City of Charleston Police Department?

A. About four years.

Q. And was that entire four years at the crime scene unit?

A. Yes, sir.

Q. Now, if you could just explain to the jury generally what sort of is the role of the crime scene unit, CSU?

A. We respond to crime scenes whether it be car break-ins to burglaries to assaults to homicides to process a scene that includes documentation, via photographs, videos, sometimes sketches, sometimes we collect and preserve the evidence there and then at times if it's called for, we process for latent fingerprints.

Q. And do you recall - - did you work in that capacity in June of 2014?

A. I did, yes, sir.

Q. And did you respond - - do you recall responding to a scene at Congress Street?

A. I did.

Q. Are you responding to that seen alone or were you part of the team?

A. I was part of the team, myself and officer Unterbrink and officer Willie.

Q. Now, is that typical to respond more than one of you to a - - -

A. Yes. Due to the severity of the scene and what needs to be done there's multiple people that respond.

Q. And then you got sort of - - have sort of a division of labor - - -

A. We did.

Q. - - - that work that up when you got there?

A. Yes, sir. I was - - -

Q. And - - -

A. I was - - -

Q. Go ahead.

A. I was responsible for videoing the scene. We video before, you know kind of initial overall look and then we kind of reconvened and establish items of evidence and placed our cards and then I re-video it with evidence markers.

MR. SIMPSON: Court's indulgence. May I approach - - -

THE COURT: You may.

MR. SIMPSON: - - - the court reporter, Your Honor?

THE COURT: You may approach the court reporter.

Q. Ms. Senn, I'm handing you what's been marked for identification purposes only it's State's 78, do you recognize that?

A. I do.
Q. And what is that?
A. That's a copy of the video that I took without the crime scene markers for so the initial overall look.
Q. Would this would have been the first action you took on scene?
A. Yes.
Q. And is it fair to say that this is the scene as you found it that day?
A. Correct. Yes. Nothing had been disturbed at this time.
Q. Now, you mentioned nothing had been disturbed, were you aware that EMS, first responders, things of that nature - - -
A. Correct.
Q. - - - obviously in the first priority?
A. Right. As soon as the victim was removed from the scene, the scene hadn't been disturbed.
Q. Was the scene sort of roped off when you got there?
A. It was. Yes, at the street.
Q. And are there patrol officers monitoring people entering and exiting the scene?
A. Yes, sir.
MR. SIMPSON: Your Honor, I want to admit State's 78 into evidence.

THE COURT: Any objection?

MR. LEWIS: No objection, Judge.

THE COURT: State's 78, into evidence. Without objection.

MR. SIMPSON: Thank you, Your Honor, and we would seek to publish for the jury?

THE COURT: You may.

MR. SIMPSON: And with your permission, Your Honor, I know this isn't one of the most high-tech courtrooms, could a juror who couldn't see, if they felt they couldn't see, come in front of the screen here?

THE COURT: Well, if that becomes an issue we'll address it at that time.

MR. SIMPSON: Thank you, Your Honor.

(Whereupon, the CD has been marked and entered into evidence as State's Exhibit No. 78)

(Whereupon, the jury watched the CD while on the record)

Q. Ms. Senn, is that complete the first version without the markers?

A. Yes, sir, it was.

Q. And can you describe to the jury again what you would've done on the second version?

A. When we decide on what evidence we're going to collect or areas of importance, we note them with little yellow placards and so we go through it and do the exact same

thing overall inside and outside with those yellow placards so we can kinda denote where exactly those items are collected.

Q. But other than the marker things, placards, no meaningful difference in - - -

A. Oh, no. Nothing is ever - - no movement of anything.

Q. After you conducted the videos, what did you do next?

A. I believe I assisted with some fingerprint, processing of the side window.

Q. Who were you assisting then?

A. Officer Wooley.

Q. Would she be a better witness to ask any particular questions to about that?

A. Yes, sir, she would.

Q. And from there?

A. I believe I process, collected a new blood swabs. Did a couple of presumption blood test. There was a red substance on the window, tested negative blood. And then also there was a red substance on the front door, tested positive, so I collected that swab. And then I also collected pants, shorts, and a finger no scrapings from, I believe, the father that was there.

Q. Do you recall take any measurements of the house?

A. I did. We - - -

Q. What was the purpose in taking that measurement?

A. Were able to, after we leave the scene, make a computerized a diagram just to better, it's better than my chicken scratch and not straight lines, so we have a computer program called Areas360, that we plug all those measurements in, measurements of rooms, measurements of where the items of evidence are placed within those rooms, so we can kinda re-create that actual computerized diagram.

MR. SIMPSON: May I approach the witness, Your Honor?

THE COURT: You may.

Q. I'm showing you what's been marked and entered as State's 1, does that look familiar to you?

A. Yes, sir. That's the computerized diagram that I made of their house.

Q. And if you could - - -

MR. SIMPSON: May I ask the witness to stand, Your Honor?

THE COURT: You may.

Q. Could you just sort of just quickly and generally walk the jury through your video?

A. Sure. This is the front door, we entered the front door. So this is the screen in porch. Came into like the living room area into the dining room. Then through here this is how we entered, I believe, the father's bedroom into the bathroom. This was a doorway we weren't able to get through. Went through to the kitchen and then another

bedroom and then that storage area.

Q. Thank you. Ms. Senn, did you work on this case end that day?

A. No. I responded to the autopsy as well the following day, I believe.

Q. And what was the purpose of you responding to the autopsy?

A. We collected the victims clothing, anything that's on him, as well as, you know, they pull scalp hair, and do finger no clippings for us as well and I collected those in place them into evidence.

Q. What about, are you familiar with the term, blood spot?

A. Yes.

Q. Is that one of the items you would've collected from the autopsy?

A. Correct. We get a blood spot card, yes, sir.

Q. And what is that blood spot card?

A. It's just a drop of their blood that can be used for DNA testing and right now or in the future, I believe, it's called indefinitely.

Q. Is that collected for DNA comparative analysis with other evidence?

A. Yes. Yes, sir. That's primary.

Q. And did you do that in this case?

A. I did. I collected the blood spot, yes.
Q. You know if that was ever sent to sled or do you not know?
A. I don't know. Yeah.
MR. PATRICK: Court's indulgence. Ms. Senn, thank you so much for being here. Please answer any questions that Mr. Lewis has of you.
A. Yes, sir.
THE COURT: Mr. Lewis?
MR. LEWIS: Thank you, Judge. May it please the Court?
THE COURT: Yes.
MR. LEWIS: Permission to approach the witness, Judge?
THE COURT: You may.

Cross Examination by Mr. Lewis:

Q. I wanted to ask you, we were able to see the video, all of us just now.
A. Okay.
Q. Is it fair to say, that your video only covers the west side of the house and the interior of the house?
A. That's fair, yes.
Q. Nothing at all that covers the east side or the decedents window, over here?
A. The decedents window was videoed in my video but as

far as exterior of it, no.

Q. And I know you said did some blood swab processing.

A. Mmm, hmm.

Q. Do you know the results of the swab that you took from the front door?

A. I just knew my presumptive test was positive but as far as further testing I don't know.

Q. And did you personally do any examination whatsoever of anything on the east side of the house?

A. I don't believe so, no.

MR. LEWIS: One moment, Judge. Nothing further.

MR. SIMPSON: Court's indulgence.

THE COURT: Take your time.

Redirect Examination by Mr. Simpson:

Q. Ms. Senn, Mr. Lewis spent ask you about that back window in the decedent's room?

A. Yes, sir.

Q. You recall whether that was open or closed?

A. I don't recall.

Q. Do you remember doing some rough sketches?

A. Yes.

Q. Do you think your sketches might remind you?

A. Yes, sir.

MR. SIMPSON: Permission two approach, Your Honor?

THE COURT: You may.

Q. Do you recognize these?
A. Yes, sir.
Q. And what are those?
A. These are my rough sketches.
Q. And if you could just - - with those refresh your recollection of open and close windows throughout the home?
A. They would.
Q. If you could just note generally each opened window that you found?
A. All right. I believe there is an open window in the living room, the one that I noted from inside and outside, that like it had a torn screen. There was a window opened in the bathroom. There was a window opened I believe it was dad's front bedroom, one of the three windows. There was one window opened in the kitchen. There was one window opened in the dining room. All of the windows in the back room or closed, the back, back room. And that is all.
Q. No notation about the one window in the decedents bedroom?
A. It's not in my - - it's not in this.
Q. I'm showing you what's been marked and entered as State's 28, do you recognize that exhibit?
A. I do. That's a picture, a photo of that window.
Q. Does that accurately depict that window as you found it?

A. It does, yes.
Q. Does it appear to be open or closed?
A. It appears open.
Q. Thank you.
MR. SIMPSON: I have no further questions, Your Honor.
MR. LEWIS: Nothing further, Judge.
THE COURT: You may step down, thank you.
MS. SENN: Thank you.
THE COURT: Call your next witness.
MR. SIMPSON: Thank you, Your Honor. At this point, the State would like to admit to stipulations into the record.
THE COURT: All right. Ladies and gentlemen, a stipulation is just simply an agreement between the parties. Typically what this does is it, a witness does not have to come in and testify. Mr. Simpson, will you read the stipulations into the record?
MR. SIMPSON: Yes, Your Honor.
THE COURT: And these have been marked as exhibits as well so if you'll please note the exhibit.
MR. SIMPSON: I will, Your Honor. Thank you. State's Exhibit 75, Evidence Chain Stipulation #4, buccal swab from Darryl Bennett. On certain type of evidence, the law requires that the party seeking to it meant the item as

evidence at trial must establish a chain of custody before the item as far as practicable. In the present case, the State and the Defense agree: that on February 27, 2015, Detective Richard Burckhardt, of the City of Charleston Police Department, collected a buccal swab from Darryl Bennett at Congress St. This swab was properly recovered, properly secured, and sent to the South Carolina Law Enforcement Forensic Service Division for comparative analysis with other evidence. From recovery by Detective Burckhardt to submission to Samuel Stewart, Ph.D, a DNA expert with the South Carolina Law Enforcement Division DNA lab, all requisite procedures regarding proper chain of custody were adhered to. Because the State and the Defense agree that a proper chain of evidence can be established on this item, the buccal swab it reads from the defendant, but it should read from Darryl Bennett, testimony establishing the "chain of custody" on this item is not necessary in the present trial. And with the defense's permission, they've been admitted into evidence.

MR. LEWIS: No objection.

MR. SIMPSON: Marked State's Exhibit 76, Evidence Chain Stipulation #5, blood spot from autopsy of Brandon Bennett. In the present case, the State and the Defense agree: That on June 12, 2014, Sarah Senn, of the City of Charleston Police Department Crime Scene Unit, collected a

blood spot from Dr. Chaplin, medical examiner, from the autopsy of Brandon Bennett in the Medical University of South Carolina. This blood spot was properly recovered, properly secured, and sent to the South Carolina Law Enforcement Forensic Service Division for comparative analysis with other evidence. From recovery by Sarah Senn, to submission to Samuel Stewart, PH.D, a DNA expert with the South Carolina Law Enforcement Division DNA lab, all requisite procedures regarding proper chain of custody were adhere to. Because the State and the Defense agree that a proper chain of evidence can be established on this item, the blood swab from the Brandon Bennett, testimony establishing the "chain of evidence" on this item is not necessary in the present trial. Again that's State's 75 and 76.

MR. PATRICK: The State calls officer Randall Unterbrink.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury in the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. UNTERBRINK: I do.

CLERK: Please have a seat. Please state your full and spell your last name please.

MR. UNTERBRINK: My name is Randall Unterbrink, U-

n-t-e-r-b-r-i--k.

RANDALL UNTERBRINK, first being duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. Officer Unterbrink, how are you doing this afternoon?

A. Fine.

Q. I know we called you officer Unterbrink, where are you currently employed?

A. Charleston Police Department.

Q. How long have you been working there?

A. Twenty-six years.

Q. What is your, I guess, did you start a law enforcement career with the Charleston Police Department?

A. Yes, sir.

Q. Explain your job progression. How did you get where you are today?

A. I began in patrol which is common and then they do transfer you different places for patrol, truancy, a few other places, identification is another unit. But then I ultimately ended up in the Crime Scene Unit which I am still out today.

Q. What you do at the Crime Scene Unit?

A. I respond to calls when they need something that's, as far as evidence collection generally, it can be through photography but my ultimate goal is to identify evidence,

collect evidence and then store that evidence.

Q. And how long of you been doing the Crime Scene Unit?

A. A little over thirteen years.

Q. And this may be tough to guess, but rough estimate, how many crime scenes do you think you've visited?

A. It's in the hundreds.

Q. And were you working - - obviously, you were working as a crime scene tech in June of 2014?

A. That's correct.

Q. Did you have an occasion to respond to a call on June 11th of 142 Congress Street?

A. Yes.

Q. Explain to me what the scene was like when you got there?

A. When I arrived officers had already arrived for me. EMS was already there and had already left but I saw other emergency vehicles there. The property of the house had barrier tape on it, is that yellow tape that says "do not cross" to prevent other individuals from crossing over into that particular area. And then when I first got there I approached the house towards the front door.

Q. Did you see - - obviously, you saw a lot of officers. Did you see any civilians there?

A. Yes.

Q. Who did you see?

A. I saw, what I understood later to be, the father. He was standing in the front yard and that would be, Darryl Bennett.

Q. What was his condition when you saw him?

A. He was agitated. He was sort of walking around. Certainly his attention was on a cell phone conversation. I took several photographs of him. I had been told that there was an injury on him and so I wanted to document how he appeared to me at that time. And so I had to kind of maneuver myself with him because he was constantly on the move.

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Showing you what's been pre-marked and admitted as State's 17, you recall that photograph?

A. I do.

Q. What is it?

A. This is a photograph of the back of his neck.

MR. PATRICK: Your Honor, may I publish this photo?

THE COURT: You may.

(Whereupon, the attorney shows the jury this photo)

Q. Now, was this one of the injuries that you documented?

A. It is.

Q. What is it?

A. It's a bite mark.

Q. And did you do anything else to collect any evidence from this bite mark?

A. Yeah. Because it's a bite mark I knew that there's this chance's that DNA could be associated with that bite mark. If a person applies his or her mouth onto the skin of another person and bites, there's a chance that some of the saliva or DNA could have transferred over to this injury area.

Q. What did you use to collect that swab?

A. A took a dampened cotton swab and simply applied that swab onto the injury area and inserted that into a box for storage.

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Showing you what's been in this state bag with several items in it, the individual bag has been pre-marked as State's 2, do you recognize these objects and that object?

A. Each item?

Q. No. Just State's 2, I'm sorry.

A. Oh, yes. Yes.

Q. What is it?

A. This particular one here is an envelope that contains a cotton swab.

Q. Do you recall if that's the same swab we've been discussing?

A. That would be the same swab.

MR. PATRICK: Your Honor, I'd move State's 2 into evidence.

MR. LEWIS: No objection.

THE COURT: State's 2 in evidence. Without objection.

(Whereupon, the Swab of Bite Mark on Darryl Bennett has been marked and entered into evidence as State's Exhibit No. 2)

Q. So after you took the swab and photographs of Mr. Bennett, where did you go next?

A. I took general photographs of the front yard area since I was outside. I took photographs of the front yard and also of the side of the house which would be what we thought possibly was the entry point. We thought we had this window of interest. After that I went inside the house itself and took photographs of the interior of the house.

Q. Let me walk you back a little bit, you said you took photos of that point of entry, you directed to take photos of that?

A. Not specifically directed to but I just simply knew from experience that I would want to do that.

Q. And as you walk to the house, I'm showing you State's 1 - - -

MR. PATRICK: May I approach, Your Honor?

THE COURT: You may.

Q. If you could describe, kind of, the path you took as you walked to the house this being the front?

A. Front, here. This is a screened in porch area, patio type, a screened in porch and so you would enter through an opening here through a door and then your front entry into the house would be accessed through that door into this living room.

Q. Did you notice anything unique about the living room?

A. I noticed that the room its self was in good order. It was clean, neat, and orderly. The item that caught my attention more than anything was here by the sofa on the right side facing, this being the right side, there's a window here and the curtains of the window had been bunched up and was laying loosely there on top of the sofa itself.

Q. Anything else about that area that struck you as significant or odd?

A. While we were on the inside, nothing really caught my attention outside of the house.

Q. And where did you had to next?

A. I then proceeded after I took my photographs here, I went inside this other room sort of like a living room as well, also generally organized, I didn't see anything unusual about that and then proceeded on to take

photographs beyond that.

Q. Now, when you got to the back bedroom, what did you see back there?

A. The back bedroom certainly did not relate with what I was seeing elsewhere in the house where everything was organized but in this back bedroom it was not that, there, to me, it appeared to be a sign of some type of activity, exactly all the activities I could not defined, but it was not in the same condition.

Q. And you collected several items from this. I'm going to direct you to a couple - - -

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

MR. PATRICK: Court's indulgence, Your Honor.

THE COURT: Take your time.

Q. If you wouldn't mind, open that for me.

A. Yes, sir.

Q. Do you recognize this object?

A. Yes, sir.

Q. What is it?

A. It's a hat, I would say like a baseball cap.

Q. Did you collect this hat?

A. I did collect it.

Q. Where did you collected from?

A. The backroom that were speaking of there was a, you

can call it maybe a closet that's a size of almost like a walk-in type of closet, and on the floor just a little bit inside from the threshold was this hat.

Q. Why did you collect this object?

A. I didn't have any absolute idea as to the value of it, sometimes you don't, but because it was right there in the same proximity where this blood like substance was on the floor because of its proximity, I thought I should collect it because of the potential value that it had with that.

Q. So in your experience, you know, it's something that you would collect?

A. It's something that I felt that I should collect.

Q. Why don't you bunch that up again.

MR. PATRICK: Your Honor, at this time I would move State's 3 into evidence.

MR. LEWIS: No objection.

THE COURT: State's 3 into evidence. Without objection.

(Whereupon, the Baseball Cap has been marked and entered into evidence as State's Exhibit No. 3).

MR. PATRICK: Permission to publish to the jury, Your Honor?

THE COURT: You may.

(Whereupon, the attorney publishes the item to the jury)

Q. And there was one other significant item of interest

that you collected from the bedroom. Do you recall seeing a weapon?

A. No.

Q. You do not recall seeing a weapon - - -

A. Oh, a weapon, yes, I did.

MR. PATRICK: Court's indulgence, Your Honor.

Q. You said, you recall seeing?

A. Yes, sir.

Q. Had you collected this item?

A. I did.

MR. PATRICK: Your Honor, may I approach one more time?

THE COURT: You may.

Q. Showing you what's been pre-marked as State's 8.

A. Do you want me to remove it?

Q. You don't have to if you recognize it.

A. I do.

Q. What is it?

A. It's a knife.

Q. Did you collect this item?

A. I did.

MR. PATRICK: Your Honor, at this time we would move State's 8 into evidence.

MR. LEWIS: No objection.

THE COURT: State's 8 into evidence. Without

objection.

(Whereupon, the Knife has been marked and entered into evidence as State's Exhibit No. 8)

MR. PATRICK: May I publish, Your Honor?

THE COURT: You may.

(Whereupon, the attorney publishes the item to the jury)

Q. Now, why you were searching through this room, did you see any gaming equipment, any kind of dye?

A. Any kind of dye?

Q. Like dice?

A. Oh, dice. I don't recall.

Q. Did you see any loose money or change?

A. No, sir.

Q. Any kind of cardboard boxes laid down?

A. No, sir.

Q. Did you collect any narcotics or marijuana?

A. No, sir.

MR. PATRICK: Your Honor, I have no further questions for this witness.

THE COURT: Mr. Lewis?

MR. LEWIS: May it please the Court?

Cross Examination by Mr. Lewis:

Q. Good afternoon.

A. Good afternoon.

Q. I think you've covered some of this already but part

of your job is to memorialize because often times unless there is a recording we have no way of seeing what you saw?

A. Correct.

Q. So you can do photographs or diagrams?

A. Yes.

Q. Sometimes you collect swabs?

A. Yes.

Q. So those can be DNA tested?

A. Yes.

Q. For example, like you did with the hat, whatever State's - - whatever the hat is?

A. Yes.

Q. It involves your going throughout the resident to try to see what you believed to be important?

A. Yes, sir.

Q. So for example, you went into Darryl Bennett's bedroom?

A. Yes, sir.

Q. You saw it showed normal signs of having been lived in?

A. Yes.

Q. You are able to see a fan right there at the front door that was on, blowing air into the room?

A. Yes.

Q. And you personally didn't do a video walk-through but

you know that one was done?
A. Yes.
Q. As you're traveling through the scene, you're also collecting anything like the knife or anything else that you think stands out?
A. Yes, sir.
Q. So for example, you had a suggested point of entry?
A. Yes.
Q. Here you could've also collected swabs of that point of entry?
A. Yes.
Q. But in this case, you elected not to do so?
A. I did not.
Q. You could've elected to take swabs of the swerve gate in the backyard?
A. Yes.
Q. Again, I elected not to?
A. I did not.
Q. You could've chosen to take swabs of a lock on the front door to see if it had been unlocked by a specific person?
A. Yes, sir.
Q. And again, you elected not to do that?
A. Yes, sir, I did not.
Q. There was allegedly disturbed doghouse?

A. Yes, sir.
Q. No swabs taken of that?
A. No, sir.
Q. You were able though to examine the front door?
A. Yes, sir. I was aware of his condition, I did not process the door but I'm aware of it.
Q. And I'm not asking specifics about it but if you saw that, then, you saw that there had been sort of damage to say, the deadbolt? Thirteen years as an crime scene you would zoom in on that?
A. Sure. Yes, sir.
Q. Obviously, not present here?
A. Correct.
Q. You also had an opportunity here to examine Brandon's bedroom, the decedent's bedroom?
A. Yes, sir.
Q. And you noted that there was an iPhone in the charger sitting on the bed?
A. Yes, sir.
Q. So you were examining the bed itself?
A. Yes, sir.
Q. No evidence of struggles, specifically located with the bed, was pulled apart or anything like that?
A. No, sir.
Q. No cuts in the mattress? No cuts to the sheets? No

blood anywhere associated with the bed?

A. Not that I recall.

Q. But you did see blood evidence, sort of, throughout the room?

A. Yes, sir.

Q. And a cooler that may or may not have been relocated?

A. Yes, sir.

Q. On the floor, some drag marks?

A. Yes.

Q. In the bathroom, throughout?

A. Yes, sir.

Q. But nothing in the bed?

A. Not that I recall.

Q. I know again, I been asking a lot of silly questions but I'm going to ask you another one. With a lot of forensics you don't have the ability to put a timestamp on anything?

A. No, sir.

Q. So it's more about confirming presence what may have been interact with but you can't say when or how?

A. Correct.

Q. Trying to re-create it a little bit later?

A. Yes, sir.

MR. LEWIS: One moment, Judge. All right. No further questions, Judge.

MR. PATRICK: Very briefly, Your Honor.

Redirect Examination by Mr. Patrick:

Q. A house that has been lived in for, you know, over ten years, how long would you say it would take you to document, collect, and log everything in that house?

A. It would be an absorbent amount of time.

MR. PATRICK: Your Honor, I have no further questions.

THE COURT: Mr. Lewis?

MR. LEWIS: Very briefly.

Re-cross Examination by Mr. Lewis:

Q. Another simply, sorry, really kind of embarrassing question, how many sides are there to a square?

A. To a square, four.

Q. And so the front of Congress Street, would be one side? How many other size?

A. Three.

Q. Did you or any other detective that was under your supervision examine the east side of that property?

A. I do not believe so. I was not there the second half so that I can't testify to.

Q. But you personally never examine the east side including the descendent's bedroom window?

A. Not on the exterior side, I did not.

Q. And the things that did stick out for you, you decided

to document, correct?

A. Yes, sir.

MR. LEWIS: Thank you.

THE COURT: You may step down. Thank you. Call your next witness.

MR. SIMPSON: Your Honor, at this time we would like to enter a few more stipulations.

THE COURT: All right. Thank you.

MR. SIMPSON: Court's indulgence. May I proceed, Your Honor? Ladies and gentlemen of the jury, on certain type of evidence, the law requires that the party seeking to it admit the item as evidence at trial must establish a chain of custody for the item as far as practicable. In the present case, the State and the Defense agree State's Exhibit 72, on, I'm sorry, State's Exhibit 72: that on June 11, 2014, Randall Unterbrink, of the City of Charleston Police Department - - -

THE COURT: Slow down a little bit, Mr. Simpson.

MR. SIMPSON: I will. Thank you, Your Honor.

THE COURT: Thank you.

MR. SIMPSON: The City of Charleston Police Department Crime Scene Unit collected a swab from the back of Darryl Bennett's neck. This swab was properly recovered, properly secured, and sent to the South Carolina Law Enforcement Division DNA lab for comparative analysis

with other evidence. From recovery by crime scene office Unterbrink, to submission to Samuel Stewart, Ph.D, a DNA expert with the South Carolina Law Enforcement Division's DNA lab, all requisite procedures regarding proper chain of custody were adhered to. Because the State and the Defense agree that a proper chain of custody can be established on this item, the testimony establishing the "chain of evidence" on this item is not necessary in the present trial.

Evidence Chain Stipulation #2, baseball hat and swab from hat. June 11, 2014, Randall Unterbrink, of the City of Charleston Police Department Crime Scene Unit collected a baseball hat from the floor of Congress Street. This hat was properly recovered, properly secured, and sent to the South Carolina Law Enforcement Forensic Service Division for comparative analysis with other evidence. Once at sled, forensic technician Verona T. Herrera swabbed the bill and band of the hat in order to collect a DNA sample for the comparative analysis with other evidence. This swab was properly recovered, properly secured, and submitted to the sled DNA lab. From recovery by crime scene officer Unterbrink, through processing by Verona T. Herrera, to submission to Samuel Stewart, Ph.D, a DNA expert with the South Carolina Law Enforcement Division's DNA lab, all requisite procedures regarding proper chain of

custody were adhered to. Because the State and the Defense agree that a proper chain of evidence can be established on these item, the baseball hate and the swab taken from baseball hat, testimony establishing the "chain of evidence" on these item is not necessary in the present trial.

And finally, thankfully, Evidence Chain Stipulation #6, knife and swabs from knife. In the present case, the State and the Defense agree: that on June 11, 2014, Randall Unterbrink, of the City of Charleston Police Department Crime Scene Unit, collected a knife from the residence at Congress Street. This knife was properly recovered, properly secured and transported to the Charleston Police Department's Crime Scene Office. On June 12, 2014, Mary Phillips, of the City of Charleston Police Department Crime Scene Unit, took two swabs from the knife, one for a touch DNA on the handle and one swab of the substance that tested presumptive as blood. The swabs taken from the knife by, Mary Phillips, were properly collected, properly secured, and sent to the South Carolina Law Enforcement Forensic Service Division for comparative analysis with other evidence. From recovery of the knife by, Randall Unterbrink, to collection of the swabs by, Mary Phillips, to submission of the swabs to Samuel Stewart, PhD, a DNA expert, with the South Carolina Law Enforcement Division's

DNA lab, all requisite procedures regarding proper chain of custody adhered to. Because the State and the Defense agree that a proper chain of evidence can be established on this item, a knife collected at Congress Street and swabs taken therefrom, testimony establishing the "chain of evidence" on these items is not necessary in the present trial. Thank you.

MR. SIMPSON: Thank you, Your Honor.

THE COURT: Thank you.

MR. SIMPSON: And for the record that was State's 72, 73 and 77.

THE COURT: There was no objection, it's already been admitted, correct?

MR. LEWIS: Yes, Your Honor, pretrial.

THE COURT: All right. Thank you.

MR. PATRICK: The State calls Detective Bailey.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury in the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. BAILEY: Yes, ma'am.

CLERK: Please have a seat. State your full name and spell your last name please.

MR. BAILEY: Thomas Bailey, B-a-i-l-e-y.

THOMAS BAILEY, first being

duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. How are you doing, detective?

A. Good, sir. Thank you.

Q. Where are you currently employed?

A. With the City of Charleston Police Department.

Q. Let me back up a little bit. Where are you from originally?

A. From Charleston South Carolina.

Q. How long of you been with the Charleston Police Department?

A. Just over ten years.

Q. And where you employed with the Charleston Police Department on June 11th, I'm sorry on, July 9, 2014?

A. I was.

Q. What was your involvement in this case?

A. I was aware the investigation that was going on from the beginning and on July 9, 2014 my assistant Detective Burckhardt was the case agent with obtaining some evidence in the case. The evidence is a buccal sample from the defendant in Detective Burckhardt had previously gotten a search warrant signed and briefly on the search warrant. I was aware of the case and I executed that search warrant for him. And what I mean by executing it, I travel to the county jail and Mr. Smith in the transport area where I

think collected the buccal sample which is the DNA sample just by a method of a Q-tip in the mouth wearing latex gloves and it goes into the box. I came back to the police station and entered that, the Q-tips into evidence.

MR. PATRICK: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Do you recognize this item?

A. I do. This is, inside here is the box with the Q-tips in it and the bio has a sticker denotes that it's a biological matter and that those are my initials right there.

Q. And what is that object?

A. This is the buccal sample that I collected from the defendant.

MR. PATRICK: Your Honor, at this time I would move State's 5 into evidence.

MR. LEWIS: Without objection.

THE COURT: State's 5 into evidence. Without objection.

(Whereupon, the Terrell Smith's Buccal Swab has been marked and entered into evidence as State's Exhibit No. 5)

MR. PATRICK: Your Honor, that's all I have for Detective Bailey.

THE COURT: Any questions.

MR. LEWIS: No questions.

THE COURT: You may step down. Feel free to stay with us but you're also free to leave. Thank you.

MR. BAILEY: Thank you.

THE COURT: Call your next witness.

MR. SIMPSON: Thank you, Your Honor. At this time, the State' would seek to enter the final stipulation the evidence chain, Your Honor. May I proceed, Your Honor?

THE COURT: You may.

MR. SIMPSON: Marked and entered as State's 74. Evidence Chain Stipulation #3, buccal swab from defendant. But you can probably predict, on certain types of evidence, the law requires that the party seeking to admit this items as evidence at trial must establish a chain of custody for the item as far as practicable. In the presence case, the State and the Defense agree: on July 9, 2014, Detective Thomas Bailey, of the City of Charleston Police Department, collected a buccal swab from defendant, Terrell A. Smith at the Charleston County Detention Center. This swab was properly recovered, properly secured, and sent to the South Carolina Law Enforcement Forensic Service Division for comparative analysis with other evidence. From recovery by Detective Bailey to submission to Samuel Stewart, PH.D, a DNA expert, with the South Carolina Law Enforcement Division's DNA lab, all requisite procedures regarding proper chain of custody were adhered to. Because the State

and the Defense agree that a proper chain of evidence can be established on this item, the buccal swab from the defendant, testimony establishing the "chain of evidence" on this item is not necessary at the present trial. For the record entered as State's 74.

THE COURT: Any objection, Mr. Lewis?

MR. LEWIS: No objection.

THE COURT: Thank you.

MR. SIMPSON: Your Honor, at this time the State calls Jennifer Wooley with the City of Charleston Police Department.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury in the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MS. WOOLEY: I do.

CLERK: Please have a seat. Please state your full name and spell your last name.

MS. WOOLEY: Jennifer Wooley, W-o-o-l-e-y.

MR. SIMPSON: May I proceed, Your Honor?

THE COURT: You may.

MR. SIMPSON: Thank you.

JENNIFER WOOLEY, being first duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Ms. Wooley, good afternoon.
A. Thank you. Good afternoon.
Q. Ms. Wooley, where were you employed in June of 2014?
A. The Charleston Police Department.
Q. And in what unit?
A. The Crime Scene Unit.
Q. Are you currently employed there?
A. I am not.
Q. How many years were you employed with the Crime Scene Unit at the City of Charleston Police Department?
A. I was at the Police Department for about thirteen years in the Crime Scene Unit for about eleven and a half years.
Q. And in your eleven and a half years with the Crime Scene Unit, can you explain to the jury sort of your various roles you had for that unit?
A. Sure. I started off as a crime scene tech. Went through my twelve week service training. Learning to process various scenes, anything from a car break-in to homicide. Later, I progressed and specialized, in latent fingerprint recovery and that's where I would work in the lab with the chemistry elements processing evidence that would be recovered at the scene and brought back to the lab setting and then later progressed into the crime scene supervisor position.

Q. And what was your position with that unit in June of 2014?

A. I was the crime scene supervisor at that time.

Q. You mentioned some training and experience with the recovery of, what you called, latent lifts?

A. Correct.

Q. And can you describe what that is for the jury?

A. A latent fingerprint lift is a finger print left in your natural body secretion, oils, stuff that your body makes leaving the impression of those friction ridges that are on your fingers.

Q. And pursuant to your knowledge, training, and experiences, is a latent lift unique to each individual?

A. It is.

Q. To be clear in the present case none of the comparisons or analysis were performed by you?

A. No. I do not examine the actual fingerprints. I just do the collection of them.

Q. And could you explain that process to the jury, the general process of collecting them?

A. Typically, we use a fingerprint powder. That powder actually sticks to each side of those ridges which is, basically, like a line of those oils. Use the powder and then you put down fingerprint tape over that item and lift it and put it on a fingerprint card with details. There's

a lot more techniques that can be used but that one will typically be the one that would be used on a crime scene itself.

Q. And do you recall on June 11, 2014 responding to a scene at Congress Street?

A. I do.

Q. And could you sort of walk us through your activity there?

A. Randy Unterbrink, the crime scene tech, was already at the scene and informed us the victim had passed away. Myself and Sarah Senn, responded to the scene. It happened to be in the daytime so it was very quick for everybody to really get there. Randy gave us or Randy Unterbrink gave us a walk-through of the scene and kind of what had, had happened and what information they had at that point.

Q. And after that discussion were duties and tasks sort of delegated out between you and the team?

A. Correct. As supervisor, I, typically assign task and make sure the communication is evolving between the detectives and the crime scene technicians as we are defining evidence and is there finding out information.

Q. What was your, sort of, focus, what was the task that you took on, yourself, with anyone?

A. Well, during the development of the scene there was a point of entry of the window that was developed. The

window was partially opened. It had a, I believe, a doghouse under the window and a curtain had been moved on the inside so it appeared like there may have been an entry through that window.

Q. The me ask you to stop for one second - - -

A. Yes, sir.

Q. - - - and have some patience with me.

MR. SIMPSON: Court's indulgence.

Q. Ms. Wooley, I've handed you what's been marked and entered by consent State's 38, 39, 40, 41, 42, and 43. I need you take a minute to flipped through this. Do you recognize the area that is depicted in those photos?

A. Correct. There's kind of a two series here. One of them is a window.

Q. Okay. And - - -

A. Which would be that point of entry window that I just described. The other one is the storm door going to the front of the residence.

MR. SIMPSON: May I approach, Your Honor.

THE COURT: You may.

Q. If I could've sort of collect those back from you?

A. You can.

MR. SIMPSON: Permission to publish, Your Honor?

THE COURT: You may.

Q. Let's start with State's 38, what are we seeing in

that photograph?

A. So this is the point of entry window or what I call point of entry window, outside of the residence looking into it. The figure lift cards are typically how we lift bigger prints, typically palm prints or you get something there. The piece that is in the middle is my normal fingerprint lifting tape which is about an inch and a half, two inches wide which explains why we need the bigger palm lifts for those. And what I observed was what appeared to be to palm lifts on that window which means if you're on the outside and you put your hands there it would be those two outside lifts.

MR. SIMPSON: The Court's indulgence. May I approach the witness, Your Honor.

THE COURT: You may.

Q. Ms. Wooley, I'm showing you what's been marked for ID only at this point, State's 11, 12, 13, 14, and 15, and there's a lot of writing on these items so just take your time and sort of view that.

A. Okay.

Q. Do you recognize those?

A. Yes, sir. These are some of the print cards that were lifted from the scene.

Q. Does - - we see two things here - - is it fair to say, you give these lifts a number?

A. Correct. Yes, we would.
Q. And do you see red stickers on them as well?
A. Yes.
Q. Those are numbers that we've assigned those?
A. Correct. Yes, sir.
Q. They don't correspond, necessarily, do they?
A. No.
Q. What red number corresponds with what we see in this photograph is your number one, lift number one, if any?
A. This print card, here.
Q. What number is that?
A. Number eleven.
Q. So number eleven is the lift number one, you're saying here?
A. Yes. It's the one in the lower left-hand corner there.
Q. And your lift number five, can you locate that in the exhibit in front of you, is that one in front of you?
A. Yes. That your exhibit number 12.
Q. So State's 12, does that correspond with anything you see here on State's 39?
A. Right. So you can - - this is the window to the right of that last window so it's a double window side-by-side so this is the right one and number five is marked there it's on the left-hand side.

Q. And number eight on State's 39, number eight, first in front of you and then State's 39?
A. Okay.
Q. Do you need a better view of this?
A. Yeah. I can't see the number in the picture but based on my drawing here it appears to be the one on the right-hand side of the picture.
Q. So those three exhibits in front of you were all taken from this window that you at least had some had inclination could have been a point of entry into the residence?
A. Yes.
Q. I want to sort of fast-forward to your lift twenty and twenty-two, are those in front of you there?
A. Yes, sir, they are.
Q. And do you indicate on those lift cards the area where you took those?
A. Yes.
Q. In what areas was twenty and twenty-two taken from?
A. Twenty was taken from the point of entry window on the lower left very close to number one, if not a duplicate. And then, same thing, twenty-two would have been in the same vicinity as the number five.
Q. So these were just further lifts taken from that same area?
A. Yes.

Q. And just so you can follow me just so we can confirm and maybe talk about this later, these are lifts, your numbers, lift one, five, eight, twenty and twenty-two?

A. Yes.

Q. And is our exhibits on the red stickers eleven through fifteen?

A. Correct.

MR. SIMPSON: Your Honor, at this point, the State would seek to admit State's 11 through 15 into evidence.

THE COURT: Any objection?

MR. LEWIS: Not at this time, Judge. There may be at a later.

THE COURT: All right. State's 11 through 15 into evidence. Without objection.

(Whereupon, the Latent Lift 2.1 has been marked and entered into evidence as State's Exhibit No. 11)

(Whereupon, the Latent Lift 2.5 has been marked and entered into evidence as State's Exhibit No. 12)

(Whereupon, the Latent Lift 2.8 has been marked and entered into evidence as State's Exhibit No. 13)

(Whereupon, the Latent Lift 2.20 has been marked and entered into evidence as State's Exhibit No. 14)

(Whereupon, the Latent Lift 2.22 has been marked and entered into evidence as State's Exhibit No. 15)

Q. Ms. Wooley, you took other lifts from the scene, is

that correct?

A. Correct.

Q. How many total lifts?

A. I'm not for sure. I don't have my report or - - -

Q. Now, would your report refresh your recollection?

A. It would.

MR. SIMPSON: May I approach the witness, Your Honor.

THE COURT: You may.

Q. Do you recognize who wrote that report?

A. Yes, sir. That would be my report.

Q. There are twenty-two lifts that were turned in to latent recovery. Seven additional lifts were made that were of poor quality that were turned in simply into evidence.

Q. So you determine some of the lifts you took, not a chance, poor quality, couldn't be - - -

A. Correct. The window actually had a good amount of dirt on it along with those first lifts that I was taking did not pick up any of the oils, they just picked up the pollen and the various dirt that was on the window.

Q. But you submitted to the Charleston Police Department's Forensic Division, how many lifts?

A. Twenty-two lifts.

Q. Twenty-two. And five of those identified we've identified in front of you and entered?

A. Yes.
Q. Just going on some of your knowledge and experiences being a latent lift recovery person, are all of these lifts going to be able to be used, be identified to people in your experience?
A. No. They are not. Typically, what I look for are part of a line or a ridge but I've had some training in identification but not enough to make it so I let the experts do that part.
Q. But in your experience, they aren't allowed, they don't -- aren't able to match them all, is that correct?
A. That is correct.
Q. And do you have any personalized knowledge in your experience about whether you can put a timestamp on a lift, do you know?
A. You cannot timestamp a lift.
Q. Lift can stay somewhere?
A. If it's protected good it can be there for years and years.
MR. SIMPSON: May I approach again, Your Honor?
THE COURT: You may.
MR. SIMPSON: Court's indulgence.
THE COURT: Take your time.
Q. Ms. Wooley, so we talked about some of your lift focus on that window there, what was the other area did you

focused on?

A. The storm door.

Q. Now, is that the front door of the residence?

A. Correct. The glass door on the front part of the door, of the front door.

Q. Some of these lifts that you have mentioned, are collected from that evidence too?

A. Correct.

Q. And they were, likewise, submitted to your - - -

A. Correct.

Q. - - - office, department?

MR. SIMPSON: Thank you, Ms. Wooley. Please answer any questions Mr. Lewis has for you.

MR. LEWIS: Thank you, Judge. May it please the Court?

Cross Examination by Mr. Lewis:

Q. Good afternoon.

A. Thank you.

Q. As you just testified, your primary focus on this case was on that suspected point of entry window - - -

A. Correct.

Q. - - - correct? To look for maybe a way someone could have gotten there, but as a crime scene tech when you're re-creating something, you can't know what happened otherwise, you'd be a witness, right?

A. That is correct.
Q. So you're looking for any forensic evidence that you can try to use a piece together what happened?
A. Correct.
Q. But just like you just testified, forensic evidence does not have a timestamp on it?
A. Correct.
Q. So if something is protected it could be there for any period of time, unless disturbed?
A. We're talking fingerprints, yes, certain evidence can be left, yes, without a timestamp.
Q. And sometimes when you're processing even if you're unable to get an identifiable fingerprint like get a good ridge detailed or anything like that, you could still swab for DNA?
A. The DNA in that context situation like that is very hard to come by. I mean, it would be possible but very remote in that situation.
Q. So you don't think you could get a touch DNA swab?
A. You can. Typically, touch DNA success comes when you have ownership of an item. An example, would be my keys most likely have enough of my cells on it to get a profile. When you handle something in a very quick manner you're much less likely to get a profile.
Q. But you can't find out if you don't try, right?

A. That, would be true, yes.
Q. You don't know what you don't know?
A. Right.
Q. And in this case from those, the suspected point of entry, you did absolutely no DNA testing?
A. No, I don't remember. I think there were some swabs of stuff we took that was on the window itself, may be a brown spot or something, but I can't remember.
Q. Let me show you what's been previously marked as State's Exhibit 38. Is that the same point of entry window, right?
A. Correct.
Q. Where's the screen at this point? Would it be fair to say, that you had to remove the screen to process?
A. To be honest, I don't remember exactly. I do remember there was an issue with the screen that had, the screens were cut but I don't remember if this screen, if this window had a screen or if we removed it. I do not recall.
Q. But you certainly don't see a screen there?
A. Correct.
Q. And that's how it was when you processed, you're just not sure if you had to remove this screen in order to that?
A. I did indicate in my report that, that both of the windows did have cuts in the screen so they would've been in there, in which case, we would've removed them for

processing.
Q. And you had to do that so that you could actually access the window?
A. Fully and properly, yes, but the screens were both cut.
Q. And just like we talked about before, you have no way of knowing when that occurred?
A. In remembering, I believe the father said that, that had happened on a previous incident a year or so prior.
Q. I was just going to get to that. So if you don't know something, sometimes you have to try to put it in context by asking people who might know something about it?
A. Correct.
Q. And so from speaking with Mr. Bennett you learn that those previously had been cut?
A. Correct.
Q. Not related to this incident?
A. Correct.
Q. And again in order for you to process it effectively, you had to remove it to get access to it?
A. To full access it, to the window, yes.
Q. And when you talk about forensic evidence being protected, for example, if that window had been previously left up, would that have protected it or would you not know?

A. I wouldn't know based on, you know, the overhang of the building can add protection to it. You know, sometimes maybe lifting it up might actually rub fingerprints. You wouldn't know without fully examining the window and its functions.

Q. And I'm just asking you again to take a fair heat at this, if that window was raised up would it be behind another pane of glass contained?

A. It would, yes.

Q. So if that window was normally left up any prints would've been protected for an extended period of time or could?

A. Could've. They could've been down also.

Q. But again you got to ask people and if they tell you the window was up, you take them at that word?

A. Right.

Q. You mentioned in addition to processing the alleged point of entry, you also processed the front door or yes, the storm door?

A. The storm door.

Q. Again DNA swab on any of them?

A. I believe there were maybe some blood on that front door but as far as contact, no. And there had been a verily good amount of traffic through that door from time even the suspect left because all first responders came in.

Q. True. But certainly blood would've been important enough?

A. I believe Sarah Senn collected.

Q. And nothing to do of locks stuff, as far as you know no one processed the deadbolt to the front door?

A. No, we did processed the front door locks and the door handles with negative results. And then process the storm door and the front door - - -

Q. So when you say processed - - -

A. Yeah.

Q. - - - you're talking about processing for latent lifts?

A. Yes. We put - - we use the fingerprint brush in the powder looking for the development. The storm door, because it's glass, happens to be a really great surface for fingerprints where a wooden door of brass locks and stuff happen to be a surface that's not as conducive for a good fingerprints.

Q. But unlike fingerprints they actually require an impression of ridge detailed for you to get all you need to get DNA is a few and epithelial cells, just a little swipe?

A. Again, I think we disagree with how much you need but - - -

Q. All right.

A. - - - But any contact DNA is possible.

Q. And it might be possible in this case?

A. I mean, I can't say no.

MR. LEWIS: One moment, Judge.

THE COURT: Take your time.

Q. One final section, I know you talked about the front door in the alleged point of entry, anything on the east side of the house, anything at all?

A. I don't - - -

Q. I say east just because that makes sense to me, I'm imagining the right side - - -

A. Okay.

Q. - - - if you look at the front door?

A. I don't remember anything indicated to us over there, it's the one that we processed.

Q. Sorry, I guess I didn't ask that artfully, what I'm asking about, you know, if you know anything at all was done on this entire side of the house right here?

A. I do not recall any process over there.

Q. All right.

MR. LEWIS: No further questions, Judge.

MR. SIMPSON: Judge, just briefly.

Redirect Examination by Mr. Simpson:

Q. So let's talk about this little further of this idea of a contact DNA, you also refer to that as touch DNA?

A. Correct.

Q. And thank you for being forthright. DNA can be determined from skin cells, is that correct?

A. It is, yes.

Q. So if a person touches right here, you can, it is possible, to find maybe my DNA right there?

A. Correct.

Q. Less - - maybe a small area like the top of this podium is a crime scene, okay.

A. Mmm, hmm.

Q. So you could come, blank, with no information and you can swab right there for DNA?

A. I can swab.

Q. You could?

A. Yes.

Q. Have these kind of - - let's continue. You can do a second swab if I put my hand right there to, couldn't you? You could?

A. I was swab the surface as a whole.

Q. And this surface?

A. (Shaking of head, yes)

Q. You could. And this surface?

A. I mean, everything is possible but what I, no.

Q. Okay. Because that's important. When you're going through these contact epithelial cells it's possible, correct?

A. It is possible.

Q. Is it usually probable that after months of analysis by sled you get hits on these contacts?

A. No. What we typically get is either not enough DNA profile so we might get, there's like peaks on a thing that you would see, he might get one or two. Often times in a common area we get multiple DNA profiles so, to, three, four five of you have used that podium over there so we would get a mixture of DNA and they can't really separate up to how many they have so it's really not a useful profile. As again would like to look for things that people had ownership of and not just a casual contact.

Q. Thank you. You know, partially because you can do that sometimes or partially because of cross-examination what we just witnessed, is it correct that you do in some cases attempt to get that touch DNA, is that true?

A. True.

Q. If for no other reason to come in here with this little game show that we just saw, say I try to do that - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: What's your argument?

MR. LEWIS: That it's - - referred to it as a game show.

THE COURT: I got it. Thank you, Mr. Lewis. Have

a seat. Rephrase your question.

MR. SIMPSON: I'll rephrase.

THE COURT: Move on.

MR. SIMPSON: I'll rephrase.

Q. The prints, however, you can see, right?

A. Correct.

Q. Okay. And did you look for prints in this case?

A. Yes, we did.

Q. And you looked in areas you thought you might find some may be of use to you?

A. We did.

Q. And you collected those prints, right?

A. Correct.

Q. And you submitted them to someone qualified or in your understanding, qualified to analyze those prints?

A. Correct.

Q. And since Mr. Lewis went thoroughly into what you were told by another person, is it your understanding that the screens had previously been cut into, so a person could enter through those windows, were you told anything like that?

A. If I remember correctly, it was somebody that was angry and slashed multiple windows.

Q. And - - -

A. But I was told that, that window, later, that, that

window is a common entry point into the house.

Q. Part of your team would've been to photograph the scene as you found it before you moved anything for processing, correct?

A. Correct.

Q. So if we're interested in seeing the status of those screens, it's like not nobody can remember, we can just go and look at the photo?

A. True.

MR. SIMPSON: Nothing further. Thank you.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge.

Re-cross Examination by Mr. Lewis:

Q. Describe a common entry point into the house?

A. That's what I had heard later not by anyone direct.

Q. Okay.

A. Just through the investigation part.

Q. And none of this is alleged in any way come back to him under the forensic that you have or had interaction?

A. None of these fingerprints come back to us.

Q. And I know it seems like I'm beating a dead horse and I'm not trying to criticize you for not processing that light fixture or everything under the sun, but you know the alleged perpetrator ran out the front door a locked, out the front door of an allegedly locked door. A lock might

be a big deal wouldn't you think?

A. You manage the scene, if that's all we had, that may be something we do but we had other items at the scene that was a better source of DNA. At best, we would've gotten it contaminated or a mixture of DNA off that lock. It's such a small surface in such a small time frame, you're shooting in the wind really.

Q. But again you don't know if you don't try, right?

A. Well, we picked our best sources for DNA.

A. All right.

MR. LEWIS: Thank you.

THE COURT: You may step down. Feel free to stay with us but you're also free to leave. Thank you. Call your next witness.

MR. SIMPSON: The State call Nada Kerstein with the Charleston Police Department.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury in the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MS. KERSTEIN: I do.

CLERK: please have a seat. Please state your full name and spell your last name please.

MS. KERSTEIN: Nada Kerstein, K-e-r-s-t-e-i-n.

NADA KERSTEIN, first being

duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Ms. Kerstein, good afternoon.

A. Good afternoon.

Q. Where are you currently employed?

A. I work for the City of Charleston Police Department.

Q. And in what capacity?

A. I'm a latent fingerprint examiner in the Latent Print Division.

Q. If you could explain for the Court and the jury sort of your education and training and experience that it takes to perform your duties, the path you took to where you are today?

A. At the end of 2007, I started training with the Latent Print Division and I went through a formal training process with the examiners in that division and I was released in 2009 to do my own case work. I've been to over a dozen fingerprint classes designed specifically for the fingerprint work. Most of those classes were at least forty hours and I think all of them were with experienced latent examiners who have been doing the work for many, many years.

Q. Have you ever been qualified as an expert in fingerprinting analysis in court?

A. Yes, I have.

Q. And have you ever testified in that regard in court?
A. Yes, I have.
Q. And approximately how many times?
A. Seventeen times for the State of South Carolina.
Q. And again over the course of your career, how many, as best you can guess, how many prints have you prepared over your career?
A. Between casework and proficiency test and training and classes, I would say over a hundred thousand but I don't have a definitive number.
Q. And you mentioned something interesting too, proficiency test, what is that? Can you explain that to the jury?
A. Proficiency test is part of our policy and procedure. Manually, we have to have a test every year that is given by an entity that puts together what would be normal casework latent's and we have to go through and do a comparison, the latent print to a non-print, and then we turn in our results and then it gets graded.
Q. Have you always passed these proficiency exams?
A. Yes, I have.
Q. And the office where you work, is it following protocol or certified by any outside groups or entities?
A. My laboratory is ASCLD accredited which means that ASCLD entity comes in every five years and they review our

policies and procedure, they review our casework, they interview all of the examiners and they make sure that what you say you are doing, you actually do.

Q. If they were ever to come in and find that your labs work was not satisfactory, have they ever made that conclusion with your lab?

A. No.

Q. Okay.

MR. SIMPSON: At this point, the State would seek to move Ms. Kerstein, qualify her as an expert in the fingerprint analysis.

THE COURT: Any objection, Mr. Lewis?

MR. LEWIS: No objection.

THE COURT: Any additional voir dire required?

MR. LEWIS: No.

THE COURT: Ladies and gentlemen, normally a person cannot give an opinion testimony. Typically when a person testifies, they must testify as to what they saw or heard or sensed by smell or something of that nature. There is an exception in our law if someone is qualified because of their education and experience. If the Court qualifies them as an expert in a certain area they would be permitted to give expert opinion testimony in that area. This witness will be qualified as an expert in the area of fingerprint analysis, to give opinion testimony in that

area. That does not mean that you must accept her opinion, it is simply evidence for you to use in any way that you see fit. Mr. Simpson?

MR. SIMPSON: Thank you, Your Honor.

Q. Ms. Kerstein, what's a latent lift?

A. A latent lift is what we get from the crime scene tech's. It's a lift that is recovered at a crime scene. Latent means not readily seen by the naked eye. It normally has to have some kind of processing in order for the print to be seen usually with a chemical or some kind of powder.

Q. And when you do your work, are you looking at the actual lifts collected by crime scene?

A. Yes.

MR. SIMPSON: May I approach the witness, Your Honor?

THE COURT: You may.

Q. Let me show you what's been marked and entered into evidence of State's 11, State's 12, 13, 14, and 15, if you could just take a moment and review those notes.

A. Okay.

Q. And you know the case that you've been called here in court today, is that correct?

A. Yes.

Q. How many prints were submitted to you in total for you to take a look at for this case?

A. Now look at my notes?
Q. With that refresh your recollection?
A. Yes. An envelope two, there were twenty-two lifts submitted.
Q. And of those twenty-two, are, the exhibits you just reviewed, some of those are twenty-two?
A. Yes.
Q. And were the lifts numbered, the twenty-two lifts numbered, one three twenty-two?
A. Yes, they were.
Q. And which list are in front of you now as exhibits?
A. They have lift one, lift five, lift twenty-two, lift twenty and lift eight.
Q. And when they're submitted to you as the generalized description of where they came from submitted with those as well?
A. Normally, the process is the crime scene technician will write on the latent lift where it was recovered from.
Q. And if you could, share, where these lifts - - what was noted on these lifts?
A. Latent lift one, was from exterior point of entry window, lower left. Latent lift five, was exterior window right point of entry. Latent lift twenty-two, was exterior window right point of entry. Latent lift twenty, was exterior point of entry window lower left.

Q. And - - -

A. And there's one more.

Q. Oh, I'm sorry.

A. Latent lift eight, exterior window right of point of entry lower right.

Q. Of the twenty-two submitted prints, how many prints were you able to effectuate some sort of identification on?

A. From the first report three of the latent lifts were identified.

Q. That's from your final report.

A. And then from the final report, two more.

Q. Is that a total of five?

A. Yes.

Q. And do those five correspond with the exhibits in front of you?

A. No.

Q. One, five, eight, twenty and twenty-two?

A. On my first report I have five, twenty-one and twenty-two, were identified. And then in the second report, sixteen and nineteen were identified.

Q. Okay.

A. Oh, I'm sorry. And then in the report from June 17th, one, five, eight, twenty and twenty-two.

Q. And who were those prints identified to - - -

MR. LEWIS: Objection, Your Honor. Relevance. And

I think we may need to talk about that.

THE COURT: All right. Please approach.

(Whereupon, a bench conference was held off the record)

THE COURT: Step back. Overruled. We will put it on the record, Mr. Lewis. Thank you.

Q. Ms. Kerstein, with an individual - - how do you go about the process of taking a latent print and matching it to another person?

A. When I do a comparison I have the latent lift next to the known ten print card and I'm using magnifying glasses. I start at a target point in the latent lift and then in that same area on the ten print card I'm going to look for those same characteristics and then I go ridge by ridge around the entire print and what I'm looking for is that they have the same characteristics in the latent print and in the ten print card, they have to be the same and they have to be in the same order. And if I can find that same arrangement between the two that my conclusion is that those two prints were made by the same contributor.

Q. And did the prints that we discussed on the exterior window match a known prints of an individual?

A. Yes, there was identifications on this case.

Q. And what was the name of that individual?

A. On the first report latent lift five, twenty-one, and twenty-two were identified to the ten print card bearing

the name of Rodney Pinckney.

Q. I guess what I'm up for referring to is your final report.

A. In the final report latent lifts one, five, eight, twenty and twenty-two were identified to the ten print card bearing the name, Rodney Pinckney.

MR. SIMPSON: Court's indulgence.

Q. To be clear, these prints match the known prints of an individual name Rodney Pinckney, correct?

A. Yes.

Q. That's not Terrell Smith?

A. Correct.

Q. And none of the - - what about the other twenty-two, were you able to effectuate any sort of matches with the others other than matches to Rodney Pinckney?

A. We did a comparison to the ten print card bearing the name of Brandon Bennett and latent lift sixteen and nineteen identified to him.

Q. And other than those matching Brandon Bennett, did any match of an individual named Terrell Smith?

A. No. We did a comparison on the ten print card bearing the name Terrell Smith and there was no identification made.

Q. Let me ask you this Ms. Kerstein, who is Kathleen Butler?

A. Kathleen Butler was the supervisor of the Latent Print Division until July of 2015.

Q. And that's the division that you, are you currently the supervisor of that division?

A. I am not, no.

Q. But that's the division you work for?

A. Yes.

Q. Did you and Ms. Butler worked hand-in-hand?

A. We - - well, there were only two of us in the office when Kathleen was there and the way we split up our cases is, whoever took the case whatever the availability was, they would be the lead examiner and then if there was an identification made, there had to be a verifier on a case. A second set of eyes had to look at the comparison, redo the case from start to finish, check and make sure the report was correct and just make sure everything was done correctly. I was the verifier in this case.

Q. And so if Kathleen Butler did a report on say this case, would you have verified that report?

A. Yes.

Q. By actual physical, physically viewing the same thing she did?

A. I have to do the analysis from start to finish and do the comparison from start to finish.

MR. SIMPSON: May I approach, Your Honor?

THE COURT: You may.

Q. I'm handing you an item, sorry, it's getting late in the day, forgive me, that I'm going to mark for ID only, for identification only as State's 79, could you review this?

A. Yes, I've seen this report.

Q. And is that a report from Ms. Butler?

A. Yes.

Q. But would you have verified that report?

A. No.

Q. No, okay. And - - -

A. It showed that it was non-comparable.

Q. Okay.

A. So there would be nothing to verify.

Q. And what was non-comparable?

A. The latent lift. It was 28.1. If there had been some ridge detailed on there but there was not enough to do anything with it, I did not look at it so I don't know what it looked like.

Q. Okay.

A. But there was not enough to do a comparison.

Q. And from where was that lift taken?

A. From a knife.

Q. And to be clear, on a lift taken from a knife, it didn't match an unknown person, right? It just could not -

- it had no evidentiary values - - -

A. That's correct.

Q. - - - is that a fair assessment? Okay.

MR. SIMPSON: May I approach, Your Honor?

THE COURT: You may.

MR. SIMPSON: Court's indulgence. Thank you Ms. Kerstein. Please answer any questions that Mr. Lewis may has for you.

THE COURT: Mr. Lewis?

MR. LEWIS: Very briefly, Judge. Thank you.

Cross Examination by Mr. Lewis:

Q. When were the prints left that you examined?

A. When were they left on the card?

Q. No. When were they left on the surface where they were tested? I'm not trying to confuse you.

A. I'm not understanding your question.

Q. I sorry, I was trying to cute. Do you have any way of knowing when those prints were left?

A. No. You cannot date a print.

Q. Okay. In so they could have been there from six months previous?

A. It's possible.

Q. And does a print on it have written why it was left there?

A. No.

Q. Anything about motives or connections?

A. No.

MR. SIMPSON: Thank you, Judge.

MR. SIMPSON: No further questions.

THE COURT: You may step down. Thank you. Do you have any further witnesses for today?

MR. SIMPSON: We have a very short one, Your Honor.

THE COURT: All right. Thank you.

MR. SIMPSON: The State calls Ken Hatfield, Jordan Hatfield.

MR. LEWIS: Your Honor, may I approach?

THE COURT: Approach the bench?

MR. LEWIS: Yes, Your Honor.

THE COURT: You may.

(Whereupon, a bench conference was held off the record)

THE COURT: Please swear him in. Thank you.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury in the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. HATFIELD: I do.

CLERK: Please have a seat. Please state your full name and spell your last name please.

MR. HATFIELD: John Jordan Hatfield. Last name, H-a-t-f-i-e-l-d.

JOHN JORDAN HATFIELD, first being duly sworn, testified as follows:

Direct Examination by Mr. Simpson:

Q. Mr. Hatfield, where you currently live?

A. I currently live in Altus, Oklahoma.

Q. Did your formally live in Charleston, South Carolina?

A. I did.

Q. When did you live in South Carolina?

A. I lived in South Carolina in Charleston 2003 til about May of 2015.

Q. How were you employed when you lived in Charleston?

A. I was employed - - I was in college for four years and then after that I was with the Charleston Police Department for a number of years as well as the South Carolina Army National Guard.

Q. In October of 2013, where were you employed?

A. In Charleston or the Charleston Police Department.

Q. And what was your role, if you can recall, in 2013 working for the Charleston Police Department?

A. I was assigned to team one as our community action team officer primarily based in the east side of Charleston.

Q. And what is a field contact report?

A. A field contact report in my own words it's pretty much, um, I ended up meeting, talking to a guy, I create a

little letter for myself and for other officers to say who I have met, what they were doing, if any circumstances that may have been kind of questionable or something like that, to build not really patterns of life but just something to create, like kind of a like a record - -like I didn't find anything necessarily wrong with the stop or anything like that, but just kind of a contact just like hey, who I met and what they were doing.

Q. Could it have been for the purpose of that is, it could be helpful down the road for law enforcement just to sort of know who knows who, who hangs out with who - - -

A. Sure. Absolutely.

Q. - - - what areas they hang out with?

A. Absolutely. I kind of mentioned the pattern of life thing, it's not really, I wouldn't call it patterns of life, but it does build a bigger picture for us to see what, kind of, people are into and what they may have done.

Q. And as part of your job back in 2013, doing a field contact with people?

A. Yes.

Q. And you know why you're here today, right?

A. Yes, I do.

Q. And are we here today about one such incident, a field contact?

A. Yes, sir, I believe, we are.

Q. Anything particular exciting about it?
A. Not that I remember anything being exciting about it.
Q. But it is a your report that you wrote?
A. Yes, I had a chance to look at it for a second prior, in the courtroom.
Q. All right. Could you please just note for the jury what happened in this field contact?
A. Sure. Well, it was about two years ago and so I did see it a second ago, do you mind if I could look at that again to help just to ajar - - -
Q. Would that refresh your recollection?
A. - - - my memory a little bit better - - yes.
MR. SIMPSON: Permission to approach?
THE COURT: You may.
Q. And if you could, in reviewing your brief report there, what was the date of this contact?
A. The date of this contact is October 21, 2013 at about 2 o'clock in the afternoon.
Q. What did you observe in this contact?
A. This was around the intersection of Columbus and Nassau Street in the east side and at this point, I saw based on my own words here, I saw one pedaling a bike and another man riding on the handlebars of the bike.
Q. Let me stop you there. Who was pedaling the bike?
A. I - - it was Terrell Smith is the one that I have

written down here.

Q. Who's riding on Terrell Smith's handlebars?

A. According to my recollection and this is Rodney Pinckney.

MR. SIMPSON: May I approach, Your Honor?

THE COURT: You may.

MR. SIMPSON: I appreciate you coming here from Oklahoma. Thank you. Answer any questions that Mr. Lewis has for you.

A. Yes, sir.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge.

THE COURT: Noting our previous bench conference just for the record.

MR. LEWIS: Thank you for nothing.

Cross Examination by Mr. Lewis:

Q. Some people have the same name, right?

A. Sure.

Q. So do you know if that's every Terrell Smith in Charleston County?

A. I can guarantee you it's probably not.

Q. Do you know a Rodney Pinckney in Charleston County?

A. No, I do not.

Q. All right. Do you know of the nature of anybody's relationship?

A. I do not. Not unless they tell me at the time that I meet them.

Q. You know if Brandon Bennett knew Rodney Pinckney?

A. What was his first name?

Q. Brandon Bennett?

A. Not off the top of my head, no.

Q. I gotcha. Just that day they, he was riding on his handlebars?

A. Sure.

Q. Sorry, what was the date again?

A. I believe it said, October 21, 2013.

MR. LEWIS: Nothing further, Judge.

MR. SIMPSON: Just very briefly, Your Honor. May I approach the witness again?

THE COURT: You may.

Redirect Examination by Mr. Simpson:

Q. On your MR. FOARD: field contact report, did you note a middle name for TerrelL Smith?

A. I did. It was Artieth. The name was Artieth.

Q. And the date of birth?

A. The date of birth is October 19, 1996.

MR. SIMPSON: I have a further, Your Honor.

MR. LEWIS: Nothing.

THE COURT: You may step down. Thank you. Mr. Simpson, you're out of witnesses for the day, is that

State of South Carolina)
)
County of Charleston)

In Circuit Court of the
Ninth Judicial Circuit
2014-GS-10-05999, 06000
06001, 06002

The State,

Plaintiff,

vs.

Terrell Artieth Smith,

Defendant.

Transcript of Record
(VOLUME II)

Charleston, South Carolina
September 19-22, 2016

B E F O R E:

The Honorable Kristi L. Harrington

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

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Circuit Court Reporter

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MR. STEWART: I do.

CLERK: Please have a seat. Please state your full name and spell your last name please.

MR. STEWART: Samuel Adams Stewart, S-t-e-w-a-r-t.

THE COURT: Mr. Patrick?

SAMUEL STEWART, first being duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. Good Morning. Please state your occupation for us?

A. I'm a forensic scientist assigned for the DNA case for the department at sled, the State Law Enforcement Division.

Q. And how long of you been with the State Law Enforcement Division?

A. Approximately four and a half years.

Q. What you do at sled?

A. Like I said, I'm a forensic scientist. Also known as a DNA analyst.

Q. What does that job entail?

A. I'm responsible for processing any evidence and known standards in a criminal investigation for DNA. My purpose is to try to determine that if the DNA profile from that known standard which can come any individual involved in that case can be included or excluded as a possible contributor to the DNA profile from that evidence.

Q. Well, let's work through that. What is DNA?

A. DNA stands for deoxyribonucleic acid, it is the genetic material that is found in every individual and it's responsible for certain trace such as our eye and our hair color. DNA is contained in a dense packet known as chromosomes for which I find in every cell in the human body excluding red blood cells. We receive half chromosome from our mother and the other half from our father. And to develop a DNA profile, we target certain locations on those chromosomes known as STR's, which stand for Short Tandem Repeat. We look at sixteen different of those STR locations that are found in your chromosomes to develop what is known DNA profile. And we use that to identify a person from another person excluding identical twins.

Q. Let me walk back a little bit. What is your educational background?

A. I received my bachelors in science and biology from Francis Marion University. I also then completed in-house sled training under other court qualified analyst for over a year and a half, where I have successfully completed a written exam and oral exam, a competency test and a mock trial before I was deemed competent as a DNA analyst.

Q. Did you receive any additional training in DNA analysis?

A. No, that's it. But we're all required eight hours of continuing education every year.

Q. How many times have you tested DNA samples?
A. Hundred close to thousands.
Q. Have you been qualified as an expert in the field of DNA analysis before?
A. Yes, I have.
Q. How many times?
A. Nineteen.
Q. Federal court? State court?
A. All general session state courts.
Q. General session as far as what we're in today?
A. That's correct.
MR. PATRICK: Your Honor, at this time I would tender, Mr. Stewart, as an expert in DNA analysis.
THE COURT: Mr. Lewis, any objection?
MR. LEWIS: No objection. No additional questions.
THE COURT: Thank you. You will be so qualified.
Q. With regards to this case, your lab number L15-02409, did you have the occasion to examine some evidence submitted by the Charleston Police Department?
A. Yes, I did.
Q. Let me go through a couple of items that we discussed, these of the swabs, the buccal swabs and the blood spot from victim.
MR. PATRICK: May I approach, Your Honor?
THE COURT: You may and you do have continuing

permission with this witness.

MR. PATRICK: Thank you, Your Honor.

Q. I'm showing you State's 5, it's already been admitted, do you recognize that item?

A. Yes, I do.

Q. What is it?

A. It is the buccal swab from Terrell Smith.

Q. And State's 6, previously marked and admitted?

A. Yes, I do.

Q. What is that?

A. It is the buccal swab from Mr. Darryl Bennett.

Q. And State's 7 for ID purposes only? Does it not say on that? Let me open it up.

A. Yes, I do.

Q. What is that?

A. It is the blood spot from Brandon Bennett.

Q. And what would you use those items for?

A. These are, as I stated, for the known standards which I used to compared to the evidence.

Q. These are the known standards, what do you mean by that?

A. We identify individuals in a criminal investigation as the known standard and we develop a DNA profile from those known standards, those individuals, to compare to the DNA profile from the evidence.

Q. And we also submitted some additional items to you, is that correct?

A. Yes, you did.

MR. PATRICK: Court's indulgence, Your Honor.

THE COURT: Take your time.

Q. What is that? It should have a little label right at the bottom of the bag.

A. Okay. This is my item 5.1, it was a swab from the scraping bill and band of the hat.

Q. You said it's your item 5.1?

A. That's correct.

Q. What does the red stickers say on there?

A. State's Exhibit 4.

Q. So we have separate numbers for these items?

A. Yes.

Q. You have your own lab number and we have our own state's exhibit numbers, correct?

A. That is correct.

Q. All right. Thank you. Handing you State's, State's 9 and 10, can you identify those items?

A. Yes. Your State's Exhibit 9, contains my item number 4 and item 6. Item 4, was a contact swab from the bruise upon, excuse me, from the right arm of Mr. Brandon Bennett. And item 6, is a touch swab from the knife.

Q. And, finally, showing you what's our State's Exhibit

2, which is in a bag with a bunch of, a couple of other items, can you tell me what State's 2 is, please?

A. It is a, my item 10, swab from bite Mark on Darryl Bennett.

Q. Let's go through each of those items separately. First, our exhibit 4, your exhibit 5 or your item 5.1, can you tell us what you found with that item?

A. Yes. The DNA profile developed from item 5.1, is a mixture of at least three individuals. The DNA profile of the major contributor of this mixture matches the DNA profile of Terrell Smith. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately 1 in 130 sextillion. Brandon Bennett cannot be excluded as a possible minor contributor to this mixture. The probability of randomly selecting on unrelated individual who could have contributed to this mixture is approximately 1 in 34. Darryl Bennett is excluded as a possible minor contributor to this mixture.

Q. That was a lot of information. First of all, what was item 5.1 again?

A. Item 5.1, is the swab from the scraping bill and band of hat.

Q. The swab from the scraping bill and band of hat, correct?

A. That is correct.

Q. And what did you find as far as Terrell Smith for that item? Just slow it down for me a little bit.

A. Not a problem. When I develop a DNA profile from this piece of evidence it was a mixture. A mixture is when we have more than one person contributing their DNA to an item of evidence and that is common when we're dealing with clothing. But I was able to identify a major contributor and a minor contributor. The major contributor is when we have an individual contributed significantly more DNA to that item of evidence. And a minor contributor is an individual who contributed less DNA to the item of evidence. In this case, I was able to develop a major contributor from that mixture and the major contributor that I was able to developed from that mixture matches the DNA profile of Mr. Terrell Smith.

Q. And what were the odds of it being a different person on that profile?

A. It was 1 in 130 sextillion. What that statement means is that, that if I was to take a random's persons DNA profile and compared it to that major contributor that I was able to develop from that mixture, there would be 1 and 130 sextillion chance that, that random person DNA profile would match that DNA profile that major contributor from that item.

Q. How many zeros is sextillion, do you know on the top of your head?
A. Twenty-one, approximately.
Q. Twenty-one zeros. All right, let's move on to the second item, our exhibit 7, your item, I'm sorry, our exhibits 9 and 10, your item, 7. It's two different swabs, one is a blood swab, one is a touch swab. Can you tell us what you found on the item - - well, first did you do a presumptive test for blood on this item?
A. Item 7, the swab from the knife?
Q. Yes.
A. Yes, I did. And the presumptive testing came back positive presence of blood.
Q. And what does that mean?
A. That means I did a serology test for the body fluid of blood and the testing came back positive saying there was possible blood on that item.
Q. And moving on as far as your findings as for DNA goes?
A. The DNA profile developed from item 7, is a mixture of at least two individuals. The DNA profile of the major contributor to this mixture matches the DNA profile of Brandon Bennett. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributed to this mixture is 1 to 250 quintillion. Due to the limited statistical significance of any other

comparisons, no further interpretation regarding the minor contributor will be offered.

Q. What is that, the second phrase, due to limited statistical ....

A. As I indicated with stats, the stat would be so low that nearly anyone could be included as a minor contributor. So because of the stat is so partial, we wouldn't be able to significantly make a strong statement about it. We won't compare anybody to that minor contributor.

Q. But as far as the first contributor, Brandon Bennett, what was the statistic on that?

A. It was 1 and 250 quintillion.

MR. PATRICK: Court's indulgence, Your Honor.

Q. Let me bring you back to the first item that we talked about, that statistic that you gave us 1 and 34, or was it 1 and 34?

A. Um, 1 to 130 sextillion.

Q. No, I'm sorry, the minor contributor on the hat, 1 in 34 - - -

A. Oh, 1 and 34, that's correct.

Q. Yes. What does that mean?

A. As I stated that would mean if we tested approximately thirty-four people, we would expect one of those thirty-four people to be included as a minor contributor to that

profile.

Q. And that was on your item 5.1, our exhibits 4, correct?

A. That is correct.

Q. All right. Moving on to our last item, your item 10, our exhibit 2, what is that item?

A. That item is a swab from the bite Mark on Darryl Bennett.

Q. And what did you find on that?

A. The DNA profile developed from item 10, is a mixture of at least two individuals. The partial DNA profile of the major contributor to this mixture matches the DNA profile of Terrell Smith. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately 1 in 38 quadrillion. The DNA profile of the minor contributor's mixture is attributable to Darryl Bennett.

Q. And remind us again what that item was?

A. It is the swab from bite Mark on Darryl Bennett.

Q. And the statistical number, how many zeros is that?

A. That would be fifteen approximately.

MR. PATRICK: Your Honor, I have no further questions for Mr. Stewart. Please answer any questions the defense may have?

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge. May it please the Court?

THE COURT: Yes.

Cross Examination by Mr. Lewis:

Q. Good morning.

A. Good morning.

Q. I want to start with some general DNA information.

A. Okay.

Q. The absence of DNA on a sample doesn't mean that someone did not have physical contact with an object?

A. That is correct.

Q. So depending on how my body actually functions, I may produce a lot of DNA, I may slough a lot of skin cells, or I may not?

A. That is correct. Individuals do give off skin cells differently.

Q. And DNA by itself, does not explain a story, it just explains potential interaction or transfer?

A. That is correct.

Q. I want to focus specifically on your analysis of number six, your number six, touch swab from item 103 (knife). As you testified briefly just now, you said that was a mixture?

A. Item 6?

Q. Yes.
A. I have not read for item 6.
Q. Sorry, I may have - - sorry, a possible mixture?
A. Yes, item 6, was the touch swab from the knife.
Q. And you said, due to the inability to perform statistical calculations, no conclusion will be offered?
A. That is correct.
Q. And I get that. That's based on your inability of given number, like these enormous numbers that you have previously given.
A. Yes, I'm able to do statistics on that profile.
Q. But you do have the ability to say whether a specific allele can come from a specific person, correct?
A. Depending upon the profile. If it's a mixture it gets a little difficult but yes, essentially, I should be able to do that.
Q. And the reason I'm asking that is I'm going to ask you as an expert as you've been qualified, to limit your world to three potential people, if you would?
A. Okay.
Q. The three I'm asking you to consider are the three that have already been mentioned, Darryl Bennett, you have a sample from; Terrell Smith who you have a sample from; and Brandon Bennett who you have a sample from. I want to direct your attention on your report - - -

MR. PATRICK: Your Honor, I objected this time. May we approach?

THE COURT: Please approach.

(Whereupon, a bench conference was held off the record)

THE COURT: Mr. Lewis, you may continue.

MR. LEWIS: Thank you, Judge.

THE COURT: Objection was withdrawn, is that correct, Mr. Patrick?

MR. PATRICK: Yes, Your Honor.

THE COURT: Thank you.

Q. And as I was talking to you about before, you can use your expertise, you can tell the presence of someone's DNA on a substance, but you can't tell the story behind it?

A. That is correct.

Q. And so for example, you can't say right now whether you can get my DNA from right there?

A. No, I could not.

Q. Even though I touched it?

A. I mean, it's possible, but I could be certain.

Q. So, and I know it seems utterly simplistic, but the absence of DNA doesn't mean the absence of interaction?

A. That is correct.

MR. LEWIS: No further questions, Judge. Thank you.

THE COURT: Mr. Patrick?

MR. PATRICK: Nothing further, Your Honor.

THE COURT: You may step down. You may leave but feel free to stay with us. Thank you. Call your next witness.

MR. PATRICK: Your Honor, may we approach briefly?

THE COURT: You may.

(Whereupon, a bench conference was held off the record)

MR. PATRICK: The State calls Dr. Michael Caplan.

CLERK: Please raise your right hand. Do you swear or affirm that the testimony that you shall give the Court and jury in the trial of this case shall be the truth, the whole truth, and nothing but the truth so help you God?

DR. CAPLAN: I do.

CLERK: Please have a seat. Please state your full name and spell your last name please.

MR. CAPLAN: My full name is Michael Jeffrey Caplan. Last name is spelled C-a-p-l-a-n.

DR. MICHAEL CAPLAN, first being duly sworn, testified as follows:

Direct Examination by Mr. Patrick:

Q. Good morning, Dr. Caplan.

A. Good morning.

Q. What is your current occupation?

A. I'm currently a forensic pathologist and chief examiner at the Suffolk County, New York Office of the

Medical Examiner.

Q. How long of you been with Suffolk County?

A. I've been there for about two years.

Q. What was your occupation before you were with Suffolk County?

A. Before Suffolk County, I was employed at the Medical University of South Carolina in the Department of Pathology and Laboratory Medicine as a forensic and pediatric pathologist and also on the faculty for teaching.

Q. What were your duties as a forensic pediatric pathologist?

A. My main duties were to, for forensic pathology was to perform autopsies that were authorized by the Charleston County coroners and by the coroners with whom we had a contract. And then following the autopsy, would generate a report that would go into the case file and to the coroners office. As a pediatric pathologist my main duties were to examine tissues or organs from children, infants, and unborn babies looking for any diseases or injuries, you know, that they were inquiring about.

Q. Let's step back a little bit, where did you get your education?

A. My education I started, my undergraduate degree in Forensic Science at Michigan State University. I graduated from there in 1983. Following that, I went to the Medical

School at the University of Connecticut, the School of Medicine and graduated in 1987 with an MD degree. Then after that, I did training in pathology which is a specialty of medicine that involves the body's reaction to disease, disease being anything other than the normal state of health. That was at the University of Michigan. That was from 1987 to 1992. Then I did a year of sub- specialty training in forensic pathology which is, pathology applied to matters of public health and public safety. That was at the New York City Office of the Chief Medical Examiner from 1992 to 1993. And I did one year of a fellowship in pediatric pathology. Again, that is addressing diseases of children, infants, and unborn babies. That was at the University of Pittsburgh Medical Center from 2003 to 2004. And that's the extent of my education and training.

Q. Do you do, I know in law we call them CLE's, do you do continuing medical education?

A. Yes. Yes, I do.

Q. How many autopsies would you say you've performed?

A. I would estimate that of either performed or directly supervised somewhere between two thousand and twenty five hundred autopsies.

Q. Have you ever been called qualified as an expert in forensic pathology in the courtroom?

A. Yes, I have.

Q. How many times would you say you been qualified?
A. I would estimate somewhere between a hundred and hundred fifty times.
MR. PATRICK: Your Honor, at this time, I would tender Dr. Caplan as an expert in forensic pathology.
MR. LEWIS: No objection. No questions.
THE COURT: You will be so qualified.
Q. Did you have the occasion to complete the autopsy of Brandon Bennett?
A. Yes, I did.
MR. PATRICK: Your Honor, may I have the witness step down?
THE COURT: You may.
(Whereupon, the witness complies)
Q. Dr. Caplan these are, what had been pre-marked and admitted, as State's 1 and State's 2, I believe you've worked with me before?
A. Yes.
Q. What I'm going to ask you to do is we're going to walk through each - - -
THE COURT: That's not State's 1 and 2.
MR. PATRICK: I'm sorry.
MR. PATRICK: State's 70 and 71, the diagram before State's 1.
THE COURT: Thank you.

Q. If you could for the jury, using the report, kind of walk us through the injuries sustained by Brandon Bennett?
A. Yes. So these are the body diagrams that we use in an autopsy and I'm going to use the actual diagrams that I made at the time of the autopsy to guide me. So there were a total of three wounds to Brandon Bennett, sharp forced injury wounds. The first wound was on the left upper chest wall above the nipple and then toward the midline. This was about 13 ½ inches below the top of head and a little less than an inch and a half to the left of the midline. Now, with a sharp forced injury - - thank you - - with a sharp forced injury because the tissue, the body of the tissue elastic fibers, when there's a sharp force injury some of those elastic fibers actually get torn or actually get cut, I'm sorry. And so what that does is that if the wound will sometime gape, it will gape open, wide-open, and so to approximate the true original length of the wound, we bring the wound edges together and that gives us the most accurate measurement of the length of the wound. So when I approximated the wound edge of this one, it came to about 8/10 of an inch long and this would've been, just about right there on the chest wall. Again about 13 inches below the top of the head and about an inch and a half to the left of the midline.
Q. Let me stop you right there, Dr. Caplan.

MR. PATRICK: Your Honor, may I publish this photo to the jury?

THE COURT: You may.

Q. I'm publishing what has been previously marked and admitted as State's 61, is this the one you're referring to on the top of - - -

A. I'm sorry. Yes, it is.

Q. All right. You can continue, doctor.

A. And we, in the autopsy report, this is labeled as stab wound number one, but the wounds are only for organizational purposes. There is no reference to a time sequence. So this was what I call in my autopsy report stab wound number one.

Q. And again you said no reference to a time sequence, this is just for your report?

A. It's just the way to organize our report. So, in no way, does this mean that this was the first wound that was inflicted.

Q. Moving on to stab wound, your stab wound number two?

A. So, now for stab wound number two, now I'm going to go over and use the lateral or the side view of the body diagram. This stab wound was on the, what we call the lateral or the outer part - - when we report injuries we do it on what we call the anatomical position and the anatomical position is with the body standing straight up,

with the palms forward and the hands to the sides of the body. And so when use the term lateral, we mean away from the midline. So the lateral part of the arm will be the outside part of the arm, the medial part would be the part closer to the midline. In here, would be the front, post here, would be the back. So this would've been on the lateral or the outside part of the arm. And this wound was when the wound edges were approximated this came to be about 7/10 of an inch long, slightly less than the 8/10 of an inch long on the chest wall. And this was about 7 inches below the shoulder and because the top of the shoulder was about 10 ½ inches below the top of the head, than this was about 17 ½ inches below the top of the head. So this would've been just at about and the nipple was about 16 ½ inches so it would've been on the outside of the right arm slightly below where the nipple is. And so that would've looked like, like that.

Q. Did this wound have what we call an exit wound?

A. Yes, it did.

Q. Can you explain a little bit about that to the jury?

A. Yes. So we use the term entrance and exit wounds to describe, you know, where the wound enter the body and if it did exit, where did it exit the body. Stab wound number one, never exited the body so there was no exit wound. But stab wound number two, actually went the side, lateral, and

the front. It enter compartments of the right arm and exited on the medial side. So there was an exit wound meaning that there was a wound track or path that directly connected the entrance wound and the exit wound through the soft tissues of the right arm.

Q. Which kinds of brings us to stab wound number three, can you tell us a little bit about stab wound number three?

A. Yes. So stab wound number three, and I'm going back to, going back to the front diagram here, stab wound number three, was a little over 17 inches towards the top of the head, remember this was about 13 inches below the top of the head and it was literally between the nipple and the front of the armpit, okay. So this wound was a little bit shorter. This wound measured about, a little less than a half of an inch about a .45 of an inch between the nipple and the armpit and this was obliquely orient, it was diagonally orient. So it went from, basically, from the back and below to the front as - - so it's orient diagonally and I would diagram that like this, (Whereupon, the witnesses makes drawings on the diagram) And this wound, was I have shown the lateral surface, the outside surface of the stab wound number two, where the wound exited on stab wound number two, was on the inside here of the right arm and about this point right there.

Q. Dr. Caplan, I'm showing you what's been pre-marked - -

-

MR. PATRICK: Your Honor, I said earlier they were admitted, I don't recall your ruling, if they were admitted or not or if I - - I know we - - -

THE COURT: You haven't asked to move them in.

MR. PATRICK: Oh. Thank you, Your Honor.

Q. State's 64 and 66, do you recognize those photographs?

A. Yes, I do.

Q. And State's 61?

A. Yes, I do.

Q. State's 63?

A. Yes.

Q. And State's 62?

A. Yes.

Q. What are those?

A. All of these, these are photographs of the three stab wounds that I described including stab wounds to the left upper corner of chest, the stab wound, the entrance wound to the outer part of the right arm, the exit wound to the inner part of the right arm which I haven't yet diagramed, yet. A probe going through the entire right arm to show that continuous wound path and also the entrance wound on the right side of the chest wall. Also - - -

A. Oh, go ahead. Sorry.

Q. You also showed me two very superficial wounds. One

that goes from the left nipple down to the front of the armpit that's about 3 inches long but it's very, very superficial. It's very shallow. It doesn't go below the skin. And then there's - - and then there's an area - - and then over on the outside part of the chest, there's another part of that very superficial shallowing wound that goes across the chest wall on the left side.

Q. And we'll walk through each of those but for now but does these verily and accurately reflect the condition of the body when you did the autopsy?

A. Yes, in my opinion, they do.

MR. PATRICK: Your Honor, I would move State's 64, 62, 66, 61 and 63 into evidence.

MR. LEWIS: And, Judge, I'd just asked that you note my objections as to 66.

THE COURT: State's 61, 62, 63, 64 into evidence without objection. State's 66, into evidence noting you objection.

(Whereupon, the Autopsy Photo: Left Chest Stab Wound (b&w) has been marked and entered into evidence as State's Exhibit No. 61)

(Whereupon, the Autopsy Photo: Left Side of Body (b&w) has been marked and entered into evidence as State's Exhibit No. 62)

(Whereupon, the Autopsy Photo: Left Side of Body, closer

(b&w) has been marked and entered into evidence as State's Exhibit No. 63)

(Whereupon, the Autopsy Photo: Right Side of Body w/Wounds (b&w) has been marked and entered into evidence as State's Exhibit No. 64)

(Whereupon, the Autopsy Photo: Right Side of Body w/Wound Tract (b&w) has been marked and entered into evidence as State's Exhibit No. 66)

MR. PATRICK: Thank you, Your Honor.

THE COURT: You may publish.

Q. Before we got into all of this, I believe you were talking about stab wound, your stab wound number two and three and how the exit path followed into stab wound number three, is that correct?

A. That's correct.

Q. I'm showing what's been marked and admitted as State's 64, and what does that show?

A. What that's showing is that's looking, we see Brandon Bennett from the front and a little bit to the right side, and what you can see, you can see the entrance wound on the outer surface of the right arm. You really can't see where the wound exits because it's covered, that's on the inside surface. But what you can see is the wound on the right side of the chest wall between the nipple and the armpit. So you can see the entrance wound of stab wound number two.

You can see stab wound number three in the chest wall. What you're not seeing is the exit wound on stab wound number two, it's on the inside of the right arm.

Q. Now, I'm showing you State's 66, what does that photograph represent?

A. Now, you're seeing the proof that stab wound number two, where the entrance is on the outside of the right arm, goes through the soft tissues including the biceps muscle on the right arm, so that would be in the front of the bone when the body is anatomic position, going through that and exit on the inside of the right arm and that tract measured 2 ½ inches long.

Q. And then you started talking about some additional wounds, can you walk us through those please?

A. Yes. So on the, just to make sure I have my numbers right, - - yes, so on the left side of the chest wall, there was a very superficial and I'm going to just do that with some incomplete lines, dotted lines. There is a superficial wound that goes as I said from the left side of the chest wall down towards the armpit, that's about 3 ½ inches long and then that wound - - and there's a similar appearing wound very shallowing, it doesn't go beneath the skin that actually, it's hard to draw because it's actually on the chest wall over on this side here.

Q. You indicate that's behind the arm - - -

A. Behind the arm, that's right. But there is, between this wound here which is about 3 ½ inches and this other wound which is a little less than a half inch there's about a 3 inch separation between those.

MR. PATRICK: All right. Permission to publish State's 62 and 63?

THE COURT: You may.

Q. Showing you what's been pre-marked and admitted as State's 62, is this the wound that you're talking about?

A. Yes, it is. You can see that very superficial wound that starts just above the nipple my diagram is slightly inaccurate, I should've started at the lateral, outside nipple, but you can see going towards the armpit and then fading away in the armpit area.

Q. I'm showing you State's 63, does that wound continue?

A. Yes. Now, you can see that wound continuing, you can see an area where there's, it's discontinuous and then you could see again that very superficial shallowing wound going across at the top of the chest wall just underneath the armpit.

Q. Did you document any other wounds on the victim's body?

A. Yes, I did.

Q. Can you walk us through those, please?

A. Yes. So on the four head there was, there was an

abrasion that was just above the middle of the eyebrow. This was about a little over half inch to 1/4 of an inch and so this was an abrasion and that would be -- - an abrasion is a scrape of the skin or a crushing of the skin, and I'm just going to call this 0.6 by 0.2 inch abrasion. The other one that I observed was that on the front of the anatomic position on the interior surface of the lower right arm, just a little bit above the croak of the elbow, there was an oval, almost an 'o' shaped injury, and the oval defined injury that measured about 2 inches long by about 1 inch wide and the width of that wound was about a little less than 1/4 inch so it was about 2 by 1 inch and then 0.2 inch wide.

This injury had different colors to it. Some was blue. Some was red. Some was purple, even a little bit of brown tint. So it looked like some sort of a, some type of contusion, some kind of a bruise but had this definite oval pattern.

Q. Now, doctor, going back to your how you dated this, not dated, but you label these one, two and three, are you able to accurately set a time for any of these wounds?

A. No, I am not.

Q. So it's possible that these minor wounds were, I guess, they could've have occurred at separate times than this, correct?

A. It is possible.

Q. Finally, on your report you noted this dry blood, can you tell us about that please?

A. Yes. So there was some dried blood on the surfaces of the hands, some specs on both hands. There is also some dried blood and again we call this - - so if the palm surfaces is facing forward what we call the back or the dorsal surface facing the back, the backs of the hand, there was also some specs of dry blood on the backs of both hands as well as on the middle finger, the back of the middle finger and on the right middle finger and on the back of the right middle and index finger. But after removing the dry blood there were no injuries there. There were no stab wounds or any sharp force injuries or blunt force injuries it was just the dried blood by itself and no other injuries beneath that on the skin.

Q. I'm not asking you to do a crime scene recreation, I know that's not your preview, could that blood be obtained by wiping your hand on the floor, by holding a wound?

A. It's possible.

Q. Mmm, hmm.

MR. PATRICK: The Court's indulgence, Your Honor.

THE COURT: Take your time. Doctor, if you want to go ahead and have a seat to the witness stand while he takes a moment.

Q. Dr. Caplan, what are defensive wounds?
A. Defensive wounds is a term that we use in forensic pathology to define wounds that are sustained when a victim is trying to defend themselves from attack from the assailant and it's the most, is a very general term, any injuries sustained while you're trying to protect yourself.
Q. Did you note any kind of defensive wounds in this case?
A. No, I did not. With the only exception that, that sometimes the arm, the outside of the arm can be used as a way to defend oneself. So there is a possibility that the outer part of the entrance wound on stab wound number two could have been a defensive type wound.
Q. Your Honor, did you collect a blood spot from the victim, Your Honor, I'm sorry, Dr. Caplan, did you collect a blood spot from the victim?
A. Yes, I did.
Q. I believe, up there in that stack of exhibits you have as State's 7, do you see that in front of you anywhere?
A. State's 7 - - -
Q. Here we are. Right here.
A. Oh, okay.
Q. Do you recognize that item?
A. Yes, I do.
Q. What is it?

A. This is an item, a small envelope marked with the decedent's name, Brandon Bennett, the autopsy number, FA14-336 and the date of the autopsy 6/12/2014 and it indicate that this is labeled with blood spot.

Q. What is a blood spot?

A. A blood spot is a sample of the decedent's or the victims blood that we use for DNA purposes that, that is known of normal origin and we use a blood spot to compare the blood from the victim with blood found at a crime scene to see whether that blood belongs to the victim, belongs to somebody else or it's a mixture of blood.

Q. And you said you collected that?

A. Yes, that's correct.

MR. PATRICK: Your Honor, at this time I would move State's 7 into evidence.

THE COURT: Any objection?

MR. LEWIS: No objection.

THE COURT: State's 7 into evidence. Without objection.

MR. PATRICK: Thank you, Judge.

(Whereupon, the Blood Spot from Brandon Bennett has been marked and entered into evidence as State's Exhibit No. 7)

Q. One of the other things that was done on this autopsy was a toxicology, can you explain what that is?

A. Yes. So one of the, parts of a forensic autopsy which

is always included is a toxicology analysis. A toxicology is really the study of whatever drugs, poisons including recreational illicit or illegal drugs and therapeutic drugs and those we take samples of blood, some from the heart, some away from the heart, we take samples of urine, bile, a gastric contents, liver and brain tissue and that's all for the purposes of looking to see what concentrations, not only of the drugs, but there break down products because the concentrations of the drugs and their break down products gives us an example of an idea of how long that drug may have been in the body and how it may have been broken down.

Q. What were the toxicology results from this victim?

A. The toxicology results in Brandon Bennett were that he had a concentration of THC which is tetrahydrocannabinol, that's the active ingredient in marijuana. That was 3.0 ng/ml and then he had the 11- Carboxy THC which is the inactive metabolite breakdown product at a concentration six times higher which was 18 ng/ml.

Q. When you say the metabolite, what you mean by that?

A. What I mean is that when a drug is introduced in to body whether through orally or intravenously or inhaling or whatever method then what happens is that the body has enzyme systems, chemical waste to break down that drug and so that drug is chemically modified into various other

metabolites or breakdown products which are eventually distributed and eliminated to the body. So metabolite just means it's the breakdown product, the THC or the active ingredient would've been introduced to the in to the body, the metabolites are the breakdown of what the body does to alter the parent drug.

Q. What was the ratio of active to metabolite?

A. The ratio active metabolite was 1 to 6. Three - - -

Q. Ah - - sorry, go ahead.

A. Ah, 3 ng/ml of THC, 18 ng/ml of the Carboxy metabolite.

Q. Can you estimate - - would that give us any kind of indication of when that THC was consumed?

A. Yes, in my opinion it would.

Q. And when was that?

A. What studies have shown is that THC gets it's 'P' concentration in blood within minutes usually within ten minutes after it smoked and then it goes down after that. It tends to be still above 1 ng/ml, you know, between the two and three hour range. After three hours, THC then goes down to less than 1 ng/ml. The Carboxy component of the metabolite, that originally is much lower than the THC, that rises and gets higher within hours. So the fact that we can still detect the apparent THC at a level above 1 ng/ml, indicates that he had recently smoked a marijuana

cigarette, if smoking was the root of ingestion.

Q. When you say recently, what is that time span?

A. Recently would be within the two to three hour, approximately two to three hour time period.

Q. Moving back to defensive wounds, did you see any kind of defensive wounds on the victim's hands?

A. No, I did not.

Q. Any kind of defensive wounds on the forearm area?

A. No, I did not.

Q. Anything, besides what you've indicated that stab wound that could have been, I guess, defensive wound, anything else?

A. No, I did not.

Q. Let's talk about stab wounds in general. What was -- how would you describe these stab wounds?

A. I would describe them as fairly typical stab wounds. And by stab wounds what we mean is, there are two kinds of sharp force injuries. So sharp force injuries being inflicted with a sharp instrument. A stab wound by definition is deeper than it is long. Where the side would be longer than it is deep. And so a stab wound tends to be usually linear in a line but it can be a regular if there's depending on how much movement there is between the victim and the assailant. Another general feature about stab wounds as I said, is because it cuts across those elastic

lines the wounds tend to gape open and so to get the most accurate idea of the stab wound, we approximate the edges, we bring the edges of the wound together to get the true, the true length of the wound. And theoretically, three dimensions of the wound, correspond to the dimensions of the instrument, of the knife that delivered, inflicted the wound. So theoretically, the length of the blade would correspond to the depth of the wound. Theoretically, the width of the blade would correspond to the length of the wound. And theoretically, the width of the blade would correspond with the thickness of the wound but there are many variables within that. Also a general principle about stab wounds is that because the bleeding, because the skin is elastic, there is somewhat of a sealing affect that the skin, because of the elasticity, the skin can somewhat seal over. And so stab wounds, for the most part, tend to have the bleeding internal, on the inside of the body, whereas the side wounds, okay, or if the blood vessels closer to the skin, especially a large blood vessel, say in the neck, that's where you would expect to see more bleeding on the outside or external bleeding.

Q. So a stab wound to the chest, you wouldn't expect to see any external bleeding without any manipulation?

A. I wouldn't expect to see any significant bleeding.

Q. A stab wound to the arm, same answer?

A. Only if - - only if, only if a major blood vessel was transected.

Q. In this case, was a major blood vessel transected?

A. No, it was not.

Q. So in your experience, what was the cause of death in this case?

A. The cause of death in this case, in my opinion, was a stab wound to the chest with injuries of the left pulmonary artery, left pulmonary veins and the left lung that caused bleeding into the left chest cavity and also bleeding around the heart by which did not allow the heart to fill with blood because of the pressure caused by the blood on the outside.

Q. But because of the elastic nature of the wound, most of the bleeding would've incur internal, correct?

A. Yes, in my opinion.

MR. PATRICK: Court's indulgence.

Q. In your opinion, when treatment occurs would that have caused some of that bleeding to become external bleeding?

A. Yes. In my opinion that's a common finding that we observe in patients we are treated.

Q. And what you mean by that?

A. Because of the manipulation that's involved for many reasons there is, you know, you're trying to - - as you're trying to put a chest tube in to relieve the chest of the

blood, some blood is going to come out, may deposit on the skin or the clothing. If there's any attempt to do resuscitation that can cause blood to come out of the mouth or the nose and because people are moving very fast to try to revive the person there's always the possibility that blood or droplets of blood could be moving around.

MR. PATRICK: Your Honor, I have no further questions at this time. Please answer any questions Mr. Lewis may have.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Your Honor.

Cross Examination by Mr. Lewis:

Q. Dr. Caplan, nice to meet you in person.

A. Thank you.

Q. You were provided with the knife during the time that you were able to conduct the autopsy per se, right?

A. That's correct.

Q. And it is your opinion that, that knife was consistent with the wounds you observed on the body?

A. That is correct.

Q. In your report, I believe you described it as a 4.3 inches long, is that accurate?

A. Yes, it is.

Q. And the handle is actually longer than the blade?

A. That's correct. The handle was, I measured it at, 5

1/4 inches.

Q. Sort of a paring or steak style kitchen knife?

A. I described it as a kitchen type knife.

Q. From your description of the wounds that the jury has been able to see and I know we talked about this briefly before, the wound that went through the right arm although gruesome, would not prove fatal?

A. Yes, I would agree with that.

Q. But because of cutting the major vessels that connect to the heart, the combination of the amount of blood that he lost and as you described, the tamponade, if I'm pronouncing that correctly?

A. Correct.

Q. Is what caused the death, those two things working together?

A. That's right. The combination of the blood loss, the tamponade and one other - - there was one other factor of mechanism in there.

Q. I want to direct your attention specifically to the toxicology that you testify to. Just using a nice round number, if time and death were 8 a.m., what time would he have smoked marijuana?

A. If the time of death was 8 a.m. and the actual circulation stopped, then my best estimate would be that he would have smoked marijuana a couple to a few hours before

that. So I can't give you an exact figure but it could have been any time between approximately 4 a.m. and 8 a.m. or 3 a.m. and 8 a.m., again, I can't give you an exact time but the fact that we can still recover THC means it had to have been within a few hours of when circulation stopped.

MR. LEWIS: Thank you. One moment, Judge.

Q. The State made a point about defensive wounds. And I may be oversimplifying this but you're not going to have a wound if you don't sustain an injury?

A. Correct. A wound is a subset of an injury. So an injury could be, a wound, an injury could be a chemical intoxication but, yeah, a wound is a physical manifestation of an injury.

Q. So hypothetically speaking, if I'm trying to stab you but you stop my hand and you're not cut, there wouldn't be a sign of that having taking place, a physical sign that you can see here in an autopsy?

A. That is - - that is true. If there's no injury that's actually sustained on the body, that is correct.

Q. And in regards to the wounds that you describe is superficial, that I guess is under the left arm, basically, under the armpit, if that arm had been down, is it your opinion that, that wound track or that superficial mark could have occurred?

A. It would be very unlikely because it would be, there

would be no explanation of how that superficial wound underneath the arm, the chest. Because if the armpit is completely opposed to the chest and there be no way for that wound to be able to get under there.

Q. So the arm would have to have been away from the body?

A. To some degree, yes.

MR. LEWIS: No further questions. Thank you.

MR. PATRICK: Redirect, Your Honor.

MR. LEWIS: Redirect?

Redirect Examination by Mr. Patrick:

Q. We talked about exit wounds earlier, besides the exit wound in the arm, there were no exit wounds in this case, correct?

A. Yes, that's correct.

Q. So there were no knives going - - there were no knives piercing through the body, correct?

A. That is correct.

Q. Let me ask you this, this frequency of marijuana use affect the amount of metabolites in the body?

A. It doesn't affect the amount of metabolites it affects the duration that, that metabolite exist, it affects the duration of that metabolite within the body.

Q. Do different people process at different speeds?

A. Yes, they do and that's a theme for all drugs.

Q. Could it, depending on these variables, could that

affect your two to three hour estimate?
A. Yes, it could.
Q. So it's possible he could have smoked the night before, correct?
A. Yes, it's possible he could have smoked the night before in addition to the next day.
MR. PATRICK: All right. Thank you, Your Honor. Court's indulgence, Your Honor.
Q. Going to that wound tract on the arm, the night that you were given, but you were given for autopsy, was a small knife, correct?
A. Yes, it was a small knife about, the blade was 4.2 inches long, the handle was 5 1/4 inches long.
Q. But that blade length is consistent with the wound, starting here and going through the arm, through the chest wall, correct?
A. Yes, it is.
MR. PATRICK: Thank you, Your Honor. I have no further questions.
THE COURT: Mr. Lewis?
MR. LEWIS: Nothing further. Thank you, Judge.
THE COURT: Thank you. You may step down. You're free to go. Call your next witness.
MR. PATRICK: Oh, I'm sorry, Your Honor. At this time the State would rest.

THE COURT: Ladies and gentlemen, that indicates to the Court there's a matter of law that I must take up outside of your presence. Do not begin your deliberations. Do not discuss this case amongst yourselves. We'll receive you back in the courtroom momentarily. Please take your notepads with you. Thank you. Please rise for the jury.

(Whereupon, the jury exits the courtroom at 10:37 a.m.)

THE COURT: Thank you. Be seated. Any motions or matters, Mr. Lewis?

MR. LEWIS: I do, Your Honor. This always happens when it comes to the time where I must move for a directed verdict. I believe the State has failed to meet several of the elements required under the statute. Specifically, I'll begin with the attempted murder of Darryl Bennett. Darryl Bennett suffered absolutely no injuries that would rise to the level of life-threatening. The weapon that was allegedly used, we contend and I think the evidence has shown has come from Mr. Bennett's own house. There's no suggestion other than Mr. Bennett's claims that my client made statements there was any intent to kill and I think that those statements are somewhat suspect in their nature. I'd ask that, that charge be dismissed based on those grounds. In regards to the burglary first, there has been no forensic evidence or anything else that would suggest that my client gained entry and properly. There is some,

as the State argued yesterday, that would suggest that perhaps Rodney Pinckney did it at some point, but nothing suggest that Terrell Smith did. Other than, again, Mr. Bennett's assertions. In light - - in addition to the evidence that we have just been presented just now, Brandon Bennett was awake several hours before based on his toxicology results and Mr. Bennett was unaware of that so he certainly can't say what was going on in his house while he was sleeping. In light of those, I'd ask that all the charges be dismissed. The possession of a weapon during the commission of a violet crime would also be tied to the others - - oh, and, in regards to the murder, I don't believe that there's been evidence as to the specific malice. Yes, they are stab wounds, but just because that has occurred does not mean that the intent behind it was there to try to kill someone because of that I would ask that the charge be dismissed.

THE COURT: Mr. Patrick?

MR. PATRICK: All right. Thank you, Your Honor. In viewing the evidence in favor of the light of the non-moving party, as to the attempted murder, Mr. Lewis mentioned the injuries were sustained by Darryl Bennett, were not life-threatening and that he had no intent to kill, there's evidence on the record that he said, "I'm gonna kill you too, Motherfucker", excuse my language,

there's evidence in the record that he was struggling with a knife and attempted to stab at his stomach. As to the burglary first, we believe there's evidence of a point of entry in the house. Terrell Smith is definitely placed inside this house. He committed the crime. He committed a violet crime and he was in possession of a weapon. As to the murder, Mr. Lewis, contends there's no evidence of malice, there's evidence in the record of the defendant saying, "I told you I was going to get you", he stabbed him twice, at least, and the stabbing caused his death.

THE COURT: How do get past the element of without consent?

MR. PATRICK: For burglary, Your Honor?

THE COURT: For burglary.

MR. PATRICK: Evidence in the record that there was a breaking and entering and I believe there's has not been any evidence in the record that he was let in other than the opening statement, Your Honor.

THE COURT: But the element that you have proven is without consent. What evidence is there that it was without consent?

MR. PATRICK: Well, on the contrary I believe that there's no evidence of consent. As far as with, I mean, I think the breaking and entering speaks for itself. Whether it was through our alleged point of entry or through a

separate entrance, we have no evidence that, you know, he had permission to enter this house without consulting with anyone that night beforehand.

THE COURT: Again, there was testimony that the defendant had been in the house on several prior occasions, correct?

MR. PATRICK: Yes, Your Honor.

THE COURT: Tell me what evidence you have that there either, we can do it either way, that there was consent or that it was without consent?

MR. PATRICK: Your Honor, Mr. Bennett testified that when his friends, when Darryl, I'm sorry, when Brandon's friends would come over they would always let someone know they were there. I don't believe that it was an open invitation for anyone to come their house at any time. The Court's indulgence, Your Honor. I mean, there was no one in the house when Mr. Bennett was checking on his son earlier, three minutes later someone is being stabbed to death - - circumstantial evidence places him at the crime scene without any kind of consent.

THE COURT: In State v. Mitchell there wasn't the mere fact that there was a fingerprint on the outside of the home, wasn't enough circumstantial evidence?

MR. PATRICK: Your Honor, I believe State v. Mitchell he was not caught inside the house committing a crime.

THE COURT: But merely he had, had consent before to be in the house, correct?

MR. PATRICK: The defendant?

THE COURT: Yes.

MR. PATRICK: Yes. He had been inside the house before.

THE COURT: And again just because he had consent, no - - what I'm struggling with is just because he's there doesn't mean he didn't have consent - - -

MR. PATRICK: I understand. I understand, Your Honor.

THE COURT: And there has been absolutely, in my mind, no testimony that would indicate either if he had consent or he did not have consent.

MR. PATRICK: I would disagree, Your Honor.

THE COURT: We don't know what happened in that three minutes or before, correct?

MR. PATRICK: I believe that we have circumstantial evidence proving that there was a break-in at the house?

THE COURT: Tell me what the circumstantial evidence is because if you would agree under Mitchell it had some significant.

MR. PATRICK: Your Honor, I'd that Darryl Bennett said that he had never seen that doghouse moved below that window before that evening. The window - - the couch and

the window of that area were all disturbed, something that was not done the evening before, not done, he never said that they were moved before he checked on his son. I mean, I don't know what - - Court's indulgence, let me think about this. Your Honor, I believe we've met our burden showing that he did not have consent to be inside this house.

THE COURT: We're going to take a comfort break we'll be back at eleven. Thank you.

(Whereupon, the Court took at short break at 10:44 a.m.)

(Whereupon, a note from a juror was handed to the Court)

THE COURT: Mr. Lewis, were you able to answer the question?

MR. LEWIS: Somewhat.

THE COURT: All right.

MR. LEWIS: As I've explained it to your clerk. Mr. Hannah, is here, his name is Benny - - -

MR. HANNAH: Benjamin.

MR. LEWIS: Benjamin. But she may have known him by Dane. He doesn't know her necessarily because he doesn't know who were talking about.

THE COURT: Well, is he related - - is the family related to a Ms. Harley, Janice Harley?

MR. LEWIS: I don't believe so. Did she say related or grew up near?

THE COURT: . Related. And so Mr. Hannah is the only individual known as Benny on that side?

MR. LEWIS: I don't believe so. He might be known as Benny. He still says Benjamin but - - anybody else?

THE COURT: So in order to answer the question I'm going to need to bring her in, my proposed plan is to bring her in, have Mr. Hannah stand up and see if she recognizes him and then ask what relationship is. Any objection to handling that way, Mr. Patrick?

MR. PATRICK: No, Your Honor.

MR. LEWIS: No objection.

THE COURT: Please bring Ms. Harley. Please bring Ms. Harley.

(Whereupon, Ms. Harley enter the courtroom at 11:04 a.m.)

(Whereupon, the Note From the Jury has been marked and entered into evidence as Court's Exhibit No. 1)

THE COURT: Y'all be seated. Ms. Harley, please approach.

(Whereupon, Ms. Harley approached the bench as requested)

THE COURT: All right. Mr. Patrick?

MR. PATRICK: Mr. Simpson is going to - - -

THE COURT: Mr. Simpson, outside the presence of Ms. Harley?

MR. SIMPSON: Thank you, Your Honor. The State would just ask that out of abundance of caution that Ms. Harley

be struck from the jury and that the alternate be seated. We're talking about, you know, from what she shared with you to be very recent contact. At least some sort of ideal that she might fill a little uncomfortable because of this contact, to me that's more than enough reason, caution, to strike her from the jury. Also, her phrasing was interesting, could be construed, I certainly think she's trying to do her best but it could be. It could be construed performing an opinion on the case she's been instructed not to at this point.

THE COURT: Thank you, Mr. Simpson. Mr. Lewis, what your position?

MR. LEWIS: I intend to agree with his interpretation at this point, Judge.

THE COURT: And so I've already made that decision. I just wanted your inputs. We are putting the alternates because we have two, we are putting the alternates name randomly, they will randomly drawn. Mrs. Angela, who will, out of my two alternates who will take Ms. Harley's place?

CLERK: Your Honor, Marion Major, juror number 197.

THE COURT: All right. So Mr. Major is now part of the twelve.

MR. LEWIS: Thank you.

THE COURT: Thank you. So now I'm going to tell the first twelve to pick their new foreperson, any

objection to handling it that way, Mr. Patrick?

MR. PATRICK: No, Your Honor.

MR. LEWIS: No, Your Honor.

THE COURT: All right. Thank you. I will be right back. I'm going to release Ms. Harley and let the jury know. We'll be right back and I'll hear from you, Mr. Patrick. Thank you. Stay seated.

(Whereupon, the Court steps out to talk with the jury at 11:11 a.m.)

(Whereupon, the Court returns back to courtroom at 11:15 a.m.)

THE COURT: Stay seated. Mr. Patrick, I'll be happy to hear from you.

MR. PATRICK: Your Honor, I just wanted to distinguish this case from State v. Mitchell. I believe in State v. Mitchell there was one fingerprint linking the defendant to the crime. In this case we have evidence of a break-in - - -

THE COURT: You actually have no fingerprints linking him to the outside.

MR. PATRICK: I agree, Your Honor. But in this case we have a defendant that is inside the home committing a violent crime while he may have had permission to be in that house at some point I don't believe that gives him continuous permission to be there anytime of the day. If I

had permission to go to my co-counsel's house, you know, for barbecue, I don't think that gives me permission to show up at 8 o'clock in the morning unannounced no matter what the circumstances might - - -

THE COURT: And I understand that, Mr. Patrick and unfortunately the issue is that there is no testimony that has been presented that he was not given consent to be there.

MR. PATRICK: And my counter to that would be there is no testimony presented that he had consent at that time, Your Honor.

THE COURT: So anything further?

MR. PATRICK: No, Your Honor.

THE COURT: Mr. Lewis, I think you understand one of my concerns about obviously now I did not hear testimony concerning one of the elements of burglary first so I'll be happy to hear from you. I am going to grant - - deny your motion for directed verdict as to the murder, attempted murder and possession of a weapon during commission of a crime. I believe the State, pursuant to Rule 19, has met its burden the existence or nonexisting of evidence standard in the light most favorable. My still concern at this point, is the element on the burglary first, as without consent. I think all of the other elements have been met, would you agree?

MR. LEWIS: From the evidence is presented, yes, Your Honor.

THE COURT: At this stage?

MR. LEWIS: At this stage.

THE COURT: You would agree. So - - and you agree - - so let me hear from you because you did touch on that issue during your initial.

MR. LEWIS: At this stage, Judge, what I would say is we have, as you know we have no burden to disapprove anything and as you recognize yourself, there's been no testimony to show that he did not have consent to enter. My arguments on the other, I understand your ruling and I'm going to live with so I have nothing else to add.

THE COURT: All right. So it is your position that there has been no testimony that there was consent or that he was without consent in the home, is that correct?

MR. LEWIS: Yes, Your Honor.

THE COURT: All right. Based upon the testimony that has been presented in the light most favorable to the State under Rule 19 of the Rules of Criminal Procedure, I'm concerned only with the existence or nonexistence of the evidence and not as to the weight. The State must prove beyond a reasonable doubt that the defendant entered without consent and intent to commit a crime at the time of entry. The State must also prove that the defendant was

armed with a deadly weapon when entering while in the dwelling or fleeing. There has been testimony that the defendant was armed with a deadly weapon. My focus at this stage is whether or not there was, that the defendant entered without consent and with the intent to commit a crime at the time of entry. Based upon the testimony that has been presented I find that the State has not met its burden and grant your motion for directed verdict as to burglary in the first degree. Note your exception to my ruling.

MR. LEWIS: Thank you, Your Honor.

THE COURT: Let's swear Mr. Smith.

CLERK: Please raise right hand. Do you swear or affirm to tell the truth the whole truth and nothing but the truth so help you God?

MR. SMITH: Yes, ma'am.

CLERK: Please state your full name and spell your last name.

MR. SMITH: Terrell Smith, S-m-i-t-h.

THE COURT: Mr. Smith, do you recall last evening before we broke for the day that I informed you of your right to testify?

MR. SMITH: Yes, ma'am.

THE COURT: And did you have any questions about that?

Direct Examination by Mr. Lewis:

Q. Terrell, please introduce yourself to the jury.

A. Hello, my name is Terrell Smith.

Q. And Terrell how old are you?

A. I am nineteen years old.

Q. And how old were you when you were arrested?

A. Seventeen.

Q. Where were you born?

A. I was born downtown Charleston.

Q. Where did you grow up?

A. I grew up in downtown Charleston.

Q. Who is your mom?

A. My mother, her name is Bertina Reid.

Q. And your dad?

A. His name is Bernie Smith.

Q. And where are they right now, do you know?

A. Over there in the front row.

Q. Tell me a little bit about your education, where did you last go to school?

A. I last attended Garrett Academy Technology.

Q. Why that school? Why were you attending Garrett?

A. Well, my mom and my dad I would say met a Garrett but both of them went to Garrett Academy so it's like a legacy thing like, they went there, I went there.

Q. And what were you studying there or were you receiving

a diploma or was there some sort of specialization?

A. Garrett is a technology school so I was going in, I was focusing on graphic design.

Q. What does that involve? What is graphic design?

A. Graphic design, I mean, graphics involved some things like - - well, we mainly focus on T-shirts, buttons, business cards, things of that nature.

Q. In addition to school, did you work anywhere?

A. I worked at Juanita's Greenberg.

Q. Tell me about your job, what you do for them?

A. I washed dishes and I was a cook.

Q. What did you cook?

A. Tacos, burritos, it's a Mexican restaurant, so Mexican food.

Q. Where were you living back in June of 2014?

A. West Ashley with my mother.

Q. Did you ever live anywhere else around the same time or did you spend your weekends anywhere else?

A. I mostly spend my weekends at my great grandmother's house on South Tracy Street.

Q. And we've heard a lot this week about Congress, how from Congress Street was your, from your great grandmother's house?

A. My great grandmother's house is like, it's like, two blocks.

Q. About how long would it take you to walk that?
A. Probably two to five minutes depending which way you walk.
Q. Had you ever walked it before?
A. Numerous of times.
Q. I want to talk to you about somebody who's come up during the trial about a guy name Rodney Pinckney, do you know someone named Rodney Pinckney?
A. Yes, I know Rodney.
Q. All right. How do you know him?
A. Me and Rodney grew up in the same neighborhood. He lived across the street from me.
Q. Okay. When did - - when do you think you first met him growing up?
A. Probably when I was like eight.
Q. Do you remember being stopped by the police while you were toting him on your bike?
A. Yes.
Q. What's that mean? What's toting someone on a bike?
A. Toting, it's like, toting really comes from like, it's like, a way to get around, like, what your mother says like when you were little because like she would be like don't let nobody ride your bike and stuff like that so like somebody come up and be like hey, hey can you tote me to the store to the park or someplace like that. That would

be like tote.

Q. And I know you're starting to pick up speed and it's going to be hard for her so just slow down, take your time.

A. All right.

Q. Do you remember the last time you and Rodney hung out?

A. About November of 2013.

Q. And are you still friends with Rodney?

A. I mean, I wouldn't say we were friends but I wouldn't say enemies.

Q. But have you associated with him in any way since then?

A. Ah, no.

Q. I want to talk to you about Brandon Bennett, someone we have talked a lot about this.

A. Mmm, hmm.

Q. You knew Brandon Bennett?

A. Yes.

Q. When did you meet him?

A. I met Brandon like school year, 2011-2012.

Q. And you remember where y'all met?

A. On the basketball court of Mitchell Park.

Q. What sort of relationship did you all have?

A. We were good friends like we would play basketball together, go talk to girls, stuff of that nature.

Q. What's stuff of that nature? What else would y'all

do?
A. Play games, gamble, play basketball, stuff like that.
Q. Was he your friend or was he an enemy?
A. He was my friend.
Q. Did you have any ill will towards him at all?
A. Not at all.
Q. Why did you like him? Why was he your friend?
A. Because he always just a cool person and stuff like that and it was like this one incident what really made me start being cool with him, we were at a party at the Gadsden Green Apartments but we had a party, it was a homecoming party and there was a girl that I really had liked and he know I liked her and he had know her better than I, you know, he would get her to dance with me and stuff like that.
Q. So he was sort of a matchmaker for you?
A. Yes, kind of like a wing man.
Q. Did you ever have any beef with him at all?
A. No, sir.
Q. Do you remember the last time that you hung out with him before the morning that we're all talking about today?
A. Not, exactly.
Q. The last time that you do remember hanging out with him, was Darryl Bennett, Brandon's father there with you?
A. No.

Q. I want to direct your attention to June 10, 2014 so, basically, the night before everything we've been talking about. What did you do that night?

A. I went to work.

Q. And where did you go to work?

A. At Juanita's Greenberg downtown on King Street.

Q. Do you remember what your shift was, what time you would've gotten off?

A. I don't remember exactly what time I got there but I know I got off around like one but I wouldn't have actually gotten off but I clocked out around one, but I would help the bartenders and stuff, restock the bar and stuff like that so I would of actually gotten off at three in the morning.

Q. And when you actually got off, like, I guess you made some extra money doing that?

A. Yeah.

Q. When you actually got off from work, where did you go then?

A. I went back to my grandmother's house on South Tracy Street.

Q. And you just said your grandmother's, is your grandmother - - -

A. My great grandmother's.

Q. Now, did you go there to go to sleep or what did you

do after you got to great grandmother's house?
A. I just went to my great grandmother's house I was like playing on my phone and stuff like that like twitter that's it.
Q. Did you end up going to sleep?
A. No.
Q. What you do?
A. Well, as the night went by and stuff like that like I like to smoke weed and stuff like that so I was like I'm going to go smoke weed like it was getting early in the morning and I usually smoke it every morning.
Q. So where did you want to go?
A. I went to Brandon's house.
Q. When you went to Brandon's house, did you go there to hurt anybody?
A. No, sir.
Q. Why that morning? How did you know you were welcome?
A. Because I'm always welcome at Brandon's house. Any of Brandon's friends are welcomed at Brandon's house.
Q. Was anything preplan between the two of you, had you said something in your itinerary to go meet with him?
A. I mean, the last time I talked to him, you know, I had a busy work schedule and stuff like that, you know, it was like getting to the end of school, the school year and stuff, so I was like I was going to catch up with you but

I'm working and stuff but my next day off I'm going to come chill with you.

Q. You mentioned school again. And so were you in school then or were you set to graduate, what was your progress through school at that point?

A. I was in school but it was the end of the school year.

Q. So summer?

A. Yeah.

Q. About what time do you think you got to Brandon's house that morning?

A. I don't know exactly. I really don't want to say the wrong thing.

Q. Was it early or late or - - -

A. It was early in the morning.

Q. Okay. Once you got to Congress Street, what did you do then?

A. I went through the neighbors, Sammy's, yard and knocked on Brandon's window - - -

Q. Okay.

A. - - - and tell him to come open the door.

Q. I'm sorry, I didn't mean to stop you. So if you're looking at the front of the house, pre-marked Defense Exhibit 1, admitted, which side of the house are we talking about if you're going through Sammy's yard?

A. Through that gate right there on the right side.

Q. To the right side of the house?
A. Yes.
Q. That day did you ever go to the left side of the house for any reason?
A. No, sir.
Q. Did you climbed through a window?
A. No, sir.
Q. Did you cut or break a screen?
A. No, sir.
Q. Did you climbed through blinds?
A. No, sir.
Q. Did you move a doghouse?
A. No, sir.
Q. Did you climb on a couch?
A. No, sir.
Q. Did you open a side gate that led into the backyard?
A. No, sir.
Q. What was Brandon doing when you showed up that morning?
A. I don't know exactly. I know when I knocked on the window and called him and stuff like that he came to the window.
Q. And how did you end up getting into the house?
A. I went around the front and by the time I got to the front he had the door open waiting on me.

Q. And so did you go in the front door?
A. Yes, sir.
Q. I'm jumping a little bit ahead here, but did you ever at any point, unlock or lock that door?
A. No, sir.
Q. Who did? Who opened the door for you?
A. Brandon opened the door for me.
Q. When you came into the house, did you know what Darryl was doing?
A. No.
Q. Did you see him?
A. Uh, uh.
Q. What was Brandon wearing when you showed up?
A. I can't remember.
Q. What were you wearing?
A. I remember I was wearing an American Eagle red like polo style shirt and some American Eagle pants with all white Adidas shell shoes with I think it was a White Sox hat.
Q. And why the White Sox?
A. I don't really know nothing about the White Sox I just like the hat, like how it looked and it had a little strap on the back and stuff like that. I like the way it looked.
Q. Do you smoke marijuana?
A. Yes.

Q. Were you high when you went over to Brandon's house that morning?
A. No, I was going to Brandon's house to smoke.
Q. Were you feeling any effects at all from smoking marijuana previously when you went over?
A. No, sir.
Q. Were you paranoid?
A. No, sir.
Q. What were you planning on doing right when you got to Brandon's house?
A. I was planning on going in there to smoke with him, you know, early in the morning.
Q. And I want to be clear about this, you're not suggesting anything bad about Brandon. Who are you going to get marijuana from?
A. I was going to - - we probably - - if Brandon didn't have weed already, we probably would've gone and get the weed.
Q. Did you do anything to make that happen?
A. I was getting ready to pull my phone out to get the weed man's number and that's when the dice fell out.
Q. The jury probably doesn't know, I'm sure they can put it together, what's the weed man?
A. The person you buy weed from.
Q. And after the dice fell out, what happened then?

A. We got sidetracked because Brandon was like "shake them up" and "shake them up" means "let's play dice."

Q. I want to back you up just a little bit before we get to that. Did you rush right in and start trying to call the weed man or did y'all talk first?

A. Like as I was coming in the house we were talking about girls and stuff like that. Like this girl I recently met from James Island.

Q. Once you got into the house you came in the front door, where did you go?

A. Directly straight back to Brandon's room.

Q. Anywhere else?

A. No, sir.

Q. Interact with anything else?

A. No, sir.

Q. I'm going to jump back in. You said that Brandon said "shake them up" and that means what?

A. "Let's play dice."

Q. Why did you like it?

A. Because like I'm like pretty superstitious and I like to have a strategy in almost everything I do so that when somebody ask me to play dice I feel like I've got a better chance at winning so I'm like, let's play.

Q. I want to take a moment to try to talk about craps a little bit. Is that the game that you all were going to

play?
A. Yes, sir.
Q. All right. And I didn't know anything about it before this case so can you please tell the jury a little bit about how you start a game of craps?
A. Craps is, another name for craps is seven/eleven. So when you start, you start by pee weeing, which pee wee is an ace which is one that's the one on the dice and six being the eight the highest and two being the lowest. So after you pee wee, once you pee wee and stuff like that, that's when you go into the game in the beginning of the game is seven and eleven is the automatic winner on the first row.
Q. All right. Slow down just a little bit. Let me stop you real quick. All right. So on the first roll you can win or lose?
A. Automatically.
Q. And if you don't win or lose on the first roll, what happens after that?
A. We roll a point.
Q. What does that mean, to roll a point?
A. When you roll a point it's like the points are four through ten and like you in the object of the game is to bring a point back before rolling seven.
Q. All right. Where were y'all playing in the room?

A. Like in the front of the TV like I was like kneeling down and I knelt down in front of the TV like my back towards the storage closet.

Q. Let me see if we have a handy picture.

MR. LEWIS: Sorry, Judge.

THE COURT: Take your time.

Q. I hate to have to use this picture but can you show me where on this picture where y'all were playing?

A. Like right there like you see where the cords are at, I was kneeling right there where the cords at.

Q. So would your back have been facing that storage room or would your back would've been facing into his bedroom?

A. My back would be facing the storage room.

Q. That was State's Exhibit 33. Tell me about your hat. You mentioned it was a Chicago White Sox hat. The police found a hat, was that your hat?

A. Yes, sir.

Q. All right. Tell me why was your hat there? Why was your hat off your head? What was going on with that hat?

A. Like once I knelt down and stuff like that I took my hat off to get comfortable.

Q. All right. Tell me about that, what you mean about get comfortable?

A. Because like when I roll dice I like to loosen up and get comfortable and stuff like that because that increases

my chances of winning.
Q. Did anyone knocked that hat off of you?
A. No, sir.
Q. You took it off yourself?
A. Yes, sir.
Q. I want to talk to you about how the game progressed. So you started you pee wee which mean, I guess, deciding who gets to go first.
A. Yes, sir.
Q. After that as best as you can remember how did the game go?
A. I remember I was winning like I remember I was winning and stuff like that like.
Q. Now, are you playing for fun or is there some money out?
A. We were playing for fun but we were paying out as you win. Like you say I would win he would pay me like that right there if you win I would pay him.
Q. I differentiate those two. I'm not saying that gambling isn't fun but what I'm saying is was actually money on the line?
A. Yes, sir.
Q. Did you have money on you?
A. Yes, sir.
Q. Why?

A. Because I just got off work and if Brandon didn't have any weed, we'd use, I would put it in to buy weed from the weed man.

Q. Why did you have dice on you?

A. Because I like to gamble.

Q. What happened after that, after y'all started playing?

A. Like I said I was winning and I was winning and stuff like that and is just that at one point I was rolling and when I would roll and I would snatch the dice - - well, I was doing that the whole game. I was rolling and snatching the dice back up and rolling and snatching the dice back up. So I rolled and snatched the dice back up and he was like you crapped and Brandon told me he was trying to say I had crapped. And when - - -

Q. Let me stop you real quick. What does that mean, that you crapped?

A. Crapped is losing. After you have a point but if you crapped on the first roll it's an automatic win.

Q. And what did you do when he was saying you crapped?

A. I was continuing to roll. I wasn't paying him any attention because I was thinking that he was just trying to get me off my mojo.

Q. What does that even mean, get you off your mojo? Was - - -

A. He was trying to get me uncomfortable which would

probably cause me to start losing.

Q. All right. Why did things go sideways? He's your friend, right?

A. Yes, sir.

Q. What happened? Why did this go sideways? Why did this go wrong?

A. I don't really know like all I know he would keep telling me, he kept telling me "you crapped, you crapped." I was thinking that he was just saying that like just to like get me off my groove stuff like that. So I keep rolling and stuff. I just keep rolling and keep rolling and that's when I heard a little assertion in his voice like, he was like, he started like talking like "you crapped." He like, he like he was getting assertive.

Q. Was he yelling?

A. No. He was talking assertively.

Q. You're saying talking what?

A. Assertively.

Q. Assertively?

A. Yeah. That's a word, right?

Q. It's a word. And how did you know he was getting mad?

A. Because like I heard his voice change.

Q. And how did you respond to that when he was talking to you assertively? How did you respond? What did you do then?

A. I was, like, man, I seriously quit.
Q. What's that mean? I mean - - -
A. Like, I quit. Like I packed, um, my money and my dice up and stuff like that and saying like "I quit."
Q. All right. Did you leave anything out there or did you take everything?
A. I took everything.
Q. Did you steal from him or did you win?
A. I took everything I won.
Q. How did Brandon respond to that?
A. I guess, I guess, I'm just guessing he felt cheated or something like that but, I mean, he's just like, he was like, "Rell, I'm going to kill for my money." Like he made that statement and stuff like that.
Q. And after he told you that what did you do?
A. Like, I'm like, hey, like we like friends and stuff like that so I didn't really pay it no mind.
Q. Well, did you at some point start paying it mind?
A. Yes. Once I pick my, the money and my dice up and stuff like that I looked up and when I looked up at him he had a knife in his hand.
Q. How did you respond when you saw that?
A. I looked up and I stopped and I stand up and I mean, he came at me with the knife.
Q. How are you feeling when that happened?

A. I was afraid. I was scared. I didn't -- it was happening so fast I didn't really know how to feel.

Q. Did you bring a knife to Brandon's home?

A. No, sir.

Q. Did you have a knife on you or any other weapon on you?

A. No, sir.

Q. Where did it come from?

A. I don't know exactly where it came from. I just know I looked back up and he had it in his hand.

Q. Do you remember exactly how everything happened after at that point?

A. No, sir.

Q. And why not?

A. Because everything happened so fast like I was just really trying to protect myself like I was afraid like I was really like really trying to leave the house like I was trying like I felt like if I didn't do what I needed to do I was going to get killed.

Q. Were you happy that this was going on?

A. No.

Q. Did you want this to be happening?

A. No, sir.

Q. Do you know how many times you ended up stabbing Brandon?

A. Not exactly but I remember one stab wound.
Q. Did you see any blood?
A. No, sir.
Q. Why didn't you just run away as soon he started doing this?
A. The only way I could get out the house was through Brandon.
Q. Why didn't you run away as soon as you are able to get the knife away from Brandon?
A. Because once I got the knife away from him, he grabbed me in the choke hold and like he was choking me and I couldn't breathe and stuff like that so I was like trying to do the best I could to get him off of me.
Q. Do you remember exactly how that happened like this person is here and this person is here and like watching the video?
A. No, sir.
Q. But how did it make you feel?
A. I was afraid. I was scared for my life. I felt, while he was choking me, I felt that like I couldn't breathe and stuff like that.
Q. Did you want to have a fight with your friend?
A. No, sir.
Q. I want to talk to you about someone else we've talked about. Tell me about Darryl. Do you know Darryl Bennett?

A. Yes, sir. I usually call him uncle Darryl.
Q. Did you ever have any issues with him before?
A. No, sir.
Q. How did Darryl become involved in the fight?
A. I don't know exactly when he came in but all I know is he tackled me and when he tackled me, he tackled me through the storage closet.
Q. What did you do after he tackled you into the storage closet? What happened then?
A. When he tackled me through the storage closet I like try my best to fight myself back out and I fought myself back out and that's when I saw Brandon coming up the side of my arm like, in my peripheral, and that's when I pushed Darryl and swung the knife like not really trying to hurt like trying to kill somebody but I was like trying to get him like off me so I would have the time to run to get out the house but I happened to hit Brandon in the chest.
Q. Was it one-on-one at that point? Was it two-on-one? How are you feeling at that point?
A. It was two-on-one.
Q. Did you feel safe?
A. No, sir. I felt like if I didn't do what I had to do they would have killed me in that house.
Q. Did you want to stab Brandon?
A. No, sir.

Q. Did you want to hurt Brandon or Darryl?
A. No, sir.
Q. Why did you?
A. Because I was trying to save my life.
Q. We've heard some testimony about Darryl biting you on the arm.
A. Yes, sir.
Q. Why did you run the second Darryl bit you?
A. Because he wasn't letting me go. He bit me and he was like grabbing me and stuff like that. He wasn't letting me go.
Q. And as soon as you were able to get away, what did you do?
A. I ran.
Q. How did you get out the house when you left?
A. I ran as fast as I could out the front door.
Q. Did you stop to unlock the front door so that you can get out?
A. No, sir.
Q. Did you need to?
A. No, sir, it was still unlocked.
Q. Which way did you go?
A. Straight down Carondolet.
Q. Is that - - where is Carondolet in relation to Congress Street?

A. Like it's between Congress and Race like it's Carondolet and then Rutledge Avenue.
Q. About how far from the front door from where you ran out would this street have been?
A. Probably from like the back wall to the door right there.
Q. Were you hurt when you running?
A. I felt the blood rushing down, coming down my head so like I grabbed my shirt and use my shirt to rub the blood off my head.
Q. What was going on right then in your head? How were you feeling right then as you were running away?
A. I was afraid. I didn't really know what was going on like I was really scared and stuff like that.
Q. Did you call the police?
A. No, sir.
Q. You just stabbed your friend in the chest and you didn't call the police?
A. No, sir.
Q. Why not?
A. Because I was afraid.
Q. Afraid of what?
A. Afraid that if I called the police and stuff like that they wouldn't have believed me.
Q. Were you scared of anything else?

A. And I was afraid of Brandon, um, Darryl.
Q. I want to talk to you a little bit about your injuries. You said your head was bleeding, did you have any other injuries?
A. Not that, like, I remember.
Q. Anything on your arm?
A. I remember the bite mark and I had a streak on my arm.
Q. Did Brandon cause any of those injuries?
A. I don't know I can't even tell you how I got the injuries. All I know is when I was running from the house my head was bleeding and stuff like that. I couldn't really.....
Q. Did you have any injuries on you from taking the knife away from Brandon, any cuts on you?
A. No.
Q. Why not?
A. I can't tell you like the way things happen so fast like I don't, I don't know.
Q. How did you get the knife away from him?
A. I was just like stopped him like I grabbed his wrist and stopped him like and like pry it from his hand.
Q. What did you do after the fight, after you got away from Congress Street, where did you go?
A. I was so afraid that I ran to North Charleston.
Q. And how far does that actually mean? I mean, they're

different parts in North Charleston. Did you run fifteen miles?

A. No. I ran like in the beginning of North Charleston.

Q. What did you do when you ran? What did you do when you got where you were going?

A. I like, like try to smoke myself into the point where I couldn't remember anything. I just really wanted to forget about the whole situation and I like felt bad about the situation but I just did - - I felt like I was doing what I had to do to save myself.

Q. Again, did you want to do what you did?

A. No, sir.

Q. If you could undo everything and go back to the way things were, would you?

A. Yes, sir.

Q. Where did the money come from to pay for the weed?

A. Work.

Q. What happened to your clothes after you fled?

A. I threw everything away. Like I was saying, I just wanted to forget the whole like the whole situation like anything that had anything to do with the situation I got rid of it.

Q. What about the dice?

A. I got rid of everything that had to do with the situation.

Q. After that, did you just stay and wait around here or did you go somewhere else?
A. No. I went out of town.
Q. How did you get there?
A. By a bus.
Q. Why? Why did you leave?
A. Because I heard that Darryl was sending people to kill me.
Q. Were you scared of him?
A. I was totally afraid because I heard stories and stuff like that about him.
Q. I don't want to go into any of that. You said you took a bus to Alabama, why there? Why did you go to Alabama?
A. Because I know I could get away there.
Q. Tell me about being arrested.
A. At first like I was walking down the street and all I know is a car just drove up and I saw the door open and a gun in my face so I just ran, I didn't stop to see who it was. I didn't even like I just ran as soon as I saw the gun and stuff like that so after I - - -
Q. Why did you stop running? Did you stop at some point?
A. Yes, sir. When he was like I'm the police, freeze or I'm going to shoot.
Q. I want to talk to you about some specific statements.

Did you ever during this say, "I told you I was going to get you"?

A. No, sir.

Q. Did you ever stab someone while they were sleeping in their bed?

A. No, sir.

Q. Did you laugh during this?

A. No, sir.

Q. Did you ever say that you were going to kill Darryl Bennett?

A. No. I don't remember saying that.

Q. Is it hard to remember everything that happened?

A. Yes, sir.

Q. Why?

A. Because everything happened so fast like I didn't really know what was going on until like after everything happened.

Q. Was that a good day for you?

A. No, sir. It was the worst day of my life.

Q. Do you want to be here?

A. No, sir.

Q. Do you want your family and their family to be here?

A. No, sir.

Q. How do you feel about Darryl now?

A. I mean, I don't, I don't know how to feel about him.

Like I don't knock him for what he did because he didn't know what was going on, all he was doing was trying to protect his son but, I mean.....

Q. How do you feel about Brandon?

A. I mean, I still think about Brandon every night and stuff like that. I just wish this had never happened like I just wish like everything just never happened.

Q. Why didn't you just run? Why didn't you just run?

A. Run, when?

Q. When they came after you. Why didn't you just run?

A. Because the only way I could've run was inside the storage closet. The only way I get through the door is through both of them.

Q. Did you feel like you had any other choice in what you did?

A. No.

MR. LEWIS: One moment, Judge. Please answer any questions that Mr. Simpson has for you, all right?

A. Yes, sir.

MR. SIMPSON: May it please the Court?

THE COURT: Yes, sir.

Cross Examination by Mr. Simpson:

Q. Mr. Smith, my name is Chad Simpson. You've been here all week. You are aware that I represent the State of South Carolina, is that correct?

A. Yes, sir.
Q. But we've never met before, correct?
A. No, sir.
Q. I want to just lay a couple of ground rules if you don't mind. If you would just answer the questions that I ask it, if you need to explain it that's fine but just the questions I ask, okay?
A. Yes, sir.
Q. And I'm going to ask your permission, may call you Terrell, is that okay with you or do you prefer Mr. Smith or....
A. Terrell is okay.
Q. Good. And I don't know if you've ever seen cross examination on TV or something but I'm not going to be yelling or screaming, I just want some answers from you if you can, if that's okay?
A. Yes, sir.
Q. You say that you and Brandon were friends, right?
A. Yes, sir.
Q. And about how often would you see him?
A. Probably, anytime that I'm downtown or because, you know, he lives inside the area and I'm always at my great grandmother's when I'm downtown.
Q. Is frequently the correct answer?
A. Yes, sir.

Q. So you frequently - - you normally would see him at his house, I think you said, you were welcome there, right?
A. Yes, sir.
Q. And so would you go to his house frequently?
A. Yes, sir.
Q. Why not in the previous couple of months?
A. In the previous couple of months?
Q. Before the incident, yeah, why not?
A. I did used to go to his house before the incident.
Q. So there wasn't frequent contact and then a couple of months before this happened, you guys didn't hang out a whole lot, that's incorrect, is that what you're saying?
A. I don't understand your question.
Q. In the two, in the one or two months before this incident, did this frequent contact and frequent hanging out with Brandon cease?
A. I started - - I got a job. I started working.
Q. So you do acknowledge that you guys hung out frequently but a couple months before hand not so much, correct?
A. I mean, I hung out with him when I was off but you don't want to keep asking do you?
Q. This is what I'm talking about. I'm just asking questions and answers, give the best answers. You said you also knew Rodney Pinckney, right?

A. Yes, sir.
Q. And you've known him since eight years old, huh?
A. Yes, sir.
Q. Sounds like you were pretty close with him, known him for a long time, I guess?
A. Yes, sir.
Q. If you know of anything, the bad blood between Rodney Pinckney and Brandon?
A. No, sir.
Q. Even though you have known Rodney since you were eight years old?
A. Yes, sir.
Q. You been sitting in the trial all week, right?
A. Yes, sir.
Q. And you've been paying attention to all of the evidence as we went through it, is that correct?
A. Yes, sir.
Q. And been thinking about it, right?
A. Yes, sir.
Q. Taking notes on it?
A. Yes, sir.
Q. And what hand do you use when you take your notes over there?
A. My right hand.
Q. Is it fair to say your right hand?

A. Yes, sir.
Q. That's your dominant hand?
A. Yes, sir.
Q. I'd like to jump ahead, we're going to back up, we might jump around a little bit, to the moment that you run away from Congress Street.
A. Yes, sir.
Q. You're saying today that where you headed was to North Charleston, right?
A. Yes, sir.
Q. Not over to Tracy Street?
A. No, sir.
Q. Where did you go in North Charleston?
A. I went to a friend's house.
Q. What's your friend's name?
A. Part.
Q. What's his - - how do you spell that?
A. P-a-r-t.
Q. And what's his last name?
A. I mean, that's a nickname.
Q. You guys are close enough that you can go stay at his house, right?
A. I mean, I wouldn't say like I could spend the night at his house if I ask but I never spent the night at his house.

Q. But after this, we would all agree, after this horrible incident happens, he's the name that pops in your head is a guy you can trust to go right to his house, right?

A. I mean, I just ran to his house.

Q. Right. And you just know him as, Part?

A. Yes, sir.

Q. You don't know his first name?

A. No, sir.

Q. You can't offer to these people who are here judging how forthright and honest you're being with us, you can offer them a last name of this person?

A. I don't know his name. I just know him by Part, like, everybody calls him Part.

Q. And it would be real hard for us, you would agree, again - - it would be really hard for us or anyone really, to go try to confirm or deny a story when all you're willing to give us is Part, is that correct? Do you think that's kind of hard?

A. I don't understand the question.

Q. Oh, well let me rephrase. What's Part's address that you went to?

A. It's on, um, South Senate, but I don't know the exact number but I know that the street is South Senate.

Q. And did you walk? Did you go on foot that day or....

A. Yes, sir.
Q. Did you tell Part what had happened?
A. No, sir. I just wanted to smoke and forget everything.
Q. And we can all confirm that if we had Part's actual name that you can't give us to that effect?
A. Yes, sir.
Q. That's unfortunate. How many days did you stay at Part's house?
A. I left that same day.
Q. Where did you go when you left Part's?
A. I went to a relative's house.
Q. What relative? I'm certain we'll get a first and last name and address for the relative?
A. Yeah, his name Damon.
Q. And last name?
A. Reid.
Q. Damon Reid. And where does he live?
A. Right around the corner. I don't know the exact address.
Q. And did you tell Damon what had happened?
A. No, sir.
Q. Now, I'm guessing that we're to believe your story, you're pretty worked up about all of this, right?
A. Yes, sir.

Q. And your demeanor is, you know, pretty traumatized, pretty upset?
A. Yes, sir.
Q. And Part never ask you, hey, man you seem a little upset what happened?
A. Yeah, but I was like I didn't answer the question like I was like man like I was blowing it off like....
Q. And Damon never asked you, "hey, what happened?"
A. No. I was just blowing it off like....
Q. And where does Damon live again?
A. Around the corner on, I think is called Ferrera.
Q. And what area of Charleston is that?
A. North.
Q. How long did you stay at Damon's house?
A. Until outside got dark.
Q. And this is the same day of the incident?
A. Yes, sir.
Q. What happens when it gets dark?
A. I think, I think I went - - I can't really remember where went after that.
Q. You just can't remember?
A. No, sir.
Q. It's kind of like the struggle that happened, you know, we don't really want to get challenged on anything when we just say we don't remember it.

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the basis?

MR. LEWIS: Asked and answered and argumentative.

THE COURT: Overruled.

Q. Would you agree that an easy way not to be challenged on our statements is just sort of say I don't remember what happened?

A. If I don't remember the answer, I can't tell you the answer.

Q. So you don't remember after going to Damon Reid's house, what happened later that night?

A. No, sir. I was so high I couldn't really remember what was going on.

Q. Okay. But you remember what happened that morning?

A. Yes, sir.

Q. And we will of course get to that. When do you, to the best of your recollection I guess where we are right now, is the night of June 11th, when do you come out of sort of this, I'm assuming you went to sleep, passed out at some point?

A. Yes, sir.

Q. And where were you when that happened? I guess, I mean, you woke up there so you remember where you passed out that night?

A. I think I went to another friends house.

Q. And what friend is that?
A. He's name is Vod.
Q. Can you spell that?
A. V-o-d.
Q. And what's his - - is that his real first name?
A. That's his middle name?
Q. What's is his actual full name if you don't mind?
A. I think his real name is Matthew Campbell.
Q. Matthew Vod Campbell.
A. Yeah, little Vod.
Q. Where does he live?
A. On Rosemont.
Q. So did you tell Matthew Campbell on Rosemont, what happened that morning?
A. No, sir.
Q. Did they ask you anything about your demeanor or why you were upset?
A. They just been asking - - they been saying I wasn't myself.
Q. But you didn't share with any of these people what had occurred that morning?
A. No, sir.
Q. Let's go to that morning of June 12th. This happened on the morning of June 11th, correct? Let's go to the following morning. You've self medicated and we've all had

bad times, you went and smoke a lot of weed but then you wake up the next morning, are you relatively clear when you wake up?

A. I mean, yeah, but I started smoking again when I woke up.

Q. You didn't - - but you wouldn't called the police first?

A. No, sir.

Q. You indicated that in the audience here, is your mother and father, is that correct?

A. Yes, sir.

Q. You didn't - - did you call any of them for just some guidance, for some advice?

A. No, sir.

Q. But you stand here today certain that you did what you did because you had to do or well, you had to do that, correct?

A. Yes, sir.

Q. So why not call the police and tell them?

A. Because I was afraid. Because I was afraid nobody would believe me.

Q. Why not at least call a trusted parent or someone to tell them to get some guidance as to what you should do?

A. Because I was afraid.

Q. So you immediately started smoking weed again?

A. Yes, sir.
Q. Let me just ask because this seems like an incredible amount of marijuana. Is this all the money, you bought all this with the money that you made at Juanita's?
A. Yes, sir.
Q. But don't forget Brandon's money, right, according to your story you had some of that as well?
A. Yes, sir.
Q. How much money would you say you got out of that house with?
A. Who Brandon's house?
Q. Yeah.
A. Probably like twenty dollars.
Q. How much money did you say you had on you from your job at Juanita's?
A. Probably like I got paid - - I can't remember how much I got paid but - - -
Q. What days did you get paid on?
A. I can't remember, it was two years ago.
Q. You don't remember what day the payday was?
A. No, sir.
Q. Most of time it's Friday, I mean, was it the Friday?
A. I mean, Thursday or Friday.
Q. And this was a Wednesday, right?
A. Yes, sir.

Q. That seemed like a pretty far distance from payday. How much cash total would you say you had on you?
A. Probably like two hundred dollars or something like that.
Q. In two hundred dollars is enough to buy enough weed to where you can't remember anything, it sounds like a whole forty-eight hour period?
A. Yes, sir.
Q. Again, you wake up in the morning and you start hitting that two hundred dollars weed again, that bottomless bag of weed the next morning, right, what do you do then? I think we're at Matthew Vod, Vod's house, you wake up.
A. Mmm, hmm.
Q. What happens then?
A. I had left without them knowing and I went and got a bus ticket and went to Alabama.
Q. So not only did that two hundred dollars buy you a seemingly bottomless bag of weed but it also purchased you a bus ticket all the way to Alabama?
A. Yes, sir.
Q. No assistance or no help given to you for any of that?
A. No, sir.
Q. And you just went on your own and bought that?
A. Yes, sir.

Q. Your grandmother didn't drive you to Alabama?
A. No, sir.
Q. And all that was done with this two hundred bucks, well, it might be as much as two hundred dollars?
A. Yes, sir.
Q. Let me just ask you directly on this point, okay. You took an oath when you took the seat, right?
A. Yes, sir.
Q. You promise to tell the truth, the whole truth, and nothing but the truth, correct?
A. Yes, sir.
Q. What does the whole truth mean to you?
A. Everything.
Q. Right. And that means even if it might get somebody else in trouble, right?
A. Yes, sir.
Q. You took an oath?
A. Yes, sir.
Q. You say that's important to you?
A. One more time.
Q. That oath, you're taking that seriously?
A. Yes, sir.
Q. You're not, from the moment this happened, you never called your mom?
A. No, sir.

Q. You never called your mom even just to say I'm going to be going down to Alabama for couple of days? I'm going to be out, you know, cross the country for a while, you never did call?

A. No, sir.

Q. Not your grandmother?

A. Your Honor

Q. Not your job?

A. No, sir.

Q. Not your dad?

A. No, sir.

Q. Not - - you didn't tell any of your friends of that?

A. No, sir.

Q. You just went - - you just moved across the country and told no one. Even if you just made up a story, you didn't even tell them you were going to Alabama?

A. I didn't tell nobody at all.

Q. And you aren't saying that to this jury just to protect you?

A. Because you don't really take this whole truth, the whole truth and nothing but the truth, very seriously?

A. You can read - - ask the question. I'm trying to understand the question.

Q. I'll move on. I'll withdraw that. I'd like to go back now, if I could to the moment, the morning of the

incident is that okay with you, Terrell?
A. Yes, sir.
Q. I'd like to walk through that a little bit with you. Did you call Brandon before you went over there?
A. No, sir.
Q. And why not?
A. Because Brandon doesn't have a phone.
Q. So you just went over to an eighteen year old's house and you said this was early in the morning, right?
A. Yes, sir.
Q. And for you, you had been up all night, right?
A. Yes, sir.
Q. So what made you think an eighteen-year-old with nothing to do was just going to awake waiting for you, you know, waiting to hang out and gamble at this hour in the morning? I don't mean to assume things about people but when I was eighteen I was not up this early unless I had some reason to be.
A. I went there - - I just went there to hang out with my friend and stuff like that.
Q. At that early in the morning?
A. Yes, sir.
Q. You thought he would be awake. So you went in - - you say you went, you went through the neighbors yard, did you jump the fence to get through the neighbors yard?

A. I walked through the fence.
Q. Went to the gate?
A. Mmm, hmm.
Q. You went to Brandon's bedroom and there he is, waiting?
A. No. I knocked on the bed - - -
Q. Okay.
A. I knocked on the bedroom window and screamed to him. The window was opened.
Q. What does it - - if you could, the best you could, explain to the jury what it sounds like to knock on an open window?
A. I can't.
Q. Right.
A. I mean, I can't.
Q. But when you go and knock on this window, he just answers, right?
A. He came to the window.
Q. Okay. And you said just let me in the front?
A. Yeah. I tell him I'm coming and I walked to the front of the house.
MR. SIMPSON: Permission to approach the witness?
THE COURT: You may.
Q. Terrell I'm showing - - you've seen this week, right?
A. Yes, sir.

Q. Do you recognize that?
A. Yes, sir.
Q. Is that pretty accurate of Brandon and Darryl's house?
A. Yes, sir.
Q. Did you come in here?
A. Yes, sir.
Q. And let's stop you right here because it sounds to me like by your story this is two good friends meeting each other nothing sinister, nothing weird going on, right, this is the kind of thing that would've happened all the time?
A. Yes, sir.
Q. So I'm guessing that you meet a friend and you say like "hey, what's up?" He says, "hey what's up back, right?"
A. Yes, sir.
Q. And I believe even your direct you said y'all are talking right when you come in the door?
A. Yeah, as we're coming through.
Q. Yeah.
A. We're just going through the house.
Q. So there's no reason for y'all to be trying to be quiet here at all, right?
A. I mean, no.
Q. Yeah, right. So you come in the store, and you come through here and you talk through here and what's through

this door here?
A. The bathroom and Darryl's room.
Q. When you were walking and talking with Brandon through here, did you have any problem hearing him right here?
A. I can't remember.
Q. You can't remember but there was nothing like you said, you don't remember any loud noise and you're like "I can't hear you?"
A. I can't remember.
Q. Okay. But you come in here and nobody's being, nobody's being secretive or stealthy or quiet, you're just walking - - -
A. I mean, were talking like - - -
Q. Yeah.
A. - - - in normal voices. I wouldn't say that we trying to be quiet but we ain't being loud.
Q. And you never see Darryl Bennett?
A. No, sir.
Q. And he never comes out or talks to you or says anything?
A. No, sir.
Q. And then you go back into Brandon's room, right?
A. Yes, sir.
Q. Explain to me again how this went - - I should say this, when it comes to marijuana and Brandon he didn't have

any that morning, is that correct?
A. That's correct.
Q. So if he would've smoked marijuana, according to your story, it would've been well before you ever arrived?
A. Yes, sir.
Q. May even woke up the night before at some point and did it?
A. I don't know.
Q. You don't know.
A. No.
Q. But he didn't have any when you got there?
A. No, sir.
Q. Well, did you see any on, any like seeds or debris on the floor or paraphernalia or anything like that?
A. I mean, he had seeds.
Q. Okay.
A. And you would see seeds and stuff like that because, you know, we smoked weed before.
Q. So if we went through the pictures we could find where you would see the seeds and the - - -
A. I mean, I can't remember exact where the seeds but the seeds so small you wouldn't be able to see it.
Q. But to be clear according to your story, there was no - - Brandon did not have any weed?
A. No, sir.

Q. Nor did he have a functioning phone to call anybody to get the weed, right?
A. No, sir.
Q. But you wanted weed?
A. Yes, sir.
Q. So you were going to call the weed man, right?
A. Yes, sir.
Q. Who's the weed man?
A. His name is Paperboy. That's the only name I know him by.
Q. Paperboy?
A. Yeah.
Q. Paperboy Johnson? Smith?
A. That's all I know him by.
Q. Just Paperboy?
A. Mmm, hmm.
Q. This isn't again an demonstration of the fact that the whole truth, and nothing but the truth, what's the name of - - -

MR. LEWIS: Objection, Your Honor.
THE COURT: Basis?
MR. LEWIS: This isn't a question.
MR. SIMPSON: I'll move - - -
THE COURT: Sustained. Thank you.
MR. SIMPSON: I'll move on.

Q. To rephrase, you cannot or will not provide a first or last name of a person that you are planning to call that very early in the morning?
A. I don't know his name.
Q. But you're comfortable calling him on his phone very early in the morning, is that true?
A. Yes.
Q. How many times have you interacted with this person before?
A. Numerous of times.
Q. Right. How did you meet this person?
A. Just out on the street.
Q. Buying and selling drugs, let's be frank, that can be dangerous business, right?
A. Hmm.
Q. It could be?
A. It could be, yeah.
Q. Yeah. So you want to do it from somebody you know and trust, is that fair?
A. I wouldn't say all that.
Q. Okay.
A. Some people you don't even know.
Q. Well, apparently. You had his number, though, right?
A. Yes, sir.
Q. So what was his number?

A. I don't know it by heart.
Q. You don't?
A. No, sir.
Q. Well, where did - - did you have your phone on you?
A. Did I have my phone on me?
Q. Yeah. You got it - - -
A. Yeah.
Q. What happened to your phone?
A. It fell when I was running from the US Marshals.
Q. It fell when you were running from the marshals?
A. Yes, sir.
Q. And they wouldn't have seen it and collected that?
A. I guess not.
Q. It didn't get destroyed along - - remember you had talked about a moment where you decide that even though you were completely justified in doing this that the best thing for you to do would be to destroy your clothes and I think the phrase you use, you can correct me if I'm wrong, "I was just going to destroy anything involved in this situation", right? You didn't destroy your phone at that point?
A. I mean, that's my phone.
Q. All right. But you weren't calling anybody, you've already testified to that. You were calling mom, dad, friends or anybody like that so weren't you trying to destroy everything?

A. Yeah, but I'm not going to throw away my phone.
Q. You think you dropped it during the pursuit by the US Marshals?
A. Yes, sir.
Q. And that's why we can't confirm your story with friends, Damon, Ferrera, Vod or Paperboy?
A. Huh? One more time.
Q. That's why we can't further corroborate your story through Paperboy, Vod, Ferrera or Part because you drop the phone - - -
A. Right.
Q. - - - when the US Marshall's - - okay. That works out well. That's probably a pretty good segue to another statement you made and if you could I would like for you to explain what you meant by this to this jury and we may come back to this a few times, but you said "I like to have a strategy with everything that I do." Do you remember saying that on direct?
A. Yes, sir.
Q. What you mean by that?
A. Like, I mean, like playing games and stuff like that.
Q. Huh, huh.
A. I like to just have like a way to win or some way I feel like I'm winning.
Q. You come into a situation, get the lay of the land

first and then come at it with a strategy. You like to have that strategy with everything you do, is that correct?

A. Like games and stuff, yeah.

Q. So you and Brandon talking with one another for no reason to be quiet, walk through this small house, is that correct?

A. Yes, sir.

Q. Back to his room?

A. Yes, sir.

Q. Let's take us through what happens then? One more time please, if you don't mind.

A. Like I was saying, we - - I was going in my pocket to get my phone and the dice fell and he was like, "shake it up. Like, shake them up."

Q. And now I'll admit I haven't played a lot of craps but does the money go, kind of fly around while you're playing?

A. I mean, if he - - if he, if I win he'll hand me the money.

Q. Yeah. So you put your money as you're playing on the floor, is that correct?

A. No.

Q. No. What do you do? Every round money changes hands?

A. Like if I win, I pay him. If he win, he pay me.

Q. Right. Do you pay each other at the end of the game or is every round money sort of changing hands?

A. I mean, yeah, it would be around, I guess.
Q. So you're not reaching into your wallet every single round and kind of - - you bust out a wad, right? A wade of cash to play, is that true?
A. Right.
Q. So that's out and about, right?
A. Yes, sir.
Q. You're here playing craps, do you talk what you're playing?
A. Yeah.
Q. You talk a little trash, I do in gambling, right?
A. Yeah.
Q. Maybe share some laughs?
A. Yes, sir.
Q. And your rolling dice, right?
A. Yes, sir.
Q. And your story to this jury is that you're doing all of this and rolling dice on a hardwood floor, is that correct?
A. Yes, sir.
Q. Then an argument breaks out, right?
A. I didn't say an argument.
Q. Forgive me but I think you describe a person coming at you to kill you, you don't think that's an argument?
A. I thought an argument was fussing.

Q. So why don't you put it in your words, again, what then happened between you and Brandon?
A. I heard him getting assertive and stuff like that.
Q. You know, we had some fun with that on direct. But what do you mean by getting assertive, raising of the voice?
A. Like, like his voice changed. Like you could hear his voice changed. I wouldn't say he got loud. I wouldn't say he got lower. His voice was changing.
Q. Okay. And what did he say?
A. He said, he told me - - at first he was saying, I cheated. He was like, "you cheat." "You crap", like, saying like that.
Q. Then you said it didn't bother you at that point to be accused of cheating?
A. No, because I thought he was just saying, just saying stuff to get me off my mojo.
Q. Didn't bother you at all. So when did it start to bother you?
A. When I looked up, I mean, when I heard his voice change and stuff like that.
Q. And you looked up and he just had a knife in his hand?
A. One more time.
Q. You just looked up, at that point, and he had a knife in his hand?

A. No. I quit first - - -
Q. Okay.
A. - - - and then I look up and he had a knife in his hand.
Q. You quit and you take the money that you won, right?
A. Yes. I scooped the money and the dice.
Q. What about the money, this sounds like an abrupt ending to the game, what about the rest of the money that Brandon had out to keep playing?
A. I don't know what Brandon was doing with his money.
Q. I thought we already covered that. That everybody's got the money out - - -
A. No, I said I had my money out.
Q. Just keep the money there - - okay. Well, what about Brandon's bank, what happens to that?
A. I don't know what Brandon, where Brandon had his money at.
Q. But the game did not end when Brandon ran out of money, it ended when you scooped stuff in the middle of the game, is that correct?
A. Correct.
Q. So we - - Brandon was playing with money, right?
A. Yes, sir.
Q. Do you have any idea where the rest of this money is - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the basis?

MR. LEWIS: Speculating.

THE COURT: Overruled. You may answer if you know.

A. I don't know where he was getting his money from.

Q. But we have an argument that happens between the you two, rolling dice on a hardwood floor, playing this game amongst friends and you scoop - - when did you see him with the knife?

A. After I quit and I scooped my money and my dice up and stuff like that and I put everything in my pocket and I was like looking up and standing up.

MR. SIMPSON: May I asked the witness to step down?

THE COURT: You may.

MR. SIMPSON: Thank you. Please step down, Terrell.

(Whereupon, the witness complies)

Q. Using this pen, and you were here when Mr. Bennett testify, is that correct?

A. Mmm, hmm.

Q. And you saw a, sort of, walk through things a bit?

A. Yes, sir.

Q. I would like for you to do that too. You move me. I don't want to do anything that they can interpret me putting my own spin on things, what are you doing? What kind of position are you in? You said your back is to the

closet, is that correct?

A. Yes, sir.

Q. And here - - and Brandon is up and upright - - -

A. Yes, sir.

Q. - - - and here are you. So help me out. Just tell me or move me if you will.

A. I was kneeling down.

Q. Okay.

A. And like my hat - - -

THE COURT: Mr. Smith, I may need you to speak up please.

A. And I snatched everything up and I looked up and Brandon was like that, he was coming - - -

Q. Up?

A. I mean, I can't really remember exactly how he was coming at me - - -

Q. But he's moving to you and you know there's a knife?

A. Yes, sir.

Q. So is it down? Is it up?

A. I can't tell you exactly how it happened.

MR. LEWIS: Objection. Asked and answered.

THE COURT: Overruled.

Q. So you cannot tell me how this approach happened?

A. No, sir.

Q. But you're certain that you had no choice but to stab

him in the chest?
A. Yes, because if I didn't - - -
Q. Okay.
A. - - - the only way I could run was through him like - - -
Q. Well, walk from I'm coming at you with this knife in some manner and we all acknowledge that you don't know if it was down, up, side or what but, I'm coming at you with this knife, how does this knife get from here and I'm assuming he's coming aggressively to stab you, right?
A. Yes, sir.
Q. So he's coming at you, how does that knife get from here to you?
A. I stopped him and like I tried to like grab the knife from him.
Q. And there you go, knife in the right hand, what happens?
A. One more time.
Q. Okay. You're right handed, right?
A. Yeah.
Q. So you take the knife, what you do, put it in the dominant hand, the right hand?
A. I don't know exactly what I did after that.
Q. Okay.
A. I know that I was doing what I had to do.

Q. All you - - you don't know what?
A. But I know that once I grabbed the knife he grabbed me in the choke hold and I can't exactly - - -
Q. In the front of you - - I mean, do you remember the face-to-face?
A. I told you I can't remember exactly how it happened.
MR. LEWIS: Judge, objection.
THE COURT: One second. What's the basis?
MR. LEWIS: He's already answered that he didn't know how it happened.
THE COURT: So it's been asked and answered?
MR. LEWIS: Yes, Your Honor.
THE COURT: Move on, Mr. Simpson.
MR. SIMPSON: Okay.
Q. You don't recall anything about choking from behind, in the front, to the sides?
A. I don't know how - - -
THE COURT: Mr. Smith, I may need you to speak loudly.
A. Yes, ma'am.
THE COURT: Thank you.
Q. But you know for sure that he's coming at you to kill you with the knife and somehow you grab and you get the knife?
A. I don't know. All I know is it felt like he was

coming at me to kill me. I don't know what he was trying to do.

Q. So how does that go from now you have a weapon, he has no weapon, what happened, is it the choking that then makes you feel like you need to stab him?

A. Yes, sir.

Q. And so you do, describe that?

A. I can't tell you exactly how it happened. All I know is that like he stops choking me.

Q. You stabbed and he stops choking, okay, and you run out of that room. He stabbed you, he stops choking. You just describe this moment, he let's go, you're not being choked, he's been stabbed, boom, you're out of there because you're not there to hurt him, right?

A. Because from like, he, like, Darryl came and attacked me.

Q. And that's when Darryl came in - - -

THE COURT: Hold on one second.

MR. LEWIS: May he be seated?

THE COURT: I'm not sure if he's done, Mr. Lewis.

Q. I'll get to that. So Darryl comes in, again, help me I'm not going to tackle you - - -

A. I can't tell you how Darryl came and tackled me.

Q. Because I'm telling you - - -

THE COURT: Mr. Simpson, I'm having a hard time

hearing Mr. Smith, first of all, and you know not to speak over a witness.

MR. SIMPSON: I do, Your Honor. My apologies.

THE COURT: So if we can't keep where I can hear Mr. Smith then I'm going to request that he take the witness chair.

MR. SIMPSON: Understood, Your Honor.

THE COURT: All right.

MR. SIMPSON: Thank you. My apologies.

Q. So Darryl comes in and tackles you?

A. Yes, sir.

Q. You have the knife at this point?

A. Yes, sir.

Q. Do you - - how do you go down? The best you can describe.

A. All I know is he tackled me. I can't say how it went down.

Q. Did you say to him, "I'm going to kill you too, motherfucker?"

A. No, sir.

Q. You never said that?

A. I don't remember saying that.

Q. Did you go - - do you remember if you went down on your back or if you went down on your front?

A. No, sir.

Q. Do you remember if he was in front of you are behind you?
A. No, sir.
Q. So in your direct when you testified that he was in front of you between you and the exit, that's incorrect, the truth is you don't remember?
A. Are you talking about as when he tackled me - - -
Q. Yeah.
A. - - -or are you talking about when I fought back out?
Q. I'm saying when he tackled you, you don't remember if it was from the front or the back, was the answer you just gave us. If you want to change it, change it.
A. I don't know how I went down when he tackled me but I know when I was fighting my way back out he was in front of me and I had my back like inside the storage room.
Q. Okay. And how did he manage to bite your arm as you recall it?
A. I swung the knife and hit Brandon in the chest and that's when he had the opportunity to bite my arm.
Q. So, again, correct me if I'm wrong, I've got to mention, you think you saw Brandon through your periphery coming at you too so you swung and you think that's when you swung and hit him in the chest?
A. I know that's when I swung and hit him in the chest.
Q. No. Act out that swinging motion as best as you can

recall please.

A. Like me and Darryl are down like this and I'm pushing - - -

Q. Okay.

A. - - - as hard as I can and I swung and hooked Darryl and hit Brandon in the chest - - -

Q. You swung in a hooking motion and got him in the chest?

A. Mmm, hmm.

Q. Okay. With your, with that dominant right hand?

A. Yes, sir.

Q. And then you swung with that hand this way with the knife and then Darryl grabs, get's you, and then bites there?

A. Yes, sir.

Q. And you go?

A. I mean, - - -

Q. Once the knife drops?

A. I know I fell back. Like I was panicking - - -

Q. See that's what I'm having a problem with. He's right here and you bit him right here.

A. Exactly. But, if you see, I swung like this and he bit me like that,

Q. Brandon hit you like that?

A. And he bit me.

Q. Okay.
A. So his head's down so I was panicking and I bit him right back.
Q. You bit in a panic?
A. Yes, sir.
Q. You can return. And is it at that point, that you then fled?
A. I mean, after Darryl let me go I fled, yeah.
Q. And it's your testimony that the whole time your main objection is trying to leave the house but you had no choice but to stab him?
A. Yes, sir.
Q. And you stabbed Brandon in the chest with this arcing swing motion?
A. Yes, sir.
Q. And you are sure about that, this arcing swing motion with your right hand, stabbed him in the chest?
A. Yes, sir.
Q. And then you felt that your only choice was to destroy everything related with the incident and get out of town?
A. No. I was like I wanted, I wanted to forget the whole situation that's why I destroyed everything.
Q. Right. And so I guess in this emotional - - you destroyed everything as just an emotional act, not to destroy evidence of a crime?

A. Exactly.

Q. And you covered your head while running from, while running from a person that you say is trying to kill you, you covered your head because of this injury that we have a photograph of, not to conceal your face because you just committed a crime?

A. No, sir.

Q. Even in a moment where you're fleeing from your life, you have to cover your head to - - -

A. My head - - my head - - -

Q. I guess that first - - -

THE COURT: Mr. Simpson, don't talk over him. Thank you.

A. My head was bleeding. I could felt my head bleeding so I was like wiping my face.

Q. Not to conceal your identity once you got out into this public street where people could see you?

A. No, sir. I didn't even see anybody. I didn't even look for anybody. I just was running like I was scared, like trying to get away.

Q. Exactly because who would be awake at this hour. You at this time are seventeen, right?

A. Yes, sir.

Q. And Brandon was eighteen?

A. Yes, sir.

Q. And you guys, I mean, you went over there and it sounds to me like you, according to your story, played a lengthy game of craps, a lengthy gambling game, right?
A. I mean, the time was going by don't know exactly how much time went by.
Q. And this was taking place on the hardwood floor in his bedroom?
A. Yes, sir.
Q. And he had come to the door and greeted - - you'd come to his window and then he would come to the door and greeted you and you walked in?
A. Yes, sir.
Q. And the whole time, you mention you don't recall what he was wearing?
A. No, sir.
Q. The whole time he wasn't in his underwear?
A. I don't know but, I mean, this is his house.
Q. Right. You found nothing odd in your story about the lengthy gambling game right there, where all his clothes are, he never put some pants when you come over?
A. I mean, we really like to gamble so like when we started gambling I guess everything got sidetracked.
Q. He liked to gamble so much that he didn't even think to throw on a pair of pants before he greeted you at the door?

A. I mean, I don't know if he had pants or not.
Q. Just a lengthy friendly game in your underwear. Would that be odd to you if that happened?
A. I mean, that's your house, I mean....
Q. Now sleeping in your underwear that makes sense, right? You would agree?
A. I mean, yeah.
Q. Mr. Smith, you had a problem with Brandon, didn't you?
A. No, sir.
Q. And you entered that house at a time, on a day and time where you knew you could enter and thought, thought everyone would be asleep?
A. No, sir.
Q. And you stabbed him once with your right hand while he was laying in that bed, correct?
A. No, sir.
Q. And then you stabbed him again, not with a swinging motion, but with a direct stab to the chest, isn't that true?
A. No, sir.
Q. And you said, "I told you," and you had to get that point out, "I told you I was going to get you", when his opened in shock?
A No, sir.
Q. And then you told his father who is just feet away

when this happens, "I kill you too, mother fucker", didn't you?

A. No, sir.

Q. And then you took off, concealed your identify, correct?

A. No, sir.

Q. Went to various people houses that you only knew on, as we wouldn't want to corroborate that, isn't that true?

A. No, sir.

Q. Fled the state half way across the country, is that true?

A. I mean, I fled the state but I wasn't trying to, like, running from law enforcement and stuff like that.

Q. And destroyed everything associated with the event, is that true?

A. Yes, sir. I did had got rid of everything.

MR. SIMPSON: I have no further questions, Your Honor.

THE COURT: Redirect.

MR. LEWIS: Thank you, Judge.

Redirect Examination by Mr. Lewis:

Q. If I was going to buy marijuana, you think the drug dealer is going to hand me his ID?

A. No, sir.

Q. Would you think he's going to give me his name?

A. He'll give you a street name.
Q. All right. What's a street name?
A. Like, a name, like, everybody in the street knows you by.
Q. Would you call it a nickname?
A. Yes, sir.
Q. Do you know every single persons name that your friend? Do you know there real name?
A. No, sir.
Q. Do you think that's odd?
A. No, sir. I mean, we was calling him - - that's his - - when we was little is the only person I really know the names for is the people I went to school with.

MR. LEWIS: Nothing further.

THE COURT: Mr. Simpson?

MR. SIMPSON: I don't anything further, Your Honor.

THE COURT: You may step down, Mr. Smith. Thank you. Call your next witness.

MR. LEWIS: The defense rest, Judge.

THE COURT: Reserving all motions and matters, any rebuttal?

MR. PATRICK: No rebuttal.

THE COURT: Ladies and gentlemen, you have now heard all the testimony you will hear in this case and have been, all the evidence will be going back with you that has

THE COURT: Thank you. Please be seated. Ladies and gentlemen, did you comply with my instructions over your lunch hour? If you did please raise your right hand. (Whereupon, the jury complies and raises their hands)

THE COURT: Thank you. All thirteen jurors have complied with the Court's instructions.

Ladies and gentlemen, we've reached the stage of the trial where you will hear closing arguments on behalf of counsel. In this case the State will go first. Mr. Patrick will give the opening/closing statement and then, Mr. Lewis will give his closing arguments on behalf of his client. After that Mr. Simpson on behalf of the State will give the final close on behalf of the State.

Just as I indicated to you what was contained in the opening statements is not evidence. Neither is what is contained in the attorneys closing arguments. I will instruct you on the law applicable to this case. Please give your strict attention, Mr. Patrick?

MR. PATRICK- CLOSING LAW ARGUMENTS:

MR. PATRICK: Thank you, Your Honor. May it please the Court?

As the Judge has told you, in a few moments the defense will be giving a closing arguments and we'll be giving our closing arguments and she's going to instruct you on the law as you should apply to this case. But I

wanted to draw your attention to a couple of the elements and features of the law that we will be discussing throughout these closing arguments.

Murder. Murder is the killing of another person with malice aforethought. Malice is hatred, ill will or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse and with intent to inflict an injury or under circumstances the law will infer an evil intent. In other words, it's not the dictionary definition of malice, the legal definition. Malice aforethought does not require that malice exist for any particular time before the act is committed. The malice must exist in the mind of the defendant just before and at the time the act is committed. In other words, it doesn't require weeks and weeks of planning it just requires that malice just before the time the act is committed.

Attempted murder. Attempted murder is the attempting killing of another person with malice aforethought which is what we just went through.

The Judge is also going to charge you on self-defense. There are three or four elements of self-defense that second element can sometimes be divided up, sometimes not. But the first element is the defendant must be without fault in bringing on difficulty. In other words, they

can't brought it on themselves. The second element is, the defendant must be in imminent danger of death or serious bodily injury are must have actually believed that he was an intimate danger of death or serious bodily injury. The final elements the defendant had no other probable way to avoid the danger of death or serious bodily injury and to act as the defendant did in this particular incident and I'm going to go through each one of these individually.

The first the State has the burden of disproving self-defense and that burden is carried by disproving anyone element in self-defense. In other words, if we disproved any element, self-defense is out by beyond a reasonable doubt. I give the first element of self-defense was the defendant must be without fault in bringing on difficulty but the defendant's conduct was the type it was reasonably calculated to and did provoke a deadly assault. The defendant would be at the at fault in bringing on the difficulty and would not be entitled to self-defense.

The second element is intimate danger. The circumstances must warrant a person of ordinary firmness and courage to strike the fatal blow and that belief of danger it must be shown that a reasonably prudent person of ordinary firmness and courage would've had the same belief.

And, finally, no other way to avoid the danger. The defendant must have had no other probable way to avoid the

danger of death or seriously bodily injury than to act as the defendant did in this particular instance. I want you to take very specific attention to this. No other probable way to avoiding danger.

And finally the Judge is going to charge you on possession of a weapon during the commission of a violent crime. We must prove the defendant was in possession of a weapon during the commission of a violent crime and murder is a violent crime. Thank you.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Your Honor. May it please the Court?

THE COURT: Yes.

MR. LEWIS: Counsel?

MR. LEWIS- CLOSING ARGUMENTS:

Good afternoon, ladies and gentlemen. As I told you at the very beginning of this case it's tragic. No matter how you look at it is a tragedy for them, the Bennett family. it's a tragedy for them, for the Smith family. What I'm going to ask that you to do is to at least some small way, end of this, end the tragedy that's going on in the life of Terrell Smith.

As I told you at the beginning as well the world is not flat. I thought it was sort of a clever way to kind of express how I would feel personally which is when you're

down in something, when you're staring at certain things, you don't have the ability to step back from. What I mean by that, is to Darryl Bennett, whatever is going on with Brandon Bennett, his son was never at fault in any way, could not be. I understand that as a father I definitely do. Your son can do no wrong. Yeah, you'll get mad at him but he's perfect in your eyes and you can never believe that anything he could've done could've attributed to his own death. It is a tragic. But it's not one that has continually be compatible. To Darryl that world is flat. And I'm going to ask you to do something that if you're able to exclude the emotion throughout this case the evidence suggest and requires which is that Terrell didn't have no choice but to protect himself, to do what he had to do. And I think through his testimony you were able to hear, this is not what he wanted to have happened. If he had the ability to have not had dice in his pocket that day, he would do that. If he had the ability not to have even seen his friend that day or even trip and fallen at work that would've been great because then he wouldn't have visited his friend and wouldn't have had to kill his friend. It would've been a different world. That would've been a better world that everyone in here would've preferred to have lived in.

Now, I do need to say this, this is not a game show.

That was a word that was mentioned yesterday. What I am doing is one of those I'm not trying to make myself sound important but it's one of the most important things that someone can do is which when I say something I'm asking you to consider it not because I'm having fun. It's not fun at all being up here. I'm doing what I think needs to be done to try to protect him and the evidence that they claim has importance. So when they should have done something and they didn't, it's my responsibility to call them out on it. It's not a game show. When he went to play dice with his friend. He thought that was going to be a game. That's again. This isn't. There's nothing in the world that's more important than what you guys are doing right now. Lives have already been changed irreparably. There's no undoing what's already happened. We're stuck where we are but we have the ability, you have the ability, to decide where we go from here. I need to talk to you a little bit about reasonable doubt. This is something that lawyers throw around all of the time but before I get to that I want to talk about the idea of being innocent until proven guilty.

When you came in here and I don't know if you viewed it this way but I certainly do and I've been a lawyer for the past eight and half years. When you came in and you may have looked over and seen Terrell and said, I wonder

what he did. That's not the way we're suppose to look at that. We're supposed to say I wonder what they said that he did. Not to presume he had done something wrong. And hopefully you've been able to listen to the evidence and see that he didn't do anything wrong and he didn't have a choice but to act the way that he did. I also want to talk to you about what beyond a reasonable doubt means. We have different legal standards in the US. The lowest one that I can think of would be is the preponderance of the evidence. If someone wants to sue you and take your money, that's down here. That's all they have to have is preponderance of the evidence. If someone wants to take your kids or to put you in a mental hospital against your will, it's clear and convincing, it's up here. The highest standard that we have is standard that's governing how you all make your decisions. Proof beyond a reasonable doubt doesn't get any more serious than this. This is not a game show.

I want to direct you back to 7:51 a.m. on June 11, 2014. If you believe Mr. Bennett, he repeatedly said that he woke up at five til seven, 6:55. If you believe what he said that's fifty-six minutes after he woke up before the 911 call. Now, I'm not holding him to that. I think that the truth is somewhere in between there. He's probably as close as he could be. But the truth is that it wasn't three to four minutes as he suggested. He's remembering

this as a hurt father. He's remembering this as someone who views the world as flat when it comes to Brandon. It just didn't make sense. That time line does not make sense.

I want to talk to you a little bit about planning a murder or planning a murder and I know that sounds kind of awkward. But I want you to think about it like, through this lens, the time that a person would be most protected is when they're at home with their father. So you're going to choose that time to try to go and try to commit a cold-blooded murder. And even talking about what time of day, it's 7:51 a.m. or 7:45 a.m. at a time when people are getting up. This was a week day. That makes no sense. If your goal is to try and find a time that someone is vulnerable go with 2 a.m., go with 3 a.m., go with any other time but not when they're going to be waking up. The location makes no sense. If your goal is to kill someone why go over when you know their father's going to be. Where uncle Darryl is going to be. That makes no sense at all. If your goal is to murder someone and you'll have the knife when you go back to deliberate , why in the world would you choose the smallest possible weapon you can find. Yes, unfortunately, it killed someone. It's the same reason that Terrell had no choice but to react and fight back to defend himself when it was presented to him but,

that's not what you would choose to go and do this. A butcher knife or a gun or anything else, you will see how small that is. The handle, as the pathologist told you, is longer than the blade itself. You will see. It just doesn't make sense.

You also heard that through Detective Burckhardt and Darryl Bennett that the knife is to believed to have come from the residence. It matches the knives that were there. So in addition to choosing the most awkward possible time, the most awkward possible location, wanted to kill your friend for no reason behind it, you also go without taking a weapon to accomplish the act. It makes no sense. The world is not flat. It's not that simple, as simple as they want you to believe it is. If Terrell's heart had been on murder, if he wanted to kill someone, he would've done it differently. If he wanted to plan something, he would've. And he didn't. He went to see his friend and smoke some weed, hopefully, and play some dice.

I want to talk to you about the bed itself. Now, I know that they're going to bring up and say oh, well because these are stab wounds because the doctor said that often times stab wounds the blood contained inside the body, I agree, yeah. It's true. But not one drop of blood. Not one in the bed where he allegedly was, if you believe the Bennett account of what took place. Not one

drop. From a wound as graphic as it is and I have to discuss it, went all the way through the right arm and also into the chest and another straight through here and another scratch over here. None of which left a single drop of blood on that bed. It just doesn't make sense. In addition, if he's sleeping as they have suggested, their own expert said, that two to three hours before he was smoking marijuana, based on the blood, the toxicology results, and the expert that they presented, he wasn't asleep. He would not have had the cut under his arm if he's sleeping in bed, lying on his back, arms to his sides as Mr. Bennett suggested. In addition, when you look at the photos of the bed, he said that he was sleeping with his head on the pillow, if he's sleeping in that bunk bed with his head on the pillow, the furthest possible thing from someone coming towards the bed to stab him is the right arm. You would have to reach across someone. Certainly, not with your right arm, unless you're going to do it like this. You would have to reach across someone with your left to accomplish that. Again, it makes no sense. There is no reason that, that would believable. It does not matched the injuries that Brandon Bennett sustained.

I want to talk to you about Detective Burckhardt. And I've known him for a series of years and I think that what

we saw was him not wanting to slam shut that in the six plus times that he spoke with Mr. Bennett, he was never told those statements. Think about it like this, if you were told specifically, "I told you I was going to get you." "I told I was going to get you", while stabbing someone in their bed, I would think that there is not a more important fact that makes it in any report. But it didn't. Not a single one of those reports because it was never said. He admitted to you that would've been those of things that I think I would have written down. I understand his hesitation because Mr. Bennett son is dead. It is a tragedy for everyone. That still doesn't mean that, that was what was said. He said that Terrell was cackling, sort of laughing. It just doesn't make any sense. And again it would've been one of those things that would've made its way into one of the innumerable report's. It would've been one of those things that when he had his personal cell phone number and you could called him, he would have done, he would've jotted down. But it didn't happen. What's happening is that Mr. Bennett views Terrell Smith as a monster because that's his job as a father. He has no other way to look at it. That doesn't mean that, that's what happened.

I want to talk to you specifically about the fact that he was asleep between 1 a.m. and in his words 6:55 a.m. so

he could not have possibly have known what was taking place while he was asleep. You've heard a lot of discussion this week about that allege point of entry window even though there are no connections that anything had to do with Terrell at that location. Brandon was awake using marijuana. He could've reached through the window to get something. He could've reached through window to give something. We have no idea why that's there but it doesn't have anything to do with Terrell. You've heard his only interaction with that residence on the east side. The location, did not one of the three crime scene techs that they assigned to this end of location, decided to take a look at it, including the window where he would've knocked. The State would like to make a point about you can't knock on the open window, you can. There's still glass there where you can talk through it. We're talking about a scared seventeen-year-old kid. At the time, was a seventeen-year-old. You saw him today, is a scared nineteen-year-old. I want you also to imagine how he was eight hundred and thirty-three days ago because that's the person that was involved in this confrontation. That was the person who had no choice but to defend himself. I've been there as his lawyer. I've watched him grow. He's got a lot bigger. He's got a lot heavier than he was. He looks older than he does but he still looks like a kid.

In addition, about those screens where they told you about someone else's fingerprints, Rodney Pinckney's fingerprints. In order to even process those they had to remove the screen to process them. But the suggestion would be that he was able to climb through without making any noise whatsoever without waking up Brandon or without waking up Darryl or without alerting a previously awaking Darryl. It just does not make sense. It doesn't. There is no reason for any of this to have happened but for the explanation that was given to you by Terrell. They had no ill will. If they have a motive, they've certainly not told it to me. I have no idea what it is because he was his friend. He did not want to kill him. He did not want to hurt him. He did not want to hurt uncle Darryl. He wanted nothing to do with this and just got scared and responded accordingly. Darryl has a justifiable bias is what I would call it. He did nothing wrong when he went in to fight Terrell. When he saw Terrell fighting Brandon, nothing wrong. If he had killed him he would've done nothing wrong. He kill - - if Darryl had killed Terrell, there's nothing wrong with that because he had the same right to act on what he saw as what was happening to Terrell. That's why Terrell had the right to defend himself against Brandon. It was a horrible situation. It was a tragedy. And it's one that I wish we could all step

back from but we can't. There was no way for anyone to know during all of this that the day was going to be significant. I get that. And if I went over the top of trying to criticize Mr. Bennett about certain details, I'm sorry for it. But again no one knew that this was going to be a big day. It's not anyone plans to go kill somebody on Wednesday, June 11, 2014. So it's hard to remember specific details about what happened. I get that. I do. But it still has to make sense with the evidence that you been provided, it still has to make sense. Common sense. As you look through it does this make sense. That's how someone would choose to try to kill someone. You heard from Terrell. You heard his explanation of what took place. That he was going to hang out with a friend that he had hung out with fifty times before at a residence that he had been at before where he played video games, where he had eaten, where he was welcomed. He did not have any problem with Brandon Bennett. He did not have any problem with Darryl Bennett. He did not want to hurt anyone.

I do also need to address that if he had been asleep it would've made more sense as graphic as it is that Brandon would've had more injuries. If you were sleeping there's no need to talk to someone and to tell them I told you I was going to get you. You just stab him again and again and again until you accomplish that goal if that was

your goal. It's not the goal. It's not what happened. You would've seen more injuries than what we're dealing with here had he been asleep. And as I said already you already know that Brandon wasn't asleep. Because the testimony of the doctor and it just didn't make sense and in addition to hearing from Terrell.

I want to talk to you about the fact that they were teenagers. It's different when you're that young. We as a society judge teenagers differently. At the time, Terrell couldn't own a gun. Brandon could've. Terrell couldn't vote. Brandon could've. Terrell couldn't see a rated R movie without a parent or an adult guardian. He couldn't buy cigarette. Neither one of them could drink alcohol. Neither one of them could rent a car. There's a reason as we as a society look at it that way is because they don't think about things the way that the rest of us may. It's easy for me to sort of step back from it as a, I'm thirty-four now, a thirty-four-year-old lawyer and say oh, yes, he should have done this differently or he should've done that differently. It's easy for me to stand in judgment of him but I wasn't the one who was scare terrified. I wasn't the one who had a knife pointed at me by my friend. I wasn't the one who had to fight for my life against two people. Darryl called him a coward for running away. He ran away because he didn't want to be there. He ran away because he

didn't want to hurt anybody. He wasn't there to kill anyone. He was a scared seventeen-year-old kid. He's a scared kid who made some stupid decisions. He thought that by destroying his clothing that would somehow help put this behind him or that by smoking marijuana and sticking his head in the sand that it would all go away. That's the way of thinking of a child. It's not true. He knows it. And he has to think about the fact that he killed his friend every day for the last eight hundred and thirty-three days. He did not want to do that.

Murder as they talked to you a few moments ago is killing with malice aforethought, ill will, hatred. Self-defense in the case, he did not have any hatred or ill will towards his friend. He did not want this to happen. The evidence shows this. The story that they're presenting to you just does not make any sense. Why out of the blue you just go and kill your friend. And they'll say, we don't have to prove motive but I wish we could. The truth remains, that's part of malice. That's part of hatred and ill will. You don't just kill someone randomly for no reason. The only reason this happened was self-defense. It's the reason it makes sense. It's the reason is consistent with the evidence.

Because of that, ladies and gentlemen of the jury, I asked that you render the only verdict that's consistent

with the evidence, is not guilty on all charges. Thank you.

THE COURT: Mr. Simpson?

MR. SIMPSON: Thank you, Your Honor. Ms. Lewis?

MR. LEWIS: Yes, sir.

MR. SIMPSON- CLOSING ARGUMENTS:

Ladies and gentlemen of the jury, I'd like to start by thanking you. I, by myself today, is in complete disbelief that it's only Wednesday. It feels like a very long week. We appreciate your time this week. We understand that you all have lives and families that you have taken but whatever decision you come to in this case I think one thing everyone in this room will agree on is how important a job you do this week is to everybody involved. Thank you.

I am so thankful at this moment that Ms. Lewis chose to a sort of a theme of his closing arguments sense and common sense. Because the truest sense of the word and that's what a jury is. We ask you to come in here and not check your common sense at the door and sit here and think all week physically. We ask you to bring your common sense in here because that is after all why you are here. Common sense. Randomly selected members of the community to come in and make a judgment. And so that's gonna, ah, I'm going to use that as well as sort of a theme of mine, to use your

common sense. Because when you take the story we have presented to you and the testimony we have presented to you and do what any logical mind would do and match it with the evidence it makes perfect sense. What doesn't, is the outlandish story of the a.m. craps game that broke out that Mr. Terrell told us but we'll take this piece by piece.

What do we even call, what words do I even use to describe what Darryl Bennett went through on that day? Darryl Bennett woke up in his home which is I think we all agree a very small home and that's why showed you the video. I think it's even better than this diagram. The video sort of gives you a lively look of the home and he woke up here, feet, feet away from his baby boy in the bedroom here. He woke up as he told you, as he approximated as best he could, around 7 o'clock. You heard no testimony, yeah, I looked at the clock, it was about seven. He woke up in the morning and as he explained to you he gave a time as the best he could. We don't hold them to that time like a clock like a computer. He woke up early. He walked, just feet, into the kitchen and looked in on his baby boy and at this moment his baby boy is sleeping. Asleep peacefully, pillow is here and, believe me, we'll come back to this, pillow is here, body this way, asleep. Goes into the kitchen thinks about fixing something for breakfast. Things about waking up Brandon.

Decides to walk in and get ready, okay. At this point, which makes more sense, someone quietly with ill will trying to be quiet and trying not to get caught slips, into the house or as Mr. Smith would have you to believe, Brandon wakes up, Brandon, a young, bodacious guy, close with his father, would always say, "good morning, hey pops, what's for breakfast." Brandon gets up and walks here, feet, look at the video, feet, away from his father, walks by his father. He's not hiding anything. Opens the front door and says, "hey, Terrell or hey what's up, man, come on in." "I'm glad you came by." "Come in." Walks on by an Darryl sees nothing. This themes that Mr. Lewis used, sense. What makes sense? A person at this point trying to sneak in because he's trying to do something that slips through pass his attention. A person sneaking or this whole big conversation of a friend coming over to play craps in the morning. Which makes more sense? A person sneaking. A person slipping in makes more sense. Darryl Bennett set right here for what he tells you is, three to five minutes, his best guest, three to five minutes. Yeah, Mr. Lewis is right if we're going to ridiculously and absurdly hold him to that 7 o'clock. If we're going to say, sure you had a bad day, but you should remember the exact time you woke up. That time line doesn't work that good, okay. But that's not how your brain works. That's

not how my brain works. And that's certainly not how Darryl Bennett's brain worked on that morning. He got up early and gave his best guess of the time. But what he told you from the stand was, walked in, saw my son, walked back, three to five minutes and because he so close I hear sort of shuffling of feet. He is that close just one wall between them to hear shuffling of feet. Three to five minutes what doesn't he hear. What are the many things he doesn't hear? His son talking with his friend. Now, was the testimony that they were just in the room talking quietly? No. The testimony was they're rolling craps on the hardwood floor, throwing dollar bills, gambling, laughing, talking about the game, that's the asserted testimony that you heard from Mr. Smith. Well, I submit to you that a distance you can hear feet shuffling, he would've long heard during that time, this impromptu craps game at 7 o'clock in the morning that Mr. Smith told you about. But he didn't hear that because it didn't happen. Three to five minutes he walks and it appears, and sees his son being stabbed on the bed. He acts like any father would, goes to help his son and finds himself fighting for his own life. I told you I would get you, is not self-defense. I'm going to kill you too, motherfucker, is not self-defense. And, however, and let me stop and say this, Mr. Lewis is a kind person, he's a good lawyer, and a smart

person and he's doing his job but, however, artful ways he wants to phrase it, he is saying that Mr. Bennett is a liar. He's saying don't believe those, that those words are spoken because Mr. Bennett is a liar and I don't think any of you think that Mr. Bennett is a liar. He wants you to nitpick a man's statement that was given literally after he defended his own life, after he witnessed his son being stabbed, he was literally drug in, at that moment, to a police station not knowing how his son was doing, dragged into a room and interviewed and he wants you to sit here and say, oh you've got a time that might be wrong, oh you may have left the detail out. I mean, how dare we, how dare we nitpick that apart. Now, what he says is, but there were other meetings. But you heard from Detective Burckhardt. There were other meetings with other purposes. Let me get a swab from your mouth. Let me -- let me ask you about this piece of evidence and can you explain this to me. The purpose of the later meetings wasn't to get feedback that but I only want to adopt what Mr. Lewis says because really the point of that is, okay, he missed some details, why did he say it at a later time? Why isn't he given an opportunity at a later date to give his whole story? Well, ladies and gentlemen, he was and he is given that opportunity to sit right here and tell you his whole story. And to be clear, the testimony was that the first

comment was not said on the video of that horrible morning that he's interviewed but the second comment was. Right from the moment this happened his story was that I'm going to kill you too, motherfucker. That was a comment that he shared immediately after this event and that is not self-defense. I think when you really start to scrutinize the injuries here that the story that happened becomes obvious and prove beyond a reasonable doubt.

And what I want to start with is to focus on the injuries that Brandon Bennett suffered. Because you heard the story from Terrell Smith, right. You heard his story that right-handed Terrell Smith swung that knife in self-defense as he was approached by an attacker, and if I could get my co-counsel, try this in the jury room. Try swinging and making aggressive action with your offhand. I'm right-handed, it just feels strange. You're going to use that dominant hand. And when he was able to free that knife he was going to stab in self-defense is what he said. And so a right-handed person stabbed in self-defense, right. Here's the problem, this is Charlie's left-hand. A right-handed person would have stabbed him in the left, in the left-hand. That's not where it is. It's over here. The second problem - - -

MR. LEWIS: Judge, I have to object briefly. I'm sorry. May I approach?

THE COURT: You may.

(Whereupon, a bench conference was held off the record)

THE COURT: All right. Ladies and gentlemen, please remember as I indicated to you what is contained in the arguments is merely the contention as to what the evidence has shown you. Ladies and gentlemen, if you, during your deliberations, require any of the testimony to be replayed back, we'll bring you back in and you can hear the testimony. Mr. Simpson, you may continue.

MR. SIMPSON: Thank you. Thank you, Your Honor. Terrell Smith told you that they were two stabbing, correct? That he had to do it twice. The first, in order for it to be self-defense, was in conjunction with the choking. He's a right-handed person in conjunction with the choking that would come to the left arm this is on the right arm. Okay. Later his explanation was to you, while fighting with the dad, he saw from his periphery as you recall that Brandon Bennett got up and was coming back, it was at that point, if I could have co-counsel again, that he testified I may - - I want to do this action because I made him do it a couple times on purpose. It was at that point with Brandon in the periphery that he made again same hand, right hand, a wild swinging right stab line which hit him in the chest. It was Terrell Smith's testimony that the first stab hit him in the arm and then the second stab

hit him in the chest. And then the second stab, he said a wild swinging motion of his right hand to the chest.

Now, let's look at the injuries. The stab wound to the chest goes directly into the chest. Not no wild stab wound to the side, directly into the chest. The other injury is on the completely wrong arm. On the completely wrong arm that it would be if you were to accept Terrell Smith's. So let's ask ourselves that question, how does that injury with a right-handed attacker get to that part on the correct arm, the right arm? And it get's there, if a person is lying on supine, slightly on their side, not in an awkward way as Mr. Lewis pained so hard to act out but a person's supine, lying down, lying on their side as we often do when we sleep with the right arm facing up and the right hand attacker coming right down and that was attacked with some force. Ladies and gentlemen, this is the knife. This is how the long the knife blade is. What did that injury to the right arm do? It went all the way through an arm and then into the chest. A blade this long went all the way through an arm and into a chest. This blade was buried straight down in a person's arm. Not swung wildly in a self-defense, that is coming down and that blade is buried down and where is the arm that it hits, if it goes through the arm and then into the chest on a blade that long? Rested. Not up and choking. Not attacking on the

side. Mr. Lewis says, it just doesn't make sense if he was laying there he would've been attacked, stabbed many, many times. I'm just going to take a guess that a stab wound through the arm and into the chest cavity might wake a sleepy person. He says it doesn't make sense. I say it makes perfect sense that a stab wound would wake a person as described by Darryl, wide-eyed, afraid not knowing what's going on. And when the stab wounds went into there, naturally he rolls over, what's the next thing, the driving of a blade straight into the chest. Not as described by Terrell Smith. He stood right here in front of you making this wild sideway motion with his right hand. That entry wound does not go into the side, that entry wound was buried into the chest and that how a weapon that size becomes a murder by driving force down into a body. But there's no blood on the bed, can't keep this out, there's no blood on the bed. Mr. Lewis says, oh, well they'll try to explain that away through science and to that I say, yes, absolutely, we will. We will explain that away through science. Because you heard from the person whose job it is, whose career it is to study these things. How bodies react to force. How wounds affect people. He told you in a cut, in a slice injury, boy, bleed. We all know that. We all cut our fingers and in a slice made you believe, we bleed a lot. But in a puncture, in a stab, the

elasticity of the wound and the length of the wound has a way of sealing up, sealing up. And if you don't believe the science, if you're not going to believe a person, I hold this blade to show you. Both sides say that this blade plunged into a person at least twice, right? This is the quote, bloody knife that we know has - - if you want to see an example of this in action, where's the blood? That's how much the stab wound bleeds. Again this is been tested. This has Brandon Bennett's blood on it. But you don't see it just like you don't sit on the bed. Now, when you do see it as the doctor says, once treatment is done and chest impressions and those things that forces the blood out through the wound and that's why you see the blood on the floor and the blood dragging and the blood where he was treated. But as he trained scientist told you at the moment that happened you're not going to get a lot of blood. And also as I just demonstrated for you when that was plunged into the arm there was no exit wound on the bed. When it was plunged into the chest there was no through and through, bleeding through to the back of the sheet. And secondly, under everybody's version of the facts, he moves. Because with his dying efforts Brandon Bennett wanted to save his father and might have and might have with his dying effort, stabbed twice on the bed and quickly gets up and that's why there's no blood on the bed

and it does make sense. It makes sense from the scientist that explained it to you.

No defensive injuries to Brandon Bennett or Terrell Smith. Why no defensive injuries to Terrell Smith? Because he was defending himself. Why no defensive injuries to Brandon Bennett? Because he wasn't defending himself either. This is what things look like when you're defending yourself from a knife attack, okay. That thing is sharp. Slashes. Cuts. When you defend yourself you end up with things like this. The only person who defended themselves from a knife attack in this case is Mr. Bennett. And while I'm on the subject of Mr. Bennett, some things came up near the end, I heard rumors about Mr. Bennett is a night manager of the hotel and he's never been in trouble his entire life, okay. Mr. Bennett is not a scary person. The entire defense case is based around you doing one thing, and again, Mr. Bennett is a kind person and he's a person who is good at his job, he has to be because - - but you - - their entire defense is based around you not believing this man. You can't believe him and find self-defense. "I told you I would get you." "I'm going to kill you too motherfucker," that's not self-defense under any way, under any view. So you are put in a position where you have to take the testimony of two people and you have to decide which one you believe. It's hard. It's a hard

thing to do. Let's talk about some ways you can do that, okay. As you'll be instructed one way you might do that is look at this, what is called bias or motive or reason to lie, okay. Mr. Bennett the grieving father does not have any reason to lie especially on a day, this whole day, where he experienced this, you know, convicting the wrong man gives him nothing. He has no reason to lie, okay. Terrell Smith has the most compelling reason to lie that I can even imagine. The most compelling. Not only does he have the most compelling to reason to lie ever, it might be in everything he does, I like to have a strategy with everything I do. And so he comes in here knowing what the evidence is, knowing and believe me Terrell Smith took that stand knowing that we can put him in that room so he had to put himself in that room and like everything, I like to have a strategy with everything I do. I like to have a strategy to win and he's had that in this case. No impromptu craps game took place on a hardwood floor in that bedroom with Mr. Bennett feet away and him not detecting it. It's impossible. He detected the shuffling of feet coming out of this place. The injuries are not defensive injuries. They are direct stabs with a knife, as if, to a supine body. The clothing, you know what doesn't make sense, when a friend comes over, hanging out, having a craps game, moving around and everything and you never put

pants on? I mean, I have close friends, you know, I don't mind if they see me naked or in my underwear but I'm not just hanging out with them playing craps or I guess there alleging this forty-five minutes in my underwear. I sleep in my underwear though. And if I could go back to determining who's telling the truth and when you think about Darryl Bennett's testimony let me let you consider this, when the truth hurt our case he told anyway. I'm going to say that again because I want you to consider in the jury room. When the truth hurt our case he told anyway. That screen was cut. We show you the evidence of the dog house being moved right under the window that screen there was cut. If he was in the calculating mind that they want you to believe what does Darryl Bennett the liar said, that screen wasn't cut. But what did he say in the case. He says, look I know what that cut screen looks but that screen was cut before. That screen was cut months before so don't consider that, right. Why didn't he just lie about it? Well, because is not a liar. Because he's telling the truth. When asked about the hat and he's a smart man, I'm sure he knew the best thing he could've said or be a liar, was I noticed that the person that stabbed my son was wearing a Chicago White Sox baseball hat. Is that the testimony he gave? No, he said, "look I can't tell you if he was wearing that hat or not." It helps our case if

he could say he was wearing a hat but he tells you he wasn't wearing the hat or he doesn't know. When the truth hurts our case, he tells it anyway. The name, later when he went out on the street to talk to people, got some information, looks at the photos on his phone, got the name Terrell Smith, he's a smart man it's better for our case if he calls Detective Burckhardt and says, Detective, I told you this morning I knew this guy well I just remembered his name. His name is Terrell Smith. That's better for our case. It doesn't confuse him going out to the street and talking to other people in bringing that level of confusion in. That hurts our case. But when the truth hurts our case, he tells it anyway. It's these little things how you determined if a person here is telling the truth. Are they adopting things that hurt the case? Are they admitting things that hurt their own side, is a better way of putting it? Or are they explaining things away that hurt their own side? Like I destroyed my clothes. I destroyed everything that had to do with this. That's what a person is trying to get away with something does and you all know that. You bring that knowledge in here. A person doesn't say this is just a dramatic event I've got to destroy the clothing I had on. That is preposterous. That is as preposterous as an eighteen-year-old playing a craps game at 7 o'clock in the morning. People destroy their clothes because they're

trying to get away. People flee the city when they're trying to get away with something. When they go they did something bad. People flee to Alabama because they know they did something bad and then later that he used code names for everybody because they don't want to be snitches and because they don't take oath seriously.

There are two stories and it is up to you to determine which fits the evidence. So scrutinize the evidence because the wild story of an impromptu craps game that couldn't be heard from feet away, doesn't make sense. A person sneaking into the house maybe not being detected, does. When you look at the injuries none of those injuries thrusting stab wounds straight into the chest, stab wounds burying that blade so deep that it goes through an arm and into the side of an arm that's down by the side, does not fit the story itself. The evidence fits the story is murder.

We appreciate, truly appreciate, that it is always hard to sit in judgment of another human being especially when they've got years later and try to explain away a wild story of their actions. That's tough with any human. It's especially tough with someone of Terrell Smith's age. We appreciate that. We're not here asking for revenge and we're not here asking you to enjoy what your community is asking you to do. But what you have to look at and that's

to look at what this evidence tells you to do and to look at what your defense is doing and come to the correct decision no matter how emotional difficult that decision might be. Punishments are up to the Court. It is your job to look and think about the testimony that you've heard and the evidence that you've seen, and things that can't be controverted like the injuries that this person suffered, and make the decision. What makes more sense? That this man concocted the story for no apparent reason or that Terrell Smith a person who has run away, fled, never went to the police, moved to a different state, had to be hunted down, comes here today, this much longer, and listen to all of the evidence being presented, craft a story - - -

MR. LEWIS: Objection, Your Honor.

THE COURT: Move on, Mr. Simpson.

MR. SIMPSON: We ask you only to do your duty of you to consider this evidence and come to the only conclusion that, that evidence points to no matter how much painfully it may be, find the defendant, Terrell Smith, guilty as charged. I think you sincerely for your time and patience here.

JURY CHARGE:

THE COURT: All right. Ladies and gentlemen, I am now going to instruct you on the law applicable to this case. I remind you that during this trial you and I have

had certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case and I have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the competent evidence before you. You are to consider only the testimony that has been presented from the witness stand, the exhibits which have been made part of the record in this case as well as the stipulations of counsel. I have the additional duty to charge you the law applicable to this case. As the presiding judge I am the sole judge of the law in this case. It is your duty as jurors to accept the law and apply the law exactly as I state it to you now. If you have any idea as to what the law is or what the law ought to be and it does not agree with what I'm about to tell you, you must abandon your own idea of the law because you are sworn to accept the law and apply the law exactly as I stated to you now.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judges of the facts. A trial judge may never make any comment regarding the facts in this case. Do not think that anything that I have said or done throughout the progress of this trial that I have the opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case.

As jurors it is your duty to determine the effect,

value, and weight and the truth of the evidence that has been presented throughout this trial. The indictments before you charge the defendant with murder, attempted murder, and possession of a weapon during the commission of a violet crime. I remind you the fact that the defendant was arrested, charged and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case nor does it create any presumption or inference of guilt. The document is simply the formal written instrument which contains the charge made against the defendant. It is the formal document by which this case is brought into court. Just as the indictments in this case are not evidence any terminologies or labels used to refer to individuals involved in this case cannot be considered as evidence. For example, the use of the words defendant and victim are merely formal labels and may not be considered by you as evidence. The indictments in this case allege several different offenses against the defendant. The charges are, indictment 2014-GS-10-5999, murder. Indictment 2014-GS-10-6000, attempted murder. Indictment 2014-GS-10-6001, possession of a weapon during the commission of a violet crime. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it. You will be asked to write a separate

verdict of guilty or not guilty for each charge, Mr. Foreperson. As to GS-2014-GS-10-6002, which was a true bill indictment for burglary in the first degree, the Court has determined that, that matter is not before you at this time. Ladies and gentlemen, please do not speculate as to what happened to that indictment. As I've indicated to you the three remaining indictments must be decided separately on the evidence and the law applicable to it or influenced by anything else. The indictment, excuse me, the defendant has pled not guilty to each indictment. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. It is an important rule of the law that the defendant in a criminal trial no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond reasonable doubt. This presumption of innocence does not end when you begin your deliberations but it accompanies the defendant throughout the trial until you reach a verdict of guilt based upon evidence satisfying you of that guilt beyond a reasonable doubt. The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it was only necessary to prove a fact

that is more likely true than not true such by greater weight or preponderance of the evidence. In criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. In criminal cases the law does not require proof that overcomes every possible doubt. If based upon your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant benefit of the doubt and find him not guilty.

There are two types of evidence that are generally presented throughout a trial. Direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact it does not require deduction. Circumstantial evidence is proof of the facts, a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of

the defendant beyond a reasonable doubt. If the circumstances merely portrayed the defendant's behavior as suspicious the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Necessarily you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze the facts and evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of the witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness, you may believe a part of a testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness and its entirety or reject the testimony of the witness and its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the manner and appearance of the witness while on the witness stand.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or to conclusions. An

exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert in some art, science professional or calling may state an opinion as to a relevant and material matter in which the witness does claim to be an expert and they also state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight you think it deserves. If you decide that opinion of an expert witness is not based on sufficient education or experience or if you conclude that the reasons given in support of their opinion or not sound or that the opinion is outweighed by other evidence you may disregard the opinion entirely. An expert witnesses testimony is to be given no greater weight than that of any other witness simply because the witness is an expert. You are not required to accept an expert opinion even though it was not contradict. There has been evidence presented that a witness made prior statements which are not consistent with the witness's testimony here in court. You may decide and use this evidence whether to believe this witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony given here in trial. If a witness has shown to

knowingly testified and truthfully concerning any material matter you may consider this in determining whether to trust the witness's testimony as to other matters. You may reject all testimony of that witness or give all of or part of the testimony the weight that you think it deserves.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury by the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. The law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring the intent was present. It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other fact taking into consideration the acts of the parties, and all the facts and circumstances of this case. Criminal intent is a mental state. It is a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed. Criminal

intent can arise from action or a failure to act. It may arise from negligence, recklessness or in indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

Mr. Smith is charged with the murder of Brandon Bennett. The State must prove beyond a reasonable doubt that the defendant killed Brandon Bennett with malice aforethought.

Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just, cause, or excuse and with the intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exist for any particular time before the act is committed. But malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent in the act.

Malice aforethought may be expressed or inferred. These terms expressed or inferred do not mean different kinds of malice but merely the manner in which malice may shown to have exist. This is either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words

which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying and wait for a person or any other acts of preparation going to show that the deed was within the defendants mind would be expressed malice.

Malice may be inferred from conduct showing a total disregard for human life.

Mr. Smith is charged with the attempted murder of Darryl Bennett. In order to prove this crime, the State must prove the defendant attempted to kill Darryl Bennett with malice aforethought either expressed or implied. Again malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law infer an evil intent.

Mr. Smith is charged with possession of a weapon during the commission of a violent crime. The State must prove beyond a reasonable doubt that the defendant visibly displayed a knife during the commission of a violent crime. A knife means an instrument, a tool with a sharp cutting blade whether or not fasten to handle which can be used to inflict a cut, slash, or wound. In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the

defendant guilty of either committing a violent crime or attempting to commit a violent crime. Murder and attempted murder are classified as violent crimes under the laws of the State of South Carolina. The State must prove beyond a reasonable doubt that the weapon furthered advanced or helped in the commission of the crime.

Mr. Smith has raised the defense of self-defense. Self-defense is a complete defense and, if it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt, and that burden is carried by disproving anyone of the four elements by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, you must find the defendant guilty. The following elements are required to establish self-defense.

First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to, and did, provoke a deadly assault, the defendant would be at fault in bringing on the difficulties and would not be entitled to an

acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in intimate danger of death or serious bodily injury or that the defendant actually believed he was in intimate danger of death or serious bodily injury.

If the defendant was actually in intimate danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he was in intimate danger of death or serious bodily injury, it must be shown that a reasonable prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant actually was, or believed he was, in intimate danger of serious bodily injury or death, you should consider all of the facts and circumstances surrounding the crime, including the physical condition and the characteristics of the defendant and the victim.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonable prudent person of ordinary firmness and courage would have had that same belief. The defendant has the right to act on appearances

even though the defendant's belief may be mistaken. It is for you, the jury, to determine and to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and could have been felt by an ordinary person in the same situation.

Words accompanied by hostile acts may, depending upon the circumstances, establish self-defense.

The size, age, and weight of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense in the amount of force needed.

The final element of self defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

The defendant had no duty to retreat if, by doing so, the danger of being killed or suffering serious bodily injury would increase.

Ladies and gentlemen, I am now going to go over the verdict form with you. Mr. Foreman, it is your responsibility to complete the verdict form. Ladies and gentlemen, there's absolutely no significance to the way these things appear on this verdict form. It's just simply that something has to go on there first. In the Court of General Sessions indictment 2014-GS-10-5999, 2014-GS-10-

6000, 2014-GS-10-6001, the State of South Carolina versus Terrell Smith. As to 2014-GS-10-5999, the indictment for murder, we the jury find the defendant, Terrell Smith, not guilty or guilty.

As to 2014-GS-10-6000, the indictment for attempted murder, we the jury find the defendant, Terrell Smith, not guilty or guilty.

As to 2014-GS-10-6001, possession of a weapon during the commission of a violet crime, we the jury find the defendant, Terrell Smith, not guilty or guilty.

After you have completed this verdict form and you have reached a unanimous decision, meaning all twelve of you must agree on each charge. You will sign it, Mr. Foreperson, date the verdict form and you will knock on the jury room door indicating to the bailiff that you have reached a verdict. We would then receive you back into the courtroom.

Mr. Foreman, you do not read the verdict form. I know sometimes the foreperson is worried that they will have to publish the verdict but I will do that so do not worry about publishing the verdict when you return.

Ladies and gentlemen, this is the last time that I say this to you, do not begin your deliberations. Do not begin discussing this case amongst yourselves. We'll gather the verdict form and the evidence that goes back with you and

once we have done that the bailiffs will indicate to you when you may begin your deliberations. To my alternate, this concludes your service to this case. However, I am going to keep you until all of the evidence and the verdict forms have gone back to ensure that all twelve are able to continue their deliberations. Is there any member of the first twelve who, for whatever reason, feels at this time you would not be able to complete your deliberations, if so, please stand?

(Whereupon, no one is standing)

THE COURT: Thank you. All twelve have indicated that they are able and willing to continue and begin their deliberation process. Mr. Foreman, please go back. Please rise for the jury.

(Whereupon, the jury exits the courtroom at 3:51 p.m.)

THE COURT: Thank you. Please be seated. Any objection or correction to the charge as read, from the State?

MR. PATRICK: No, Your Honor.

THE COURT: From the defendant?

MR. LEWIS: None, Your Honor.

THE COURT: All right. We will be at ease. Please just one more time come look at the verdict form. Mr. Lewis, come look at the verdict form one more time.

(Whereupon, both counsels complied)

BAILIFF: All rise for the jury.

THE COURT: Please rise for the jury.

BAILIFF: All jurors are present and seated, Your Honor.

THE COURT: Thank you. Please be seated. Madam Clerk, excuse me, Mr. Foreman, I understand you have reached a verdict. If you'll please hand the forms to the clerk. Thank you.

(Whereupon, the foreman complies)

VERDICT:

CLERK: The State of South Carolina, County of Charleston, The State of South Carolina versus Terrell Artieth Smith, defendant, as to 2014-GS-10-5999, murder, we the jury find the defendant, Terrell Artieth Smith, guilty. As to 2014-GS-10-6000, attempted murder, we the jury find the defendant, Terrell Artieth Smith, guilty. As to 2014-GS-10-6001, possession of a weapon during the commission of violent crime, we the jury find the defendant, Terrell Artieth Smith, guilty. I certify and the foreperson as signed, Your Honor.

THE COURT: Correct. Thank you. Anything further requested of the jury, Mr. Lewis?

MR. LEWIS: Judge, I'd ask that they be polled?

THE COURT: Okay. Please have seat. Ladies and

JUROR 197: Yes.

CLERK: Is it still your verdict?

JUROR 197: Yes.

CLERK: Your Honor, the jury has been polled. The verdict stands.

THE COURT: Thank you. Anything further, Mr. Lewis, from the jury?

MR. LEWIS: Not in the presence of the jury.

THE COURT: All right. Thank you. Anything required of the jury, Mr. Patrick?

MR. PATRICK: No, Your Honor.

THE COURT: Ladies and gentlemen, this completes your service to this case. It's also completes your service for the week. If you would please go back to your jury room. I'll be there in just a few moments to thank you for your service to Charleston County. Please rise for the jury.

(Whereupon, the jury exits the courtroom at 1:53 p.m.)

THE COURT: Thank you. Please be seated. And we will prefer sentencing, is that correct, Mr. Lewis?

MR. LEWIS: Yes, Your Honor. We need to make an oral post trial motions, motion for a new trial, renew all previous objections and motions based on the grounds that I gave you at that time.

THE COURT: Any response or argument to renew all

of the motions, Mr. Patrick?

MR. PATRICK: Nothing in addition to what's already put on the record, Your Honor.

THE COURT: Okay. Thank you. Mr. Lewis, your arguments are noted for the record. I haven't heard or seen or I have not observed anything from the jury at this point that would cause the Court to reverse any of the previous rulings. Note your exceptions to my ruling.

MR. LEWIS: Thank you, Your Honor.

THE COURT: Anything further?

MR. LEWIS: No, Your Honor.

THE COURT: Do we want to go ahead and set the sentencing or do you want to leave that open because you're going to have some experts to come in, correct?

MR. LEWIS: Yes, Your Honor. A series of experts. I think we've already done a finding for it and actually - - -

MS. EHRLICH: And, Your Honor, just so the Court's aware, we're having a very difficult time with mitigation experts with these in other cases and so there's a lack of people available to assist with mitigation which could cause things to take longer than they normally would as far as finding experts to assist us.

THE COURT: I'm going to set it and then we can set it before but I'm not going to let it go. The last day

that I will be in Charleston County for the year is December 12th at 9:30. So I am going to set that for the tentative hearing. We can have it before then but that way we do not let this on into a new year without some sort of discussion about the sentencing. All right. So December 12th, that is my non-jury week, December 12th at 9:30 a.m and I'm not sure if you'll be in Charleston. Thank you. Any objection or comment on that date?

MR. PATRICK: No, Your Honor.

THE COURT: All right. Thank you. Good luck to you all. I'll see you all at 9:30. Thank you.

(CONCLUSION OF THE FOURTH DAY OF TRIAL ON SEPTEMBER 22, 2016)

STATE OF SOUTH CAROLINA	GENERAL SESSIONS COURT
COUNTY OF CHARLESTON	CASE NO. 2014-GS-10-05999; 06000; 06001
STATE OF SOUTH CAROLINA, Plaintiff, vs. TERRELL ARTIETH SMITH, Defendant.	Transcript of Record Date: May 9, 2017

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B E F O R E:

The Honorable Kristi Harrington

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Denise J. Lauder, RPR

Ninth Judicial Circuit

A P P E A R A N C E S

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(The following proceedings were held May 9, 2017, Charleston County Circuit Court, 9:50 a.m., in front of Judge Kristi Harrington.)

(COURT EXH. 1, Sentencing Memo, was marked for identification.)

(COURT EXH. 2, Defendant's motion, was marked for identification.)

(COURT EXH. 3, Defendant's motion, was marked for identification.)

(COURT EXH. 4, Miller sentencing, was marked for identification.)

MR. PATRICK: Your Honor, Charles Patrick. State v. Terrell Artieth Smith. The defendant was convicted on November 2, 2016, of murder, attempted murder, possession of a weapon during the commission of a violent crime. Appearing on behalf of the State was myself, Charles Patrick, and Chad Simpson. For the defense was Ben Lewis and Megan Ehrlich.

Sentencing was deferred at the request of the defense made prior to the commencement of the trial. The defendant was a juvenile at the time pursuant to Aiken v. Byars, 410 FC 534, 725 SC2nd 572, 2014.

The sentencing hearing was initially

set for December 16th. It was continued at the request of the defense until today. Your Honor, because we have never done something like this before, we anticipated being mostly responsive to their putting up a witness as well as a presentation. We will -- we're prepared to argue first or second at your discretion.

THE COURT: Is the victim present? The victim's family been notified.

MR. PATRICK: Yes, Your Honor.

THE COURT: And everyone is present. And what is the State's position as to sentencing?

MR. PATRICK: We leave sentencing in your discretion, although we do believe the minimum is not appropriate in this case, but you were there for the trial, Your Honor. We leave that to your discretion.

THE COURT: All right. Mr. Lewis.

MR. LEWIS: Thank you, Judge. If I may, we had two previous filings that the Court was provided, a motion to preclude LWOP for juveniles and a motion to declare it unconstitutional, the South Carolina statute for murder as it applies to juveniles.

Ms. Ehrlich is prepared to discuss that

first before I begin if you would like to hear from her. I think it will be very brief.

THE COURT: All right. Mrs. Ehrlich.

MS. EHRLICH: Your Honor, we filed two motions; the first was a motion to preclude life without parole as a punishment, as well as a motion asking the Court to declare the mandatory minimum required under the murder statute to be unconstitutional. We filed both of those, and I've had them premarked as a Court's Exhibit, and I would ask that the Court admit those into the record for purposes of this hearing.

THE COURT: And you've marked those as one exhibit.

THE COURT REPORTER: There's actually four exhibits.

MS. EHRLICH: First, with regards to the constitutionality of a life sentence as it applies to juveniles. Our position would be that life without parole, any sentence for any juvenile defendant, including Terrell Smith, is disproportionate and would constitute cruel and unusual punishment that violates the Eighth Amendment of the United States Constitution, as well as Article I, Section XV of the South Carolina

Constitution.

As I indicated, we previously filed that motion. It's the motion to preclude life without parole as a punishment. That was served on the Solicitor's office as well as provided to Your Honor. That's been marked as an exhibit and lays our argument out in great detail.

Briefly, I will just say that given the transient nature of youth and a juvenile's capacity for change, we believe that life without parole is a disproportionate and a cruel and unusual sentence for any juvenile, including for Terrell Smith.

In addition, there is an increasing number of states that have abolished life without parole sentences for juvenile offenders including homicide. And so, again, when looking at the 8th Amendment and looking at whether or not something violates the evolving standard of decency, sentencing Terrell given that change in our country and that movement would be in violation of those evolving standards of decency.

Obviously, we recognize that the Supreme Court of the United States and the Supreme Court of South Carolina have yet to say that life without parole for juveniles under all

circumstances would be an unconstitutional punishment, but we believe that's the next clear logical step as these cases continue to go to court; and we would ask that Your Honor declare that life without parole for any juvenile defendant, including Terrell Smith, be unconstitutional.

THE COURT: I deny that request. Tell me -- remind me just for the record how old was Mr. Smith when this crime was committed.

MS. EHRLICH: He was 17.

Moving on to our second motion, that's the motion objecting to a 30-year mandatory minimum sentence and declaring the murder statute as it would apply to juveniles to be unconstitutional. Our position is that 30-year mandatory minimum for murder under South Carolina Code Section 16-3-20(a) as applied to Terrell Smith who was a juvenile at the time of the crime, age 17, violated the Eighth Amendment to the United States Constitution, Article 1, Section XV of the South Carolina Constitution.

Again, we filed that motion, the motion to declare that code, the mandatory minimum, unconstitutional, as it applies to juvenile

defendants. It was filed and served on the State as well as provided to Your Honor. It's been marked as a Court's Exhibit and fully lays out our argument in detail.

As stated in the motion, recent United States and South Carolina cases established that juveniles are constitutionally different from adults for sentencing purposes and that any punishment in cases involving juvenile defenders must take those differences into account if it is to be proportional to both the defender as well as the offense.

Accounting for those differences requires recognition, the penological justification that would support lengthy incarceration and lengthy mandatory minimum sentences for adults do not apply equally to juveniles; and, therefore, our position would be that the court not commit Terrell, who was a juvenile at the time for the offense that he's being sentenced for, to the same mandatory minimum sentence as an adult offender.

In our motion, Your Honor, we talk about how juveniles have decreased moral culpability; their brains are not fully developed. And as an alternative to the mandatory minimum, we

propose sentencing him under the manslaughter statute that gives the Court much -- a much wider range as far as looking at his age and the other factors in sentencing.

We would ask Your Honor to declare the 30-year mandatory minimum would be unconstitutional in this case.

THE COURT: I deny -- I decline to do that at this time.

MS. EHRLICH: Thank you, Judge. And I believe Mr. Lewis will now be presenting further.

THE COURT: Okay.

MR. LEWIS: Thank you, Your Honor. May it please the Court?

THE COURT: Yes.

MR. LEWIS: At this time, I would ask to be allowed to call Dr. Susan Knight to testify?

THE COURT: You may. Susan Knight.

SUSAN KNIGHT,

being first duly sworn, testified as follows:

THE CLERK: Have a seat. Please state your full name and spell your last.

THE WITNESS: Susan Knight, K-N-I-G-H-T.

DIRECT EXAMINATION

BY MR. LEWIS:

Q. Morning, Dr. Knight.

A. Morning.

Q. What is your occupation?

A. I'm a clinical forensic psychologist.

Q. And actually I probably did that out of order. Would you please introduce yourself to the Court?

THE WITNESS: Good morning, Your Honor.

BY MR. LEWIS:

Q. Where are you employed?

A. I'm employed in private psychological practice in Charleston. I also hold adjunct faculty positions at two law schools where I teach: Cornell Law School where I teach in the Capital Case Clinic, and at the Charleston School of Law where I teach a seminar on forensic psychology.

Q. And what is your educational background and what professional degrees do you hold?

A. I have a bachelor's degree in psychology from Trinity University in San Antonio, Texas; a master's degree in clinical psychology from the University of Louisville in Kentucky; a doctorate, PhD from the University of Louisville, again, in clinical psychology --

THE COURT: Let me stop you right there. Mr. Simpson, I've qualified her as an expert before and it's just -- I'm well aware of her qualifications. Do you have any objection as to her being qualified as an expert?

MR. SIMPSON: No, Your Honor. Thank you for that opportunity. I was waiting for the appropriate time. We stipulate that she is duly qualified.

THE COURT: And qualified in what area?

MR. LEWIS: Clinical and forensic psychology.

THE COURT: All right. Any objection to that?

MR. SIMPSON: No, ma'am.

THE COURT: And, Mr. Lewis, you have the right to go through, but I've already qualified her previously as an expert in both of those areas, as I recall. And so -- but you're always free to continue with the qualifications.

MR. LEWIS: I should have approached the State earlier.

THE COURT: It's fine. I do qualify her as an expert in these areas.

MR. LEWIS: Thank you, Your Honor.

BY MR. LEWIS:

Q. Dr. Knight, how did you become involved in the case involving Terrell Smith?

A. I was contacted by your office, the public defender's office.

Q. And what did we ask you to do in this case?

A. So a Miller evaluation was requested in Mr. Smith's case. This is a specialized forensic psychological evaluation conducted with individuals who are 17 years old, or younger, at the time of their charges. And the evaluation assesses and applies the Miller factors to the individual's case circumstance.

Q. And what are the Miller factors?

A. So the Miller factors, there are five factors: The hallmark features of youth, the family and home environment, circumstances of the homicide, incompetency associated with youth, and the possibility of rehabilitation.

Q. And how did you go about evaluating those factors as they related to Mr. Smith?

A. In Mr. Smith's case I reviewed many records related to his case. I reviewed all of the discovery given to me. I reviewed psychosocial

records which included things -- records from his infancy, his medical records through childhood, records from the Department of Social Services, his school records, records relating to juvenile justice contacts, records related to prior adult charges, records from the detention center. Those kinds of sources.

Q. And as part of your work on this case, you prepared a report to include a full list of all of those in that report?

A. Yes.

Q. Please tell the Court what your findings were for each of those Miller factors beginning with the hallmark features of youth.

A. Yes, I would. There were -- there was more sources involved in the evaluation besides the records review if I can --

Q. Oh, I apologize. Record review -- did you conduct any testing of Mr. Smith?

A. Yes. I conducted psychological testing; I conducted clinical interviews with Mr. Smith totalling over 11 hours; I interviewed his family members including his mother, father, his grandmother, step-grandfather, his aunt. I also reviewed collateral source affidavits that had

developmental knowledge of Mr. Smith. I consulted with a noted adolescent development expert in the field, I reviewed her affidavit that she submitted for this hearing. I consulted with SCDC personnel and his prior treatment provider at the detention center.

Q. Thank you. And where did that lead you after that? After you consulted those experts, evaluated the records, did you begin to evaluate the Miller factors?

A. Yes. All of those were sources of data to evaluate the Miller factors and applicable to Mr. Smith's case.

Q. I would like to direct your attention to the first of those factors, the hallmark features of youth. What did you find reviewing all of this in regard to Mr. Smith?

A. The hallmark features of youth are traits, characteristic features that are inherently found within adolescent population, much more so to a greater prevalence, intensity, and frequency than adult populations. And those are things like impulse activity. So more difficulty controlling one's behavior, regulating one's behavior. Things like intense emotional expression and more

difficulty regulating that emotional expression. Behaviors such as reckless behaviors, risk taking, sensation seeking. All of those behaviors are much more frequently found in adolescent population.

And then this notion of psychosocial immaturity, so how adolescents make decisions and use judgment. So as a group, adolescents have more difficulties considering the long-term consequences of their decision. They have what we call a lack of future orientation. It's difficult for them to project themselves into the future to see how what they're doing would impact themselves in the future.

Another hallmark feature would be a much greater susceptibility to negative peer influence and then negative family environment and community environment. So those would all be the types of hallmark features that are at the heart of the Miller case, and we find them in adolescent populations.

Mr. Smith was 17 years old at the time of these charges, so these would apply to Mr. Smith.

Q. Thank you. Any other comments that you have that you want to give about hallmark features,

or are you prepared to move on to the next?

A. Two things about the hallmark features. They are the reason we see such a spike in risk-taking behavior in adolescents. So every type of reckless behavior, every type of risky behavior is disproportionately seen in adolescent population. Reckless driving, DUIs, experimentation with drug use and alcohol use, unsafe sex practices, crime of all kinds. All of these behaviors spike in adolescents compared to adult populations because of the hallmark features.

The second thing is the features themselves are a reflection of the development of the adolescent brain. I think that's important to note. The brain during adolescence is not a fully mature adult brain. There is immaturity there.

The brain develops from the back to the front, and the very last part of the brain to develop is the prefrontal cortex. This is the area of the brain that is responsible for rational thought, reasoning, judgment. It's the area -- it's the brakes of the brain. Another part of the brain that says, on second thought, maybe I shouldn't do that, or maybe I could consider this alternative.

It's really the part of the brain that kicks in around age 25 when scientists think that part of the brain is fully mature. That prefrontal cortex, the brakes of the brain, is not -- it's pretty immature during someone's teenaged years. So that's one factor.

The second thing that's happening in the brain is that there is a second system that develops faster than the prefrontal cortex. If the prefrontal cortex is the brakes, the second system is the accelerator. This system is reward-based. It's incentive processing. It's the part of the brain that's based on emotions and impulsivity and risk taking. That part of the brain develops much faster during adolescence.

So what you have is the accelerator part of the brain that's more mature than the prefrontal cortex, which is the brakes of the brain, and that is why we see these hallmark features so prevalent in youth, and that's why we see them drop off as somebody matures into their early and mid 20s.

Q. Okay. And throughout my reading of your report and Dr. Kauffman's report as well, would it be fair to say that at 16 we're

cognitively developed, we can think things through, but until 25 we don't really have the ability to emotionally control our brains, we can't get there yet?

A. That's correct. So the intellectual capacity of a teenager might be on par with an adult, but then it's using those capacities in what we call psychosocial situations that's more difficult for the adolescent. So using those capacities in more highly charged emotional situations. Using those capacities in situations where they're around peers, especially older peers or more negative peers. Using those capacities where there is an immediate reward and not being able to really think through the consequence of the behaviors.

So, yes, intellectual ability is there, but it's how it's used where we see the difficulties with adolescence.

Q. Okay. At this time, are you prepared to discuss the next topic under the Miller factors?

A. Yes.

Q. Can I direct your attention to the home and family environment? What can you tell us about your evaluation as it relates to Terrell's home and

family life?

A. So several pertinent factors came out with his life, and we'll just start chronologically. He was a child born to teenaged parents. Both his parents were very young. His mother was 14 when she became pregnant. She was 15 at the time of his birth, and his father was 17.

So what -- going back to the psychological literature, what we know is that children born with teenaged parents are just at a higher risk for adverse outcomes developmentally. It's just something that we find in the literature on the subject.

So, for example, they are at a higher risk to discontinue schooling, which he did that. They're at a higher risk for incarceration, that's the male children of teenaged parents, which he's facing. They're at a greater risk for physical abuse, so this did happen with Mr. Smith.

When he was 13 weeks old, he was taken to the hospital. The doctors there thought his leg was purposely broken, that they thought this was physical abuse. He was taken out of the home by DSS, put into emergency protective custody, and in foster care eight or nine months. So when he was

returned to the home, the maternal grandmother was given custody.

So I think that's important because when children that young, infants, are taken away from a maternal caregiver, especially for that length of time, what we might see later is they develop difficulties with attachment with other people or difficulties with attachment with their primary caregiver.

Q. What about his father?

A. Right. So as -- once he was placed back into the home and as he grew up, he did seem to have strong maternal support, but his father was absent from his life for all practical purposes. When I spoke to Mr. Smith, he said that his father never took a parent role. This was confirmed by family members. This is noted in his treatment records from age 16, that his father was not around and that this was, quote, traumatic for him.

So what that tells me is that he lacked a stable paternal guiding figure in his life. There were other adult males in the family that could have revolved in and out of this role. He has older family members. Also, the individuals that his mother dated, these would be the father of

his half-siblings, all of those individuals when I looked at their criminal history had long criminal history records, incarcerations, drug charges, violent charges.

So not only was his father not around, the individuals that would have revolved in and out of that role had long criminal histories. So this put him at risk for the influence of older peers, and so what happened with Mr. Smith is, as he was growing up in downtown Charleston as a young kid, he said that older, quote, street peers would give him advice. And these were individuals who had just come home from prison, quote, and took him under their wing giving him advice much like a father would.

Q. You talked about the community itself. What about the environment trauma he may have experienced from growing up in the community that he did?

A. From birth to 13 he grew up in an area of downtown Charleston that he described as having a lot of shootings and a lot of violence, pretty much every week if not more frequently. I think he said it would be strange if there was not a shooting. Three of these individuals that had

taken him under their wings were violently shot in separate homicides. So he lost them traumatically. He was exposed to a great deal of drug activity in that neighborhood.

Q. In addition to the community that he couldn't control himself and the fact that his parents were young, what kind of supervision did they provide even as young parents?

A. As what -- what I found as I looked through his history, as he developed and grew older and hit his teenage years, the family lost track of him. It's the best way to put that. So that they -- they were loving and supportive for all practical purposes, but they essentially lost track of him. They -- and we would psychologically call that poor parental supervision monitoring.

So they knew that he began sleeping out of their home. They knew that he had stopped going to classes consistently. They knew that he was associating with people out of their immediate neighborhood in downtown Charleston, and they did not take more of an active role in these things.

At age 15 when he went for treatment, this is documented in the treatment records, where his family was supportive but disconnected from

him. Disconnected from important areas of his life, and two of those areas that I felt were particularly important were his drug use and his peers.

So when I talked to the family, no one in the family could identify a peer or a friend by name that Mr. Smith had as a teenager. They knew that he was in certain parts of town, that he was hanging out in, but none of them identified Brandon as a peer, even though Mr. Smith had been to his home many times. To me, that means they had really lost track of him.

Q. Okay. And you discussed substance abuse, marijuana usage. How did the family sort of take that? How did they interact with Mr. Smith starting to use marijuana?

A. Around age 14, Mr. Smith really began using marijuana pretty heavily, frequently, and that continued on up until age 17 at the time of his arrest. When I looked at his family culture, he would have been socialized into marijuana use. This was normalized for him.

He told me all of his -- all members of his family smoked marijuana. When I looked at rap sheets of multiple family members, most had

marijuana charges. He was first given marijuana by an older cousin. So in addition to family normalization of use, he was also raised within a community where there was lots of drug activity, including marijuana. This would have been a behavior that he was socialized around as normal.

When he began smoking at age 14, I didn't see much -- the family didn't step in and really try and talk with him about that and work with him on that. He later got a juvenile charge with marijuana at age 16, and then again at age 17 he had his first adult charge of marijuana. There was certainly a progression of seriousness of use, and that's where the poor parental monitoring and supervision comes in.

We know that youth who are subject to that have higher rates of drug use, so I think that's where those two interact.

Q. Would it be fair to say that through your review there had been sort of an earlier stage where he was involved in sports and things like that, and then almost about 14 or so everything changed?

A. Right. When he started high school, one, around that time his family moved him from an

area that he had grown up in all his life. He was very involved in a downtown church, very involved in recreation activities downtown, in the boxing club.

Then around age 13 or 14, the family moved to North Charleston and that separated him from what he had known his whole life. He was also starting high school, so there was an adjustment to a new school. And that is when there seemed to be a clear break in Mr. Smith's development, that he really started smoking marijuana, not going to school, being away from his family more and more, and, as you mentioned, stopped sporting activities which was his main source of social activities up to that point.

Q. Okay. Anything else about the family features, or are you prepared to discuss the next Miller factor?

A. We can discuss the next one.

Q. Can you guide us a little bit about the circumstances of the homicide? I know this was an extra tricky section for you.

A. Right. Let me start with his life around the time of the homicide and before talking about the actual circumstances. So Mr. Smith's

life around the time of the homicide, at age 17, was a youth who had stopped going to school, a youth who was smoking marijuana heavily, a youth hanging out in more criminalized neighborhoods, gambling, somebody that was not subject to parental supervision or monitoring, making bad decisions about his life, not thinking long term.

You know, that lack of future orientation was certainly there when we look at his life around that time. So that was really what was happening with him around the time of the homicide.

The circumstances of the homicide, to analyze that, I reviewed the trial transcript so I understand what the State asserted at trial. I reviewed Mr. Smith's testimony at trial, so I understand his position, and then I interviewed him about that. In this case those accounts were very different, the State's account versus Mr. Smith's account.

In order to do the Miller evaluation I have to analyze both accounts that are given to me. I have to analyze all of the data. So I don't give greater weight or validity to either account, but I analyze both for Miller factors.

Q. And either one first, whether the

State's version or the defense version, what Miller factors or what elements did you see when you evaluated the trial transcript?

A. With the State's account, they asserted that Mr. Smith went into the house undetected without permission in the early morning hours when Brandon's father was home and that's when the incident occurred.

So I don't have from their account much more information about what was going on right before that happened, motivation of why that happened, a motive for why that happened, so I'm limited in my analysis. What I can say is that that appears to be a very reckless decision, a very risky decision to go into a home where the person's parent is there in essentially daylight hours. That's very risky, reckless behavior, so that can implement some of these hallmark features of youth.

Without knowing more about the reason for the homicide, the motive for the homicide, I can't evaluate whether adolescent variables were implicated in the motive from the State's account.

Q. What about your evaluation of Terrell's account?

A. Mr. Smith's account I had more data to

work with as far as what was going on in the hours before the homicide. So his account is reflective of adolescent behavior and variables in the sense that he gets off work late, he's staying up late, he doesn't want to go to bed or sleep. He's seeking marijuana and peer socialization very late at night. This is all pretty standard adolescent behavior, taking risks, sensation seeking, seeking peers.

He goes to the home of Brandon and is able to be let in by Brandon, and they played games before a fight breaks out. So this -- that account is reflective of adolescent behavior variables, such as risk taking, sensation seeking, not thinking through actions, you know, leaving his own residence late at night and going out, not thinking about the risks, that sort of thing.

Q. Okay. Any further comments about that section, or are you prepared to move to the next Miller factor?

A. I will say that both accounts clearly have him fleeing the scene of the incident. That's clear from both accounts. Certainly, a motivation to avoid detection was present most likely in his decision to do that. There's no question about

that.

But if we look at it through an adolescent's lens, we know that adolescents have much more difficulty making decisions in emotionally charged situations, particularly thinking of alternative courses of action, for thinking of long-term consequences. They make decisions much more based on immediate reward such as fleeing the distress of the situation versus thinking about, if I flee, how is that going to impact my legal case? Just don't think that far out, particularly under high levels of emotion.

So I think those factors -- those developmental factors were all at play in him leaving the scene.

Q. Okay. Are you prepared at this point to discuss the incompetency associated with youth?

A. Yes.

Q. What can you tell me about your evaluation of Terrell under that prong of Miller?

A. So within the spirit of Miller, this is really getting at youth who have difficulty navigating the legal system based on lack of experience and lack of consideration of long-term consequences and how they interact with authority

figures.

In Mr. Smith's case, I did not find strong evidence that this factor was implicated. So when he was interviewed by the police, I can hear him on audio asserting his rights, he asked for an attorney a few minutes into the interrogation. He did not provide a post-arrest statement at that time or any other time.

When I consulted with you about how he felt he was doing as far as understanding things, working with you, you didn't have any concerns about his level of understanding or his capacity to work with you through a murder trial, which takes a lot.

And the other way that we would assess this is if the adolescent is given a plea deal to consider and assess their reasoning around that. He was not offered a plea deal; I was not able to assess that. So in looking at all of that, this factor for him was not strongly implicated.

Q. Okay. At this point I would ask that you move onto the final section, the possibility of rehabilitation. What were you able to find out during your analysis of Terrell under this prong?

A. So I looked primarily at his

post-arrest functioning in detention to see if there were signs of rehabilitation or the capacity for rehabilitation, and I did find strong evidence for this factor.

So if we start again chronologically, he was involved in the DAOTUS program. He started very young at age 17. He was in that program for two months. In that two months' time, the notes indicate that he initially did not make progress. That's what the counselor was struggling with. But over time that changed and he was able to work with his counselor, he was able to make progress despite his young age, he was able to make better progress on his treatment goals and communicate better.

So I think that evolution over those short time, over those two months is important. That program only ended when a much older individual struck him at the detention center. He's noted in records, quote, not the aggressor in that incident, but, unfortunately, both individuals had to leave the program. He did leave that program prematurely.

After he left the program, he concentrated all of his focus and efforts on getting his GED. Mr. Smith told me that most males

in his family don't finish middle school, and it was very important to him that he get his GED to, quote, break the wheel. And so he studies, he took pretests, and he accomplished his goal over several years. So in March he was able to earn his GED.

So that kind of focus and diligence towards a goal, particularly when you're a teenager in the detention center, shows a good capacity for rehabilitation.

Other things that I looked at are his disciplinary record in the detention center. So he has one major infraction and that was from the incident in the DAOTUS program, the altercation with the older inmate where he was not the aggressor. So besides that, he's only had very minor infractions.

So these -- most of them are for being out of his cell. He has four hours out of his room every day, and this has been very difficult for him. So most of his infractions come from being out of his room, and if we look at them year by year, they've decreased. So he's had only one minor infraction in 2017 for being out of his room. So that -- the drop -- because of the infractions have dropped in frequency and they have been minor,

that shows the capacity for rehabilitation.

Q. Okay. What about remorse? Have you seen anything that suggested remorse through your evaluation of Mr. Smith?

A. So a couple different places. His family has been in very frequency contact with him at the detention center; they have shown a lot of support with this detention, visitations, phone calls, things like that. They have told me that he will say to them, you know, my friend, that was my friend, and he will become tearful when he says that.

He has also told his grandmother, I didn't listen, kind of reflecting on his actions. And that kind of reflection, that kind of insight, that kind of remorse also goes well for rehabilitation. And during my last evaluation with him, he also communicated that to me.

Another word about the family contact is that they have shown that they are more than willing to establish frequent and strong contact at the detention center, that would continue during his incarceration. We know that inmates during their incarceration when they have strong family support, it's a positive factor for rehabilitation.

I do take that into consideration as well.

Q. Did he develop any insight in regards to his substance abuse?

A. Yes. I evaluated Mr. Smith over three occasions. I also looked at his substance treatment records from when he was 16 years old up to now. And when I initially interviewed him around this, he did not either understand or acknowledge that marijuana had caused so many problems in his life; but by the last interview I did some substance testing with him, he really seemed to get it, that marijuana has caused alot of problems.

He said he needed treatment for marijuana use. He seemed to have evolved in his way of thinking, and as he's matured in his three years in the detention center, to develop more insight into that.

Q. Lastly, did you look into no matter what the Court does today, at least 30 years of prison, what prison could offer him as well?

A. So I consulted with SCDC about this, and they have a number of vocational programs that he would be eligible for. When I -- I did some psychological testing with Mr. Smith, his

intellectual ability was average. He would have no problem completing these programs. He would be able to take full advantage of the vocational opportunities which would then help him when he is released at any point to help with reentry and rehabilitation.

There are also character dorms and units at SCDC that provide greater opportunity for rehabilitation. Because he's maintained such good behavior at the detention center and he -- so he has shown that he's able to do that. If he's able to do that in prison, he would be eligible for those character units which would also help him in rehabilitation.

Q. All right. Are there any other sections under rehabilitation that you would like to discuss?

A. No.

Q. Can I ask you a little bit about the age crime curve? What is that and how would it apply here?

A. The age crime curve is a finding in criminology that is extremely robust. It's been repeated over many cultures at different times and, essentially, what it says is that people age out of

crime, they age out of violent acts as a whole. That crime -- there's a spike in mid adolescence. It peaks around age 17 to 19, and then there is a sharp decline and then a more steady decline. So that's what the age crime curve is.

Essentially, it says most people age out of crime and the highest frequency of violent crime and criminal activity is in one's late teenaged years.

Q. Okay. And while you were reviewing Terrell, did you label him a specific type or believe that he would fall into a specific category of offender?

A. So most adolescents are adolescent-limited type of offenders. This coincides with the age crime curve. Their offending is limited to the time of adolescence to mirror that curve. So they begin offending around puberty, when that accelerator system kicks in before the brake system kicks in in the brain, and they offend throughout their teenaged years, and then there's a sharp decline in their late teenage years.

That's what we would call the adolescent-limited type of offender, that they

don't persist with offending well into adulthood and that most adolescents would fall into that category.

Q. Okay. And at this point, are you prepared to give an opinion from reviewing all of these different Miller factors on a couple of final issues?

A. Sure.

Q. Dr. Knight, did you form an opinion as to Mr. Smith's diminished culpability in this case?

A. Yes. I think there is evidence of diminished culpability, and that falls really along three factors. So it falls along the immature factor, this immaturity of judgment. That all goes back to the hallmark features of youth that he would be subject to at age 17.

The second factor would be the susceptibility factor. Youth are more susceptible to older peer influence, negative peer influence, negative family community environments; in other words, environments where they can't voluntarily extricate themselves from.

And then the third item under that would be their character is not well formed at age 17. They're not the person at age 17 that they're

going to be at age 25. Their personality is transient. And so all of those factors work together to support this concept of diminished culpability.

Q. And also in regards to capacity for change?

A. Right. And that really falls under that possibility of rehabilitation; so all of those findings under that factor that he has matured from age 17 to 20, he has earned his GED, he has made progress in the treatment program, he has a good disciplinary record, he has the intelligence to further take advantage of rehabilitation programs. All of that would fall under the opinion that, yes, he has a heightened capacity for change.

Q. And lastly, Dr. Knight, did you form an opinion as to irreparable corruption in this case?

A. So this is a legal term. It is not -- there is not -- no real psychological corresponding construct --

THE COURT: Hold on one second.

MR. SIMPSON: I'm sorry, for the reasons she probably just articulated, I'm going to object that the defense is asking her to draw the final legal conclusion.

THE COURT: Rephrase your question.

BY MR. LEWIS:

Q. Can you explain to us why you can't do that?

A. Sure, was just about to do that. This is the -- this is an ultimate issue before the Court, so I cannot opine on this issue. This is squarely within the Court's jurisdiction, the finding of irreparable corruption.

I can say that because he has shown a heightened capacity for change and possibility for rehabilitation, that that would argue against a finding of irreparably corrupt, but I'm unable to render a yes or no on that.

Q. There's no scientific test that you can give to get input A, get answer B; that just doesn't exist for you at this stage?

A. Correct, and it's a legal term. It's not a psychological construct.

MR. LEWIS: One moment, Judge.

BY MR. LEWIS:

Q. I may have glossed over this, my co-counsel's helped me, because you were so qualified so quickly as an expert, have you been involved in Miller cases before? Tell us a little

bit about your involvement in that.

A. So I have been involved in approximately 16 Miller cases at various stages of consultation and evaluation. I have spoken at the state level to attorneys on Miller evaluations. I have conducted a national talk, a workshop for forensic psychologists around the country on how to conduct Miller evaluation, and I have provided consultation to the juvenile justice clinic at the Cornell Law School on the psychological elements of Miller evaluation.

MR. LEWIS: Thank you, Dr. Knight. Please answer any questions that the State has for you.

THE COURT: How long do you think you're going to be?

MR. SIMPSON: Ten to 15.

THE COURT: Counsel approach.

(Bench conference.)

CROSS-EXAMINATION

BY MR. SIMPSON:

Q. Doctor, good morning.

A. Good morning.

Q. Your task, as very ably previously reviewed, was to go over the Miller factors and how

they applied to this case?

A. Yes.

Q. And, again, I found it -- it's somewhat curious that in outlining those factors to the court, you mentioned factor number one being the hallmarks of youth. Why not mention chronological age? Is that not one, if not the first Miller factor?

A. It's included within the hallmark features of youth.

Q. I don't recall that being mentioned by you or Mr. Lewis in his direct examination.

A. I think we mentioned he was 17.

Q. And how far was he from 18 when this occurred?

A. He was 17 years and seven months.

Q. So about four months away from legal anyway, not -- perhaps not -- legal adulthood?

A. Sure.

Q. And do you not interpret that first Miller factor, that wasn't even mentioned, as putting quite a lot of legal weight on that as being kind of, you know, if you want to say, it's the first thing the Court should consider is the chronological age, how close to that 18 are you?

You would disagree that's how it is to be interpreted?

A. I, as a psychologist, I'm looking at it more in the terms of brain development. There's no real difference between 17 and 18 in the development of the brain when we talk about the hallmark features.

Q. Right, but what we're making here is legal determinations, correct?

A. Yes.

Q. And had he been 18, we wouldn't be doing this at all?

A. Correct.

Q. While perhaps medically arbitrary, the first Miller factor is -- or biologically arbitrary, how close is the person to 18, what is their chronological age?

A. Sure.

Q. Okay. Because in Miller it was 14, right? And in Pitman, another famous case, it was 12, and so a court would likely consider, you know, a 12-year-old weight far differently than someone this close to 18?

A. I would think so.

Q. Okay. Secondly, I want to talk about

some of your conclusions in the family prong.

A. Sure.

Q. And, you know, I never want to seem flippant over someone's struggles, especially the incident you've mentioned at how very, very young Mr. Smith was, but Mr. Smith did have family support throughout his life; is that correct?

A. Yes.

Q. Okay. And, you know, just conversationally in the occupations that you and I've had, we've seen far worse than Mr. Smith's situation; is that correct?

A. There are certainly youth who have, yes, worse circumstances, I would say.

Q. Okay. And so we had things like he was given the opportunity to play AAU basketball. That's sort of a structured environment; is it not?

A. Yes.

Q. The boxing club?

A. Yes.

Q. Had his grandmother as a pretty stable influence in his life?

A. Yes.

Q. Had stretches of his life where he did quite well in school, as I recall?

A. Yes, his grades were not -- were not terrible.

Q. Okay. And several references were made to his drug use, but that's limited to marijuana; is that correct?

A. That's correct.

Q. No use of heroin, cocaine, crack?

A. Not that I uncovered, no.

Q. Okay. Had a church environment provided to him that gave him some stability; is that correct?

A. Yes.

Q. Okay. And then you mentioned later when we talk about rehabilitative possibility how there's been an outpouring of family and community support since arrest; is that correct?

A. Yes. I think the family definitely came together after the arrest.

Q. Okay. So if a judge or the court were applying the Miler factors and looking at his prong on family support, you might find it to be some, you know, good things and bad things? Is that a fair assessment of that prong?

A. Yes.

Q. And so on prong one of chronological

age we have someone very close to 18; is that correct?

A. Four months out, yes.

Q. Prong two under family support we have good stable aspects of his family life and some bad; is that fair?

A. Yes, although that was more concentrated on the absence of a paternal figure.

Q. Right, but we also had people more than willing to -- the coaches in his life, right, to provide sort of -- I'm not trying to draw the equivalency of a father, but a male role model to him, right?

A. He did have coaches, yes.

Q. So moving on to three, which is what again, the third prong?

A. Circumstances in the homicide.

Q. Okay. Miller itself when weighing these factors as a court, not a doctor, admittedly gives a little more guidance that I don't think you went into. And it says, in weighing the circumstances, particularly with the court, one of the things the court should look at is -- it says, circumstances of the homicide such as or including the extent on the offender's participation. Okay.

Do you recall from your review how -- what was the extent of his participation in this murder?

A. So he would be fully participating in this.

Q. Right. And I believe it was referred to that there's several cases, such as one of the ones in the Miller case where someone might be a driver --

A. Sure.

Q. -- or a lookout? But that doesn't apply here --

A. No, that does not apply.

Q. Also, in the conduct of the crime, how familiar peer pressures might have influenced that decision.

A. Uh-huh.

Q. What peer pressures were influenced here? Were there peers challenging him to go murder, commit a murder?

A. Well, again, you have to look at the different accounts. So in the State's account, I don't know. There could have been peer involvement. There was no motivation given or motive given, so there could have been peer

influence there as a reason that it happened.

In his account, it's more indirect because I think he got himself into this situation, because weeks, months, years before that he was hanging out with older street peers who were giving him guidance. That sort of thing.

Q. So in a general life circumstance maybe, but not pressures to commit this crime coming from external --

A. There was no evidence of that.

Q. And when you differentiate between the State's account and Mr. Smith's account, Mr. Smith's account is the account that was, after careful review of the evidence, wholly dismissed by a jury of 12 of his peers?

A. Yes.

Q. Okay. For various reasons we don't have to go into here, it was found not credible or not a true and accurate account of what occurred in light of the evidence.

MR. LEWIS: Objection, Your Honor.

THE COURT: Sustained.

BY MR. SIMPSON:

Q. I guess I'm saying that the account, would you say, Mr. Smith's account was the same

account he gave at trial?

A. They're very consistent from what he told me during the interview and what he testified to at trial.

Q. Okay. So when we look at the circumstances of this crime, particularly in light of the way Miller directs us to, we see, again, more factors weighing on culpability; in other words, he's the actor here, there is no direct peer, familial influence on this specific violent act?

A. Correct.

Q. So to recap, factor one, we have chronologically close to 18 weighing toward culpability; factor two, a family life which has some unpleasant aspects and a family life that has alot of support?

A. Correct.

Q. And factor three, when looking at it in the manner that Miller directs us, some factors weighing to culpability?

A. Yes.

Q. Factor four, you went over in your direct testimony speaking to how sometimes youth might be disadvantaged in their dealings with

police and attorneys, but no concerns of that in this case; is that correct?

A. I didn't find evidence of that.

Q. In this individual life, we look at Mr. Smith and he asserted his rights quite confidently in his interview with the police and all indications that he's assisted Mr. Lewis?

A. That's what I found.

Q. So weighing that factor in the manner that Miller directs the Court to, we weigh towards culpability again?

A. I just found that it wasn't present for his case.

Q. Okay. And then lastly you talk about the ability or possibility for rehabilitation and cite, obviously, very competently how juveniles -- how his stature as a juvenile weighs toward an ability to rehabilitation; is that correct? But you said you also noticed that one thing you might look at is conduct in the jail?

A. Uh-huh.

Q. And he has 12 infractions since being in jail?

A. Yes.

Q. Most minor as you noted?

A. Yes.

Q. But one involving, again, violence between him and another inmate?

A. Correct, although that was clearly documented that he was not the aggressor.

Q. Okay. From another clinician, correct?

A. Correct, within the DAOTUS program that I spoke to about that, but she had also documented that in her records.

Q. Okay. But one of the witnesses to the event, you did note in your report, that Mr. Smith was throwing punches at the other person?

A. From the disciplinary --

Q. Records?

A. -- records, yes.

Q. And you also note that he self-reported that he has received anger management since the fourth grade?

A. He reported that in prior treatment records, but not to me directly.

Q. And that might play into the juvenile impulsivity into the Miller factor a little bit?

A. Sure. He also wore glasses for being cross-eyed as a very young child. I think he was bullied because of that, so part of that anger as a

fourth grader came from that.

Q. Okay. And getting close to the finish. In the aspect of remorse, this is kind of a broad category, would you agree?

A. Uh-huh.

Q. Has there been any acknowledgment, to your knowledge, on the record or to you that this was a malicious act and not one that he explained away as one that was taken defensively?

A. Let me make sure that I understand. He --

Q. Maybe I should rephrase. As part of, for lack of a better term, true remorse and acceptance, not accepting the reality of your actions?

A. His remorse displayed was about the death of a friend.

Q. Correct. In a more meaningful way, wouldn't part of that be accepting that what he did was not someone else's fault, as he so often likes to explain it away?

A. I'm not sure what you're getting at. He did tell me this was a self-defense perspective.

Q. Okay. So, in other words, the -- he stands by that --

A. Yes.
Q. -- view of the case?
MR. SIMPSON: Your Honor, just a moment?
THE COURT: Take your time.
MR. SIMPSON: Thank you, Doctor. Appreciate your time.
MR. LEWIS: One minute.
THE COURT: One minute.

REDIRECT EXAMINATION

BY MR. LEWIS:

Q. First factor, 18 is less than 17 -- 17 is less than 18?
A. Yes.
Q. So you would still be considered a juvenile even though your brain doesn't fully develop until after 25?
A. Correct.
Q. So even if a court has said that you're considered an adult, it doesn't have anything to do with whether you process things correctly?
A. Correct.
Q. Factor number 2, the State alluded to, he has a supportive family. The fact that they're visiting him while he's in jail facing 30 years to

life is not the same thing as getting him to stop using drugs, is it?

A. Correct.

Q. It's not the same thing as making sure that he's being supervised living at someone's house where he was supposed to be, is it?

A. Correct.

Q. So does he have a supportive family, or did they lose track of him? I'm sorry to have to say that to them, but they lost him, right?

A. It appears that although they were supportive, they lost track of him from a supervision standpoint, a monitoring standpoint, a parental supervision standpoint.

Q. And about, yes, the circumstances of the crime, we talked about that. The fifth, rehabilitation. Your opinion in regards to his rehabilitation, has he been making an effort to make himself a better human, and do you have any reason to believe that over the next 30 years of his life he won't continue to do so?

A. So there has been evidence in the three years that he's been in detention that he has made those kind of gains and strides that we would see in somebody with a capacity for rehabilitation. It

should continue over the next 30 years. I don't have any way to tell you, yes or no, that will continue, but there are indications that it would.

MR. LEWIS: Thank you. No further questions.

MR. SIMPSON: Nothing further, Your Honor.

THE COURT: Dr. Knight, you may step down, and I believe you are free to go.

THE WITNESS: Thank you.

(Bench conference.)

THE COURT: We will continue this matter until 2:30. Thank you.

(There was a break in these proceedings.)

(The following proceedings were held.)

THE COURT: Mr. Lewis, are you ready?

MR. LEWIS: Yes, Your Honor.

THE COURT: Mr. Patrick.

MR. PATRICK: Yes, Your Honor.

THE COURT: Call the next witness.

MR. LEWIS: We're not going to call her to the stand. Would you like to hear from her? She's a lay witness.

THE COURT: All right. Do you have any

other --

MR. LEWIS: No. No more testimony from the stand.

THE COURT: All right. Happy to hear from you.

Thank you.

MR. LEWIS: Shakeenah Reid, Judge, the family representative.

THE WITNESS: Hello, how are you doing? Hello, everyone --

THE COURT: I need you to address the Court if you're going to speak to the Court. It's for the purpose of the Court only.

THE WITNESS: Yes, ma'am. I'm Shakeenah Reid. I'm Terrell's -

THE COURT: State your full name and please spell your last name.

THE WITNESS: Shakeenah, R-E-I-D.

Hello, everyone --

THE COURT: All right. One more time, Ms. Reid. You need to address the Court. This is not for the purpose of anyone else.

THE WITNESS: Your Honor.

THE COURT: All right. Let's start again, Ms. Reid.

THE WITNESS: Shakeenah Reid. Good morning, Your Honor -- afternoon. My name is Shakeenah Reid; I am the aunt of Terrell Smith. We grew up in the same house, so I know the sweet, genuine yet silly kid he is.

THE COURT: Mr. Smith, I need you to face forward.

THE WITNESS: I speak for my entire family when I say that we will support him and we will stand with him every step of the way. We will be with him until the end of the road. My condolences goes out to the Bennett family today.

Terrell has been away from us for three years in June. I know that he can one day be a law-abiding citizen. He is not a monster; he is not an animal. On behalf of my family, I ask the Court to sentence him to the minimum sentence and to give him a meaningful opportunity for release. We will be here for him.

Again, from my entire family, our condolences for everyone.

THE COURT: Thank you, Ms. Reid.

MR. LEWIS: Thank you, Judge.

If I may. I have to start my presentation to the Court with a confession, that

when I began, I believed that this case was like all others. I saw Terrell as just another murder client that I was going to be representing. I ignored the fact that he was 17 years old. That was a huge flaw. Not just for him, but because it doesn't take into account the hallmark features of youth.

It doesn't address the issues that were brought forth in Miller and Aiken. It doesn't take into account that his brain is not developed until 25. It doesn't take into account that adolescence extends well into your 20s, the brain is simply not developed. To expect him to think and rationalize how someone older would is not fair.

THE COURT: Mr. Lewis, are we here for fairness or are we here to follow the confines of the law?

MR. LEWIS: To follow the confines of the law.

THE COURT: Clearly, that's what you have done. You have represented your client to the best of your ability within the confines of the law; is that correct?

MR. LEWIS: Yes, Your Honor.

THE COURT: And the State of South

Carolina has determined that someone at the age of 17 that commits the offense of murder is charged as an adult, and that has been considered. And even in Aiken v. Byars, the decision most recently, that it is within the purview of the court and within the bounds of our law in the State of South Carolina that I could even impose a life without possibility of parole sentence; is that correct?

MR. LEWIS: Absolutely. If you take into consideration each of the factors and make a finding on the record that Terrell is irreparably corrupt which --

THE COURT: Well, I don't know that I have to make that finding. I don't need to make the finding that he's irreparably corrupt on the record. My concern is -- and perhaps I jumped in the middle of it, but my concern is you -- you zealously represented that through this, and you zealously represented your client, correct.

MR. LEWIS: Yes, Your Honor.

THE COURT: All right. Thank you.

MR. LEWIS: I'm certainly not suggesting anything for PCR or anything like that. What I was saying is, I was blaming myself, not that I failed him in that sense, but that I failed

to be able to appreciate that he is different than my 30-year-old murder client or my 50-year-old murder client, physiologically.

From the report that you were able to read provided by Dr. Knight, and also from Dr. Kauffman's affidavit that accompanied our packet, talked about that criminality peaks at 19 years old. So he was -- basically, he approached the age at which someone is expected, if they're going to violate the law, if that violation would occur, and his insistence being that he will get better, stopped being as likely to break the law would occur after the age of 25.

Obviously, in the best-case scenario for me and for my client, he's not going to be on the street. He's still going to be in the Department of Corrections, until the very earliest, into his late 40s.

As I discussed, as well, with Dr. Knight, there's a difference in our ages that we develop. Cognitively, we can think like adults at 16, but we can't process, we can't rationalize. I think it was referred to as the CEO in Dr. Kauffman's affidavit of our brain that's able to decide how to regulate what we do in stressful

situations.

I'm sure people in the Solicitor's office would agree that I have lost my temper. I am not an adolescent, but I still lose my temper and have to struggle being able to control emotions. It's impossible to expect that same thing for someone significantly younger when their brain is not fully developed. These hallmark features, as you begin, I ask that the Court take those into consideration when fashioning your sentence.

I talked about under the family section, and Dr. Knight presented this as well, Terrell's family lost track of him. The State presented, well, they're supporting him now, so it's okay. Well, the truth is, had they been there, had they been staying with him, monitoring him, preventing his marijuana usage, keeping him involved in athletics, this probably would never have happened. There wouldn't be the situation where this would have put him in. They were part of the problem. They are what has failed him. Not just them, but our society has failed him. He grew up in a high crime area with violence that was prevalent. Things that he couldn't control.

Now, obviously, he still gets to make decisions, but his life and his brain development is impacted by all of these things. He's not the same as someone else. Our law says that he can be sentenced as an adult, but he's just physiologically not there.

He killed his friend. That was the testimony that came out. It wasn't something that he wanted to do. It's something that he feels remorse for. I know that that's hard for anyone to feel because he argued self-defense at trial, but just because you testified that you were defending yourself doesn't mean that you don't feel badly that your friend is gone.

Doesn't mean that every day he doesn't want Brandon back on this earth. He feels sorry for that. He reported to Dr. Knight to what sounded as nightmares from the trauma of this, that he never wanted this to happen.

In regards to something that didn't come out earlier, I think I need to address it, in regards to the jury's decision on this case. Well, none of us know specifically why they reached the conclusion that they did. They might have felt that Terrell used unnecessary force in defending

himself and that's why they convicted him. It's not that they flat out -- everything he said is a lie.

I know that he has been convicted and the Court has to sentence him in that range of 30 to life, but I don't think it's fair to him and I don't think it's -- to be sending out any sort of a message that says undisputedly that he was lying.

There's something else that I do need to talk to the Court about, about life expectancy. And I know that it's going to be hard for Terrell's family and hard for Terrell to hear, but based on the affidavits that were provided and the study by Ms. Doland, life expectancy for an African American male in the Department of Corrections, who goes in at 17, has a life expectancy of 39.1 additional years. He would be expected to live to be age 56.9, if he were average.

That doesn't mean that everyone magically ceases to exist at that point. He could develop a heart condition, he could develop any medical condition and die earlier. He could live perfectly and live longer, but we have to assume that he's average. We have nothing to suggest otherwise. And if he's average, this is the life

that he has lived so far. These are the 17 years that he lived before he was arrested for the event. These are the last three years that he's lived in our jail away from his family. Puts him at the 20-year-old man that's before you today.

I would point out that the person that you see has grown up. That's what happens to the adolescent as he grows. He's gotten bigger, he looks older than he was. And then this is at least the next 30 years of his life, and I don't play this to trivialize or be cheesy or to insult the Court's intelligence, but it was powerful for me to see the amount of time, at a minimum, that he will be taken away from the people who love him. Each of those is a tenth of a second. If you look at just the 30 years, it's going to almost double the life that he lived before going into incarceration.

The most important thing for us to consider today, for you to consider, is where we go from here. If the data is accurate that analyzed 68,000 different SCDC inmates, the court's decision today has to deal with what to do with these next nine years.

And I would ask that you consider that in fashioning your sentence because if he's

average, that's the life that he could hope to have, the meaningful release that he could hope to have if you gave him the minimum. If you gave him a sentence of 39 years, and I'm -- as I explained early on why I had to ask for a continuance originally, because this is new to me, so I'm going to have to read the objection that I have about that.

It says, Your Honor, any sentence you impose is the functional equivalent of life without parole. Arguably, that violates the defendant's rights under the Eighth Amendment. Similar to Ms. Ehrlich's earlier argument, and based on Exhibit O, which is contained in your packet, that is Ms. Doland's affidavit and the data that's included, Terrell Smith's life expectancy is 56.1 years; therefore, if you sentence him to 39 years or more, it is the functional equivalent of life. That's why we're asking, Judge, that you do not do that to Terrell.

I want to talk to you also about rehabilitation. This is probably the most important part for us. Terrell wanted to break the wheel, those were his words, to break the wheel. As you read in Dr. Knight's report, much of his

family never graduated from high school and most of the males --

THE COURT: One second. Are we correcting something Mr. Lewis.

MR. LEWIS: Yes, Judge.

Okay. It was important to him to break that wheel -- we might say break the cycle, but break the wheel that had existed in his family. Up until this point, no one known had moved on to be successful academically, but Terrell did. In the Department he was able to get his GED -- and that definitely is not on my slide.

But, anyway, his GED. That's an amazing achievement to be in custody, take classes, knowing that you're going to be in prison for 30 years at least, no matter what, but still hope to make yourself a better person. That's the sign and the goal of rehabilitation.

And not just that, that he struggled a little bit. He had sections that he struggled on, but he kept working on that. That was his desire to succeed to try to make himself a better person even though he is going to be taken away from everyone for at least 30 years.

The one good factor about having had a

young family is the idea of reentry. With parents as young as Retina and Brendon were, he has a hope that they will be here. If the Court gives him the minimum, to be here to allow him to come back to see his family. They're young enough that they can provide support and they can visit him in the Department of Corrections and help keep him on this path in becoming a better person.

The biggest issue for me, Judge, and I know you don't think that this would be the finding, from my review it's almost analogous to death penalty case law. And so the worst of the worst crime by the worst of the worst person, that person is supposed to get life sentence or the functional equivalence of a life sentence.

I would ask, as you've reviewed the documents, and if you will hear from Ms. Ehrlich, as well, in a moment, that you not find that he's irreparably corrupt, that you give him the minimum 30-year sentence. It is not a slap on the wrist. It is a significant amount of time.

Lastly, what I want to talk about -- and I know it's somewhat cheesy, but if I didn't get it out -- I talked to Terrell about it. There was a card that was included, Exhibit H, in your

packet. It was a happy holidays card that he wrote to me where he drew out typical Christmas things and a gavel. And said, Ask for a lot of things at Christmas, but I could never ask for a better lawyer than you. P.S., Congratulations on your second child. That's a blessing. Happy Holidays. From my family to yours.

Now, like I said, I know that could be viewed as cheesy, but, to me, that's the sign of somebody who is not irreparably corrupt. The sign of someone who has empathy, who is redeemable, who could be rehabilitated after three decades in prison. In addition, after his trial -- well, before his trial -- during his trial, he had said thank you for trying his case.

After I lost at his trial, he still said thank you for what you did. That is not an irreparably corrupt or evil personal. None of us is that -- the worst thing we have ever done. He's going to be punished for that significantly. Thirty years, Judge, is a significant punishment. Thank you.

THE COURT: Ms. Ehrlich.

MR. EHRLICH: Thank you, Your Honor. I want to talk a little bit more about the human

aspects of Terrell Smith. I think we outlined it pretty thoroughly in our sentencing memorandum, and Dr. Knight's report is over 40 pages talking about his history, in the community, and information about his family; but I do hope that the court has time to look at the affidavits that were written by people from the community.

We had submitted affidavits from coaches who worked with him when he was very young, members of the community who witnessed his behavior while involved in social activities including those who could talk about his ability that he wasn't aggressive, that they didn't see him to be violent.

Even though he was bullied pretty mercilessly as a child because of his eyes being cross-eyed, nobody said anything about him losing his temper to the point that he was a violent or aggressive child. He was involved in those activities leading up to high school. The boxing coaches, I think, had some really nice things to say about him as far as his behavior, the fact that he would take a lesson and learn from it. And I think that says something about him.

The fact that he would have a tough fight, but be okay about it if he had done his

best. Unfortunately, he grew up in a neighborhood where there were a lot of drugs, a lot of crime. For him, not hearing the shooting at night seemed weird. And I say that because Mr. Brendon Smith is here for him today. And I know he loves his son, but I don't think he was there for him as he was growing up, and I think Terrell's real role models were other kids on the street.

And you could see from Dr. Knight's report how other teenaged peers were kind of teaching him the way of life, how to talk to girls, introduced him to gambling, family members were introducing him to drugs. Those people just cannot take the place the role of a strong, stable, paternal figure.

When he was 16 years old, I think that's when the family really started to lose track of him. Funding had been cut at the boxing club and he wasn't able to go there. They moved out of downtown, he was in a new neighborhood, and that's when he started acting like a teenager, not wanting to do sports, smoking more marijuana.

And that's the point I think where had the family done more to intervene, had they set more boundaries for him instead of acting more as a

friend -- I think they allowed him to just do what he wanted, and I think they failed him in that. I think they know that now. I think they know they have to be there for him in a different way now. But he was really at the height of adolescence when all of this happened and when his life started to kind of go downhill.

What I see for him is much different than the picture that was painted by the State at trial. I see him to be somebody who is thoughtful and kind to other people. He says thank you to the defense attorneys before the verdict and after the verdict. He sends us thank you cards from inside the jail. He shows interest in how other people's lives are going, not just his own. He congratulated his attorney on the birth of their second child. He worked hard to get his GED even though he's struggling with certain sections.

He appreciates receiving books and works to read through those books to help prepare himself for what will be a seriously long prison sentence and prepare himself spiritually for that.

He's embarrassed that his coaches had to hear bad things about him and that they know that he's been convicted of something like this.

He's embarrassed. So that tells me that he's somebody who has remorse, has empathy for others, and is somebody who could benefit from all of the services that SCDC could offer him, and that's if he's given the minimum sentence; he would come out and make the best of his life and not re-offend, Your Honor.

He is somebody who I think has intellectual capability to benefit from programs and is motivated to do that. Even when he was doing testing for Dr. Knight, he wanted to work past time limits to try to get problems correct because it's important to him to try to be successful, Your Honor. And I just ask that you consider all of that in fashioning your sentence, and our hope is that you will give him a 30-year sentence and give him a meaningful opportunity for release.

THE COURT: Mr. Lewis, does anyone else wish to address the Court.

MR. LEWIS: No, Your Honor.

THE COURT: Does your client wish to address the Court?

MR. LEWIS: No, Your Honor.

MR. PATRICK: Thank you, Your Honor.

May it please the Court.

First, I would like to address the five Miller factors, and then we have several members of the victim's family that would like to speak at the appropriate time.

Your Honor, as far as the chronological age of the offender and the hallmark features of youth, the defendant was 17 years old and seven months at the time of this offense, extremely close to legal adulthood. We heard from Dr. Knight and the defense that this was the period when it was the middle of adolescence and that he should be held to a lower standard of culpability. We disagree finding that this case requires sentencing requirements for juveniles, not for adolescents, and it should be the legal definition of adulthood that is considered.

As to the failure, and to appreciate the risks and the consequences mentioned in their motion, we have direct evidence that this defendant appreciated the risks and consequences of his actions when he fled to Alabama immediately following the cruel murder of Brandon Bennett and the attack on Darrell Bennett, and we ask that you consider this to be a young man on the verge of

adulthood.

As to his family and home environment that surrounded the offender, Mr. Smith's upbringing and family experiences were regrettable, but not substantially worse than any other defendants we've seen in this system. By the time he committed this offense, he was living in a stable environment with his grandmother and mother and he was holding a steady job. We ask that you look to his case in relation to other murder cases when you sentence, even when their family life was not an ideal situation.

As to the circumstances of this offense, we take issue with the characterization of the offense. The defense in mitigating documents intended that we provided no motive nor any explanation as to why Brandon was stabbed. We don't have this information because we could have never received the information except from Mr. Smith or from any other documents because there were no other -- there was eyewitness to the offense, but we just don't know.

We've had no witnesses give us reason why the defendant would break into the victim's home and attack him or Darrell Bennett. The only

person that can know this for sure is Mr. Smith. So we're left with his story as the narrative as to how these events transpired.

What we do know is that he came into the home, repeatedly stabbed the victim, and according to our only eyewitness, Mr. Bennett, told him that I was going to get you, while stabbing him. And told him, I'll get you too mother F'er, to Darrell Bennett. We ask that you consider the facts of the crime of which he was convicted for by the jury and not the story the defendant has come up with to explain himself.

As to the forth prong associated with youth, Dr. Knight testified that that wasn't a factor in this instance. We disagree. The defendant knew well enough to flee the state of South Carolina and make it several states away before being captured. He knew enough to assert his right to counsel to Detective Burkhart when he drove to Alabama. He spoke with him on the phone weekly about this. He knew simultaneously enough not to reveal the circumstances of the facts of the case while also planning a legal defense.

Clearly, this is a person with a firm grasp on the justice system who understood the

consequences of his actions.

As for the possibility of rehabilitation, we ask you to note that the defendant had multiple drug violations before this offense. He failed on the drug treatment at the jail as you heard. We ask that you waive rehabilitation according to -- of these common addressed factors, punishment from the justice system, the retribution deterrent, and an incapacitation. A lesser sentence will not address those other purposes for punishment.

In conclusion, we ask that you consider each of the Miller factors in light of the heinous nature of this crime and fashion an appropriate sentence as you see fit, bearing in mind that we do not believe the minimum sentence is appropriate for the facts and circumstances of this case.

We ask that you consider to sentence the person on the cusp of adulthood who stabbed another young man in the bed, tried to stab his father, fled the state, verbally confirmed his intent and his refusal to accept responsibility.

Your Honor, I believe the mother and father of the victim would like to speak as well as his friend and the victim's aunt.

THE COURT: All right.

THE WITNESS: I'm Latrece Smalls. I'm the victim's mother.

THE COURT: Please spell your last name.

THE WITNESS: S-M-A-L-L-S.

THE COURT: Thank you.

THE WITNESS: I stand here today with many questions. The main question is to why? Repeatedly, I've heard Terrell address Brendan as his friend in trial, as his homeboy, his wing man, how much Brandon looked out for him. I heard how he was bullied. I heard how Brandon would get others not to bully him, but yet still you say he's your friend.

You write letters to your attorney and say you're remorseful, but I feel one of those letters could have been addressed to his father to say you're sorry, to me, his mother, to say I'm sorry. I stated early on that I have forgiven you for what you have done to my son.

I've heard testimony on how you can receive rehabilitation, but what about Brandon? Your mother and your family have the excitement of seeing your high school diploma. My son had to

complete some more courses, and he knew that was one of the main things that I wanted from him to make him -- to make me happy. I would never be able to see his name on a diploma. I will never get the chance to see him -- to see him achieve his goals. I will never get the chance to see him grow up as a man. I want those things for my son.

I have just recently come to the understanding that my son is gone, still speaking of him I would never say he was gone. I would still speak of him as if he was alive today. I have waited for nearly three years and I still want to know why. And you called him your friend. He has a niece who still talks about her uncle Brandon.

I have friends of his who still keep in touch with me, and I'm so happy to see them with their accomplishment, and I can only sit and wonder what my life would be like experiencing the same things as if Brandon was still here. So while you get the chance to still live your life, give me the opportunity.

Your Honor, let Terrell write me and give me a reason why he decided to take my son. You're saying the marijuana use. Well, guess what?

I can stand here and say, my son smoked marijuana too. Where we resided on Concord Street, walking up he saw drug dealers outside the home as well. Same gunshots you heard, he heard as well. So he did not take the same path as you took and he decided to call you his friend. Thank you.

THE WITNESS: Your Honor, my name is Darrell Bennett, B-E-N-N-E-T-T.

THE COURT: Mr. Bennett, I need you to speak a little louder so my court reporter -- I know it may be difficult, but please do the best you can.

THE WITNESS: Your Honor, nearly three years ago I lost my youngest son. I saw him the first day; I held him when he took his first breath. I held him while he took his last breath. There are three people that knew what went on that morning; one is dead, one got in here a few months ago and told you what went on, the other concocted a story that he's still not -- (Inaudible). So to say that he has remorse, he has no remorse.

He was to that day and he still to this day to me is a coward. Don't use my son's name and friend in the same sentence. He's not your friend. You don't do your friend that way. If you went to

a boxing club and all this, you learned a fight game.

His representative said that he has gotten bigger since he was incarcerated. Well, he was always bigger than Brandon. Brandon was the smallest of his friends. From kindergarten on, he was always the smallest. That's why they called him Little Brandon. If you're such a skilled fighter and such a good friend, why attack him while he was in his bed asleep and then run from prosecution.

If you were so innocent, why not say exactly what went on? Why run? First and foremost, why you do that? Who does that?

I've heard the age thing come up. That's an adult crime. I don't care what age he was when he did it. His actions were adultlike. I saw it. I saw it. I experienced them. So to say my child was this and my child was that, I know exactly who my child was. I'll never get to see him grow up or hold his kids. He has a niece and nephew that he'll never meet. Ever. He will never have kids of his own. He will never have his dreams come to fruition.

You say he would be at least 50 when he