

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MARSHELL HILL,

APPELLANT

APPELLATE CASE NO 2016-000868

RECORD ON APPEAL

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STATE'S EXHIBIT NO. 81- (Videotape of Appellant's Statement)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
v.) Case No. 14-GS-23-02209
MARSHELL HILL,)
DEFENDANT.)

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on April 11-13, 2016, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

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Appearing for State of South Carolina

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- None Entered -

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(STATUTORY QUALIFICATION)

(DEFENDANT NOT PRESENT)

THE COURT: All right. I guess the first matter that we're going to go through the suppression hearing? Is that what you want to do?

MS. WICKER: Yes, sir. Your Honor.

THE COURT: I mean, which would make sense now in light in this change. Does it still make sense to go forward with those?

MS. WICKER: Your Honor, there are two ---

THE COURT: Y'all going to have your client? Let's figure out what we're going to do before we bring him. Let's figure out where we are.

MS. WICKER: Your Honor, there are two statements that my client made to Mr. Napolitano and Deputy Downey that are not going to be related to the video. If we wanted to go ahead and do the *Jackson v. Denno* for those and then maybe get into the video with Investigator Fortner after that.

THE COURT: Will that work?

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1 SOLICITOR STEINBERG: That's fine.

2 THE COURT: Let's do the *Jackson
3 v. Denno.

4 SOLICITOR STEINBERG: Thank you,
5 Your Honor. First of all -- well, let's wait
6 for the defendant.

7 (DEFENDANT ENTERS COURTROOM)

8 THE COURT: All right. I'll be
9 glad to hear from you.

10 SOLICITOR STEINBERG: Thank you,
11 Your Honor. The State's first witness is Mr.
12 Brandon Napolitano, we call to the stand.

13 (WITNESS TAKES STAND)

14 *BRANDON NAPOLITANO, having been duly
15 sworn to tell the truth, and nothing but the
16 truth, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR STEINBERG:

19 Q. Mr. Napolitano, what was your role
20 in August of 2013?

21 A. I was the first responding deputy to
22 this incident.

23 Q. And did you have the opportunity to
24 -- and what was your role at the crime scene?

25 A. Like I said, I was the first

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1 responding unit. I was the first deputy on
2 scene. My job was to maintain the scene,
3 maintain the integrity of the scene and
4 separate witnesses.

5 Q. Did you speak to Marshall Hill, the
6 defendant in this case?

7 A. Briefly. Yes, sir.

8 Q. And what was his demeanor? What was
9 his appearance like?

10 A. When I first arrived on scene, I saw
11 Mr. Hill wearing a tee shirt and boxer. When
12 I approached him, I could smell alcohol on
13 him. He appeared to be intoxicated. He was
14 nervous. He was walking around a lot. Just
15 seemed to be evasive.

16 Q. Did he tell you what he drank and
17 how much he drank?

18 A. He said he drank a pint of vodka.

19 Q. How did he -- when I say he, Mr.
20 Hill, how did he identify the victim? How
21 did he identify their relationship?

22 A. The victim, he explained to me, was
23 a homeless man who often walks around the
24 Judson community and is a drinking buddy of
25 his.

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1 Q. What time line did Mr. -- well, just
2 tell us, was Mr. Hill in custody and did you
3 have any reason to put him in custody?

4 A. No, sir. I had no reason. He
5 wasn't in custody.

6 Q. Was he in handcuffs for any other
7 reason at that point?

8 A. No, sir.

9 Q. And did you tell him that he had to
10 speak with you?

11 A. No, sir.

12 Q. And was he willing to speak with
13 you?

14 A. Yes, sir.

15 Q. Did you promise him anything in
16 order to get him to speak with you?

17 A. No, sir.

18 Q. As to the substance of what he had
19 to say, does he give you a time line about
20 what happened with Mr. Patterson, the victim
21 in this case?

22 A. Yes, sir. In my report I wrote that
23 Mr. Hill had advised me that Mr. Patterson,
24 the victim, was alive at the incident
25 location at 11:00 hours.

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1 Q. Did you say alive or allowed?

2 A. Alive.

3 Q. Alive?

4 A. Yes, sir.

5 Q. Thank you.

6 A. He advised that he was helping with
7 the dog in the back yard and that at around
8 11:52 hours he found Mr. Patterson to be in a
9 chair, slumped over and was not breathing.

10 Q. I'm not going to ask you to repeat
11 what Mr. Barksdale, the other resident of
12 this house had to say, but did you ever
13 speak, an opportunity to speak with him?

14 A. Yes, sir.

15 Q. And was he in custody?

16 A. No, sir.

17 Q. And was he sober?

18 A. Yes, sir.

19 Q. And was he willing to speak with
20 you?

21 A. Yes, sir.

22 Q. After that, did you speak with Mr.
23 Hill again?

24 A. Yes, sir. You know, during the
25 course of the investigation I had to do other

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1 things. But I did speak to Mr. Hill.

2 Q. And this next time, approximately
3 how soon after the first time?

4 A. Thirty to forty minutes maybe.

5 Q. Okay. At this point, was he in
6 custody?

7 A. No, sir.

8 Q. Where was he in relationship to
9 where the crime scene was?

10 A. If you're facing the residence he
11 was maybe twenty yards to the right, by
12 Deputy Downey's patrol car.

13 Q. Was he standing or seated?

14 A. Both. I mean, we had asked him if
15 he wanted to sit in the back of the patrol
16 car and he said he did. So he was in and
17 out, standing, sitting.

18 Q. Okay. During this time did you
19 threaten him or promise him anything?

20 A. No, sir.

21 Q. At that point, what did he say about
22 Mr. Patterson?

23 A. He then told me that -- I asked him
24 a couple more questions. Mr. Hill stated
25 that the victim came to the incident location

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1 around 21:00 hours the night prior, on the
2 13th, and had some scratches on his face and
3 bruises on his face, but they didn't know how
4 he got them there.

5 And, again, he went back to, you know,
6 11:00 hours, Mr. Patterson was there taking
7 care of the dog. Mr. Hill stated that Mr.
8 Patterson had asked him for a glass of water
9 and advised that he was having trouble
10 walking. Mr. Hill then told me that he
11 obtained a glass of water for Mr. Patterson
12 and then gave it to him.

13 And that that was when he went inside to
14 drink his pint of vodka. And then went back
15 around 11:50 hours, 11:52 hours and saw Mr.
16 Patterson and he was slumped over.

17 Q. Did you ask Mr. Hill if there was
18 any verbal or physical confrontation between
19 he and the victim?

20 A. Right. Mr. Hill told me initially
21 that there was no verbal altercation or
22 physical altercation between the two of them.

23 Q. Were you aware of a conversation
24 that Deputy Downey had had with Mr. Hill?

25 A. I was aware that a conversation was

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1 had. Yes, sir.

2 Q. Okay. Did you hear it yourself or
3 from him?

4 A. I heard from Deputy Downey.

5 Q. Okay. Well, don't repeat what
6 Deputy Downey had to say.

7 A. Yes, sir.

8 Q. He told you that he did not have a
9 physical or verbal confrontation?

10 A. Yes sir.

11 Q. Okay. Did you later take him into
12 custody for an unrelated matter?

13 A. Yes, sir.

14 Q. Please tell the Court what the
15 unrelated matter was for.

16 A. It was a failure-to-appear bench
17 warrant, I believe, out of Greenville City.

18 Q. And where did you drive him to at
19 that point?

20 A. Drove him to the law enforcement
21 center to CID, per the CID investigators.
22 We obtained the warrant and then we drove him
23 over to detention.

24 Q. Okay.

25 SOLICITOR STEINBERG: And, Your

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1 Honor, as I informed the court earlier
2 that was for a driving under suspension,
3 those underlying charges.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR STEINBERG:

6 Q. Was he under arrest or in custody
7 during the time he made those statements?

8 A. When he spoke to me, sir?

9 Q. Yes?

10 A. No, sir.

11 Q. Okay. Thank you. Please answer
12 anything opposing counsel or the court may
13 have.

14 MS. JOHNSON: May it please the
15 Court?

16 CROSS-EXAMINATION

17 BY MS. JOHNSON:

18 Q. Mr. Napolitano, You said Mr. Hill
19 was drinking?

20 A. Yes, ma'am.

21 Q. And he was grossly intoxicated?

22 A. He was pretty intoxicated. Yes,
23 ma'am.

24 Q. Okay. And he told you he'd had a
25 pint of vodka that morning?

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1 A. Yes, ma'am. He said he began
2 drinking around 11:00. 11:00, yes, ma'am.

3 Q. Okay. So he had a pint of vodka in
4 roughly an hour, an hour and a half?

5 A. Yes, ma'am.

6 Q. Okay. Now, as far as this bench
7 warrant, you knew there was a hold on Mr.
8 Hill?

9 A. At what point, ma'am?

10 Q. During your investigation?

11 A. No, ma'am. It wasn't until much
12 later that we found out he had a bench
13 warrant.

14 Q. Okay. But you stayed with him while
15 -- well, you stayed with him during this time
16 you were on scene?

17 A. Me, personally, I did not.

18 Q. Okay. Do you have a copy of your
19 report with you?

20 A. I sure do.

21 Q. Okay. Well, I want to get you to
22 look at page three of your report.

23 A. (Reviews report).

24 Q. Did you not say you stayed with Mr.
25 Hill?

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1 A. Can you be more specific as to where
2 you're ---

3 Q. Can you look in the third paragraph?

4 A. Uh-huh.

5 Q. You stayed with Hill as he was
6 placed in the back of your patrol car?

7 A. I apologize. I don't see where
8 you're speaking of. Can you tell me the
9 first sentence.

10 MS. JOHNSON: May I approach the
11 witness, Your Honor.

12 THE COURT: You may.

13 MS. JOHNSON: (Indicating on report
14 for witness)

15 SOLICITOR STEINBERG: And for the
16 benefit of myself, can you tell me what it's
17 on.

18 WITNESS: It's in the third
19 paragraph.

20 MS. JOHNSON: It's in the third
21 paragraph, toward the end.

22 SOLICITOR STEINBERG: Okay. Thank
23 you.

24 CROSS-EXAMINATION CONTINUED

25 BY MS. JOHNSON:

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1 Q. You see that?

2 A. Right. That's simply stating that I
3 was with Hill as he was placed in the back of
4 my patrol car.

5 Q. Okay. But he was in the back of
6 your patrol car also during this, I guess,
7 the time?

8 A. Well, he had asked to sit down so we
9 gave him a place to sit.

10 Q. Okay. And you stayed with him?

11 A. Again, no. You know, I was doing
12 other things on scene.

13 Q. Okay. Did you put that in your
14 report?

15 A. Did I put that in my report?

16 Q. Uh-huh?

17 A. No, ma'am.

18 Q. "I stayed with Hill as he was..." ---

19 A. Oh, yeah. I placed, "I stayed with
20 Hill." Yes, ma'am.

21 Q. Okay. Okay. And also you talk
22 about this statement to Deputy Downey. I
23 don't want to go into that statement, but you
24 refer to a supplemental in your report?

25 A. Yes, ma'am.

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1 Q. Okay. And are you aware that there
2 was no supplemental report(s) by Deputy
3 Downey?

4 A. I'm not aware, no.

5 MS. JOHNSON: Okay. I beg the
6 Court's indulgence.

7 CROSS-EXAMINATION CONTINUED

8 BY MS. JOHNSON:

9 Q. But he did have a bench warrant on
10 him?

11 A. Yes, ma'am.

12 Q. Okay. And y'all did take him into
13 custody at some point?

14 A. Yes, ma'am.

15 Q. Thank you.

16 THE COURT: Redirect?

17 SOLICITOR STEINBERG: Very briefly.

18 REDIRECT EXAMINATION

19 BY SOLICITOR STEINBERG:

20 Q. On this time line, the statements
21 that the suspect made to you, were they made
22 to you -- looking chronologically at your,
23 were they made to you prior to the part where
24 you said "I stayed with him at the back of
25 the patrol car"?

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1 A. No, those were made before. The
2 statements made to me by Mr. Hill were made
3 before he was placed into my patrol car.

4 Q. Okay. At what point did you tell
5 the Defendant 'there's a bench warrant for
6 your arrest'?

7 A. I can't recall, sir. I wasn't the
8 one who discovered that. It was a, I believe
9 another deputy or investigator on scene that
10 advised me.

11 Q. Well, was he informed of that before
12 or after he made the statements?

13 A. Much after.

14 Q. Okay. Thank you.

15 A. Yes, sir.

16 MS. JOHNSON: Judge, just briefly in
17 follow up to the redirect?

18 THE COURT: Yes.

19 RE CROSS-EXAMINATION

20 BY MS. JOHNSON:

21 Q. It's normal to run peoples' names as
22 soon as you get on the scene?

23 A. Yes, ma'am.

24 Q. Okay. So there is a possibility
25 that you would know initially, immediately

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1 upon responding, that he had an outstanding
2 bench warrant?

3 A. No, ma'am. That's not the case at
4 all. I was on scene of a death
5 investigation. Our number one goal is to
6 ensure that life may be preserved. You know,
7 our goal is to resuscitate the victim. At
8 that point, I was one of -- you know, the
9 only deputy on scene. And my job was to
10 ensure that fire and EMS were safe and able
11 to do their job. I wasn't in -- I didn't
12 have time to run anybody's name.

13 Q. But other people could have been
14 running his name?

15 A. No, ma'am. I was the only one
16 there.

17 Q. Okay.

18 MS. JOHNSON: Thank you, Y our
19 Honor.

20 THE COURT: All right.

21 SOLICITOR STEINBERG: No questions
22 further from this witness.

23 THE COURT: Thank you. You may
24 step down.

25 WITNESS: Thank you, sir.

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1 (WITNESS STEPS DOWN)

2 SOLICITOR STEINBERG: The State's
3 next witness will be Investigator Michael
4 Downey.

5 (WITNESS TAKES STAND)

6 MICHAEL DOWNEY, having been duly sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR STEINBERG:

11 Q. Investigator Downey, what was your
12 role in this case in August of 2013?

13 A. I was a responding unit, showed up
14 after other units. When I got on scene, I
15 began the scene preservation. So I put crime
16 scene tape, you can see where my vehicle was,
17 and I maintained the security of the crime
18 scene until Mr. Hill was escorted over to my
19 vehicle.

20 Q. Thank you. And you were in uniform
21 patrol at the time?

22 A. Yes, sir. That's correct.

23 Q. And what was role in relation to Mr.
24 Hill, the suspect?

25 A. Well, at that point he was a witness

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1 or potential witness. So it was just to keep
2 him away from everyone else, just separate
3 the particular witness. We were just ---

4 Q. Okay. Who were the potential
5 witnesses? Who was the other witness that
6 was out there?

7 A. I can't recall his name. I'm sorry.

8 Q. Okay. Well, what was his role?
9 What was the other individual's role? Was he
10 a resident? Was he a stranger? Was he a
11 passerby, what was his role?

12 A. Other than Mr. Hill?

13 Q. Yes?

14 A. I'm not sure of that either.

15 Q. Okay. Did you speak with Mr. Hill
16 and if so, please tell us about that
17 conversation.

18 A. I did. Do you still have a copy of
19 my notes?

20 Q. I have a copy of your notes.
21 (Tenders), I'm handing you up a one-page
22 document. Are these your notes?

23 A. (Upon review), they are.

24 Q. Okay. Please refresh yourself with
25 those notes.

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1 A. (Upon review), okay.

2 Q. And did you speak with Mr. Hill?

3 And if so, where were you and what did that
4 conversation consist of?

5 A. I had parked my patrol car, once I
6 arrived on scene, if you were looking at the
7 house ---

8 Q. Yes, sir.

9 A. --- I was at the right side of the
10 house on the street side. I pulled my
11 vehicle there. That's where I established
12 the crime scene tape, over to my vehicle. We
13 were just standing there while CID was on the
14 way. So we -- I had no clue what was going
15 on and so I just asked what was going on.
16 'Who is this guy?'

17 Q. So at that point did you know who
18 the victim was?

19 A. No, I did not.

20 Q. At that point, did you know who the
21 suspect was or whether Mr. Hill, whether he
22 was a suspect or not, did you know who he
23 was?

24 A. I knew he was the resident is all I
25 knew at that time.

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1 Q. Okay. Did you know if there were
2 any other residents at that location?

3 A. No, sir.

4 Q. And was Mr. Hill in custody at that
5 time?

6 A. No, sir.

7 Q. Was he in handcuffs at that time?

8 A. No, sir.

9 Q. Did you threaten him or pressure him
10 to speak with you in any way?

11 A. No, sir.

12 Q. Did you promise him anything?

13 A. I did not.

14 Q. Where did you speak with Mr. Hill
15 and then tell us what he had to say?

16 A. Our conversation occurred at the
17 front of my patrol car. And just like I said
18 I just asked what's going on here? What's --
19 and he -- my notes here, he explained to me
20 that the victim lived in the community. That
21 he had been friends with the victim, that
22 he'd gave the victim shots. And he said the
23 victim had left somewhere between 2000 and
24 2100 hours, which is 8:00 or 9:00 p.m.

25 And then he tells me that -- which the

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1 notes skip around here. But just for
2 chronological order, that somewhere around
3 midnight the victim showed back up at his
4 door intoxicated. "The victim grabbed the
5 door and fell back out of the door." So he
6 said that was after midnight.

7 And then around 6:00 or 7:00 a.m. he went
8 outside and checked on the victim, gave him
9 water.

10 And then he called Barksdale -- so I'm
11 assuming that was the other guy in the house.
12 Called Mr. Barksdale and told him that the
13 victim was not breathing, the victim was not
14 breathing, call for an ambulance.

15 Q. Did you provide the Defendant with a
16 chair during this conversation?

17 A. I did. Because he -- I can't
18 remember. It seems like he had disabilities
19 or something like that. So I gave him a
20 chair. He sat outside of my patrol car.

21 Q. Did you feel the need to read him
22 his *Miranda* rights during any of this
23 conversation?

24 A. I did not.

25 Q. What was your reason for not

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1 advising him of his *Miranda* rights?

2 A. At that point I think there was
3 nothing suspect about him. I was just
4 getting a time frame for and who he was and
5 why we were there.

6 Q. The record will reflect that during
7 the conversation he's talked about the door
8 and you waved your hands. Please explain
9 more about what the Defendant did during that
10 time period?

11 A. Well, Mr. Hill, the way he described
12 it as when the victim came back around
13 midnight, he had a hold of the door or
14 something like that. And Mr. Hill animated,
15 said he fell back from the door.

16 Q. Were you able to tell Mr. Hill's
17 level of intoxication during your conversa-
18 tion with him?

19 A. I just know he'd been consuming
20 alcohol.

21 Q. Was he able to walk to your car on
22 his own power?

23 A. Yes, sir. He may have been --- I
24 don't think he was assisted by cane. I can't
25 remember. But he could have been assisted by

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1 a cane. I remember that he had a cane.

2 Q. That's all the questions I have.

3 Please answer any of opposing counsel's
4 questions.

5 A. Okay.

6 MS. JOHNSON: May it please the
7 Court?

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MS. JOHNSON:

11 Q. Deputy Downey, Downey?

12 A. Downey, yes, ma'am. The soap,
13 fabric softener.

14 Q. Okay. Deputy, you spoke with Mr.
15 Hill?

16 A. I did.

17 Q. And were you aware that he had
18 consumed a pint of vodka earlier in the
19 morning?

20 A. The quantity I do not know.

21 Q. Okay. But he was grossly
22 intoxicated?

23 A. He was intoxicated.

24 Q. Okay. And something that I failed
25 to ask earlier, do y'all have bodycams with

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1 the County?

2 A. (Negative gesture), this was 2013.

3 Q. Okay. But, that's not ---

4 A. The answer to your question is no.

5 Q. No bodycams? Okay. And as far as
6 your notes, you never reduced that to some
7 report, to a report?

8 A. I did.

9 Q. You did? You do have a report?

10 A. I do not have a report. A report
11 was filed and -- we'd discussed this earlier.
12 I can go into the details of the server
13 issues, but it never made it on the server is
14 why.

15 Q. So the server crashed?

16 A. I don't know what happened to it.
17 No, the server did not crash.

18 Q. Okay.

19 A. Would you like for me to explain it
20 to you? I had a computer at one point in
21 time. When I would type the reports, it
22 would pop up that it's uploaded. And then I
23 would get messages either from Records or
24 supervisors later on, that I did not have a
25 report on the server. Well, you can go back

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1 and look in a queue, and that is no longer
2 there. So it was an upload issue which that
3 is two, or three, four computers ago.

4 Q. Okay.

5 A. I know it sounds complicated.

6 Q. Well, there's not any backup system
7 with the Greenville County Sheriff's Office?

8 A. I don't know how that works.

9 Q. Okay. Well, I understand, but ---

10 A. But I'm just telling you what's
11 happened. I mean, I've had Records call me
12 two years later saying 'we never got a report
13 for this.' So I have to retype the report.

14 Q. So you're retyping reports two years
15 after the incident happened; is that what
16 you're saying?

17 A. There wasn't a record on the server.
18 I didn't type the report for this.

19 Q. You didn't type the report for this?

20 A. No, I did not get a -- you don't
21 have a typed report for this. I did type a
22 report.

23 Q. I understand that. But like I said
24 there's no protection, no backup? I mean,
25 this is the sheriff's office?

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1 A. You can talk to the IT. I don't
2 know.

3 Q. Okay. I understand.

4 MS. JOHNSON: I beg the Court's
5 indulgence.

6 CROSS-EXAMINATION CONTINUED

7 BY MS. JOHNSON:

8 Q. And you were also aware that Mr.
9 Hill had an outstanding bench warrant from
10 the City of Greenville?

11 A. Was I aware?

12 Q. You never were aware of that during
13 your investigation or your ---

14 A. I'm sure towards the end -- my role
15 was very limited. We had a brief
16 conversation. And at that point CID, which
17 is the violent crime unit, showed up. So at
18 that point, my role then became, again, just
19 scene preservation and security.

20 Q. Okay. But you were or weren't aware
21 of the bench warrant?

22 A. I'm sure at the end when we were
23 getting ready to leave.

24 Q. Okay. So that's a yes?

25 A. Well, yeah. Well, I was there until

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1 the end. So if he left and he had a warrant,
2 I became aware at some point in time;
3 correct.

4 Q. Okay. Thank you, deputy.

5 SOLICITOR STEINBERG: No further
6 questions.

7 THE COURT: All right. You may
8 step down. Thank you.

9 (WITNESS STEPS DOWN)

10 SOLICITOR STEINBERG: Your Honor,
11 we have no further questions for Mr. Downey.

12 THE COURT: I'm sorry.

13 SOLICITOR STEINBERG: Your Honor,
14 we think it would probably be best for the
15 Court, just for economics to have the hearing
16 on these two witnesses before we go into the
17 much larger issue involving the video tape.

18 THE COURT: All right. So the
19 statements that are in issue are the ones,
20 only those little ones we're talking about
21 here, right?

22 MS. WICKER: Yes, sir, Your Honor.

23 THE COURT: Okay.

24 MS. WICKER: Your Honor, I would
25 argue that Mr. Hill's statement to Mr.

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1 Napolitano should be suppressed. He was in
2 custody. He was not allowed to leave. The
3 officer knew there was an outstanding warrant
4 for him, and that he would be taken into
5 custody. He was not free to leave. He was
6 grossly intoxicated as well. He was not
7 Mirandized and as such, the statement should
8 be suppressed.

9 Regarding Investigator Downey's
10 testimony, Your Honor, again, he wasn't free
11 to leave. There was an outstanding warrant.
12 It was a custodial interrogation. He was not
13 advised of his rights pursuant to *Miranda*.
14 And, Your Honor, I would say that it was a
15 custodial interrogation. He should have been
16 Mirandized. And as such, the statement
17 should be suppressed.

18 THE COURT: And I think that the
19 testimony kind of leads down a different road
20 there. I think they were just, you know, it
21 doesn't raise to a level of custody and,
22 therefore, *Miranda* was not required. So I'm
23 going to deny your motion as to both.

24 MS. JOHNSON: Thank you, Your Honor.

25 SOLICITOR STEINBERG: Thank you,

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1 Your Honor.

2 The next witness will be
3 Investigator Mike Fortner.

4 THE COURT: And just for my
5 context purposes, this is also *Jackson v.*
6 *Denno*?

7 SOLICITOR STEINBERG: Yes, sir.
8 This will be a much longer hearing.

9 (WITNESS TAKES STAND)

10 (WITNESS DULY SWORN)

11 SOLICITOR STEINBERG: Your Honor,
12 if there's no objection, I'm going to release
13 these two witnesses. I'm going to release
14 these two witnesses for today. They'll come
15 back tomorrow for the trial proper. To which
16 they ---

17 THE COURT: Well, I haven't --
18 well, I haven't exactly ruled that way yet.
19 That's why I held them -- so as long as they
20 can be, that you can get a hold of them if we
21 decided to go forward today. I'm waiting to
22 hear kind of what ---

23 SOLICITOR STEINBERG: Yes, sir.

24 THE COURT: As long as you can get
25 them if we start this afternoon.

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1 SOLICITOR STEINBERG: We're going
2 to start this afternoon with the trial?

3 THE COURT: Well, I was going to
4 hear this before I made an absolute ruling on
5 that.

6 SOLICITOR STEINBERG: Your Honor, I
7 think the jurors are not coming back until
8 tomorrow.

9 THE COURT: No, they're on hold.

10 SOLICITOR STEINBERG: The issue
11 involving Investigator Bailey.

12 THE COURT: Right. I wanted to
13 hear some of this before I made a decision on
14 that.

15 SOLICITOR STEINBERG: Yes, sir.

16 THE COURT: The jury's ---

17 CLERK: Coming back at 2:00.

18 THE COURT: Yeah, they're coming
19 back at 2:00.

20 SOLICITOR STEINBERG: The State
21 would ask that the jurors not be sworn
22 however until after you've made your final
23 ruling on ---

24 THE COURT: Right. And I just
25 wanted to kind of get -- I wasn't able to get

1 a full picture when we were talking. I
2 wanted to hear just a little more before I
3 ruled on that.

4 SOLICITOR STEINBERG: Yes, sir.

5 MIKE FORTNER, having been duly sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR STEINBERG:

10 Q. Investigator Fortner, what is your
11 role in this matter?

12 A. Lead investigator.

13 Q. And did you go to the crime scene at
14 the time?

15 A. Yes, sir. I did.

16 Q. And did you speak with the Defendant
17 on that day?

18 A. Just very briefly. Yes, sir.

19 Q. What, if anything, did he have to
20 say as it relates to this case?

21 A. Actually, I didn't really ask him
22 anything pertinent to this case. I had heard
23 that he was intoxicated so I want to speak to
24 him to see what kind of level of intoxication
25 he had. And if I remember correctly, he was

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1 actually seated in the back seat of a patrol
2 car at that time. I went over and spoke with
3 him and it was pretty obvious he was too
4 intoxicated to speak to him about this
5 incident that day.

6 SOLICITOR STEINBERG: Madam Court
7 Reporter, do you have all of the exhibits
8 from ---

9 COURT REPORTER: Right here.

10 SOLICITOR STEINBERG: Thank you,
11 ma'am.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR STEINBERG:

14 Q. Were you able to interview him on
15 that date? And if not, please tell us why?

16 A. On the date of the incident, no,
17 sir. He was too intoxicated, so I decided
18 not to talk to him about the incident that
19 day about the incident that had taken place.

20 Q. Had officers already interviewed Mr.
21 Barksdale? Or did they on that same date,
22 August 14th -- let's use the actual date of
23 August 14 -- did they interview Mr. Barksdale
24 the roommate?

25 A. They spoke with him, yes.

1 Q. Okay. So this issue can be
2 addressed now, was the suspect taken into
3 custody?

4 A. Eventually, yes, sir.

5 Q. And would you agree that it was for
6 charges unrelated to this matter?

7 A. Yes, sir.

8 Q. When were you intending on inter-
9 viewing Mr. Hill? What was your desired time
10 and place?

11 A. At some point in time while we were
12 out there, I had learned that he had this
13 bench warrant on him, so I figured that once
14 he had the bench warrant served on him, he'd
15 be held overnight in jail. And my intention
16 was to go get him the following day from the
17 detention center.

18 Q. The following day August 15th, did
19 you attempt to interview him at the law
20 enforcement -- at the detention center? And
21 if so, what happened?

22 A. Yes, sir. Myself and Investigator
23 Bailey went over there to get him out of the
24 -- actually I just checked him on the jail
25 screen, I guess, and I saw that he had been

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1 released. So at that point in time we went
2 to his house.

3 Q. When you got to the house, did you
4 see Mr. Hill?

5 A. We did. We knocked on the door and
6 Mr. Hill answered the door. We introduced
7 ourselves as to who we were and why we were
8 there. And we asked him if he'd be willing
9 to come down to the law enforcement center
10 with us so we could get a statement from him
11 about what had happened the night before.

12 Q. And at that point, was he a suspect
13 or a witness?

14 A. He's a witness at this time.

15 Q. Okay. To be very candid, did you at
16 least have some suspicions that he may be
17 involved in this case?

18 A. Sure. I mean, we don't know who did
19 it so everybody's a potential suspect. But
20 we were interviewing him as a witness that
21 day.

22 Q. And was he in custody on your
23 charge?

24 A. No, sir. He was not.

25 Q. He had been released from this other

1 bench warrant. Was he in custody on any
2 other charges?

3 A. No, sir.

4 Q. On August 15th was he sober?

5 A. Yes.

6 Q. And was he willing to speak with
7 you?

8 A. He was.

9 Q. Was he under arrest at that time?

10 A. No, sir.

11 Q. Did he agree to ride with you in
12 your vehicle to the law enforcement for an
13 interview?

14 A. He did. Yes, sir.

15 Q. Did he put any conditions on you
16 going or you taking him to the law enforce-
17 ment center?

18 A. He just asked us to bring him back
19 home, which we told him we would.

20 Q. At that point, was the intention to
21 bring him back home after the interview?

22 A. It was. Yes, sir.

23 Q. Why do you do interviews at your
24 office instead of at their residence?

25 A. We've got a computer that we can

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1 type on, take a typewritten statement from.
2 And in some cases if we're going to do a
3 video statement, we also have video equipment
4 for a video statement.

5 Q. And do you have such a computer and
6 printer in your vehicle if you had to do it
7 at a crime scene?

8 A. No, sir. I don't.

9 Q. Okay. When you interviewed him at
10 the law enforcement center, where did you
11 bring him and what type of room was this?

12 A. We walked him to my desk, which is
13 in the on-site office, I guess you'd call it.
14 It's a room -- I'm not sure -- I'd say maybe
15 thirty feet long by twenty feet wide. It's
16 got six desks in there and Mr. Hill sat in
17 the chair next to my desk.

18 Q. Is this a dedicated interview room
19 or is this your investigator's working room?

20 A. Yeah. Just a working room. He was
21 at my desk.

22 Q. Well, do you Mirandize him for this
23 interview? And if so, why? If not, why not?

24 A. I did not because he was not in
25 custody and I was interviewing him more as a

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1 witness, as somebody that might be able to
2 provide some information as to what had taken
3 place.

4 Q. At this time in August of 2013, did
5 the sheriff's office have a video interview
6 room?

7 A. The sheriff's office did not. No
8 sir.

9 Q. Do you have one now and if so, how
10 many?

11 A. We do. We have two now at this
12 time.

13 Q. When you needed to interview someone
14 who was a suspect, not a witness or a victim,
15 but you needed to interview a suspect in
16 2013, where would you go?

17 A. We would use the Greenville City
18 Police Department had two interview rooms.
19 They were kind enough to allow us to utilize
20 their interview rooms if we needed to.

21 Q. And are they in the same building as
22 the sheriff's office?

23 A. They are. Yes, sir.

24 Q. How did you conduct the interview of
25 Mr. Hill while in your office?

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1 A. I just asked him what had taken
2 place and just kind of went it through it.
3 And then have him tell us from the time that
4 Mr. Patterson originally had gotten over to
5 his residence and what happened and when he
6 left and all that type of thing.

7 Q. And did you have him write a
8 statement or do you wait and then later on
9 type a statement?

10 A. I do everything once I get an idea
11 that he's going to say and then we go back
12 and what he tells me again, we type it out.

13 Q. Okay. I'm going to show you State's
14 Exhibit Number 3. Is that the then-witness
15 Mr. Hill's statement?

16 A. Yes, sir. It is.

17 Q. And does that accurately reflect
18 what he told you in the interview room?

19 A. Not in the interview room, no, sir.
20 At my desk, yes.

21 Q. At your desk?

22 A. (Affirmative nod).

23 Q. I'm sorry?

24 A. Yes.

25 Q. In fact, what kind of statement is

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1 that? What kind of document is this on the
2 top?

3 A. The victim/witness statement.

4 SOLICITOR STEINBERG: I apologize.
5 I'm showing the victim/witness statement.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. STEINBERG:

8 Q. If Mr. Hunt [sic] had been a
9 suspect, what other document or documents do
10 you use?

11 A. Well, if we were going to do a
12 typewritten statement with a suspect, it
13 would go on a suspect statement form.
14 However, at the time since Greenville City
15 was kind enough to allow us to use their
16 equipment, any suspects that we would
17 interview, we would use their interview rooms
18 for that.

19 Q. When you interviewed Mr. Hill at
20 your desk, did he seem to be able to answer
21 your questions?

22 A. Yes.

23 Q. Were his answers responsive to your
24 questions?

25 A. Yes, sir.

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1 Q. Did he tell you his educational
2 level?

3 A. He did.

4 Q. And what was that?

5 A. Had a high school diploma from
6 Parker High School.

7 Q. And what year did he graduate?

8 A. 1973.

9 Q. Tell us very briefly, and I don't
10 want you to read the whole statement to the
11 Court unless the Court needs it. Tell us
12 briefly his statement to you in your office.
13 Did it incriminate himself at that point?

14 A. No, sir.

15 Q. At that point and you had that
16 document in your hands, State's Exhibit
17 Number 3, did you -- was he a suspect at that
18 point?

19 A. Not at this point. No, sir.

20 Q. At some point did you speak with
21 Investigator Bailey?

22 A. I did. Yes, sir.

23 Q. After you spoke with Investigator --
24 was that privately or with Mr. Hill around.

25 A. I'm sorry. What was that?

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1 Q. Was that private or was Mr. Hill
2 around?

3 A. That was private. Investigator
4 Bailey was present while this interview was
5 going on. But then him and I stepped out
6 together to talk.

7 Q. And then when you typed it up, did
8 you ask the suspect any questions; and if so,
9 why?

10 A. After we got done getting everything
11 typed out, Investigator Bailey had inter-
12 viewed Mr. Barksdale, the roommate. And I
13 was familiar with what Mr. Barksdale had told
14 Investigator Bailey but I wanted to kind of
15 confirm that with Investigator Bailey. And
16 it was apparent that there were a lot of
17 discrepancies between what Mr. Hill had said
18 and what Mr. Barksdale had said.

19 So we went back and talked with Mr. Hill.
20 I brought up the television set. It was
21 pretty obvious that he liked his television.
22 He spoke about it that day while we were
23 there and he had mentioned something about it
24 during the course of our interview. So then
25 I asked him if Mr. Patterson had maybe tried

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1 to steal his television while he was there?
2 And I could tell by his actions -- he
3 actually looked like he was about to cry.
4 And he broke down and said that yes that he
5 did. And then that he had tapped him twice.

6 I said 'all right.' At that point in
7 time I stopped our interview here. And then
8 we went across the hallway, over to
9 Greenville City to their interview rooms that
10 are recorded.

11 Q. Up until this point, had Mr. Hill
12 made any mention of using force against the
13 victim?

14 A. Not up until this point. No, sir.

15 Q. Had he mentioned any concern that
16 the suspect was trying to steal his TV prior
17 to you bringing the subject up?

18 A. No, sir.

19 Q. Is this part of your training or
20 part of your experience to confront witnesses
21 with information like this?

22 A. Both. Yes, sir.

23 Q. How did he react once you brought up
24 the TV? And how would you explain to the
25 Judge how he starts -- reacts?

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1 A. He actually looked like he was about
2 to start crying. You could tell when I
3 brought it up that you could tell it bothered
4 him.

5 Q. When you went over to the Greenville
6 City Police interview room, did you tell him
7 it was going to be recorded or either video
8 or audio recorded?

9 A. I believe we did. Yes, sir.

10 Q. And did you advise the suspect of
11 his Miranda rights?

12 A. I did. At that time since he was
13 now a suspect not a witness, we did. Yes,
14 sir.

15 Q. Okay. I'm going to show you State's
16 Exhibit Number 1. This is the rights waiver
17 form. Is this the document that you used?

18 A. Yes, sir. That's a copy of it.
19 Yes, sir.

20 Q. And on the upper left hand side,
21 what is that information?

22 A. It's the defendant's name, address,
23 birth date, Social Security number, the high
24 school that he went to, what year he
25 graduated.

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1 Q. What is the date of birth?

2 A. Date of birth is [REDACTED]/54.

3 Q. Okay. And the top of this document
4 is your Rights. And please go over what the
5 rights were that you read to him and what the
6 initials are next to it, stopping before you
7 get to the words "waiver of rights."

8 A. Okay. The waiver of rights are,
9 (reading): "Before we ask you any questions,
10 you must understand your rights.

11 You have the right to remain silent.
12 Anything you say can be used against you in
13 court.

14 You have the right to talk to a lawyer
15 for advice before we ask you any questions
16 and to have them with you during questioning.

17 If you have no money to pay a lawyer's
18 fee, the court will appoint one to represent
19 you without cost if you wish.

20 If you decide to answer questions now
21 without a lawyer present, you will still have
22 the right to stop answering any time.

23 You also have the right to stop answering
24 any time until you talk to a lawyer."

25 Then, the way I do it after I read each

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1 one of these lines out loud to whoever it is
2 I'm interviewing, I always ask them to put
3 their initials out here to the side. So as I
4 read it, before we ask any questions you must
5 understand your rights. I would then have
6 Mr. Hill write his initials out there to the
7 side, just to kind of indicate to me that we
8 did go over it, that he did understand it.

9 Q. Okay. And did you promise him
10 anything to get him to initial those?

11 A. No, sir. I did not.

12 Q. And did you threaten him or coerce
13 him in any way?

14 A. No, sir.

15 Q. Do you normally have them sign that
16 waiver?

17 A. I do. Yes, sir.

18 Q. Okay. From the point, the part
19 right below this, the waiver of rights. Read
20 the waiver of rights and explain why one word
21 is circled and then initialed.

22 A. Okay. The waiver of rights states,
23 "I have read this statement of my rights and
24 I understand what my rights are and I'm
25 willing to make a statement and answer

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1 questions. I do not want a lawyer at this
2 time. I understand and know what I'm doing.
3 No promises or threats have been made to me
4 and no pressure or coercion of any kind has
5 been used against me."

6 Then what I normally do is circle the
7 word coercion and then I would explain the
8 word "coercion" to whoever it is I'm talking
9 to because a lot of people aren't real
10 familiar with that word. And then I'll have
11 them place their initials next to the word
12 just to indicate that we did cover that word.

13 Q. Did he agree to speak with you?

14 A. He did, yes.

15 Q. Please tell us how long it took for
16 you to explain his rights to him, if you can?

17 A. I'd say maybe five minutes or so.

18 Q. Okay. Does he have any concerns and
19 did he express those concerns to you?

20 A. Yes, sir. He did. He was afraid
21 that if he signed the form that it would
22 interfere with his disability. So we kind of
23 went back and forth, I guess you'd say, about
24 signing that form. He was willing to talk to
25 us but he didn't want to sign it.

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1 Q. Well, let me stop. Are those were
2 his words or your words, that he was willing
3 to speak to you but did not want to sign the
4 document?

5 A. That was his words.

6 Q. Okay, sir. In your experience have
7 you had other witnesses or suspects that
8 would agree to speak to you but were not
9 willing to sign a waiver?

10 A. Yes, sir.

11 Q. Okay. And the other individuals
12 that were willing to give a statement have
13 said 'but I don't want to just sign that same
14 statement'?

15 A. Yes, sir.

16 Q. Since you normally get a signature
17 there, what did you do in this case or what
18 did the other investigator do in this case?

19 A. Investigator Bailey was sitting in
20 on my interview, this interview as well like
21 he did the first one. He got up, left the
22 interview room and I believe it was he called
23 you and asked you if there was a problem with
24 him not signing the form, since he was
25 willing to speak to us. He just didn't want

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1 to sign it. And then Investigator Bailey
2 came back and said that we were good to go.

3 Q. At that point what did the suspect
4 say?

5 A. He said he was willing to talk to
6 us.

7 Q. Okay. I'm not going to go over the
8 substance of the statement at this point
9 since you have a videotape.

10 This defendant had a cane. Did he have a
11 cane on this date that you were dealing with
12 him? On this interview during the 15th?

13 A. No.

14 Q. Did it appear like he was able to
15 make his own decisions?

16 A. Yes, sir.

17 Q. Just in case the Judge wants to look
18 at the transcripts, were transcripts prepared
19 in this case?

20 A. They were. Yes, sir.

21 Q. And who prepares the transcript and
22 who proofreads.

23 A. Our division secretary, Ms. Revis,
24 she would transcribe for us. She watches the
25 video and then writes it down, types it out.

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1 Q. When you first had it delivered to
2 you after this incident happened, did you
3 proofread it? Did it appear to be correct?

4 A. I did. And we did make a couple of
5 corrections. Yes, sir.

6 Q. And then more recently within the
7 last month or so, did you and I watch the
8 videotape?

9 A. Yes, sir.

10 Q. And did you make any -- particularly
11 where it says "inaudible", did you make any
12 corrections there?

13 A. Yeah. Best I recall, we made
14 another correction but I don't remember
15 exactly what it was.

16 Q. The transcripts, are they now
17 accurate? Do they reflect what was said in
18 that courtroom [sic]?

19 A. Yes, sir.

20 Q. Or in that interview room?

21 A. Yes, sir.

22 Q. Are there microphones next to the
23 suspect or are they hidden away or up on the
24 ceiling?

25 A. Yeah. I guess they're with the

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1 camera. They're not on the table where we're
2 at.

3 Q. Okay.

4 SOLICITOR STEINBERG: Do you wish
5 to do any cross-examination before we show
6 the video?

7 MS. WICKER: I'll wait.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR STEINBERG:

10 Q. Did you bring the copy of the video
11 of Mr. Hill today?

12 A. I did. Yes, sir.

13 Q. Is it on the table here?

14 A. The one the DVD's on the table in a
15 paper bag over there, sitting on the floor.

16 Q. I'm handing this open bag. If you
17 could please find this item because we're
18 going to have it marked.

19 SOLICITOR STEINBERG: Your Honor,
20 I'm going to have sheriff's office item MEF-C
21 marked at this point as a State's Exhibit as
22 a CD.

23 COURT REPORTER: State's 81 for
24 identification.

25 (SO MARKED AS STATE'S EXHIBIT 81)

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR STEINBERT:

3 Q. Is this the interview of the case --
4 interview of Mr. Hill?

5 A. Yes, sir. It is.

6 SOLICITOR STEINBERG: And, Your
7 Honor, I do have a transcript of this.
8 Opposing counsel has been provided a
9 transcript about a month or so ago, a little
10 bit longer than that. If Your Honor wishes
11 for a transcript, I can provide it for you as
12 well.

13 THE COURT: Are you going to show
14 this now?

15 SOLICITOR STEINBERG: Yes, sir.

16 THE COURT: Let me move down here
17 so that I can see the video.

18 SOLICITOR STEINBERG: We're going
19 to start from the very beginning, from the
20 001 section.

21 (STATE'S EXHIBIT 81 FOR ID PUBLISHED)

22 SOLICITOR STEINBERG: Thank you,
23 Your Honor. That's the end of the tape.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR STEINBERG:

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1 Q. Investigator Fortner, I'm going to
2 show you this transcript.

3 SOLICITOR STEINBERG: I'd like to
4 have it marked as a State's Exhibit at this
5 point.

6 COURT REPORTER: State's Exhibit
7 Number 82 for identification.

8 SOLICITOR STEINBERG: This is the
9 transcript of Marshall Hill.

10 (SO MARKED AS STATE'S EXHIBIT 82)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR STEINBERG:

13 Q. Is this the document, does it
14 accurately reflect what the videotape showed?

15 A. Yes, sir. It is.

16 SOLICITOR STEINBERG: It's a
17 State's Exhibit for the Court if the Court
18 has any concerns, I'll hand it up to the
19 Court. Opposing counsel certainly has a copy
20 of this.

21 THE COURT: Thank you.

22 SOLICITOR STEINBERG: I beg the
23 Court's indulgence.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR STEINBERG:

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1 Q. Investigator Fortner following this
2 interview, did you arrest the suspect for the
3 murder of Billy Patterson?

4 A. Yes, sir. We did.

5 Q. Please answer any of opposing
6 counsel's questions at this time?

7 A. Yes, sir.

8 MS. WICKER: May it please the
9 Court.

10 CROSS-EXAMINATION

11 BY MS. WICKER:

12 Q. Investigator you wrote several
13 reports with respect to this investigation;
14 correct?

15 A. Yes, ma'am.

16 Q. Okay. And all of them accurate,
17 complete and truthful; right?

18 A. Yes, ma'am.

19 Q. When you initially arrived on scene,
20 Mr. Hill was grossly intoxicated; correct?

21 A. Yes.

22 Q. Okay. And in fact on page five of
23 your August 19th report, you state that the
24 suspect could not be interviewed on August
25 14th of 2013 because he was so intoxicated?

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1 A. Correct.

2 Q. Okay. Through the course of your
3 investigation, did you become aware that it's
4 not uncommon for Mr. Hill to begin drinking
5 at the beginning of the day?

6 A. That's correct, yes.

7 Q. Investigator Bailey's the one who
8 spoke to Mr. Barksdale at the law enforcement
9 center?

10 A. We both did.

11 Q. You both did?

12 A. Yes, ma'am. I mean, are you
13 referring to ---

14 Q. Did you speak to Mr. Barksdale with
15 respect to this investigation?

16 A. Oh, Barksdale. I'm sorry, I was
17 thinking of Mr. Hill. Investigator Bailey
18 talked to Mr. Barksdale, yes.

19 Q. Okay. So you never personally
20 interviewed Mr. Barksdale?

21 A. Not in a formal setting, no, ma'am.

22 Q. Did you speak to him on scene at all
23 or ---

24 A. Just briefly. Yes, ma'am.

25 Q. Okay. You went the next day after

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1 this incident to speak to Mr. Hill at his
2 home about what happened?

3 A. Yes, ma'am.

4 Q. You originally wanted to speak to
5 him was he was in the GCDC; correct?

6 A. Yes, ma'am.

7 Q. When you saw Mr. Hill at his
8 residence -- he told you he was drunk, had
9 been drinking that day; right?

10 A. What day are we referring to now?

11 Q. When you went back to his residence
12 after he'd been released on that bench
13 warrant?

14 A. (No verbal response).

15 Q. Did he tell you he'd been drinking
16 that day?

17 A. Which day are you referring to now?

18 Q. On the 15th, when you went back?

19 A. On the 15th. He said he'd had a
20 little bit to drink that day. Yes, sir
21 (sic).

22 Q. But he did ultimately go with you
23 and Investigator Bailey back to the law
24 enforcement center?

25 A. Yes, ma'am. He did.

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1 Q. And I'm sorry, were you in your
2 office -- or where were you initially?

3 A. Well, I don't have my own personal
4 office. We're all six of us that work
5 homicide are all in the large room. We were
6 at my desk.

7 Q. Okay. And you questioned him about
8 what had happened; right?

9 A. Yes.

10 Q. Okay. In fact, you said earlier
11 that he told you what happened. Then he told
12 you again so you could type it up?

13 A. Right.

14 Q. The statement that you typed up, Mr.
15 Hill did not sign?

16 A. Correct. Yes, ma'am.

17 Q. Okay. And on page eight of your
18 August 19th report, you state you noted
19 differences in Mr. Barksdale's account versus
20 Mr. Hill's; right?

21 A. Right.

22 Q. Okay. And specifically one
23 difference was that Barksdale had told you
24 when he got home from work the victim was
25 laying on the ground and had his injuries at

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1 this time. But the suspect states that the
2 victim did not have any injuries when he left
3 the house; correct?

4 A. Right.

5 Q. You and Investigator Bailey then
6 stepped out to discuss the differences
7 between the two statements?

8 A. Yes, ma'am.

9 Q. You decided to let Mr. Hill talk and
10 then you asked him about his TV; right?

11 A. Right.

12 Q. Okay. And you said earlier that
13 that's part of your training. You brought up
14 the issue of the TV?

15 A. Correct.

16 Q. On page nine of that same report,
17 you said that he said he bought it so he and
18 his friends could watch football when the
19 season began; is that correct?

20 A. Right.

21 Q. And then you continued on with your
22 interview of him. And you write that Mr.
23 Hill told you that he hit the victim two to
24 three times on his back because the victim
25 was stealing his TV; is that correct?

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1 A. Right.

2 Q. And so you stop the interview at
3 this time so you could record it; right?

4 A. Right.

5 Q. Okay. We watched the video. You go
6 over Mr. Hill's rights with him. And he
7 refused to sign the form?

8 A. Right.

9 Q. And I counted that it was just under
10 twenty minutes that you discussed that waiver
11 of rights with him in that video. In your
12 report on page nine, you said that Mr. Hill
13 didn't want to sign this waiver but he did
14 not request an attorney.

15 A. Correct.

16 Q. Also on page nine of that same
17 report you write that Investigator Bailey
18 stepped out of the office and called a member
19 of the Solicitor's office and explained to
20 them that the suspect was willing to speak
21 with you and did not request an attorney but
22 he did not want to sign his waiver; is that
23 correct?

24 A. Yes, ma'am.

25 Q. Investigator Bailey returned and

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1 advised you that if the suspect didn't want
2 to sign his waiver he didn't have to. Is
3 that also correct?

4 A. Yes, ma'am.

5 Q. Okay. And you write in your report,
6 (reading): *"I then asked the suspect if he*
7 *wanted to speak to us and he said he would."*

8 A. Yes, ma'am.

9 Q. Okay. So when we watch the video it
10 looks like Investigator Bailey is the one who
11 steps out to speak to the Solicitor; is that
12 correct?

13 A. Yes.

14 Q. So you stayed in the room and
15 continued to speak to Mr. Hill? You didn't
16 speak to the solicitor personally, did you?

17 A. I did not. No, ma'am.

18 Q. Also in the video we can see that
19 you asked him, do you like to watch
20 football?' When he replies in the
21 affirmative you ask, 'Is that what you got
22 the TV for?' He also replies in the
23 affirmative; is that also correct?

24 A. Yes.

25 Q. Okay. So Investigator Bailey came

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1 back in and you asked Mr. Hill if he was
2 willing to talk to you at that point?

3 A. Right.

4 Q. And in the video we saw he says "off
5 the record"?

6 A. Right.

7 MS. WICKER: I beg the Court's
8 indulgence.

9 CROSS-EXAMINATION CONTINUED

10 BY MS. WICKER:

11 Q. Just to confirm, Mr. Hill never did
12 sign that waiver form; right?

13 A. That is correct.

14 Q. And the statement that you had
15 printed off from earlier, he never signed
16 that either; correct?

17 A. Never signed it, no.

18 Q. But you witnessed it? I saw you
19 writing on it in the video?

20 A. That was the waiver of rights that I
21 was witnessing.

22 Q. Okay. So you witnessed the waiver
23 of rights.

24 A. (Affirmative nod).

25 Q. But the other statement is just

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1 something that you typed but blank with
2 signatures?

3 A. Correct. Yes, ma'am.

4 Q. Okay. Thank you.

5 MS. WICKER: I don't have any
6 further questions.

7 SOLICITOR STEINBERG: Nothing from
8 the State, Your Honor.

9 THE COURT: All right. You may
10 step down.

11 (WITNESS STEPS DOWN)

12 SOLICITOR STEINBERG: The State has
13 no further witnesses. We do understand that
14 opposing counsel speak with or cross-examine
15 Investigator Antonio Bailey, which the
16 State's not going to call another witness in
17 light of the testimony in the video that you
18 just heard.

19 THE COURT: All right. In light
20 of my ruling that I will allow them to do
21 that. You know, quite frankly, watching
22 that, I'm going to let y'all do that. But
23 I'm not sure it's going to have any impact on
24 -- well, maybe there's something in there
25 that I'm missing that happened outside that

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1 video, but I'm going to let y'all do that.

2 Let me just kind of let y'all know
3 the schedule. We do have the jury coming
4 back at 2:00. So we'll go ahead and select a
5 jury today. We won't swear them. I guess
6 we'll have them come back at 2:15 in here.
7 They'll come back at 2:00 anyway; right?

8 CLERK: They're coming downstairs
9 at 2:00.

10 THE COURT: Right. And then we'll
11 have them come in about 2:15. That way
12 everybody can have a lunch break. And then
13 we'll continue. I guess we've got a couple
14 -- we've got a Castle Doctrine?

15 MS. WICKER: Yes, sir, Your Honor.

16 THE COURT: And then the rest of
17 it we can't do anything further until we hear
18 from Detective Bailey.

19 SOLICITOR STEINBERG: Yes, sir.
20 Your Honor.

21 THE COURT: Which pretty much is
22 going to take up the whole afternoon anyway
23 so things are going to work out. And then
24 we'll finish up in the morning. And then
25 what I'll do is I'll have -- my plans are,

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1 just to kind of let everybody know. We'll
2 take a -- and that's all we need right now
3 before we selected a jury, right?

4 SOLICITOR STEINBERG: Yes, sir. I
5 had mentioned earlier that Detective Bailey
6 might not be available today at all. We're
7 hoping he'll be here tomorrow morning.

8 THE COURT: Right. Okay. We're
9 going to let y'all -- this is kind of my
10 thoughts and you can tell me if it works for
11 you. We're going to select a jury at 2:15?

12 SOLICITOR STEINBERG: Yes, sir.

13 THE COURT: Hear any further
14 Motions that we need without Detective Bailey
15 after the jury has been selected. And then
16 we will begin in the morning at 9:00, finish
17 up any additional testimony and then have the
18 jury ready to go at 10:00 if needed at 10:00.
19 Does that schedule -- have I missed anything?

20 SOLICITOR STEINBERG: No, sir.
21 Your Honor.

22 MS. WICKER: No, sir.

23 THE COURT: All right.

24 (OFF RECORD DISCUSSION)

25 THE COURT: So we'll be at-ease.

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1 And that way you can, I guess, release. Now
2 that I've heard everything, your officer can
3 be released until in the morning.

4 SOLICITOR STEINBERG: Thank you,
5 Your Honor.

6 THE COURT: All right. So we'll
7 be at-ease until 2:15 when we'll have the
8 jury come in here. So y'all need to be ready
9 to go.

10 SOLICITOR STEINBERG: Yes, sir.

11 THE COURT: Do I have any *voir*
12 *dire* you may want?

13 SOLICITOR STEINBERG: None from the
14 State, Your Honor.

15 THE COURT: Anything from the
16 defendant?

17 MS. WICKER: Nothing from the
18 Defendant.

19 THE COURT: All right we'll be
20 ready to select the jury at 2:15. Again,
21 after the jury is selected we'll release them
22 and continue with any additional hearings or
23 any matters we have to take up at that point.

24 SOLICITOR STEINBERG: Yes, sir.

25 THE COURT: And Mr. Hill is in

1 guess for scheduling purposes we've got most
2 of the -- we've gotten all of -- we're having
3 to wait on the testimony of Detective Bailey,
4 which we will have first thing in the morning
5 at 9:00. And what else have we got on --
6 anything else from the State?

7 SOLICITOR STEINBERG: There's
8 nothing else from the State, Your Honor. Two
9 witnesses are not here today. If I decide to
10 call them, they'll be here in the morning.
11 It will be very short. It's two coroners.
12 And they heard essentially a one-word
13 statement from the suspect. The information
14 was turned over to opposing counsel. I'll
15 make the decision tonight whether I'm going
16 to call them.

17 THE COURT: All right. And as far
18 as we discussed, I'm not going to entertain
19 any arguments this afternoon on the
20 suppression of what I've designated
21 statements number three and four. I'm not
22 sure exactly how y'all are -- one and two
23 we've already talked about. Three and four,
24 I think are what they're any issue. I will
25 accept any case law to review. But as far as

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1 any argument, we'll have those after
2 we've heard all of the testimony tomorrow.
3 So that's all Motions on behalf of the State;
4 right?

5 SOLICITOR STEINBERG: Yes, sir.
6 Your Honor.

7 THE COURT: All right. And now we
8 will turn to the defense?

9 MS. WICKER: Your Honor, we do have
10 a Motion under the Castle Doctrine.

11 THE COURT: All right. I'll be
12 glad to hear from you.

13 MS. WICKER: I'm going to ask to
14 briefly elicit some testimony from Mr. Hill,
15 but solely for the purpose of this hearing.

16 THE COURT: Okay.

17 MS. WICKER: The defense calls Mr.
18 Hill.

19 (WITNESS TAKES STAND)

20 MARSHELL HILL, having been duly sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. WICKER:

25 Q. Would you please state your name for

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1 the record? Would you state your name for
2 the record, Mr. Hill?

3 A. Marshall Hill.

4 Q. Would you spell that for us, too,
5 Mr. Hill?

6 A. M-A-R-S-H-E-L-L.

7 Q. Thank you, Mr. Hill. Mr. Hill, I
8 notice that you have cane. Why do you have a
9 cane?

10 A. Because I have a bad hip.

11 Q. Okay. Do you have a specific
12 diagnosis for what's going on?

13 A. I need a hip operation.

14 Q. Okay. Let me just jump to August
15 13th of 2013. Do you recall what time Billy
16 Patterson originally came to your house,
17 approximately?

18 A. Right around dark.

19 Q. Okay. Why was he there?

20 A. We were drinking.

21 Q. Okay. Did you invite him into your
22 home at any time?

23 A. Later on that evening.

24 Q. And why did you invite him in?

25 A. Because we was still drinking.

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1 Q. Okay. Other than the drinking that
2 may have impaired his sobriety, was Billy
3 Patterson physically a pretty mobile person?

4 A. Yeah. He gets around better than I
5 do.

6 Q. Okay. All right. How late did
7 y'all stay up drinking, do you remember?

8 A. It was late because I know -- like,
9 my roommate came home and he gets off at
10 10:00, 11:00, maybe 12:00. So it was late.

11 Q. At any point before your roommate
12 got home, did you ask Billy to leave?

13 A. No.

14 Q. Did you ever ask him to leave?

15 A. After I had gotten really
16 intoxicated.

17 Q. Okay. Why did you ask him to leave?

18 A. I was ready to lay down. I had got
19 real drunk.

20 Q. Okay. Did he ultimately end up
21 staying over with you?

22 A. No, he wasn't supposed to stay.

23 Q. He wasn't supposed to stay?

24 A. Right.

25 Q. But did he stay?

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1 A. After my roommate come, he stayed.

2 Q. All right. Well, after your
3 roommate came home and Billy stayed, what did
4 you do?

5 A. Huh?

6 Q. What did you do after that, after
7 your roommate got home?

8 A. Oh, my roommate went in his room.

9 Q. Okay. What did you do, Mr. Hill?

10 A. We continued to drink.

11 Q. Okay. Did you stay in living room
12 the whole time? Did you go to the kitchen,
13 bathroom, your bedroom at any point?

14 A. Yes, I did. I went to my bedroom
15 after I had got, after a while I went to my
16 bedroom.

17 Q. When did you next see Billy?

18 A. Behind my TV.

19 Q. Okay. What did he do when you saw
20 him?

21 A. It was like I surprised him.

22 Q. Did he leave? Did he come towards
23 you? What did he do after he saw you?

24 A. He throwed his hands up and walked
25 towards me.

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1 Q. And what was your mental state when
2 you saw him doing that?

3 A. I was still a little intoxicated,
4 but I was in fear; I was scared.

5 Q. Why were you scared?

6 A. Without no stick and I all, I
7 couldn't do anything with him.

8 Q. Okay. Did you ask him to leave
9 again at that point or did you try to leave?
10 What happened next?

11 A. I asked him to leave.

12 Q. Did he leave?

13 A. No.

14 Q. So what did you do at that time?

15 A. I pushed him, bumped him, and swung
16 at him with my stick.

17 Q. Okay. Why did you do that?

18 A. Because I was disturbed, because I
19 had never seen him like that.

20 Q. So were you ultimately able to get
21 him out of your house?

22 A. Yeah. After we wrestled at the
23 door.

24 Q. What did you do after you got him
25 out the door?

1 A. Well, really, he grabbed my screened
2 door and tore it off the door. Fell with the
3 screened door, fell down the steps with the
4 screen door.

5 Q. So what did you do after that? What
6 did he do?

7 A. Well, I told him to leave my yard.

8 Q. Okay.

9 A. And he stood up and I went on back
10 in the house and closed the door. Because
11 like I said, I was really drunk.

12 Q. So when did you next see him? When
13 did you see Billy after that again?

14 A. After that?

15 Q. Uh-huh?

16 A. The morning.

17 Q. Okay. What was he doing?

18 A. He was sitting on the side of the
19 house.

20 Q. Did the two of you say anything to
21 each other? Was he alive at that time?

22 A. I actually asked him 'why are you
23 still here?'

24 Q. And what was his response to you
25 about that?

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1 A. He fell down. He mumbled, said he
2 couldn't move and he asked could he have a
3 glass of water.

4 Q. Okay. So what did you do?

5 A. I gave him some water.

6 Q. Okay. Was that the last time you
7 saw Billy alive?

8 A. No.

9 Q. Okay. When did you see him alive
10 again?

11 A. When I come back out to feed the
12 dog.

13 Q. All right. Did you say anything to
14 him at that time?

15 A. No, I looked over at him and asked
16 him, 'you ain't gone yet?'

17 Q. Okay. All right. Let me ask you
18 again. So when you saw Billy in your home
19 with the TV, what was your mental thought at
20 that time?

21 A. At the time I was actually drunk.
22 If I wasn't drunk, I think I would have just
23 threw him out.

24 Q. Okay. All right.

25 A. Or tried to, attempt to or

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1 something.

2 Q. Okay. Well, when he started to walk
3 towards you, what did you think?

4 A. Well, he -- I thought he was going
5 to try me or something.

6 Q. All right. Mr. Hill, would you
7 answer any questions that the Solicitor has
8 for you?

9 A. Yes, I would.

10 CROSS-EXAMINATION

11 BY SOLICITOR STEINBERG:

12 Q. Mr. Hill?

13 A. Yes, sir.

14 Q. When you testified in the courtroom
15 today, is this different from what you told
16 officers on the crime scene? Did you tell
17 the officers -- did you tell them the same
18 thing?

19 A. At the time I was actually
20 incoherent and halfway out of my mind, you
21 know, drunk and stuff.

22 Q. Okay.

23 A. But I tried to tell them as much as
24 I could tell them at the particular time,
25 sir.

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1 Q. Do you think your alcohol -- did you
2 also smoke marijuana at that time?

3 A. I smoked very little of it.

4 Q. Okay. Do you agree you smoked
5 marijuana?

6 A. Sometimes.

7 Q. No, I don't mean in general. I mean
8 on August 13th when this whole incident
9 started, do you remember you told officers
10 you smoked marijuana?

11 A. I smoked a little bit that day.

12 Q. And you agree you were drinking
13 alcohol?

14 A. Yes.

15 Q. And you agree this has an effect on
16 you?

17 A. Yes, it do.

18 Q. How do you remember so very, very
19 well that he held his hands up towards you
20 when he was behind the TV? How can you
21 remember all this?

22 A. Well, you know how you can just
23 suddenly see things and, you know, like
24 they're blurred and but you can tell stuff.

25 Q. I'm sorry. Did you say that some

1 things were blurred and some things you could
2 tell?

3 A. Yes, sir.

4 Q. Do you agree that you told officers
5 in the sheriff's office during the first
6 interview a different story?

7 A. At the time at the sheriff's office,
8 I was still, I was still not believing what
9 was going on.

10 Q. Well, regardless of what you were
11 believing, do you agree that you told them a
12 different story that did not involve you
13 forcing him out ---

14 A. It wasn't altogether a different
15 story, sir.

16 Q. But do you agree you told them that
17 you allowed him to stay in the house, that
18 you allowed him to lay down?

19 A. Allowed him to lay down?

20 Q. Yes. Allowed him to lay down on
21 your floor?

22 A. That was at the first particular
23 time that I tried to put him out.

24 Q. Okay.

25 A. And Barksdale was in, was there

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1 then.

2 Q. When Barksdale -- did Barksdale tell
3 you to just let him stay?

4 A. Yes.

5 Q. And after Mr. Barksdale, who's your
6 roommate allowed him to stay, did you try to
7 put him out immediately after that?

8 A. No, I did not.

9 Q. When did you try to put him out?

10 A. When I seen him behind my TV.

11 Q. And you didn't say anything about
12 the TV to the uniformed patrol officers; did
13 you?

14 A. Not as I can tell.

15 Q. Okay. And did you not say anything
16 to that when you spoke to the coroner's
17 office, the two coroners; did you?

18 A. No, I couldn't tell you.

19 Q. In fact, the first time you said
20 anything about a TV was when the
21 investigator, Mr. Fortner, told you about the
22 TV; isn't that correct?

23 A. Oh, the gentleman right there?

24 Q. Yes, sir. And why did you wait the
25 entire time to tell officers about the TV?

1 A. Just like I said I was still --
2 because when they come to get me the second
3 time, I had at least drunk a pint.

4 Q. Okay.

5 A. As I told them when they come to the
6 door and knocked on the door, I told them
7 that I had been drinking.

8 Q. Now, your story today is that you
9 hit him two times with your stick to make him
10 leave and then you wrestled with him?

11 A. It was -- to be honest, sir, there
12 was a lot going on, sir.

13 Q. You said to be honest. I want you
14 to be honest. Did you tell him that? Did
15 you tell this Court that you only hit him
16 twice?

17 A. I hit him twice.

18 Q. Isn't it true that you were
19 interviewed the very next day and you said
20 that you hit him many, many times?

21 A. Well, like you tell it -- like I
22 said, I had been drinking. And what you can
23 see on the film that I wasn't -- and I was
24 sore from that walking home, scared, a little
25 out of it.

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1 Q. To this date you still say you only
2 hit him two times?

3 A. Well, sir, the way everything looks
4 that I might have hit him maybe three or four
5 times.

6 Q. Is it possible you hit him at least
7 twenty-three times about his head and his
8 body?

9 A. No, sir. I don't think I did that,
10 sir.

11 Q. You say you don't think. Is it
12 possible you did?

13 A. No, sir. It's not possible to do
14 because I am not that kind of person. I
15 would do enough to keep you off of me. But
16 after that, I am kind.

17 Q. Okay. When you're drinking, do you
18 act differently?

19 A. Not as I know. I get kind of sleepy
20 and nodding and stuff.

21 Q. Okay. Have you ever gotten violent
22 while under the influence of alcohol?

23 A. No, sir.

24 Q. Have you ever assaulted anybody
25 under the influence of alcohol?

1 A. No, sir.

2 Q. Specifically Roberta Byrd. Have you
3 ever assaulted ---

4 A. Oh, the way that went, sir. I did
5 not assault her. She assaulted me. She
6 poured water in my TV, tipped my microwave
7 over, tore up my documents.

8 Q. And you deny hitting her back.

9 A. And then she ran.

10 Q. You deny hitting her at all?

11 A. No. I couldn't get to her because
12 she was running, because I couldn't run.

13 Q. Did you plead guilty to that crime,
14 sir?

15 A. See, at the time I had my job and I
16 just wanted to get it out of the way.

17 Q. So I guess the answer to that is you
18 did plead guilty to criminal domestic
19 violence?

20 A. Yes, I did.

21 Q. You also said that in your words you
22 wrestled him out the door. Is that correct?

23 A. Yes, sir.

24 Q. How soon after you hit him with the
25 stick, did you wrestle him out the door?

1 A. Oh, we was up, we was up moving
2 around.

3 Q. Okay. Was it during the same scene
4 or did y'all rest or you go back to talking
5 or anything or ---

6 A. Like I said it was two scenes.
7 There was one scene where I told him that it
8 was time for him to go.

9 Q. Right.

10 A. But he wouldn't leave. And then
11 Barksdale come in and said leave him alone
12 and let him settle down. So when the other
13 occurred events happened, it was after I had
14 come out of my room and seen him behind my
15 TV.

16 Q. And how soon after that did you
17 wrestle with him out the door?

18 A. Right then.

19 Q. Right then?

20 A. Yes, sir.

21 Q. Isn't true that during the non-video
22 statement -- I want to make sure it's very
23 clear -- in the sheriff's office on August
24 15th, did you tell the officers that, in fact,
25 he just slept it off and that you never had

1 to push him out the door?

2 A. At the time I was under the
3 influence and I was scared.

4 Q. So you're saying you were under the
5 influence the second time when the officers
6 interviewed you and it's on videotape?

7 A. Yeah. You could not tell?

8 Q. Please read that statement. It's
9 State's Exhibit Number 3?

10 A. Just like I said, I'm not a very
11 good reader.

12 Q. Would you like me to read it to you?

13 A. If you would, thank you.

14 SOLICITOR STEINBERG: Your Honor,
15 I'm reading State's Exhibit Number 3. That's
16 the victim witness statement.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. STEINBERG:

19 Q. Your statement starting with the
20 word "quote", (reading): "Quote, I have
21 known Billy for about five or six years. I
22 think Billy stays in one of the empty houses
23 on 5th Street. Tuesday morning I got into my
24 tea." End quote. What does "into my tea"
25 mean?

1 A. Alcohol.

2 Q. Thank you. (Reading): "By that, I
3 mean drinking. I started at around 11:00,
4 11:30 may 12:00 noon. I then lit one up. By
5 that I mean I smoked some marijuana. I laid
6 back and looked crazy, period. What did you
7 mean by that?

8 A. Cool, calm.

9 Q. (Reading): "I sat up under the air
10 conditioner. It was about 6:00 p.m. or maybe
11 later when Billy showed up. I did not notice
12 any injuries that he had. He had a beer in
13 his hand, I think it was a Miller. He was
14 sitting out in the front yard. He was
15 sitting out by the white Oldsmobile. I went
16 up to a friend of mine's house. I call him
17 Pooh. I went back to my house right at dark
18 and I asked Billy into the house. He came on
19 in and I gave him one shot of Taco Vodka Blue
20 Top." Is all that correct so far?

21 A. Yes, sir.

22 Q. (Reading): "I then gave him another
23 one. We sat back and watched a little TV. I
24 asked him what was up. He told me that he
25 couldn't move. He was sitting in a chair. I

1 went to the bathroom and came back and Billy
2 had slid down out of the chair. I asked him
3 what was wrong and again he said he couldn't
4 move. He didn't say why he couldn't move."
5 Is all of that correct?

6 A. Yes.

7 Q. (Reading): "I told him to just lay
8 down on the floor. He stayed there for about
9 a couple of hours. Right after Barksdale,
10 which was at about 11:00 p.m. When Barksdale
11 got home, Billy was still on the floor.
12 After Billy got home, I got up and was going
13 to try and leave. Pardon me. I got up and
14 went up to the living room. Barksdale said
15 to let Billy sleep it off. Billy got up and
16 said that he was going to try and leave. At
17 this time, Barksdale had gone to his room.
18 At some point, Billy got up and was holding
19 onto the screened door.." -- Pardon me.

20 (Reading): "At some point Billy got up
21 and started moving around. Billy said he was
22 going to leave and he went out the front
23 door. He was holding on to the screened door
24 and fell and he and the door went to the
25 ground. I went outside to Billy and helped

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1 him up. I got Billy all the way back up the
2 stairs, all the way back to the doorway.
3 Barksdale helped me get him to the door. I
4 am pretty sure of that. We got him inside
5 and closed the door. Billy laid back down
6 again. He laid there maybe a couple of hours
7 and Billy looked at me and said 'I' and
8 started down the street towards the empty lot
9 beside my house. I let him go this time. I
10 went on back in the house." Is all of that
11 correct?

12 A. Yeah. I'd say some of it is. But
13 ---

14 Q. Let me finish reading the rest of to
15 you and you can tell me what parts are
16 incorrect, sir?

17 A. Of course, sir.

18 Q. (Reading): "About a couple of hours
19 later, I heard my dog barking. This was
20 about 1:00 a.m. It was after Barksdale had
21 been home for a couple of hours. I went
22 outside to see why. And I saw Billy and he
23 was right there in the corner by the air
24 conditioner on the back side of my house. He
25 was sitting on the ground. He was mumbling

1 something. So I asked him if they had
2 boarded up that house again. He really
3 didn't say anything so I asked him if he was
4 going to be all right and he mumbled
5 something back. I left out there and went
6 back inside." Is all of that correct?

7 A. Yes.

8 Q. (Reading): "I went back outside
9 around 9:00 or 10:00 a.m. and Billy was still
10 there leaning up against the house. That was
11 the first time I'd seen the injuries that
12 Billy had. Mostly I'd seen that he had a big
13 cherry on one of his eyes. I noticed he had
14 some black and blue marks on his back. He
15 had on a black tee shirt that was tore up.
16 Billy took the shirt off and I gave him a
17 shirt to put on. He asked for some water and
18 I got him a jar of water. I went back into
19 the house. I went back outside at around
20 11:00 or 12:00 noon. It may have been a
21 little earlier. He drunk the water. I
22 filled the jar up full with water. I went
23 back into the house and Billy was still
24 outside. I went back out about two hours
25 later and he had drunk most of the water. It

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1 was maybe 8:00 or 9:00 a.m. I pushed him and
2 he didn't move and I then felt for a pulse.
3 I didn't feel one so I went inside the house
4 and got Barksdale. He called 9-1-1 and
5 started CPR. The first people that showed up
6 was EMS and they started what they do. One
7 of the officers showed up and they separated
8 me from Barksdale." Is all of that true?

9 A. Yes.

10 Q. Is that substantially different from
11 what you're telling us today?

12 A. Well, yes.

13 Q. Why?

14 A. Because I really didn't know what
15 was going on at that particular time when I
16 talked to them.

17 Q. Well, why did you tell them the
18 story if you didn't know what was going on?

19 A. Because it was what I seen and what
20 I know because see, certain things that you
21 leaving out that I had told you about. Just
22 like when you first said that when he went
23 out the door and pulled the screened door
24 off.

25 Q. You agree there's nothing in the

1 statement that I just read involving you
2 hitting him with a stick. Is that correct?

3 A. I didn't hear nothing you said that
4 involved me hitting him with a stick because
5 I told you later on that I did hit him with a
6 stick.

7 Q. Later on. But in this interview you
8 didn't say that, did you?

9 A. Uh-uh, (negative gesture).

10 Q. And you didn't say anything about
11 wrestling him out the door. In fact, he just
12 went out the door on his own in this version.
13 Isn't that correct?

14 A. Yeah.

15 Q. Do you remember speaking to a
16 coroner and telling the coroner you got into
17 a verbal altercation?

18 A. No.

19 Q. You don't remember seeing the
20 coroner's office?

21 A. Uh-uh.

22 Q. Did you ever tell anybody that you
23 got into a verbal altercation that caused the
24 door to come off the frame?

25 A. Uh-uh.

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1 Q. And there's nothing in this about
2 hitting him multiple times on the back and on
3 the sides and on the head, is there?

4 A. Just like I told you, I know what I
5 did. And I hit him a couple time. And I'm
6 not denying that.

7 Q. You say a couple of times. Are you
8 still staying it was only two times you hit
9 him?

10 A. Two, three. I was intoxicated then.
11 I figured it wasn't no more than about two or
12 three times because it was like I couldn't
13 get to him no more than about two or three
14 times.

15 Q. So how come when you're intoxicated
16 you can remember certain things very well.
17 And other times you're intoxicated you can't
18 remember things well?

19 A. I couldn't say, sir.

20 SOLICITOR STEINBERG: That's all
21 the questions I have, Your Honor. Thank you.

22 THE COURT: All right. Any
23 redirect?

24 MS. WICKER: No, sir. Your Honor.

25 THE COURT: All right. You may

1 step down. Thank you.

2 (WITNESS STEPS DOWN)

3 THE COURT: Any more witnesses?

4 MS. WICKER: No, Your Honor.

5 SOLICITOR STEINBERG: Your Honor,
6 the State would have at least one witness for
7 the Castle Doctrine hearing.

8 THE COURT: All right.

9 SOLICITOR STEINBERG: Your Honor,
10 the State would call Investigator Mike
11 Fortner.

12 (WITNESS TAKES STAND)

13 THE COURT: You're already under
14 oath.

15 MICHAEL FORTNER, having been previously
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR STEINBERG:

19 Q. Investigator Fortner, you testified
20 earlier. I want to draw your attention to
21 the suspect's cane. Did he have a cane when
22 you dealt with him on August 15th?

23 A. No, sir. August 15th, no.

24 Q. Have you had the opportunity to see
25 Mr. Hill at other times between August 15th

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1 and now?

2 A. Yes, sir.

3 Q. And did he need a cane during those
4 opportunities.

5 A. No, sir.

6 Q. Let's talk about this alleged
7 larceny of the TV. Until you raised the
8 issue, had it ever been brought up to you by
9 the suspect?

10 A. No, sir.

11 Q. Did you see any evidence at the
12 crime scene that the TV had been taken down
13 or removed or taken away from where the TV
14 was supposed to be?

15 A. No, sir. It was actually still
16 sitting on the table in the corner of the
17 living room there.

18 Q. Okay. Was the suspect drunk in your
19 opinion as a -- an officer of how many years?

20 A. Twenty-two and a half.

21 Q. Have you dealt with intoxicated
22 people during those twenty-two years?

23 A. Yes.

24 Q. And on August 15th when you
25 interviewed the suspect, was he intoxicated?

1 A. No, he was not.

2 Q. In fact, if he had not been
3 intoxicated on the 14th, would you have
4 interviewed him on that date?

5 A. Yes, sir.

6 Q. Were you present during the autopsy?

7 A. I was, yes, sir.

8 Q. Approximately how many was the
9 suspect -- or how many times was the victim,
10 Mr. Patterson hit with a stick?

11 A. Many times. I mean, twenty or so
12 I'd say.

13 Q. Did you have an opportunity to see
14 all the number of injuries?

15 A. Yes.

16 Q. And did you speak with the Medical
17 Examiner, Dr. Fulcher at the time?

18 A. I did, yes, sir.

19 Q. To what parts of the body were these
20 injuries?

21 A. All over. Head, front of the torso
22 area, the back, a lot of it was on his legs,
23 particularly his thighs, upper thighs. And
24 there were some down on his shins as well.

25 Q. You said there were a lot. Were

1 there multiple injuries to the side of his
2 body?

3 A. Yes.

4 Q. Were there multiple injuries to his
5 back?

6 A. Yes.

7 Q. Were there multiple injuries to his
8 legs?

9 A. Yes, sir.

10 Q. Were there multiple injuries to his
11 head or upper extremities?

12 A. Yes.

13 Q. Thank you. That's all the questions
14 I have. Please answer any of opposing
15 counsel's questions.

16 THE COURT: Cross-examination

17 CROSS-EXAMINATION

18 BY MS. WICKER:

19 Q. Just very briefly, Investigator.
20 Are you aware that in Mr. Barksdale's
21 interview with Investigator Bailey, Mr.
22 Barksdale told Investigator Bailey about Mr.
23 Hill's concerns about Billy Patterson
24 stealing from him?

25 A. Yes.

1 Q. And we've been over this. But you
2 knew he was grossly intoxicated on August 14th
3 when you initially responded; right?

4 A. Yes, ma'am.

5 Q. And then the next morning when you
6 went to see him, you knew he'd been drinking
7 then too; correct?

8 A. He had been drinking. Yes, ma'am.

9 Q. Thank you.

10 MS. WICKER: I don't have any
11 further questions.

12 THE COURT: All right. Any
13 redirect?

14 SOLICITOR STEINBERG: No, sir, Your
15 Honor. I have no further questions. I would
16 ask -- I think it's already included there,
17 but incorporating what you saw in the
18 videotape and the transcripts as part of the
19 State's response.

20 THE COURT: Okay.

21 SOLICITOR STEINBERG: That's all
22 the questions we have.

23 THE COURT: All right. Thank you.
24 You may step down.

25 (WITNESS STEPS DOWN)

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1 THE COURT: All right. Anything
2 further?

3 SOLICITOR STEINBERG: Not from the
4 State, Your Honor.

5 THE COURT: Defendant?

6 MS. WICKER: No, Your Honor, unless
7 you'd like to hear arguments.

8 THE COURT: Yeah. I'd like to
9 hear argument on this one.

10 MS. WICKER: Thank you, Your Honor.
11 Your Honor, we would argue that pursuant to
12 Section 16-11-440, Mr. Hill is entitled to
13 immunity from prosecution in this case. He
14 had reasonable fear of imminent peril or
15 great bodily injury when we used the deadly
16 force against Billy Patterson.

17 Initially, Mr. Patterson admittedly
18 was a guest in Mr. Hill's home but as he will
19 testify he repeatedly asked Billy Patterson
20 to leave and he did so before actually
21 striking Mr. Patterson.

22 When Mr. Hill awoke, the victim was
23 stealing from him and Mr. Hill again asked
24 him to leave his residence. Mr. Patterson
25 came towards Mr. Hill. He is disabled, he is

1 older with limited flexibility. He was in
2 his own home. He had nowhere to retreat
3 against somebody who is very well,
4 comparatively. He used the only force he had
5 available to him. He did not look for a
6 knife or a gun or anything. He used the cane
7 because he felt in fear for his safety.

8 After being caught, he again asked
9 Mr. Patterson to leave and he still refused.
10 After he hit Mr. Patterson, Mr. Patterson
11 still refused to leave so Mr. Hill continued
12 to hit him until he removed that trespasser
13 who was committing a crime in his home from
14 his home. As such, we would argue that he
15 showed by a preponderance of the evidence
16 that he had reasonable fear imminent peril or
17 of great bodily injury and, therefore, had a
18 right to use deadly force against Mr.
19 Patterson.

20 THE COURT: All right. But based
21 on your position, he did not use deadly
22 force. Popped him on the head of couple of
23 times and that was enough to let -- to usher
24 him out the door and that was the end of it.
25 I mean, that's y'all's position. That's what

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1 he's testified he was doing. And, you know,
2 and, therefore, would the Castle Doctrine
3 even apply under your theory and the
4 testimony?

5 I think even under your argument on
6 the testimony and looking at the statute,
7 applying it the way *State v. Douglas*, I do
8 believe that by a preponderance of the
9 evidence that the defense has not met its
10 burden and the Castle Doctrine wouldn't
11 apply. So I'm going to deny your Motion on
12 that.

13 MS. WICKER: Thank you, Your Honor.

14 THE COURT: All right. Anything
15 further from the Defense before we break?

16 MS. WICKER: No, sir. Your Honor.

17 THE COURT: I mean, that's all we
18 need right? Is that everything?

19 SOLICITOR STEINBERG: Your Honor, I
20 informed you I had a number of cases. I will
21 limit that number of cases so not to burden
22 Your Honor.

23 I will hand to the defense a copy of
24 *North Carolina v Butler*, 441 U.S. 369 to
25 opposing counsel as well as -- I'm probably

1 mispronouncing *Burghuis v Thompson*, 560 U.S.
2 370. And a copy of *Davis v United States* 512
3 U.S. 452. I have additional cases, though
4 I'm not going to present them to the Court.

5 THE COURT: Do they all say the
6 same thing?

7 SOLICITOR STEINBERG: At some
8 point. It's almost they're going up.
9 They're basically giving the State stronger
10 ---

11 THE COURT: I don't want to get
12 too much on it. All right. I'll review what
13 you have.

14 SOLICITOR STEINBERG: Thank you,
15 Your Honor. I'm not going to pass up any
16 additional cases at this time. If Your Honor
17 has any questions tomorrow, in clarifying the
18 issues, I have additional case law but I'm
19 not going to submit that until Your Honor has
20 a chance to read those cases.

21 THE COURT: All right. Is there
22 anything further before we break for the day?
23 Yes, Ms. Johnson?

24 MS. JOHNSON: I would ask on behalf
25 of Mr. Hill, since the jury has not been

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1 sworn to allow him to remain out on bond.

2 THE COURT: Well, I think the case
3 has been called, so I'm going to deny your
4 request.

5 MS. JOHNSON: Thank you, Your Honor.

6 SOLICITOR STEINBERG: Thank you,
7 Your Honor.

8 THE COURT: All right. We'll see
9 everybody at 9:00 sharp. I want y'all
10 sitting in your chair with your mouth open
11 and be ready for argument or questions.

12 MS. WICKER: Yes, sir.

13 SOLICITOR STEINBERG: Yes, sir.

14 THE COURT: All right. See y'all
15 in the morning.

16 (COURT IN RECESS)

17 (TRANSCRIPT CONTINUED NEXT PAGE)

18

19

20

21

22

23

24

25

1

2

APRIL 12, 2016

9:00 A.M.

3

4

(DEFENDANT PRESENT)

5

THE COURT: I understand we have

6

a continuation of what I've called the

7

suppression hearing on statements three and

8

four. Is that where we are?

9

SOLICITOR STEINBERG: Yes, Your

10

Honor.

11

THE COURT: All right.

12

SOLICITOR STEINBERG: Your Honor,

13

the State's witness will be Investigator

14

Antonio Bailey.

15

(WITNESS TAKES STAND)

16

ANTONIO BAILEY, having been duly sworn to

17

tell the truth, and nothing but the truth,

18

testified as follows:

19

DIRECT EXAMINATION

20

BY SOLICITOR STEINBERG:

21

Q. Investigator Bailey, what was your

22

involvement in this case? What was your, I

23

guess title or position in this case?

24

A. I was assisting Investigator

25

Fortner.

1 Q. And let's skip right to the part
2 where -- well, on the day of the discovery of
3 the body, August 14th, 2015 -- pardon me --
4 2013, did you go to the crime scene?

5 A. Yes, sir. I did.

6 Q. And I see you have your notes here
7 that you can refresh your memory if needed.
8 Did you speak with the suspect at all?

9 A. I spoke to him briefly.

10 Q. Okay. (First, tell us if at that
11 time, was he a suspect?

12 A. No, sir.

13 Q. And at that time, did you make a
14 determination as to his level of inebriation?

15 A. I did.

16 Q. And what was it?

17 A. He was intoxicated. Very
18 intoxicated.

19 Q. Did you think it was appropriate to
20 interview him on that date?

21 A. No, sir.

22 Q. Okay. What, if anything, did the
23 suspect have to say at the crime scene at his
24 residence?

25 A. I don't recall him saying a whole

1 lot of anything because of the fact that he
2 was so intoxicated I didn't -- I knew I
3 wasn't going to interview him that day so I
4 didn't really pay a whole lot of attention
5 to him as to -- just that he was very
6 intoxicated.

7 Q. Well, please review your report, the
8 relevant portion and see if he didn't make
9 any statements. If I can find it, I'll
10 direct you to it as well.

11 A. The note said he appeared to be very
12 intoxicated. Continuously told the officers
13 the victim had broke the storm door, causing
14 it to be torn away from the wooden frame.

15 Q. At that time, were you interrogating
16 him?

17 A. No, sir.

18 Q. At that time, was he in custody?

19 A. I believe he was in -- not to my
20 knowledge.

21 Q. Was he handcuffed at that time?

22 A. No, sir.

23 Q. And was the door frame, was the
24 storm door back, pulled away from the door
25 frame?

1 A. The entire frame, (affirmative nod).

2 Q. Was there anything else you could
3 notice about the Defendant's speech or what
4 type of language he was using? Was he
5 telling consistent stories or what was his
6 language?

7 A. To my best recollection and looking
8 at my report, he was very intoxicated. He
9 was sitting in a chair in the street and
10 repeatedly made that statement. There's
11 nothing else I can recall.

12 Q. Okay. I'm going to bring you to the
13 next day, August 15, 2013. Did you have an
14 opportunity to speak to the suspect?

15 A. I did.

16 Q. And at that time -- where did you
17 initially intend to interview him?

18 A. Initial intention was to interview
19 him at the detention center.

20 Q. And was he still in the detention
21 center?

22 A. He had been released, unbeknownst to
23 us.

24 Q. Where did you go and who did you see
25 there?

- 1 A. I went to his residence and I spoke
2 with him.
- 3 Q. And was he sober at this time?
- 4 A. He was.
- 5 Q. Did you ask him to return to the law
6 enforcement center?
- 7 A. I did.
- 8 Q. And did he?
- 9 A. Yes, he did.
- 10 Q. Did he give you any conditions or
11 any requirements that he wanted before he
12 would go over there?
- 13 A. No, sir.
- 14 Q. Did you agree to give him a ride
15 back to his location at the end?
- 16 A. We did.
- 17 Q. And at that time was that your
18 intention, to bring him back to ■ 3rd
19 Street?
- 20 A. Yes, sir.
- 21 Q. During this drive back to the law
22 enforcement center, was he in custody?
- 23 A. He was given a ride to the law
24 enforcement center. No, sir.
- 25 Q. Was he in handcuffs?

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1 A. He was not.

2 Q. Tell us about how this interview
3 occurred. What room did the initial
4 interview happen in?

5 A. The initial review started in our
6 investigation room, which is located at the
7 rear of our CID office. It's basically our
8 working office. It consists of six desks and
9 six chairs. That's where we initially
10 started.

11 Q. At the end of this interview, did
12 either you or Investigator Fortner type up
13 what the suspect had to say?

14 A. I believe Investigator Fortner may
15 have typed up the statement.

16 Q. Have you read that statement?

17 A. I did.

18 Q. And does it accurately reflect what
19 the suspect said in your interview room?

20 A. It was.

21 Q. Prior to having him sign in, did you
22 and Investigator Fortner walk outside?

23 A. We did.

24 Q. And generally, what did you discuss?

25 A. Basically discussed the

1 inconsistencies that he had given compared to
2 the statements that were given by, I believe,
3 by Mr. Barksdale.

4 Q. When you walked back in and spoke
5 with Mr. Hill, did Investigator Fortner make
6 any comments about Mr. Hill's property?

7 A. His property?

8 Q. Specifically, was there a mention of
9 the television?

10 A. Yes, it was.

11 Q. And what was the Defendant's
12 reaction on mention of the television?

13 A. His demeanor seemed to have changed.
14 And -- do you want me to tell you what he
15 said?

16 Q. Yes, please do.

17 A. His demeanor changed and he said --
18 when he came out the room -- and, again, I
19 can't recall the victim's name, but that the
20 victim had his TV under his arm and that that
21 made him real mad.

22 Q. And what did he say he did when he
23 got mad?

24 A. He basically, from my recollection,
25 that that made him real angry and he hit the

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1 victim.

2 Q. Did he say what he hit him with?

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

4 Q. Did he say how many times he hit him
5 with it?

6 A. A couple of times.

7 Q. Okay. At that time do you think it
8 was appropriate to have him sign the
9 statement that was typed up?

10 A. No, sir.

11 Q. And did you decide to use a
12 different document to record his statement or
13 just different -- would you have used a
14 victim/witness statement at that point?

15 A. Yes, sir.

16 Q. Okay. And did you eventually take
17 him to another room?

18 A. We did.

19 Q. Where did you take him -- and tell
20 us where that is in relationship to your
21 office?

22 A. It's across the hall. We took him
23 to the Greenville City Police Department's
24 interview room. The interview was video-
25 recorded.

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1 Q. Did you tell him this interview was
2 going to be recorded?

3 A. We did.

4 Q. I'm going to show you State's
5 Exhibit Number 1 and State's Exhibit Number
6 3. Would you please identify what State's
7 Exhibit Number 1 is?

8 A. That's advisement of the rights form
9 used by the sheriff's office.

10 Q. And did the suspect initial next to
11 the advisements?

12 A. On the advisements? He did.

13 Q. When you got down to the waiver of
14 rights, was that read to him?

15 A. It was.

16 Q. And did he initial next to coercion?

17 A. After it was explained. Yes, sir.

18 Q. And did he sign that waiver?

19 A. No, he did not.

20 Q. Is it unusual in your experience for
21 someone not to sign a waiver but still want
22 to cooperate?

23 A. Yes.

24 Q. Have you had occasions where they
25 have agreed to cooperate but not sign a

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1 waiver?

2 A. Yes, sir.

3 Q. I'm going to show you State's
4 Exhibit Number 3. What is this document?

5 A. It's the victim/witness form taken
6 on 8/15/2013.

7 Q. And does that accurately reflect
8 what the suspect told you?

9 A. What he told Investigator Fortner.
10 Yes, sir.

11 Q. Were you present for this, though?

12 A. I was.

13 Q. Okay. When you were in the
14 Greenville City investigation room, did you
15 put any pressure on the suspect to either
16 give a statement or not give a statement?

17 A. No, sir.

18 Q. Did you threaten him or promise him
19 anything in any way?

20 A. None whatsoever.

21 Q. And did he appear sober to you?

22 A. Yes, sir.

23 Q. Were his answers -- I'm not asking
24 for accuracy. I'm asking responsiveness.

25 Were his answers responsive to your

1 questions?

2 A. Responsive and clear.

3 Q. Okay. At some point during the
4 interview process, did you walk outside and
5 speak to an assistant solicitor?

6 A. Yes, sir. I did.

7 Q. Who was the assistant solicitor and
8 what was your question?

9 A. You were. My question to you was,
10 even though we had an individual who wanted
11 to cooperate with us, wanted to tell us what
12 happened that, however, he did not want to
13 sign the waiver.

14 Q. Did the suspect at that point agree
15 to speak with you?

16 A. Yes, he did.

17 Q. And how forthcoming was he?

18 A. Initially, kind of held back but he
19 went ahead pretty much and told us everything
20 that happened.

21 SOLICITOR STEINBERG: I beg the
22 Court's indulgence.

23 DIRECT EXAMINATION CONTIUED

24 BY SOLICITOR STEINBERG:

25 Q. Did you inform him that he could

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1 stop talking at any time?

2 A. Yes, we did.

3 Q. Did you repeat that advice during
4 the course of your interview with him?

5 A. Several times.

6 Q. That's all the questions I have.
7 Please answer any opposing counsel's
8 questions.

9 CROSS-EXAMINATION

10 BY MS. JOHNSON:

11 Q. Good morning, Investigator Bailey.

12 A. Good morning.

13 Q. Now, you wrote a report in this
14 case?

15 A. I did.

16 Q. And everything in that report is
17 complete and accurate?

18 A. To the best of my knowledge. Yes,
19 ma'am.

20 Q. Okay. A couple of things I want to
21 clear up before we begin. When you interview
22 witnesses, just ordinary witnesses, do you
23 have the capabilities to record them?

24 A. The County did not have those
25 capabilities at that time. No, ma'am.

1 Q. So you had the capabilities to
2 record Michael Barksdale. He was a witness?

3 A. The sheriff's office did not have
4 the capability of doing that. We used the
5 recording equipment across the hall at the
6 City Police Department. That was available.

7 Q. Okay. But you can have ordinary
8 witnesses recorded. You can use another
9 agency's equipment?

10 A. Yes.

11 Q. Okay. And actually, in this case
12 you did. You got a witness, his interview
13 recorded. I don't remember whether it was
14 audio or video, but I know it was audio. Do
15 you agree with me?

16 A. I agree.

17 Q. Okay. Now, let's talk about the
18 statements that Mr. Hill gave to you and
19 Investigator Fortner on August 15th. You
20 didn't expect Mr. Hill to be released from
21 jail?

22 A. I did not.

23 Q. Okay. So that was a surprise to
24 you?

25 A. Yes, it was.

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1 Q. You go back to his house; correct?

2 A. Yes, ma'am.

3 Q. Okay. And you ask him to accompany
4 you to the LEC?

5 A. That's correct.

6 Q. Now, he told you he had been
7 drinking?

8 A. He probably had.

9 Q. He told you he had hit the bottle
10 pretty hard that morning?

11 A. I don't remember the exact verbiage
12 he used but he indicated he had been drink-
13 ing.

14 Q. Okay. He was drinking that morning.
15 And it's safe to assume that he drinks a lot?

16 A. From previous interviews, that's
17 when it was determined. Yes, ma'am.

18 Q. You asked him to accompany you
19 anyway?

20 A. That's correct.

21 Q. You never allowed him to sober up or
22 make a later appointment with you?

23 A. Can I clarify? Can I clarify
24 something about that?

25 Q. Yeah. Go ahead.

1 A. He'd been drinking. He indicated
2 he'd been drinking but he was not drunk based
3 on the observations I'd made of him the day
4 before.

5 Q. Well -- and I don't want to get into
6 an academic argument with you, but you never
7 allowed the alcohol to completely exit his
8 system. He had alcohol in his system.

9 A. He indicated to me that he had drank
10 some.

11 Q. Okay. So he gets in the car with
12 you, with you and Investigator Fortner; is
13 that right?

14 A. That's correct.

15 Q. Okay. And you tell him 'we'll bring
16 you back'?

17 A. After the interview. That's
18 correct.

19 Q. Okay. And he gets to the LEC and
20 Investigator Fortner takes him and questions
21 him; is that right?

22 A. That's correct.

23 Q. Okay. This first interview wasn't
24 recorded?

25 A. That's correct.

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1 Q. And you were also present, but it's
2 my understanding that your participation was
3 minimal?

4 A. That's correct.

5 Q. Okay. But you participated a lot in
6 the second interview?

7 A. That's correct.

8 Q. Okay. And this one is two hours
9 later; is that right?

10 A. I'm not exactly sure on the time.
11 It may -- that sounds about correct.

12 Q. Okay. And this one is recorded?

13 A. Yes, ma'am.

14 Q. Now, this interview with my client
15 lasts roughly forty minutes?

16 A. Okay.

17 Q. And would you agree with me,
18 Investigator Bailey, that a great portion of
19 this interview is spent either talking about
20 Mr. Hill's rights or getting him to waive his
21 rights?

22 A. I would agree with that.

23 Q. Okay. About twenty minutes; is that
24 right?

25 A. I'm not exactly sure about the time

1 but, yes, ma'am.

2 Q. So if I said twenty minutes and the
3 video was forty minutes?

4 A. I would say roughly.

5 Q. Okay. You saw this investigator,
6 Investigator Fortner go over Marshall's
7 rights?

8 A. Yes, sir.

9 Q. And you were present when he said
10 'if you don't sign the paper we can't talk to
11 you'?

12 A. Yes, ma'am.

13 Q. Okay. And you were present on many
14 occasions when Investigator Fortner said
15 'before we can do anything, we need you to
16 sign this waiver.' Would you agree with me?

17 A. yes, ma'am.

18 Q. Okay. Now, there obviously was a
19 transcript done or transcribed with this
20 interview. Are you familiar with that?

21 A. I'm familiar.

22 Q. Okay. Now, Investigator Bailey, do
23 you remember saying 'before you can tell us
24 what happened, we've got to get you to sign
25 this form'?

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1 A. Something of that sort. Yes, ma'am.

2 Q. Okay. And do you remember saying,
3 'before we can go any further we need you to
4 sign the papers, that's just the way it is'?

5 A. Yes, ma'am.

6 Q. Okay. And then you say later on,
7 'One way of making it right is telling the
8 truth about it. And in order for us to
9 listen to the truth, we've got to have you
10 sign that form.'

11 A. If you're reading from the
12 transcript, yes, ma'am.

13 Q. And do you remember saying later on,
14 'One of the ways you can help us is to tell
15 us about it. And before we're able to listen
16 we have to get you to sign that paper.'?

17 A. That sounds about correct.

18 Q. Okay. And then you say later on, 'I
19 can't talk to you about it until you sign the
20 form. Once you sign the form if there's
21 anything about it, we can talk about it.'

22 A. Yes, ma'am.

23 Q. Okay. So you agree you said that?

24 A. Pretty much.

25 Q. Okay. And Mr. Hill says to you

1 "it's like signing my rights away"?

2 A. I think he did make a reference to
3 that.

4 Q. Okay. And you say 'no, that's not
5 it'? Do you remember how you made a big deal
6 about rules?

7 A. About?

8 Q. About rules. Like you talk about
9 rules in baseball and rules in basketball.

10 A. Oh, rules.

11 Q. Rules, (affirmative nod). I'm
12 sorry. Do you remember that?

13 A. I do.

14 Q. You say that 'there are procedures
15 that we have to follow.' Would you agree
16 with me?

17 A. Yes, ma'am.

18 Q. 'You have rules in baseball', you
19 said. Did you say that?

20 A. I did.

21 Q. And in basketball?

22 A. I don't know if I used basketball
23 but I specifically remember baseball.

24 Q. Okay. And you say to him, "we have
25 to play by rules."

1 A. Yes, ma'am.

2 Q. Okay. You say to him "before we do,
3 we have to follow the rules?"

4 A. That's correct.

5 Q. Okay. You also say that there is a
6 part of the rules that we have to follow.
7 You also say there is a part of the rules
8 that we have to follow, (reading): "We can
9 talk to you about this thing and we will.
10 But before we do, you have to follow the
11 rules. And one of the rules is we all have
12 to make sure we sign the form." Do you
13 remember saying that?

14 A. If you're reading from the
15 transcript, yes, ma'am.

16 Q. Okay. You tell Mr. Hill you have to
17 sign the form. There is no way around it.
18 Do you remember saying that?

19 A. Before he's allowed to talk to us.
20 Yes, ma'am.

21 Q. Okay. And you even asked him "has
22 anybody thrown you any curve balls today"?

23 A. That sounds correct.

24 Q. Do you remember that?

25 A. Uh-huh. Yes, I do.

1 Q. Okay. You tell Mr. Hill, (reading):

2 "We've been shooting straight with you all
3 day." Or we've been shooting straight with
4 you. Do you remember that?

5 A. I do.

6 Q. Okay. So Investigator Bailey, you
7 spent twenty minutes talking to my client
8 about this form?

9 A. That's correct.

10 Q. Okay. Twenty minutes telling him
11 that he had to sign something or he couldn't
12 talk?

13 A. I don't know if I stated that. I
14 know I told him -- at least twenty minutes.
15 If I state that length of time in order for
16 us to do that, speak with him then the form
17 would have to be signed. Yes, ma'am.

18 Q. Okay. So you said you cannot talk
19 until you sign this form?

20 A. We did not initiate any questioning
21 to him unless he signed the form. That's
22 correct.

23 Q. So you -- after twenty minutes, you
24 go out and call Mr. Steinberg?

25 A. Yes, ma'am.

1 Q. And you come back in. Well, hold
2 on. Let me back up. And you talk about how
3 it can be -- I don't want to say common --
4 but usual in your experience where you have
5 to go out and -- or excuse me -- where a
6 defendant is not wanting to sign a form?

7 A. Yes, ma'am.

8 Q. And is it a typical or usual
9 occurrence that you are having to call a
10 solicitor on every interview you make?

11 A. That's not correct.

12 Q. Okay. So you go out and you call
13 Mr. Steinberg; correct?

14 A. In this case, yes, ma'am.

15 Q. Okay. And you come back in and you
16 tell my client that you talked to a
17 solicitor. Would you agree with me?

18 A. Yes, ma'am.

19 Q. And "now you can talk"?

20 A. If he wanted, yes.

21 Q. You said, okay. (Reading): "I just
22 talked to one of our Solicitors and he said
23 -- because I wanted to make sure. I didn't
24 want to do nothing wrong. And he said if you
25 want to talk to us without signing the paper,

1 you can." Do you agree you said that?

2 A. If that's what's on that transcript,
3 yes, ma'am.

4 Q. Okay. The only thing that has
5 changed in this whole scenario or environment
6 is that you have now talked to Mr. Steinberg?

7 A. I don't understand your question.

8 Q. Well, we go twenty minutes without
9 Mr. Hill signing this waiver. And then you
10 go in and call Mr. Steinberg, and now it's
11 okay to talk?

12 A. After I asked for clarification,
13 yes, ma'am.

14 Q. Okay. You tell him you can talk to
15 us. Do you remember that?

16 A. If he'd like. Yes, ma'am.

17 Q. Okay. And he says "off the record."

18 A. I believe he did say so.

19 Q. Clear as day, "off the record."

20 A. Yes, ma'am.

21 Q. And, Investigator Bailey, you never
22 clear anything up with that?

23 A. With what?

24 Q. About what off the record means?

25 A. I probably didn't. No, ma'am.

1 Q. Okay. And just to cover some things
2 in the actual conversation you had with Mr.
3 Hill, you say "we're going to answer all of
4 your questions." I know there were some
5 questions Mr. Hill had.

6 He said, you know, "I've got some
7 questions."

8 And you said, "We're going to answer all
9 of your questions." Do you remember saying
10 that?

11 A. I do.

12 Q. Okay. But then after he signs this
13 form you say, let me ask the questions. Do
14 you remember that?

15 A. I did not say he signed the form,
16 no, ma'am.

17 Q. I said later on in the interview Mr.
18 Hill started asking those questions that he
19 wanted to ask. And you said "let me ask the
20 questions?

21 A. Yes, ma'am.

22 Q. And you also tell Mr. Hill, "I
23 wasn't at the autopsy." Do you remember
24 telling him that?

25 A. I do.

1 Q. But your report says that you were
2 at the autopsy. Is that right?

3 A. That's correct.

4 Q. Okay. You also say, "I don't get
5 paid to lie." Do you remember saying that?

6 A. I do.

7 Q. "I've got to sleep at night."

8 A. I do.

9 MS. JOHNSON: I beg the Court's
10 indulgence. Thank you, Investigator Bailey.

11 THE COURT: Let me see those
12 exhibit, Ms. Johnson, I need -- especially
13 the waiver.

14 MS. JOHNSON: Oh, I'm sorry.

15 SOLICITOR STEINBERG: Your Honor,
16 do you just want the waiver or the
17 transcript?

18 THE COURT: Just the waiver.

19 REDIRECT EXAMINATION

20 BY SOLICITOR STEINBERG:

21 Q. Investigator Bailey, is it unusual
22 for you to call me with legal questions?

23 A. It's not unusual. No, sir.

24 Q. Was the suspect sober or drunk when
25 you interviewed him on May 15th?

1 A. He was sober.

2 Q. During this interview, did you
3 advise him of his rights?

4 A. We did.

5 Q. Did you ensure that he can revoke
6 his speaking?

7 A. We did.

8 Q. And did he have any concerns about
9 -- did he give you a reason why he did not
10 want to sign this waiver?

11 A. He did.

12 Q. What was the reason he gave?

13 A. He didn't want to mess up his
14 disability check.

15 Q. Okay. Did you put any undue
16 pressure on the defendant?

17 A. None whatsoever.

18 Q. Did you offer him water?

19 A. Yes.

20 Q. And, in fact, give him some water?

21 A. Yes, sir.

22 Q. And did you offer that either
23 yourself or Investigator Fortner could leave
24 to avoid any, maybe pressure on him?

25 A. We did.

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1 Q. Did he want that?

2 A. No, sir.

3 Q. Did you tell him that there were no
4 deals or promises?

5 A. I did.

6 Q. Did he, in fact, try to make a deal
7 to try to get him to leave if he signed the
8 document, the waiver?

9 A. He did.

10 Q. Opposing counsel asked some
11 questions about you denying Mr. Hill the
12 right to ask questions. Did he, in fact,
13 ask you some questions?

14 A. I believe he did.

15 Q. And do you answer some of his
16 questions?

17 A. I did.

18 Q. When -- in written context, have you
19 watched the video in preparation for this
20 trial?

21 A. I did.

22 Q. When you told him that he had to
23 sign the statement, did you tell him that he
24 must sign the statement or did you give him
25 the opportunity to not sign the statement?

1 A. I gave him the opportunity not to
2 sign it.

3 Q. Did you tell him he could refuse?

4 A. I did.

5 Q. In the waiver, he used -- well,
6 in the interview he used the term "off the
7 record"; correct?

8 A. He did.

9 Q. Was this interview about anything
10 other than the murder of Billy Patterson?

11 A. Nothing whatsoever.

12 Q. Did you make clear to him that
13 you're an investigator?

14 A. I'm sorry?

15 Q. Did you make it clear to him that
16 you are an investigator?

17 A. Yes, sir.

18 Q. And did the rights waiver include
19 that anything that he said could be used
20 against him?

21 A. Yes, sir.

22 Q. And did he, in fact, make statements
23 during the course of this interview where he
24 knew that some of these statements were
25 pretty serious?

1 A. He did.

2 Q. Did he make statements along the
3 lines of 'this could carry a lot of time' or
4 words to that effect?

5 A. Yes, sir.

6 Q. That's all the questions I have.
7 Thank you, sir.

8 MS. JOHNSON: Judge, just briefly?

9 THE COURT: Yes, ma'am.

10 RECROSS-EXAMINATION

11 BY MS. WICKER:

12 Q. Investigator Bailey, you saw the
13 video and you saw where Mr. Hill was burping
14 throughout the video?

15 A. I don't recall whether or not he was
16 burping or not.

17 Q. You had to go get him some water at
18 one point?

19 A. I did.

20 Q. And he was kind of slouched over in
21 his chair?

22 A. I remember him sitting in the chair.
23 I don't remember him slouched.

24 Q. Okay. Kind of leaned back?

25 A. Maybe.

1

2

MS. JOHNSON: Thank you, Your Honor.

3

THE COURT: Thank you, Mr. Bailey.

4

5

SOLICITOR STEINBERG: Nothing else
from the State, Your Honor.

6

THE COURT: You may step down.

7

(WITNESS STEPS DOWN)

8

9

10

11

12

SOLICITOR STEINBERG: Your Honor,
I might just have arguments on this aspect
statements three and four at this point. I
might have some additional coroners
testifying, but they will be very brief.

13

14

15

16

MS. WICKER: Your Honor, could we,
for the limited purpose of this hearing, I
would object and request that I be allowed to
call Mr. Hill to the stand.

17

THE COURT: All right.

18

(WITNESS TAKES STAND)

19

20

THE COURT: Since it's a new day,
please swear Mr. Hill.

21

MS. WICKER: Okay. Thank you.

22

23

24

MARSHALL HILL, having been duly sworn to
tell the truth, and nothing but the truth,
testified as follows:

25

DIRECT EXAMINATION

1 BY MS. WICKER:

2 Q. Mr. Hill, do you recall when
3 Investigators Bailey and Fortner came to your
4 home on August 15th, 2013?

5 A. Yes.

6 Q. What had you been doing before they
7 got to your home?

8 A. Drinking.

9 Q. How much had you been drinking?

10 A. Over a pint.

11 Q. You remember when they asked you to
12 go with them to the law enforcement center?

13 A. Yes.

14 Q. Did you feel like you could say no
15 or did you feel like you had to go with them?

16 A. I had to go with them.

17 Q. Do you recall the first room where
18 you were interviewed at the law enforcement
19 center?

20 A. Yes.

21 Q. Can you describe it?

22 A. It was a pretty good sized room. It
23 wasn't too big a room. It just had a lot of
24 desks and chairs.

25 Q. Who was in the room with you?

1 A. The two officers.

2 Q. Investigators Bailey and Fortner?

3 A. Yes.

4 Q. Were you seated or standing?

5 A. I was seated.

6 Q. Okay. Were the two investigators
7 seated as well?

8 A. Yes, I think so.

9 Q. Did you feel like at any time during
10 that time you could leave the room?

11 A. No.

12 Q. All right. Do you remember going
13 into a different room for further
14 questioning?

15 A. Yes.

16 Q. Okay. Can you describe that room?

17 A. It was smaller than the first one.

18 Q. What was the nature of the questions
19 that they asked you when you were in the
20 first room?

21 A. What had happened.

22 Q. What about in the second room? What
23 did they ask you about in there?

24 A. What had happened.

25 Q. Was it essentially the same

1 questions they were asking you?

2 A. Pretty much.

3 Q. Did you feel like you could leave
4 that second room whenever you wanted?

5 A. No, ma'am.

6 Q. Do you remember discussing your
7 rights with the investigators?

8 A. Yes.

9 Q. What was your understanding about
10 those rights?

11 A. (No verbal response)

12 Q. Did you understand what the rights
13 were?

14 A. Not really.

15 Q. What was your understanding about
16 signing the form, signing that waiver?

17 A. Well, just like I said it'd be just
18 like signing your life away.

19 Q. Why didn't you sign the waiver?

20 A. I didn't think that it was fair.

21 Q. We watched that video yesterday
22 where this investigator tells you a solicitor
23 said you didn't have to sign anything. And
24 you asked them "off the record." What did
25 you mean by off the record?

1 A. Everything that I would say wouldn't
2 be held against me.

3 Q. Did you think that in not signing
4 the form your responses would be used against
5 you?

6 A. No, I didn't think so.

7 Q. Would you have spoken to the
8 investigators if you had known you were
9 waiving your rights, even not by signing the
10 form?

11 A. I'm afraid not.

12 Q. Just one second, okay? All right.
13 Mr. Hill, will you answer any questions the
14 Solicitor has for you?

15 CROSS-EXAMINATION

16 BY SOLICITOR STEINBERG:

17 Q. Mr. Hill?

18 A. Yes, sir.

19 Q. Approximately what time did you get
20 home after you walked home from the jail on
21 August 15th?

22 A. At about -- I'm really not sure,
23 sir.

24 Q. When officers came to your house,
25 were they mean?

1 A. (No verbal response).

2 Q. Were they rude?

3 A. No, sir.

4 Q. Were they polite?

5 A. Huh?

6 Q. Were they polite when they came to
7 your house?

8 A. Yes, sir.

9 Q. Okay. And did they ask you to go to
10 their location?

11 A. Yes, sir.

12 Q. And did you tell them no?

13 A. No, sir.

14 Q. Why did you think that you couldn't
15 tell them no.

16 A. They come -- they come to speak to
17 me. So it would be rude or disappointing for
18 them.

19 Q. No, sir.

20 A. Because I know that they are
21 officers and ---

22 Q. Thank you. And I appreciate your
23 being candid. When you were driven from your
24 residence to the law enforcement center, you
25 agree you were not handcuffed?

1 A. Huh?

2 Q. You were not handcuffed?

3 A. No, sir.

4 Q. And you did not have your cane that
5 day?

6 A. No, sir. I had left it. And I
7 didn't have it because I couldn't get to it.

8 Q. Okay. But you agree you can walk
9 without your cane if needed?

10 A. Not very long.

11 Q. In 2013, do you agree that you could
12 walk without your cane sometimes?

13 A. Yeah. Not far. You know, I
14 probably could walk, say, from here all the
15 way up the street or something from my house
16 without it then but the pain would start.

17 Q. Okay. So you could walk up the
18 street but you wouldn't walk -- you wouldn't
19 want to walk farther up the street than ---

20 A. Naw. Not too far. Most of the time
21 I'd rather have my cane so on the way back it
22 would help me.

23 Q. And you agree that the officers
24 typed up a statement.

25 A. (Affirmative nod).

1 Q. I think you agreed yesterday that
2 what I read to you was accurate and said what
3 you believe you said?

4 A. Yes, sir.

5 Q. At some point did the officers raise
6 the interview of your television?

7 A. Yes, sir.

8 Q. How did you react?

9 A. Frustrated.

10 Q. Frustrated? How do you mean
11 frustrated?

12 A. A little disoriented. Kind of a
13 little mad.

14 Q. Why were you mad?

15 A. Because I didn't see why somebody
16 that you helped would do something like that.

17 Q. Following -- you agree with that
18 statement that was in their office -- we'll
19 call it the sheriff's office, to separate it
20 from the City's police office. Do you agree
21 that was voluntary? You gave that statement
22 voluntarily?

23 A. Yes.

24 Q. Thank you, sir. And did they bring
25 you across the hall to the Greenville City

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1 video recording room?

2 A. Yes, sir.

3 Q. And did they go over your rights
4 with you?

5 A. Yes, sir.

6 Q. And the document you saw, the rights
7 waiver form, does that -- was that your
8 signature or initials on it?

9 A. Yes.

10 Q. And did they go over with you?

11 A. Yes.

12 Q. In fact, did they tell you
13 repeatedly that you did not have to sign the
14 statement, that was your decision?

15 A. Yes.

16 Q. Well, if it was your decision why
17 didn't you make a decision to not speak if
18 that was your concern?

19 A. I really couldn't say.

20 Q. All right. Let me ask you a couple
21 of questions. You've answered all my
22 questions clearly today; correct?

23 A. Yes.

24 Q. And you're an adult. How old are
25 you now, sir?

1 A. Sixty-one.

2 Q. Sixty-one. So you were in your late
3 fifties when this incident happened?

4 A. Yes.

5 Q. And do you agree that you took care
6 of your own affairs, that you made your own
7 decisions?

8 A. Yes.

9 Q. And were you aware of these rights?
10 Had you heard of the *Miranda* rights before?
11 As you watched television, had you ever seen

12 ---

13 A. No, sir.

14 Q. You've never heard the *Miranda*
15 rights before?

16 A. (No verbal response).

17 Q. Let me ask you. Have you heard that
18 you have the right to remain silent?

19 A. Yes.

20 Q. You've heard that? Probably heard
21 it a thousand times?

22 A. Yes.

23 Q. Have you heard anything you say can
24 and will be used against you in a court of
25 law? You've heard that line?

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1 A. Yes.

2 Q. And you have a right to an attorney
3 and one could be appointed for you. Have you
4 heard that?

5 A. Yes.

6 Q. Okay. So knowing all of that and
7 having the officer repeat it, isn't it true
8 that you wanted to tell your story?

9 A. Off the record.

10 Q. Okay. Did you want to tell your
11 story off the record?

12 A. Yes.

13 Q. Did you want the officers to hear
14 what you had to say?

15 A. Yes.

16 Q. In fact, on one part, isn't it true
17 they asked you very specifically did you want
18 to speak and you said yes, pretty
19 emphatically? Very strongly, I should say?

20 A. Yes.

21 Q. Okay. And did you try to work out a
22 deal with the officers so that if you signed
23 the statement and talked to them, that you
24 could go home for a few days?

25 A. Yes.

1 Q. In fact, did you ask the officers to
2 do that a couple of times?

3 A. Yes.

4 Q. And did they tell you they were not
5 allowed to do that?

6 A. Yes.

7 Q. And when Investigator Bailey, the
8 gentleman who just testified a few minutes
9 ago, when he walked out and came back in and
10 said that you can speak as long as it's your
11 decision and you don't have to sign the
12 statement, did you realize it was still your
13 decision?

14 A. After I had said "off the record",
15 (affirmative nod).

16 Q. Yes, sir. Well, let's go to that.
17 Is that where your issue is here today?
18 You're saying you understood your rights.

19 A. Yes.

20 Q. And you're saying you were not
21 pressured. But you're saying your issue is
22 the words on the record. Is that what your
23 concern is here?

24 A. I said off the record.

25 Q. Oh, I'm sorry. Off the record. You

1 wanted to make sure your comments were off
2 the record.

3 A. Right.

4 Q. Well, you knew what they interview-
5 ing you for and you knew that they were
6 investigators; correct?

7 A. Yes.

8 Q. Why did you think you were there
9 speaking to officers? What was your
10 understanding of why you were there in that
11 office?

12 A. I didn't know yet.

13 Q. But didn't you know you were being
14 interviewed about the murder of Billy
15 Patterson?

16 A. Yes.

17 Q. And you knew you were speaking to
18 officers?

19 A. Yes.

20 Q. That's all the questions I have.
21 Please answer any of opposing questions or
22 your attorney's questions.

23 MS. WICKER: Just a few on
24 redirect.

25 REDIRECT EXAMINATION

1 BY MS. WICKER:

2 Q. Mr. Hill, at any time during this
3 interrogation, did you feel like you could
4 leave, that you could just walk away?

5 A. No.

6 Q. Did you ever sign the form?

7 A. I initialed it.

8 Q. Right. But did you sign the waiver
9 of rights form?

10 A. No.

11 Q. Did you ever intend to waive your
12 rights?

13 A. No.

14 Q. Thank you.

15 MS. WICKER: I don't have any
16 further questions.

17 THE COURT: All right. Anything
18 further.

19 SOLICITOR STEINBERG: No, sir, Your
20 Honor.

21 THE COURT: Let me see all the
22 exhibits that y'all have referred to. And,
23 you know, can we just use the transcript?
24 Y'all have turned this Motions hearing into
25 an entire trial.

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1 If we can just use the transcript,
2 let the jury hear it. We're just going to
3 have to hear the whole trial again. Let me
4 see the exhibits.

5 SOLICITOR STEINBERG: Yes, sir.

6 THE COURT: You can step down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Except for the
9 autopsy. I don't think we have anything in
10 on that, but we've had reference to that.

11 Do y'all have the statement? I call
12 it statement number three, that was typed up.

13 SOLICITOR STEINBERG: Yes, sir.

14 THE COURT: Was that an exhibit?

15 SOLICITOR STEINBERG: Yes, sir.

16 I'm handing to the Court State's Exhibit
17 Number 3.

18 THE COURT: All right. I'll be
19 glad to hear from y'all. I guess it's your
20 Motion for suppression?

21 MS. WICKER: Yes, sir, Your Honor.
22 May it please the Court, Your Honor?

23 THE COURT: Yes.

24 MS. WICKER: Mr. Hill's first
25 statement to these investigators, statement

1 number three, I would argue, Your Honor, was
2 a product of custodial interrogation by
3 investigators who failed to advise him of his
4 *Miranda* rights.

5 THE COURT: Let me stop you there.
6 All right. Let's make sure, because really
7 there are five statements here.

8 We have one that was kind of done at
9 the officer's desk, okay?

10 And then we have one where you move
11 to the City's interrogation room.

12 Then you have one that was taken --
13 that was on the video, which is in the
14 county's interrogation room; right?

15 SOLICITOR STEINBERG: I think
16 they're in reverse order, Your Honor.

17 MS. WICKER: Your Honor, I
18 understood that he gave a statement that the
19 law enforcement then typed up in that initial
20 room, and then moved on to where he was
21 interviewed.

22 SOLICITOR STEINBERG: Yes, sir.

23 THE COURT: I thought at first he
24 talked at his desk, then they went and
25 borrowed the little room over at the City's

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1 room.

2 SOLICITOR STEINBERG: Yes, sir.

3 THE COURT: Then he went to the
4 county part where the video was?

5 SOLICITOR STEINBERG: No, sir. The
6 interview started in Greenville County in the
7 investigators room. And then went over to
8 Greenville City, Greenville City's room is
9 the videotape.

10 THE COURT: Okay. So just two
11 tapes. Okay.

12 MS. WICKER: Yes, sir.

13 THE COURT: I wanted to sure that
14 I've got them -- somewhere ---

15 MS. WICKER: Yes, Your Honor.

16 THE COURT: All right.

17 MS. WICKER: Mr. Hill testified he
18 did not feel free to leave. He was in a room
19 with both investigators at the time. He was
20 driven there by law enforcement.

21 Investigator Fortner also testified
22 that he wanted to speak to Mr. Hill before he
23 was released from custody on an unrelated
24 charge. He wanted Mr. Hill to be in custody.
25 If this were not a custodial interrogation,

1 why not just interview him at his home.
2 Certainly, a laptop would be available to
3 record that.

4 They said that they didn't think he
5 was a suspect at the time, that he was a
6 witness. Yesterday Investigator Fortner
7 testified that when he went to Mr. Hill's
8 home, he kind of considered him to be a
9 suspect at that time. Throughout his report,
10 even including August 14th, his report, he
11 discusses that Mr. Hill -- refers to him as a
12 suspect.

13 We also know that Mr. Hill had been
14 drinking and he appears intoxicated in the
15 video quite frankly, Your Honor.

16 I would further argue, Your Honor,
17 that his statement should be suppressed as a
18 violation of *Missouri v. Seibert* and *State v.*
19 *Navy*. I have copies of those cases, Your
20 Honor, if you would like to see them.

21 THE COURT: I'll be glad to look
22 at them, yes.

23 MS. WICKER: (Tendering), both of
24 those cases deal with police questioning a
25 suspect until incriminating information is

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1 elicited. *Miranda* warnings are then
2 administered. The suspect is again
3 questioned and the remaining information is
4 relisted in the post-warning statement is
5 then sought to be introduced as it is here
6 today.

7 Further, in *Seibert* the court set
8 forth four factors to be considered in
9 determining whether a constitutional
10 violation occurred:

11 The first being the completeness and
12 detail of the question and answers in the
13 first round of interrogation; the timing and
14 setting of the first questioning and the
15 second; the continuity of police personnel;
16 and, the degree to which the interrogators
17 questions treat a second round as continuous
18 with the first.

19 THE COURT: Okay.

20 MS. WICKER: Your Honor, I don't
21 think there's any dispute in the proximity of
22 time here. Mr. Hill was questioned at the
23 law enforcement center in Investigator
24 Fortner's office, then immediately escorted
25 to another room in the law enforcement center

1 so it could be recorded.

2 Investigator Fortner testified that
3 he questioned Mr. Hill about the events. Mr.
4 Hill told him what happened. And they
5 questioned him again.

6 Once he had Mr. Hill's statement
7 that he hit Mr. Patterson a couple of times
8 in the back, he and Investigator Bailey took
9 Mr. Hill in the next room. He was then
10 Mirandized and continued to be questioned.

11 This case is also very similar in
12 the Navy case, Your Honor. Mr. Hill was
13 brought to the LEC by two investigators who
14 had already attended the autopsy, knew the
15 cause of death was blunt force trauma by a
16 cylindrical object. And then after extensive
17 questioning Investigator Fortner asked Mr.
18 Hill if he hit the victim because the victim
19 tried to steal his TV, at which time Mr. Hill
20 tells the investigators he hit the victim two
21 different times on his back. And at this
22 time the two investigators speak to each
23 other, and then escort Mr. Hill to another
24 part of the LEC where they record the
25 continued questioning. Your Honor, and I

1 would argue that as such the situation meets
2 the requirement is set forth in *Seibert* and
3 should be, therefore, suppressed.

4 And, Your Honor, I don't know if you
5 want the State to respond to that question
6 before I move into the next question, the
7 question.

8 THE COURT: No, I'll let them
9 respond.

10 MS. WICKER: All right.

11 THE COURT: All right.

12 SOLICITOR STEINBERG: Thank you,
13 Your Honor. As far as the custodial aspect,
14 this meets no definition of custodial. He's
15 not put in handcuffs, he is not in custody.
16 They have no charges against him. At that
17 point, they have no intention of any charges
18 against him. So it doesn't fit any
19 definition of custodial. The fact that he
20 may have been a suspect. He was a suspect in
21 that someone in that area committed this
22 crime. He is not a suspect in the idea that
23 there's even a warrant out for his arrest.
24 If there was a warrant out for his arrest,
25 there would have been a warrant for his

1 arrest.

2 I'd also point out that there's
3 plenty of case law that said just because the
4 officers have narrowed their suspicions or
5 their case is leading in one direction, it is
6 not the same as being custodial.

7 I would also like to differentiate
8 this case from *Missouri v Seibert*. That was
9 a very unique case where the State of
10 Missouri officers were doing something that I
11 think the Supreme Court took great offense
12 at. They were interviewing somebody who was
13 a suspect and asking him questions in their
14 custody. And then they would almost played a
15 game. And then after they got what they
16 needed, they would wind up doing a *Miranda* on
17 the very same subject.

18 Compare this to what we have in this
19 case. Your Honor has State's Exhibit Number
20 3 in front of you. It clearly says nothing
21 about the suspect's involvement. It's one
22 hundred percent a victim witness statement.
23 It's not just titled a victim witness
24 statement. The narrative, the language in
25 there does show that a suspect at this point,

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1 is simply talking about time lines that don't
2 involve his guilt. It just talks about the
3 victim wound up passing out on his floor.
4 The victim was unable to speak. That has
5 nothing to do with it. That happened as a
6 non-custodial, a very, very free giving
7 statement. The suspect makes a statement
8 concerning a television. The officers then
9 do what they're supposed to do. The follow
10 every single rule. They Mirandize him. They
11 bring him in front of a camera in another
12 agencies interrogation room. And then they
13 perform the *Miranda*.

14 Again, read over *Seibert*, Your
15 Honor, that has -- it's totally different
16 subjects. Counsel brought up the fact that
17 it has to be completeness and that it has to
18 be on the same subject. Well, of course,
19 it's on different subjects. One is involving
20 what did Billy Patterson do? How did he get
21 there? What was Billy Patterson's state of
22 mind, things of this nature? The next
23 statement was only called because the
24 Defendant out of the blue said 'I hit him
25 with my cane. I tapped him twice with my

1 cane.' Then the second interview is totally
2 aboveboard. It is videotaped.

3 The officers did everything they're
4 supposed to, but it's on different -- it's no
5 longer on what happened to Billy Patterson in
6 general. It's now, what did this Defendant
7 do to Billy Patterson. Therefore, Seibert is
8 a rather unique case and frankly does not
9 apply to this case or, frankly, any
10 procedures in South Carolina.

11 THE COURT: All right. Number
12 Four.

13 MS. WICKER: May it please the
14 Court, I would argue that Mr. Hill's second
15 statement that is recorded at the law
16 enforcement center -- excuse me -- or the
17 second round of question that is recorded,
18 the fourth statement should be suppressed
19 because he doesn't knowingly and
20 intelligently waive his rights as set forth
21 in *Miranda*.

22 Your Honor, I would argue that this
23 is similar to having a search warrant. If
24 law enforcement has a search warrant and they
25 execute that search warrant and the search

1 pursuant thereof, is it incumbent upon the
2 defendant to show the search was
3 unreasonable. Conversely, if law enforcement
4 does not have a search warrant and they
5 execute the search, then it becomes incumbent
6 upon law enforcement to prove that search was
7 reasonable.

8 It's similar here, Your Honor, in
9 that we don't have a signed waiver. And so
10 the State has to prove that Mr. Hill did
11 knowingly voluntarily and intelligently waive
12 his rights. When Mr. Hill is moved from
13 Investigator Fortner's office to the city
14 investigators office, he's Mirandized for
15 further interrogation. For close to twenty
16 minutes he and the investigators discussed
17 the waiver of rights. Not just the rights
18 themselves but his actually waiving his
19 rights. For close to twenty minutes they
20 tell him before he can go any further, he has
21 to sign that form in order to waive his
22 rights. The unequivocally tell him that to
23 discuss the -- to continue discussing the
24 matter and thereby waive his rights, he has
25 to sign the form.

1 Mr. Hill tells law enforcement he's
2 been drinking but he's still taken to the LEC
3 for questioning. Mr. Hill refuses to sign.
4 He doesn't want to waive his rights. He
5 doesn't want to speak to them and have what
6 he says to them used against him as they are
7 seeking to do here today.

8 Investigator Bailey stepped out to
9 speak to the Solicitor, Mr. Steinberg, and
10 returned to say to Mr. Hill 'okay, if you
11 want to talk to us without signing, you can.'
12 At this time Mr. Hill asked off the record.
13 At this point, it is incumbent upon law
14 enforcement to advise him of his rights.
15 They have to continue to inform that, no,
16 there's no such thing as off the record.
17 What you say can and will be used against you
18 in a court of law. There's no clear
19 understanding other than off the record that
20 Mr. Hill does not understand what he's doing
21 and does not intend to waive his rights. He
22 testified that he thought he was speaking off
23 the record, that he didn't know what he said
24 was going to be used against him.

25 Instead of adhering to their

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1 affirmative duty to inform Mr. Hill that
2 there's no such thing as off the record and
3 his statements will be used against him,
4 Investigator Bailey says to Mr. Hill, "Okay,
5 I just talked to one of our solicitors and he
6 said -- because I want to make sure I didn't
7 do nothing wrong. He said if you want to
8 talk to us without signing the paper, you
9 can."

10 The investigators have chosen as a
11 part of their procedure, Your Honor, to have
12 a solicitor, an attorney at their disposal.
13 They have chosen as a part of their
14 interrogation of an unrepresented person to
15 make available to him, to encourage the
16 unrepresented person to incriminate himself
17 having a solicitor at his disposal.

18 Mr. Steinberg can't be a witness in
19 this case. He's prosecuting the case. Now,
20 I want to make it clear I'm not lodging any
21 sort of violation about Mr. Steinberg. I
22 have the utmost respect for Mr. Steinberg. I
23 think he's a highly ethical, highly
24 professional individual. But if we're to
25 believe what law enforcement has told my

1 client, then we start get into the rules of
2 professional conduct and that violation of
3 Rule 4.3 dealing with unrepresented persons
4 and Rule 3.8(c) governing responsibilities of
5 prosecutor. I know Mr. Steinberg is not in
6 violation of those rules. I'm not alleging
7 that he is. So what that leaves us with is
8 that law enforcement is either
9 mischaracterizing what's going on to Mr.
10 Steinberg or what Mr. Steinberg says is
11 misrepresented to Mr. Hill, who is
12 unrepresented at the time, in an effort to
13 get him to waive a very important right and
14 incriminate himself. Mr. Hill at no point
15 knowingly and intelligently waived his rights
16 to pursuant to *Miranda* and I would argue that
17 it should be suppressed.

18 THE COURT: All right.

19 SOLICITOR STEINBERG: Thank you,
20 Your Honor. If I may address this last point
21 first. I am the law enforcement advisor,
22 that's twenty-four hours a day. The
23 sheriff's has an agreement with the
24 solicitor's office. We provide legal
25 services. It doesn't matter if it's a

1 murder, a felony DUI, anything. It's a good
2 policy. It's good for law enforcement. In
3 fact it's good for defendants too. So I'm
4 not even going to address Rule 4.3. I don't
5 think it's appropriate.

6 I do want to point out if there's
7 any dispute, I did not speak with the suspect
8 directly or indirectly. I spoke with
9 Investigator Bailey about a legal issue. A
10 very simple legal issue, does he have to sign
11 a waiver? And the issue is no, he does not
12 need to sign a waiver. There's a lot of case
13 law for that.

14 Your Honor, to make your decision a
15 little easier this defendant on the stand
16 actually admitted he was already aware of
17 these rights and was informed and understood
18 all of his rights going into this. The only
19 issue as the defendant himself admits is,
20 what does his words "off the record" mean?
21 The best argument is that off the record
22 simply means that it can't be used against
23 you. The State brought out the fact that the
24 suspect knew he was being interviewed on a
25 murder. He was being interviewed in a

1 videotaped room and knew that he was speaking
2 to investigators who were trying to get
3 information on what happened to Billy
4 Patterson. How can that be off the record?
5 He's aware of all these rights.

6 And the courts have examined this.
7 They've said that you don't have to have an
8 expressed waiver. Your actions can be the
9 expressed waiver. It can be an implied
10 waiver. When this officer on -- at the
11 twenty minute mark the officers for a second
12 time have already asked him, 'do you want to
13 speak?' That's when -- after they'd come and
14 spoke to me. The twenty-minute mark in that
15 videotape when the suspect said, 'What do you
16 want to know?' Judge, That is about as
17 expressed of a waiver as you're going to get.
18 Just because the Defendant said the words off
19 the record, that doesn't mean anything.

20 There's no case law dealing with off
21 the record. For example, in *Texas v Barrett*
22 which I have a copy of, this defendant said,
23 "I will talk but not write anything down." I
24 handed up to the Court yesterday *North*
25 *Carolina v Butler*. He says, "I will talk but

1 I'm not signing any form." This is just
2 another example of where this defendant has
3 been given his rights. He admits he
4 understands them, which is pretty much the
5 entire voluntariness. His only issue now is
6 He's concerned not with voluntariness but
7 with what the term "off the record" means.

8 I don't think that's even a *Jackson*
9 *v Denno* issue. I think that's a -- I'm not
10 even sure what kind of issue it would be but
11 it's -- it's a suppression issue.

12 If the Court has any more questions
13 I can address any of these issues. But at
14 this point I would say the suspect by taking
15 the stand has actually made his decision
16 pretty clear by admitting that he understood
17 his rights.

18 THE COURT: All right. As to
19 statement number three. I have reviewed
20 State's Exhibit 3 and I don't believe
21 *Missouri v Seibert* applies.

22 For one thing, he does not really
23 incriminate himself. He doesn't go, 'well I
24 killed him' or something like that. I mean,
25 I think that this was merely a, you know,

1 it's my understanding from the testimony that
2 sometime afterwards, after he gave the
3 statement the officers got together and said
4 'there's some inconsistencies here.' And
5 that's when they turned it into a custodial
6 interrogation. So I think statement number
7 three was merely a witness statement, that he
8 was not in custody and I'm going to allow
9 that one in.

10 As to statement number four, you
11 know, the testimony from the officers was
12 that they acknowledged that there was
13 drinking involved. There was -- I mean, they
14 did not indicated he was intoxicated. My
15 review of the video didn't indicate to me
16 that he was intoxicated. He testified he
17 understood his rights. And even though he
18 didn't sign this waiver of rights, he
19 initialed one, two, three, four, five, six
20 places on the top acknowledging his rights.
21 And he actually, even though he didn't sign
22 below the waiver of rights, he initialed one
23 portion of it that discussed it clearly on
24 there. So I believe that his rights were
25 clearly advised and that he understood his

1 rights; and, you know, when he began to speak
2 he knew that he was giving those rights up.
3 So I'm going to let both of those statements
4 in and deny your motion.

5 SOLICITOR STEINBERG: Thank you,
6 Your Honor. We have a few short questions
7 for the coroners.

8 THE COURT: I'm going to give you
9 about four minutes.

10 SOLICITOR STEINBERG: Well, Judge,
11 I'll try to get it within four minutes. I'll
12 do my best. The State will call ---

13 THE COURT: We have a jury waiting
14 on us.

15 SOLICITOR STEINBERG: Yes, sir.
16 The State would call Deputy Coroner Jeff
17 Fowler to the stand.

18 THE COURT: And what is this
19 issue?

20 SOLICITOR STEINBERG: This also
21 involves statements of the suspect made to
22 the ---

23 THE COURT: Okay.

24 SOLICITOR STEINBERG: And, Your
25 Honor, I'm not sure if this will even involve

1 *Jackson v. Denno.* I just want to err on
2 the side of caution because coroners do have
3 a quasi law enforcement role.

4 THE COURT: Okay.

5 (WITNESS TAKES STAND)

6 JEFF FOWLER, having been duly sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR STEINBERG:

11 Q. To speed things up. Mr. Fowler, are
12 you a deputy coroner for Greenville?

13 A. I am, sir.

14 Q. And did you speak -- did you go to
15 this location on the date of the discovery of
16 Billy Patterson's body?

17 A. I did, sir.

18 Q. Have you had a chance to review your
19 notes and/or your coroner's report?

20 A. Yes, sir.

21 Q. Did you have a conversation with Mr.
22 Hill, the defendant in this chair over here?

23 A. Yes, sir.

24 Q. Were you able to determine to the
25 best of your knowledge and experience whether

1 he'd been drinking?

2 A. He stated he'd been drinking. Yes,
3 sir.

4 Q. What, if anything, did Mr. Hill say
5 about his relationship with Mr. Patterson?

6 A. That Mr. Patterson was a drinking
7 buddy of his and he had come to the
8 residence.

9 Q. And your notes or in your report,
10 does it say what time Mr. Hill said that
11 Billy Patterson had come over to his house?

12 A. I do not recall.

13 Q. Okay. Did he say anything about
14 having been beaten up prior, that Mr.
15 Patterson had been beaten up prior?

16 A. He did, sir.

17 Q. Did he say what time he left and
18 anything unusual about how he left?

19 A. I don't recall, sir.

20 Q. Did he make any statements
21 concerning ripping his screened door off?

22 A. He did, sir.

23 Q. Were you interrogating him as a
24 suspect?

25 A. No, sir.

1 Q. In your role as a coroner, do you
2 interrogate people or suspects?

3 A. No, sir.

4 Q. What was your reason for interview-
5 ing him?

6 A. To determine the cause and manner of
7 death.

8 Q. And is one of your duties to locate
9 family members?

10 A. It is.

11 Q. And did you ask questions concerning
12 family members as well?

13 A. We did, sir.

14 Q. Was he free to leave when you were
15 speaking to him?

16 A. Yes, sir.

17 Q. That's all the questions I have.
18 Please answer any opposing counsel's
19 questions.

20 MS. WICKER: Your Honor, we don't
21 have any questions of this witness.

22 (WITNESS STEPS DOWN)

23 THE COURT: All right. Call your
24 next witness.

25 SOLICITOR STEINBERG: This will be

1 the last witness we call in *Jackson v*
2 *Denno*, and this is deputy coroner Mike Ellis.

3 (WITNESS TAKES STAND)

4 MIKE ELLIS, having been duly sworn to
5 tell the truth, and nothing but the truth,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR STEINBERG:

9 Q. Mr. Ellis, are you a deputy coroner
10 in Greenville -- a deputy coroner in
11 Greenville County?

12 A. Yes, sir. I am.

13 Q. And did you arrive at [REDACTED] 3rd Street
14 on August 14th, 2013?

15 A. Yes, sir. I did.

16 Q. Did you speak with Mr. Hill, the
17 suspect?

18 A. I did.

19 Q. Was he handcuffed at the time?

20 A. No, sir.

21 Q. Were you interrogating him?

22 A. No, sir.

23 Q. Was he free to leave?

24 A. Yes, sir.

25 Q. Did you ask him any questions and if

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1 so, how did he respond?

2 A. The questions I asked him was
3 attempting to locate the family of the
4 deceased. And he did respond that he thought
5 he had family living in the same area, on a
6 street maybe a couple of blocks over.

7 Q. Did he make any comments about
8 having any hostile actions or any altercation
9 with the would be victim?

10 A. He did make a statement around
11 approximately 9:20 I think on the 13th, that
12 they had a verbal altercation inside the
13 residence.

14 Q And what was the result of that
15 verbal altercation?

16 A. He said that after the verbal
17 altercation they went to the front steps and
18 the front screened door was ripped off.

19 Q. And was there, in fact, a front
20 screened door ripped off?

21 A. Yes, sir.

22 Q. Thank you. Please answer any of
23 opposing counsel's questions.

24 MS. WICKER: I don't have any
25 questions of this witness.

1 THE COURT: All right. Thank you.

2 WITNESS: Thank you, sir.

3 (WITNESS STEPS DOWN)

4 SOLICITOR STEINBERG: Thank you,
5 Your Honor. I think that was close to four
6 minutes.

7 THE COURT: That was close. That
8 was good.

9 SOLICITOR STEINBERG: Judge, the
10 State's position is that this is clearly non-
11 custodial and therefore, the statement should
12 come in.

13 THE COURT: Any response?

14 MS. WICKER: No, sir. Nothing.

15 THE COURT: No, I think it's -- it
16 doesn't seem interrogation or anything like
17 custodial so I'm going to allow those in.

18 All right. Anything else?

19 MS. WICKER: Your Honor, the only
20 other thing the Defense would have is the
21 issue of the redactions since Your Honor has
22 ruled that the statement does come in.

23 I don't know if Mr. Steinberg plans
24 to introduce it later today. If we could
25 look over it together and take out what needs

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1 to be taken out or ---

2 SOLICITOR STEINBERG: Judge, the
3 State has brought this to the Defense counsel
4 attention. There are a couple of mentions in
5 the transcripts, on the video and the
6 transcripts about him being in jail.

7 THE COURT: Why don't y'all work
8 it out. When are you going to do it?

9 SOLICITOR STEINBERG: Judge, it
10 could be later on this afternoon or it could
11 be tomorrow. Having said that, Judge, I
12 think -- I don't think the State should have
13 to do this because it's such a minor issue.
14 It is a bench warrant on a driving charge.

15 THE COURT: Y'all talk about it.
16 We're going to take a -- you know, y'all talk
17 about it. Come up with a solution. We'll
18 take five minutes and then we'll start the
19 case.

20 MS. WICKER: Thank you, Your Honor.

21 SOLICITOR STEINBERG: Thank you.

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: All right. Anything
25 before we bring the jury in?

1 SOLICITOR STEINBERG: Nothing, Your
2 Honor, from the State.

3 THE COURT: Yes. Bring the jury
4 in. Did y'all resolve anything?

5 SOLICITOR STEINBERG: No, sir.

6 THE COURT: I mean, you're not
7 going to show it before lunch.

8 SOLICITOR STEINBERG: No, sir.
9 We're not going to do anything until at least
10 after lunch.

11 (JURY IN AT 10:25 A.M.)

12 THE COURT: All right. Ladies and
13 gentlemen, I appreciate your patience. We
14 had some preliminary matters to go over and
15 then allow us to -- hopefully it'll make this
16 trial go a lot smoother and more efficient
17 for your purposes. But I hope everybody had
18 a good evening and I appreciate your making
19 it back this morning. And I appreciate your
20 patience.

21 As I previously told you, I just
22 want to remind you, my name is Perry Gravely.
23 I'm a judge for the Thirteenth Circuit. This
24 is my resident circuit. I'm actually from
25 Pickens, but Pickens/Greenville is my home

1 followed. So that's -- really, there's
2 no difference other than that, it is pretty
3 straightforward.

4 So with that, any exceptions from
5 the State?

6 SOLICITOR STEINBERG: No, sir.
7 Your Honor.

8 THE COURT: Anything from the
9 Defense?

10 MS. WICKER: No, sir. Your Honor.

11 THE COURT: All right. At this
12 time we will have opening statements. So
13 thank you for your attention.

14 SOLICITOR STEINBERG: Your Honor,
15 has the jury been sworn?

16 THE COURT: Yes.

17 SOLICITOR STEINBERG: Okay.

18 OPENING STATEMENT

19 BY SOLICITOR STEINBERG:

20 Good morning, ladies and gentlemen.

21 My name is Howard Steinberg. I'm an
22 Assistant Solicitor, that is, a local
23 prosecutor, here in the Solicitor's office.

24 We're here on a sad and unwarranted
25 and unnecessary death. Billy Patterson was a

1 homeless man who was beat to death on the
2 night of August 13th leading on into August
3 14th of 2013. He was visiting his friend --
4 we will use the term "drinking buddy" --
5 Marshall Hill, who's on my right. They both
6 had been drinking heavily.

7 Billy at some point passed out. At
8 some point, he was assaulted, repeatedly
9 assaulted with a cane. He didn't die right
10 away. At some point he was removed or moved
11 out of the house and he was found the next
12 morning.

13 Mr. Barksdale who will testify is a
14 roommate. He dialed 9-1-1 -- even though Mr.
15 Hill is the one that found Mr. Patterson's
16 body, he did not dial 9-1-1.

17 Law enforcement came. The suspect
18 at one time said there was a verbal
19 altercation between the two of them and a
20 storm door came off. And then later on he
21 said that the victim came over with an
22 existing injury but he didn't have anything
23 to do with it. Then finally he gives a
24 confession.

25 At first he's slightly assaulting

1 Mr. Patterson and then eventually, murdering
2 Mr. Patterson, striking him repeatedly with a
3 cane or a stick.

4 The medical examiner will testify.
5 He will testify as to what type of weapon
6 that was used, the amount of injuries, the
7 location of the injuries and the effects this
8 would have had on Mr. Patterson's body and,
9 again, on his life.

10 Now, the law you're here for is
11 murder. We've all heard the term "murder."
12 Everyone thinks they know what it means. But
13 in South Carolina it is a remarkably broad
14 charger of murder. It means that you have
15 taken a human life unlawfully with malice
16 aforethought. Taking a human life and
17 unlawfully are pretty easy. What does malice
18 aforethought mean? Malice means wrongful.
19 It means without just cause. It means --
20 sometimes it can mean evil. It doesn't mean
21 it has to be a predisposition, that there has
22 to be a scheme, that you had to plan this.
23 In fact the word "aforethought" simply means
24 that when you commit the action, whether it's
25 shoving someone off a cliff, shooting

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1 someone, stabbing someone or hitting
2 someone with a cane, you're not doing it in
3 jest. You're not doing it to kid around.
4 You're not doing it by accident. You know
5 what you're doing. That is malice
6 aforethought.

7 South Carolina does not have
8 different degrees of murder like other states
9 might have, you may have heard on TV. When
10 you hear the term "murder", this simply means
11 an unlawful murder -- an unlawful homicide by
12 someone who knows what they're doing and they
13 have an evil intent or a wrongful spirit
14 about what they're doing.

15 At the end of this case, I'll ask
16 you to return a guilty verdict. That is a
17 verdict that you cannot get drunk and beat
18 another man and beat them to death and call
19 it anything other than murder. Thank you.

20 MS. WICKER:. May it please the
21 Court?

22 THE COURT: Yes, ma'am.

23 OPENING STATEMENT

24 BY MS. WICKER:

25 None of us want to be here this

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1 morning, certainly not Billy Patterson's
2 family, not the investigators, not the
3 Solicitor not Mr. Hill. Billy Patterson is
4 deceased. No one wants to be here discussing
5 that today, but it's necessary. And it's
6 necessary because Marshall Hill has been
7 charged with the murder of Billy Patterson.
8 The evidence will show he's not guilty of
9 that charge.

10 We're here for a serious matter, the
11 death of Billy Patterson.

12 We're here for a serious charge.
13 Marshall Hill is not guilty of this charge.

14 I'm going to ask you to pay very
15 close attention to the details of this case.
16 What the witnesses tell you, what they don't
17 tell you, any discrepancies or
18 inconsistencies, any biases that they might
19 have. How they answer questions. This is
20 not an open and shut case. There are a lot
21 of details we intend to put together.
22 There's a lot of information in the case.
23 But I believe if you pay close attention to
24 the details you'll see that Marshall Hill is
25 simply not guilty of this charge.

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1

2

THE COURT: All right. Solicitor.

3

4

5

SOLICITOR STEINBERG: Thank you,
Your Honor. The State's first witness will
be Mr. Michael Barksdale.

6

(WITNESS TAKES STAND)

7

8

9

MICHAEL BARKSDALE, having been duly sworn
to tell the truth, and nothing but the truth,
testified as follows:

10

DIRECT EXAMINATION

11

BY SOLICITOR STEINBERG:

12

13

Q. Mr. Barksdale, where are you from
originally?

14

15

A. Originally Easley, South Carolina.
I was born and raised in Easley.

16

17

Q. What's your highest level of
education?

18

19

20

A. I graduated. I've got twelve years
of high school and about three years of
college.

21

22

Q. And where do you work and how long
have you worked there?

23

24

A. I've worked at St. Frances Hospital
for about, like, twenty-nine years.

25

Q. Okay. Where do you live right now

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1 and who is your roommate?

2 A. I stay at [REDACTED] 3rd Street, Judson.
3 And Marshall is my roommate.

4 Q. Did you know Billy Patterson, the
5 victim in this case?

6 A. Yes, I did.

7 Q. And how long have you known him?

8 A. I've known Billy for a long time, at
9 least about ten to twelve years.

10 Q. And where, if anyplace, did he live?

11 A. Billy just mostly, you know, just
12 stayed anywhere because, you know, he was
13 homeless.

14 Q. Did Mr. Billy Patterson, did he have
15 any particular job or do any particular tasks
16 or work?

17 A. Most of the time he be to the house,
18 you know, we might give him little jobs to
19 do. He probably actually needed some money,
20 you know, to buy him some beer or something
21 like that, so -- (pause).

22 Q. Do you remember the last time you
23 saw him alive?

24 A. I do not. The last night, the night
25 this happened was probably -- that's when I

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1 remember the last time I seen him alive, you
2 know.

3 Q. Have you ever known him to steal
4 things?

5 A. No, I have not.

6 Q. Have you ever known him to be
7 violent?

8 A. No, I've not ever known.

9 Q. Would you agree that Billy had a
10 drinking problem?

11 A. Yes, sir.

12 Q. Back in August of 2013, back when
13 this incident happened ---

14 A. Uh-huh.

15 Q. --- did you know of him to have any
16 prior disputes with Marshall Hill?

17 A. No, not really.

18 Q. How would you characterize the
19 relationship between Billy Patterson and
20 Marshall Hill?

21 A. See, I know they was friends.
22 Billy, he would come up to the house. You
23 know, they'd sit in the back yard and all
24 that, you know, drink beer and -- (pause).

25 Q. How long have you known Marshall

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1 Hill the suspect in this case?

2 A. I've known him about, well like --
3 about seven years.

4 Q. Let me ask you a couple of
5 questions. Does he have a hip or leg injury?

6 A. Yes.

7 Q. Does it affect his upper body at
8 all? Is he able to use his arms basically?

9 A. Mostly use him arms basically.

10 Q. Does he ever walk without that cane?

11 A. Most of the time he had the cane.
12 Mostly he walks with a cane.

13 Q. Okay. Most of the time. Does he
14 ever walk without that cane?

15 A. Sometime I see him in the house,
16 like he won't have it with him if he go to
17 the bathroom or something like that.

18 Q. Have you ever seen him walk up the
19 street, up to maybe Pearl Eikenberg's house
20 without the cane?

21 A. No. No.

22 Q. And what is this cane? What does it
23 look like?

24 A. The last cane I seen him walk with,
25 you know, he had the silver one with the

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1 prongs.

2 Q. Well, back in August of 2013, what
3 type of cane did he have or walking stick did
4 he have?

5 A. I kind of remember -- he had
6 different canes. You know, like, you know,
7 he had, you know, like the big stick one.
8 Yeah.

9 Q. Okay. Let's talk about that. Was
10 that his primary -- the primary walking
11 stick?

12 A. No. He walked with that some time.
13 He had the -- he had two different ones he
14 would probably walk with, you know.

15 Q. Does Mr. Hill, does he manage his
16 own finances? Does he manage his own
17 business affairs?

18 A. Yeah. Most of the time he do. He
19 go out and pay his bills.

20 Q. I'm going to ask you about the night
21 of August 13, 2013. Do you remember what
22 time you got home from work that day?

23 A. Yeah. I'd just got off about 10:30.
24 It was probably around about ten till 11:00
25 when I got home.

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1 Q. And when you got home at 11:00 p.m.,
2 was this about the normal time?

3 A. Yeah. About the normal time.

4 Q. Was the storm door on the house?

5 A. Yes, it was.

6 Q. What was the condition of the living
7 room? Was it different than it normally was?

8 A. The only thing that was just
9 different, no, I just seen -- when I walked
10 in, I just seen Billy, you know, laying on
11 the floor.

12 Q. Was he face up or face down?

13 A. He was faced up.

14 Q. Was there anything unusual about his
15 face?

16 A. He had like a little cut right here.

17 Q. About where?

18 A. A cut over his eye?

19 Q. Thank you. At that point, did you
20 know if he was alive or dead? Did he make
21 any motions or anything?

22 A. No.

23 Q. Okay. Had you seen Mr. Patterson at
24 your house before either passed out?

25 A. Yeah, sometime, you know, he

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1 probably be drinking and just go to asleep.

2 And then he'll leave.

3 Q. At that point did you see any of the
4 blood inside your house or on the suspect or
5 on Mr. Patterson?

6 A. I seen some blood, you know, like
7 where he got cut there. Down below the cut,
8 there was some blood down there.

9 Q. Was Mr. Patterson able to speak?
10 Was he saying anything?

11 A. No. I just assumed that he, you
12 know, he just passed out. I didn't -- really
13 didn't -- (pause).

14 Q. Okay. Let's talk about Mr. Hill.
15 Was Mr. Hill in the same room?

16 A. Yes.

17 Q. In this room we're talking about,
18 we'll call it the living room.

19 A. Uh-huh.

20 Q. How close is that to the storm door?

21 A. He was sitting, he was sitting like
22 in the back, and just like on the front door,
23 you know, like on the front.

24 Q. It was in the same living room,
25 though?

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1 A. Yes. Uh-huh.

2 Q. How far was he from Mr. Billy
3 Patterson?

4 A. Well, he was not too far from him;
5 but he was just laying down, you know, and he
6 was -- (pause).

7 Q. Well, when you say not too far are
8 we talking about five feet, ten feet?

9 A. Not even that close. About two
10 feet.

11 Q. About two feet?

12 A. Yeah.

13 Q. Had Mr. Hill been drinking?

14 A. Yes, sir.

15 Q. Did you listen to his words or
16 speech pattern?

17 A. Yes because I asked him, you know,
18 what had happened.

19 Q. And what did he say?

20 A. He said -- I said what was wrong
21 with Billy?

22 A. He said Billy, you know, had been in
23 a fight. I asked him where about and he said
24 came from up the street somewhere.

25 Q. Did that sound normal to you that

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1 Billy would be out and fight?

2 A. No.

3 Q. Did Mr. Hill make any statements
4 about Billy Patterson remaining in the house?

5 A. No. He wanted me to put him out
6 there on the porch. But I told him just let
7 Billy, you know, just sleep it off. We don't
8 need to put him out there.

9 Q. What did you do after that?

10 A. After that I just went on. I said
11 to just let Billy sleep it off. I just went
12 on in the room. I just took off my work
13 clothes and getting ready to go to bed.

14 Q. Were you woken up at all during the
15 night?

16 A. No.

17 Q. And then when did you wake up?

18 A. I woke up, you know, later on that
19 morning, you know, like when I went to use
20 the bathroom. And I just looked in the
21 living room. I didn't see nobody in there.
22 I assumed Billy was gone.

23 Q. About what time was this?

24 A. It was probably around about like
25 2:00, 2:00 o'clock in the morning.

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1 Q. Okay. Did you ever go outside and
2 see Billy Patterson? I'm sorry, at about
3 2:00 or 3:00 in the morning?

4 A. No. I didn't go outside, no.

5 Q. Did you ever assist in bringing
6 Billy back inside the house?

7 A. No.

8 Q. Were you then later on woken up in
9 the morning?

10 A. Yes. Mr. Hill told me that Billy
11 had came back. He was out there on the back,
12 in the back of the house and seemed like, you
13 know, he was dead. So I jumped up and, you
14 know, went to the back door. After I
15 determined he was dead, I got the phone and,
16 you know, dialed 9-1-1.

17 Q. Did Mr. Hill have a telephone, a
18 cellphone?

19 A. Yes. He had a cellphone, yeah.

20 Q. Did he dial 9-1-1?

21 A. No, I did.

22 Q. Okay. And where was Billy
23 Patterson?

24 A. He was like on the back of our house
25 by our air conditioning unit.

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1 Q. Did you attempt to give him CPR?

2 A. Yes, I was, you know, getting
3 direction by what the lady was, you know,
4 when I called 9-1-1.

5 Q. Yes, sir.

6 A. And I was going by the directions
7 that she was telling me to do.

8 Q. When officers showed up, did you
9 cooperate with the officers?

10 A. Oh, yes, sir.

11 Q. Did you give officers consent to
12 search your house?

13 A. Yes.

14 Q. Did you go with the officers
15 voluntarily to the law enforcement center?

16 A. Yes.

17 Q. Did you answer any and all questions
18 they had?

19 A. Yes.

20 Q. During this time period, this day
21 and the day after and maybe it was the day
22 after that, did you know what caused the
23 death of Billy Patterson?

24 A. No, I didn't really know.

25 Q. Did Marshall Hill ever tell you

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1 about striking Billy Patterson?

2 A. No, he didn't mention that. No.

3 Q. Did Marshall Hill tell you anything
4 about Billy trying to steal a TV belonging to
5 Marshall Hill?

6 A. No.

7 Q. Did he ever mention being assaulted
8 by Billy Patterson?

9 A. No.

10 Q. Since that time, have you lived with
11 Marshall Hill?

12 A. Yes.

13 Q. In fact, have you lived in the same
14 house with him for about two or so years?

15 A. Yes. We stay together, yeah.

16 Q. Still?

17 A. Yes.

18 Q. Have you ever spoken to Mr. Hill
19 about this case?

20 A. No. I never did speak to him about
21 it, no.

22 Q. Does he ever mention why he did
23 this?

24 A. No.

25 Q. Thank you, Mr. Barksdale. Please

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1 answer any of opposing counsel's questions.

2 A. All right.

3 THE COURT: Proceed.

4 MS. JOHNSON: May it please the
5 Court?

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MS. JOHNSON:

9 Q. Good morning, Mr. Barksdale. Do you
10 remember you gave a statement to Investigator
11 Bailey?

12 A. Yes.

13 Q. And that was the day of this
14 incident or the next day?

15 A. That was the day the police took me,
16 you know, downtown. I was already in his
17 car.

18 Q. Okay.

19 A. Uh-huh.

20 Q. And you tell him that you came home
21 from working?

22 A. Uh-huh.

23 Q. And you saw Billy laying down?

24 A. Yes.

25 Q. He was very intoxicated?

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1 A. Yes.

2 Q. And you didn't think anything was
3 wrong with Billy at that point?

4 A. No.

5 Q. And you work at St. Francis?

6 A. Yes. Uh-huh.

7 Q. So you've been around medically
8 urgent situations?

9 A. Yes.

10 Q. Okay. He was just laying down
11 drunk?

12 A. Uh-huh.

13 Q. And you watched TV until 12:30,
14 1:00?

15 A. I went to my room.

16 Q. Okay.

17 A. Yeah. I just had the, you know, TV
18 on.

19 Q. You didn't go to sleep until about
20 that time?

21 A. I probably just had dozed off.

22 Q. Probably?

23 A. Dozed off to sleep. Yeah, I had the
24 TV on.

25 Q. Okay.

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1 A. Uh-huh.

2 Q. But you checked again. Do you
3 remember coming in and checking again on
4 Billy?

5 A. Yeah. When I -- I told you when I
6 woke up, you know, and went to the bathroom.
7 I seen the light and then when I looked they
8 wasn't in there.

9 Q. Well, before you went to the
10 bathroom. Did you go to the bathroom like
11 4:00 or 5:00 in the morning?

12 A. Yes. Uh-huh.

13 Q. But right before you went to bed, do
14 you remember telling Investigator Bailey that
15 you checked again?

16 A. Oh, yes. Uh-huh.

17 Q. Okay.

18 A. Yeah. I can't remember that. It's
19 so long ago, you know.

20 Q. I know. I understand completely.
21 And he was either sitting or talking to you?

22 A. No. He didn't say nothing to me,
23 no.

24 Q. But you asked if everything was
25 fine?

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1 A. Yes. I just looked over there and
2 I didn't see him so I just assumed that
3 everything was okay, you know.

4 Q. Okay. You just assumed everything
5 was fine?

6 A. Uh-huh.

7 Q. Okay. And you lay down and go to
8 bed at that time?

9 A. Yeah.

10 Q. After that?

11 A. Uh-huh.

12 Q. Okay. And he's fine before you go
13 to bed. And you said you got back up about
14 4:00 or 5:00 to go to the bathroom?

15 A. Yes. Uh-huh.

16 Q. Okay. And when you get up, you
17 learn from Marshall that Billy was back; is
18 that right?

19 A. Yes.

20 Q. Do you remember telling that to
21 Investigator Bailey?

22 A. Yes. Uh-huh.

23 Q. Okay. And do you remember asking
24 him how did he know Billy was back?

25 A. Once he told me that Billy was back.

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1 It seem like he say look like Billy was dead
2 on the back. That's why I jumped up and went
3 to the back.

4 Q. Well, and I know it's been three
5 years. But before that, do you remember him
6 giving him a jug of water or a glass of
7 water?

8 A. I don't. No.

9 Q. You don't remember telling that to
10 Investigator Bailey?

11 A. You know, I told him when I went
12 around to the back I seen Billy had some
13 water right beside him on the back ---

14 Q. But you don't remember before that
15 that Marshall said, 'I'm giving him a glass
16 of water. Billy's back.'

17 A. Yeah, that what he say. He say "I
18 gave him some water", yeah. It seemed like,
19 you know, he was dead. So I went in and
20 called 9-1-1.

21 Q. Well, this was before that. You
22 don't remember telling investigator Bailey he
23 gave him a glass of water. He comes back in
24 and says Billy's back?

25 A. Uh-huh.

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1 Q. You don't -- you keep on doing your
2 routine and then later on, maybe an hour or
3 so. And I don't know the timeline, but later
4 on he says Billy's dead. Is that ---

5 A. So what I'm saying though Marshall
6 told me, you know, that Billy had came and it
7 seemed like, you know, he was dead. That's
8 when I just got up and run to the back, yeah.

9 Q. Okay.

10 A. Uh-huh.

11 Q. And Marshall is the one that tells
12 you to call 9-1-1?

13 A. Yes. At that point, yeah.

14 Q. He's screaming. He's upset. He's
15 telling you to call 9-1-1?

16 A. (No verbal response).

17 Q. And this door, you didn't notice the
18 door that night. You didn't notice the door
19 until Marshall told you about the door?

20 A. No, he did not tell me about the
21 door. I know about the door, you know, the
22 police came around and told me to come around
23 to the front and sit. Then I seen the door.

24 Q. Okay.

25 A. Because I didn't come through the

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1 front door.

2 Q. I understand. But you didn't see
3 the door that night. You're talking about
4 the next day?

5 A. Yeah. The door was on the hinges
6 when I come through the door when I got off
7 of work, the door was on the hinges.

8 Q. Okay. So you didn't notice the door
9 until the next day?

10 A. Yeah. It was on, yeah.

11 Q. Okay.

12 A. Because I came through the back. I
13 didn't come through the front. Uh-huh.

14 Q. And, Mr. Barksdale, you've continued
15 to live with Mr. Hill for over two years now?

16 A. Yes. Uh-huh.

17 Q. Okay.

18 MS. JOHNSON: I beg the Court's
19 indulgence.

20 Q. Thank you, Mr. Barksdale.

21 A. Okay.

22 SOLICITOR STEINBERG: Very briefly.

23 REDIRECT EXAMINATION

24 BY SOLICITOR STEINBERG:

25 Q. Mr. Barksdale, when you got home at

1 11:00 p.m., you said you saw the victim had
2 an injury that was -- I think you pointed to
3 your eye?

4 A. Uh-huh.

5 Q. Did you know if the victim, Mr.
6 Patterson was drunk or whether he was passed
7 out or whether he was dead. Did you know?

8 A. I'm assuming he was passed, yes.

9 Q. You assume. Are you positive?

10 A. Yes. Uh-huh.

11 Q. Okay. Why are you positive?

12 A. Because he's been coming up there.
13 Like if he had been drinking or something, he
14 might just go, you know, to sleep. You know,
15 he would just wake up and, you know, he'll
16 leave, you know.

17 Q. Okay. So that was unusual?

18 A. Well, not unusual, no.

19 Q. And you have been living with Mr.
20 Hill since this incident. You said your
21 words, you are friends. You are friends with
22 him?

23 A. Yes.

24 Q. And are you physically larger than
25 him, that is taller and broader than he is?

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1 A. Yes.

2 Q. Okay. Thank you.

3 THE COURT: All right. Thank you,
4 Mr. Barksdale. You may step down.

5 (WITNESS STEPS DOWN)

6 SOLICITOR STEINBERG: Your Honor, I
7 would ask that Mr. Barksdale be free to
8 leave. He can be called back again if
9 necessary.

10 MS. JOHNSON: No objection.

11 THE COURT: All right. You may
12 leave. Thank you.

13 WITNESS: Oh, okay.

14 SOLICITOR STEINBERG: Your Honor,
15 the State's next witness will be Deputy
16 coroner, Jeff Fowler.

17 (WITNESS TAKES STAND)

18 JEFF FOWLER, having been duly sworn to
19 tell the truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR STEINBERG:

23 Q. Mr. Fowler, are you a deputy coroner
24 in Greenville County?

25 A. I am, sir.

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1 Q. And in your role as a deputy
2 coroner, what tasks do you perform?

3 A. Our job is to determine cause and
4 manner of death and also to identify the
5 legal next of kin in regards to that.

6 Q. Do you respond to crime scenes?

7 A. We do, sir.

8 Q. And how long have you been with the
9 coroner's office?

10 A. Almost six years.

11 Q. And before that, where did you work?

12 A. I was a paramedic.

13 Q. For approximately how long?

14 A. For approximately four years.

15 Q. Do you have any specialized training
16 or any courses you've taken in this field?

17 A. Yes, sir. I'm certified.

18 Q. Now, did you respond to [REDACTED] 3rd
19 Street in Judson?

20 A. Yes, sir.

21 Q. And did you speak with Mr. Hill and
22 Mr. Barksdale. Mr. Barksdale, is the
23 gentleman who just testified?

24 A. I did, sir.

25 Q. Okay. Did you note anything in

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1 either your report or in your notes about
2 what Mr. Hill had to say?

3 A. I did, sir.

4 Q. You did? I didn't hear your
5 response?

6 A. Yes, sir.

7 Q. Yes? What did Mr. Hill have to say
8 about his relationship with the victim, Billy
9 Patterson?

10 A. He stated they were drinking
11 buddies.

12 Q. Did he make any statements
13 concerning how the injuries had occurred and
14 how the victim had ---

15 A. He stated that Billy was in a fight
16 prior to getting to the incident location.

17 Q. Did he make any statements about the
18 screen being ripped off -- I'm sorry, the
19 screened door being ripped off?

20 A. He did, sir.

21 Q. What did he say?

22 A. He stated it was ripped off. I
23 don't recall.

24 Q. All right. I'm going to hand you
25 the notes that I showed you earlier. Please

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1 identify if these are your notes and then
2 please take a look at them?

3 A. Yes, these are my notes.

4 Q. Please take a look at that to
5 refresh your memory?

6 A. Yes, sir. Okay, sir.

7 Q. What, if anything -- did you read
8 all the pages?

9 A. Yes.

10 Q. What, if anything, did the suspect,
11 Mr. Hill, have to say about the injuries or
12 the damage to the residence?

13 A. He stated Billy left the residence
14 mad, ripped the door off.

15 Q. Was the door in fact ripped off?

16 A. It was.

17 Q. In fact, do you have any role in
18 transporting the door?

19 A. I did.

20 Q. What was your reason for transport-
21 ing the door?

22 A. Due to its size the forensics
23 division didn't have anything to transport
24 it, so I transported it for them.

25 Q. Okay. Where was the body located in

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1 reference to the house?

2 A. It was behind the residence.

3 Q. Okay. How close to the residence?

4 A. Within a few feet.

5 Q. Thank you. Please answer any
6 opposing counsel's questions.

7 CROSS-EXAMINATION

8 BY MS. WICKER:

9 Q. Good morning.

10 A. Good morning.

11 Q. Did you note if Mr. Hill had been
12 drinking when you were speaking to him?

13 A. I did.

14 Q. And you spoke to both Mr. Hill and
15 to Mr. Barksdale?

16 A. Yes, ma'am.

17 Q. How long did you speak to them?

18 A. A short period of time.

19 Q. Pretty short, five minutes or so
20 maybe?

21 A. Yes, ma'am.

22 Q. So you didn't get a typed statement
23 from either of them or anything like that?

24 A. No, ma'am.

25 Q. Okay. Thank you. I don't have any

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1 further questions.

2 SOLICITOR STEINBERG: Nothing from
3 the State, Your Honor.

4 THE COURT: Okay.

5 SOLICITOR STEINBERG: The State
6 would ask this witness be release.

7 MS. WICKER: No objection, Your
8 Honor.

9 THE COURT: All right.

10 (WITNESS STEPS DOWN)

11 SOLICITOR STEINBERG: The State
12 witness will be Mike Ellis.

13 (WITNESS TAKES STAND)

14 MIKE ELLIS, having been duly sworn to
15 tell the truth, and nothing but the truth,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR STEINBERG:

19 Q. Mr. Ellis, are you a deputy coroner
20 at Greenville County?

21 A. Yes, sir, I am.

22 Q. You're the chief deputy coroner; is
23 that correct?

24 A. Yes, sir.

25 Q. Are you familiar with this area,

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1 Judson?

2 A. Yes, sir.

3 Q. How are you familiar with it?

4 A. I was raised in that same
5 neighborhood, probably five blocks away from
6 the incident location.

7 Q. All right. Thank you, sir. Did you
8 respond to the scene along with deputy
9 coroner Fowler?

10 A. Yes, sir. I did.

11 Q. And did you speak with Mr. Hill?

12 A. Yes, sir. I did.

13 Q. What was your reason as a deputy
14 coroner for speaking with Mr. Hill?

15 A. I originally spoke with him in
16 reference to attempting to locate some family
17 for the deceased.

18 Q. Were you interrogating Mr. Hill as a
19 suspect at that point?

20 A. No, sir.

21 Q. Did you have any reason to suspect
22 that he was a suspect in this case?

23 A. No, sir.

24 Q. Had Mr. Hill been drinking?

25 A. Appeared to be, yes, sir.

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1 Q. When you were standing, when you
2 were talking to him, where do you think he
3 was -- where were you standing and where was
4 he standing?

5 A. We were outside of the crime scene
6 tape in the roadway.

7 Q. When you were asking questions about
8 how to get in touch with his family, did the
9 suspect, Mr. Hill, make any statements about
10 this incident?

11 A. Yes, sir.

12 Q. What did he say?

13 A. As we were talking, I explained to
14 him that if I could locate next of kin, I was
15 going to have to explain to them what
16 happened to him. Did he have any idea? And
17 he only expressed that they had an
18 altercation inside the residence.

19 Q. Did he say what kind of altercation
20 inside the residence?

21 A. He said verbal altercation.

22 Q. Did he say anything about the door?

23 A. He did. He said that the door was
24 ripped off.

25 Q. Was the door, in fact, ripped off?

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1 A. Yes, sir. It was.

2 Q. Thank you, Mr. Ellis.

3 CROSS-EXAMINATION

4 BY MS. WICKER:

5 Q. Mr. Ellis, you noted that Mr. Hill
6 had been drinking?

7 A. Yes.

8 Q. And the main purpose in you being
9 there was to locate the next of kin?

10 A. Well, we determine cause and manner
11 of death.

12 Q. Okay.

13 A. And attempt to locate next of kin.

14 Q. Was your purpose in speaking to Mr.
15 Hill just to kind of give the family some
16 idea of what had happened?

17 A. Yes, ma'am.

18 Q. How long did you speak to Mr. Hill,
19 pretty briefly?

20 A. It was less than five minutes.

21 Q. Thank you. I don't have any further
22 questions.

23 A. Thank you.

24 SOLICITOR STEINBERG: Your Honor,
25 the State would move that Deputy Coroner

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1 Ellis be released from his subpoena.

2 THE COURT: Yes. Any objection?

3 MS. WICKER: No objection.

4 THE COURT: All right. You may be
5 released.

6 (WITNESS STEPS DOWN)

7 SOLICITOR STEINBERG: Your Honor,
8 the State's next witness will be Deputy
9 Brandon Napolitano.

10 (WITNESS TAKES STAND)

11 BRANDON NAPOLITANO, having been duly
12 sworn to tell the truth, and nothing but the
13 truth, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR STEINBERG:

16 Q. Mr. Napolitano, where are you from
17 originally?

18 A. Originally from Connecticut.

19 Q. And what's your highest level of
20 education?

21 A. Bachelor's Degree from The Citadel.

22 Q. Do you have any military experience?

23 A. Currently eight years in the
24 military as a military police officer.

25 Q. Okay. Back in August of 2013, were

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1 you a member of the sheriff's office?

2 A. I was.

3 Q. And what unit or division were you
4 in?

5 A. I was assigned to uniform patrol.

6 Q. What do you do now? What's your
7 current occupation?

8 A. I'm currently a Realtor.

9 Q. Here in Greenville?

10 A. The upstate, yes, sir.

11 Q. Were you dispatched out to this
12 location?

13 A. Yes, sir. I was the first unit to
14 arrive on scene.

15 Q. And [REDACTED] 3rd Street in Judson. That's
16 in Greenville County?

17 A. Yes, sir. It sure is.

18 Q. What other, either officers or other
19 first responders had arrived?

20 A. Well, when I first got there, the
21 original call when it came out was an assault
22 and battery. So I wasn't really expecting
23 anybody else. However, when I arrived on
24 scene, I saw paramedics and firefighters
25 there.

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1 Q. Did other police officers, uniformed
2 officers arrive?

3 A. Yes, sir. Deputy Downey, Master
4 Deputy Downey; ---

5 Q. And what were their roles?

6 A. Scene preservation.

7 Q. Did you see the victim, Billy
8 Patterson?

9 A. Yes, sir. I sure did.

10 Q. Tell us about the injuries that you
11 could see?

12 A. Well, when I first got there I went
13 over to where Mr. Patterson was laying. EMS
14 and the fire department were working on him,
15 doing chest compressions, CPR. I noticed him
16 to be pale. His lips were blue. He had
17 flies on his face. He wasn't blinking. I
18 noticed him to have several cuts, scratches
19 on his face and it appeared he had a swollen
20 eye.

21 Q. Did you see Mr. Marshall Hill, the
22 gentleman in the black shirt to my left?

23 A. Yes, sir. He was on scene.

24 Q. And tell us about his condition.
25 How did he appear?

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1 A. He appeared unkempt. He was wearing
2 a tee shirt and boxers, no shoes. He
3 appeared to be intoxicated.

4 Q. Specifically, did he tell you what
5 he had drank earlier that day?

6 A. Yes, sir. He had stated he drank a
7 pint of vodka.

8 Q. What terminology did he use to
9 explain his relationship with Billy
10 Patterson?

11 A. Mr. Hill stated that him and Mr.
12 Patterson were drinking buddies.

13 Q. When you were speaking to Mr. Hill,
14 was he in custody at that time?

15 A. No, sir. He was not.

16 Q. Did you have him in handcuffs and
17 were you interrogating him?

18 A. No, sir. He was not in handcuffs
19 and I was not interrogating him.

20 Q. Did he tell you -- first of all when
21 you were talking to him, how were his
22 responses? How was he in answering your
23 questions?

24 A. He jumped around a whole lot. I
25 couldn't get a straight answer. None of his

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1 answers seemed to be chronological. It was
2 very jumpy.

3 Q. To the best of your recollection --
4 do you have your report with you?

5 A. Yes, sir.

6 Q. Okay. What time line did Mr. Hill
7 give concerning these injuries?

8 A. I have in my report here that he
9 last saw Mr. Patterson to be alive at the
10 incident location at 1100 hour at that date.

11 And at approximately 11:52 hours he
12 appeared -- excuse me. Him, as Mr.
13 Patterson, he found Mr. Patterson to be on
14 the back side of the incident location
15 slumped over in a seated position.

16 Q. Now, when you say the word 11:00 and
17 11:52, is that 11:00 a.m. and 11:52 a.m.?

18 A. Yes. 1100 hours is 11:00 a.m. And
19 11:52 hours is 11:52 a.m.

20 Q. And no need to apologize but just --
21 because it will come up in your report, when
22 you say 11:00 p.m. what language do you note?

23 A. That would be 2300, which would be
24 11:00 p.m.

25 Q. Did you later speak to -- do not

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1 repeat what was said by Mr. Barksdale, but
2 did you later speak to Mr. Barksdale?

3 A. I did speak to Mr. Barksdale.

4 Q. Did you ever speak with Deputy
5 Downey?

6 A. I did speak with Deputy Downey.

7 Q. And did you again confront Mr. Hill
8 and speak to Mr. Hill?

9 A. I did.

10 Q. Was he in custody?

11 A. Mr. Hill was not in custody.

12 Q. Was he threatened or promised any-
13 thing to talk to you at that point?

14 A. No, sir. He was not.

15 Q. At that point was he the suspect in
16 this case?

17 A. No, sir. I still have him listed in
18 my report as a witness.

19 Q. In case jurors don't understand, in
20 a homicide, would you be the lead officer in
21 a homicide case?

22 A. No, sir. I wouldn't be the lead
23 officer. I was the first responding --
24 whenever somebody calls 9-1-1 I was the one
25 who showed up.

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1 Q. When you spoke with Mr. Hill the
2 second time, what, if anything, did he have
3 to say about Mr. Patterson and the injuries?

4 A. The second time I talked to him, Mr.
5 Hill stated that Mr. Patterson had come to
6 the incident location around 2100 hours on
7 the night prior and already had the scratches
8 and bruises on his face.

9 I asked Mr. Hill if he could give any
10 insight on who caused the scratches on
11 bruises or who Mr. Patterson got in a fight
12 with. He couldn't advise.

13 Then he stated he saw Mr. Patterson that
14 morning around 11:00 hours in the back yard
15 and he asked for a glass of water. Mr. Hill
16 said he did obtain that glass of water and
17 went back inside and drank his pint of vodka.

18 Q. You said the term 2100 hours. Was
19 that August 13th?

20 A. Yes, sir.

21 Q. Is that 9:00 p.m. on August 13th?

22 A. Yes, sir.

23 Q. Did you ask Mr. Hill whether they
24 had had a confrontation or altercation? And
25 if so, how did he respond?

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1 A. Mr. Hill didn't advise me if they
2 had an altercation.

3 Q. Did or did not?

4 A. Did not.

5 Q. Did not. Thank you. Please answer
6 any opposing counsel's questions.

7 CROSS-EXAMINATION

8 BY MS. JOHNSON:

9 Q. Good morning. Mr. Napolitano?

10 A. Close enough.

11 Q. I'm sorry.

12 A. No, you're fine.

13 Q. And when you were talking to Mr.
14 Hill, this was just like gathering
15 information. You were not in any kind of
16 formal interview with Mr. Hill? You were not
17 interrogating him?

18 A. No, ma'am. I was not.

19 Q. Okay. You were just trying to get
20 information?

21 A. Yes, ma'am.

22 Q. Okay. And he was drunk?

23 A. Yes, ma'am. He was.

24 Q. Grossly intoxicated?

25 A. He was intoxicated.

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1 Q. And he had just told you he had
2 consumed a pint of vodka?

3 A. Yes, ma'am.

4 Q. Do you know what kind of vodka that
5 was?

6 A. No, ma'am.

7 Q. Was it Taco Vodka?

8 A. I can't advise on the type.

9 Q. Okay. And was he slurring any
10 words?

11 A. Yes, ma'am. His speech was slurred.

12 Q. Okay. He was in no position to give
13 an interview?

14 A. Right. I wasn't interviewing him.
15 I was just trying to gather basic
16 information.

17 Q. Okay. I understand. And you
18 surveyed the scene where the victim was?

19 A. What do you mean by surveyed?

20 Q. You saw the victim?

21 A. I did.

22 Q. And you noticed there was a glass of
23 water by the victim?

24 A. I don't recall.

25 Q. Okay.

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1 MS. JOHNSON: I beg the Court's
2 indulgence.

3 Q. Thank you, Mr. Napolitano.

4 A. Yes, ma'am.

5 THE COURT: Any redirect?

6 SOLICITOR STEINBERG: No, sir, Your
7 Honor.

8 THE COURT: All right.

9 SOLICITOR STEINBERG: The State
10 would ask that Mr. Napolitano be released
11 from his subpoena.

12 THE COURT: You're released. Any
13 objection?

14 MS. WICKER: No, sir, Your Honor.

15 (WITNESS STEPS DOWN)

16 SOLICITOR STEINBERG: Your Honor,
17 the State's next witness is Officer Downey.

18 (WITNESS TAKES STAND)

19 MICHAEL DOWNEY, having been duly sworn to
20 tell the truth, and nothing but the truth,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR STEINBERG:

24 Q. Officer Downey, what is your current
25 role with the sheriff's office?

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1 A. I am currently a detective in the
2 vice unit.

3 Q. What was your position in August of
4 2013?

5 A. I was with the Bravo uniformed road
6 patrol unit.

7 Q. What is your highest level of
8 education?

9 A. I have a bachelors degree from the
10 University of South Carolina, Upstate.

11 Q. Did you have occasion to respond to
12 the incident scene at [REDACTED] Third Street,
13 Judson, on August 14th, 2013?

14 A. Yes, sir.

15 Q. What was your role in that response?

16 A. I arrived after Officer Politano and
17 my job was scene preservation.

18 Q. Did you have any particular dealings
19 with the defendant, Mr. Hill?

20 A. Yes, sir, I was standing at my
21 patrol car and he was escorted over to my
22 vehicle.

23 Q. Was he able to walk of his own
24 power?

25 A. Yes.

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1 Q. What was your role in dealing with
2 him?

3 A. At that point time potential
4 witnesses had been separated since he didn't
5 reside at that residence.

6 Q. Did you allow him or allow Mr.
7 Barksdale to speak with Mr. Hill?

8 A. I did not.

9 Q. At some point did you give Mr. Hill
10 a chair to sit in?

11 A. Yes, I did.

12 Q. And at some point later on did you
13 allow him to sit in an air-conditioned car?

14 A. That's correct.

15 Q. And this was August in Judson. Was
16 it hot that day?

17 A. Absolutely.

18 Q. Were you interrogating him as a
19 suspect?

20 A. No, sir.

21 Q. And was he a suspect at that point
22 in ???

23 A. No, sir.

24 Q. If he had been a suspect, would you
25 have interrogated him or given him to

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Testimony of Michael Downey - Cross Examination

1 Investigator Fortner to interrogate?

2 A. Absolutely, I would have handed him
3 over to CID.

4 Q. Okay. Had Mr. Hill been drinking?

5 A. Yes.

6 Q. And what did Mr. Hill have to say if
7 anything?

8 A. Just that -- what was going on. And
9 he told me that the victim, which I didn't
10 know where he was located, said that he'd
11 gave shots to him the night before. At some
12 point he'd left. I can give you're the
13 timeframe if you'll hand my notes to me.

14 Q. I do have your notes. I'm going to
15 hand these up to you. When you look at these
16 notes, just please identify that these are
17 your notes and it's your handwriting?

18 A. These are my notes and this is my
19 handwriting.

20 Q. Please review them and if it helps
21 you in refreshing your memory?

22 A. He said that he did drink with the
23 victim. The victim had gotten up and left
24 between 2000 hours and 2100 hours, so 8:00
25 p.m., 9:00 p.m. the night before. Somewhere

1 around midnight he returned to the residence,
2 the victim. And said he was beat up. And
3 then he left, grabbed the door and fell out,
4 which he animated. And then he said about
5 6:00 or 7:00 he went outside to check on the
6 victim and provide him some water. After
7 that, he called Barksdale to call 9-1-1.

8 Q. Okay. And the court reporter
9 obviously cannot see your demonstration.
10 When you said he knocked on the door and he
11 fell back, did you throw your arms up in the
12 air?

13 A. Yeah. That's how he was showing me.

14 Q. That was his explanation to you?

15 A. Yes.

16 Q. Okay. And did he ever make any
17 statements about his own involvement in
18 causing Mr. Patterson to have any injuries?

19 A. None. That wasn't approached.

20 Q. We handed up your notes. Did you do
21 a report in this case?

22 A. I did not. Well, I did a report but
23 you do not have a report from me.

24 Q. Please tell the Court very briefly
25 why your report is not here.

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1 A. The way that the server works,
2 reports are uploaded wirelessly on a data
3 card. The computer I had at the time, it
4 would send a message box from the reporter
5 writing system that had been uploaded that
6 would furnish the case number. And then
7 between there and wherever the server is some
8 reports would make it. Some of the reports
9 would not, which that problem has been
10 identified. And it should have been locally
11 on that computer but there's no way of
12 knowing where that computer is.

13 Q. Thank you. Please answer any
14 opposing counsel's questions.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MS. JOHNSON:

18 Q. Deputy Downey, Mr. Hill was very
19 intoxicated?

20 A. He was intoxicated.

21 Q. He'd been drinking a lot.

22 A. Okay.

23 Q. Agree with me?

24 A. He was intoxicated. His level, I
25 don't know.

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1 Q. Okay. Slurring words?

2 A. Yeah.

3 Q. Okay. You weren't interrogating
4 him?

5 A. No, ma'am.

6 Q. You were just trying to gather
7 information?

8 A. Right. A potential witness.

9 Q. He was in no position to give any
10 kind of formal interview?

11 A. I would not have attempted to
12 interview him the morning that I seen him.

13 Q. Okay. Thank you.

14 A. Thank you, ma'am.

15 THE COURT: Any redirect?

16 SOLICITOR STEINBERG: No, sir, Your
17 Honor. We'd ask that Deputy Downey be
18 released?

19 MS. JOHNSON: No objection, Your
20 Honor.

21 THE COURT: All right. You may be
22 released from your subpoena.

23 (WITNESS STEPS DOWN)

24 SOLICITOR STEINBERG: Your Honor,
25 the State's next witness will be a much

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1 longer witness.

2 THE COURT: Okay.

3 SOLICITOR STEINBERG: And the State
4 would call ---

5 THE COURT: Everybody's okay with
6 it.

7 All right.

8 (BENCH CONFERENCE)

9 THE COURT: All right. We're
10 going to take a break now, just a short break
11 just so we can get everything ready to roll
12 in here. And, again, this is your
13 opportunity to select a foreperson.

14 Again, do not talk about the case.
15 It's not the time to have any discussions
16 until after all the evidence is in. So at
17 this time if you'll return to your jury room.

18 (JURY OUT AT 11:25 A.M.)

19 THE COURT: All right. We're
20 going to take a five-minute break.

21 SOLICITOR STEINBERG: Your Honor,
22 the concern is we're going to have a medical
23 examiner, Fulcher. The question is do we do
24 it before lunch or after lunch. His
25 testimony will probably last about thirty to

1 forty minutes. Sergeant Hamilton is our next
2 witness. That'll take us about an hour,
3 maybe an hour or so.

4 THE COURT: Well, we can -- it's
5 11:30 now. We can run until 1:00 if you need
6 to, if you want to get to a witness and then
7 break for lunch.

8 SOLICITOR STEINBERG: Yes, sir. I
9 can do that. Thank you, Your Honor.

10 THE COURT: So you want to do the
11 shorter witness?

12 SOLICITOR STEINBERG: We're going
13 to do Sergeant John Hamilton next. And then
14 we'll break for lunch if Your Honor agrees,
15 and then we'll bring Dr. Fulcher.

16 THE COURT: Okay, we will do the
17 medical examiner after everybody's eaten
18 lunch.

19 MS. JOHNSON: The statements?

20 THE COURT: Okay.

21 MS. JOHNSON: State's 1 and 3.

22 THE COURT: All right. Well we'll
23 show that.

24 MS. JOHNSON: Thank you, Your Honor.

25 THE COURT: All right. We'll be

1 at break for just a few minutes.

2 (SHORT BREAK)

3 (DEFENDANT PRESENT)

4 (JURY IN AT 11:40 A.M.)

5 (WITNESS TAKES STAND)

6 JONATHAN HAMILTON, having been duly sworn
7 to tell the truth and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR STEINBERG:

11 Q. Officer Hamilton, if you would just
12 tell the jury what your role is, and what
13 your tasks are, what your job is?

14 A. I am a sergeant for the Greenville
15 County Forensics Division. We're part of the
16 Department of Public Safety, which means that
17 we are not attached to a certain individual
18 agency, such as the sheriff's office or the
19 police department. We actually run straight
20 from the County itself.

21 In the course of my duties I supervise
22 eleven officers and also answer calls for
23 service such as crime scenes, malicious
24 damage, or assault or residential burglaries
25 or even homicides.

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Testimony of Jonathon Hamilton - Direct Examination

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1 Q. How long have you been in forensics?

2 A. Forensics division, I have been
3 there nine years now.

4 Q. And how long have you been in law
5 enforcement?

6 A. A total of right at fifteen now. I
7 worked for Greenville City Police Department
8 for six years prior to becoming a corrections
9 officer.

10 Q. Do you have any specialized training
11 or courses in forensics?

12 A. Yes. I've been to multiple classes,
13 beginner and intermediate crime scene
14 investigation in Tampa, Florida.

15 I've had numerous training in Columbia,
16 Charlotte, North Carolina, also in-house
17 training. We do a lot of in-house training
18 with our officers so that way we can get them
19 prepared the way the County expects us to do
20 things on our crime scene.

21 Q. On August the 14th of 2013, did you
22 respond to this crime scene?

23 A. Yes, I did.

24 Q. Who was with you and what was this
25 person's role?

1 A. Officer Tucker was with me. He had
2 recently left the Greenville City Police
3 Department and came over to the forensics
4 division and it was an FTO, a field training
5 officer, kind of role. I was training him to
6 do our job.

7 Q. And in the training role did he
8 handle any of the evidence or take any of the
9 photographs?

10 A. No. He was in more of an
11 observation role that day.

12 Q. Did you see the victim, Billy
13 Patterson, in this case?

14 A. Yes, I did.

15 Q. And where was he located?

16 A. He was located at the left corner
17 rear of the home, outside. So if you're
18 looking at the front of the home, around the
19 left side as you're looking at the home to
20 the back corner.

21 Q. I'm going to show you what's been
22 pre-marked as State's Exhibit Number 4. Does
23 this accurately reflect how the house looked?

24 A. Yes, it does.

25 Q. And did you prepare this?

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1 A. Yes, I did.

2 SOLICITOR STEINBERG: (I would move
3 State's Exhibit Number 4 into evidence.

4 MS. WICKER: No objection.

5 THE COURT: All right. That's
6 State's Exhibit what?

7 COURT REPORTER: Four (4).

8 SOLICITOR STEINBERG: Exhibit
9 Number 4, Your Honor.

10 THE COURT: All right. In without
11 objection.

12 (SO ENTERED AS STATE'S EXHIBIT 4)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR STEINBERG:

15 Q. I show this to you -- hang on a
16 second. So the jurors can see, this item
17 right here looks like a body -- what was
18 that?

19 A. That would be the victim.

20 Q. Does that show fairly close to scale
21 how close he was to the residence?

22 A. Yes.

23 Q. And what I'm pointing to up here
24 that looks like a ladder or stairwell, what
25 is that?

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1 A. Those are stairs.

2 Q. Then is that the main entrance into
3 the house?

4 A. Yes. It's kind of odd. As you're
5 staring at the front of the house there's
6 actually a side porch. That has a set of set
7 of stairs that lead to the driveway. And
8 that side porch is actually the front door of
9 the home.

10 Q. And, in fact, on the side of the
11 home facing the street, facing 3rd Street,
12 Judson, is there a door into the house from
13 that location?

14 A. No, there is not.

15 Q. Did you go into the living room?

16 A. Yes, I did.

17 Q. And in relation to this sketch,
18 where is the living room? How do you get
19 into the living room from the outside?

20 A. May I?

21 Q. Yes, sir.

22 A. (Witness steps down)

23 Q. In fact, I'm going to have you, as
24 best you can -- I'm not trying to block the
25 jury -- try to explain where the relevant

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1 parts of the house were?

2 A. Okay. This right here is going to
3 be the driveway, so the main roadway of the
4 home is going to be at the bottom of this
5 diagram. This is that side porch I was
6 telling you about that is considered the
7 front door. Living room, den area is pretty
8 small. It encompassed this part of the front
9 of the home. So it wasn't too long because
10 we had a bedroom here and we had a living
11 room area there.

12 Q. Were you able to determine where Mr.
13 Hill's bedroom was?

14 A. I'm not sure. Right here.

15 Q. Okay. Thank you.

16 A. (Witness takes stand)

17 Q. As part of your duties, did you
18 search the exterior of the home?

19 A. Yes. When we first get on scene we
20 do what we call a walk-through with an
21 investigator. We want to try to identify
22 anything that could be used or to prove or
23 even disprove anything in the case.

24 After we do the walk-through and the
25 initial collection of evidence, take

1 photographs and that kind of thing, we'll
2 also do a more thorough search once we can
3 walk through the scene a little bit more with
4 the investigator and figure out whether he
5 sees anything that may assist him in his
6 case.

7 Q. Did you then search the interior of
8 the residence?

9 A. We did -- there, again, a cursory
10 walk through of the interior of the home.
11 And then after photographs were taken we
12 would do a little bit more thorough search.

13 Q. The room that you refer to as the
14 den or the living room ---

15 A. Uh-huh.

16 Q. --- what did that appear like to you
17 when you got there? Did there appear like
18 there had been any disturbance there?

19 A. No. No, everything seemed to be in
20 order. I mean, you had couches and loveseat
21 there. It wasn't in disarray. There wasn't
22 anything strewn all over the den and living
23 room area.

24 Q. Did you see any evidence of an
25 injury?

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1 A. We did see an area of suspected
2 blood. I call it suspected blood because
3 laboratory test confirms blood. So the
4 suspected blood we did see at the doorframe
5 of the side or front door of the home that I
6 was speaking of earlier, on the inside, down
7 at the bottom.

8 Q. Was there any blood on the floor
9 near the couch?

10 A. I didn't see any. No, sir.

11 Q. If there had been, would you have
12 taken photographs or taken some samples?

13 A. Oh, yes. Yes, sir.

14 Q. The doorframe that had the blood,
15 did you take photographs of this and take a
16 swab of that?

17 A. I did.

18 Q. The photographs, did you take the
19 photographs yourself?

20 A. Yes.

21 Q. And do they accurately reflect the
22 scene as you saw it?

23 A. Yes.

24 Q. I'm going to show you a number of
25 exhibits after reading them all out to you.

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1 I'm going to ask you to look at State's
2 Exhibit 19. That makes things faster. I'll
3 read them out and let you have a chance to
4 look at them.

5 A. Okay.

6 Q. State's Exhibit Number 19, 20, 21,
7 22, 23, 24, and close up, 25. 26. I'm going
8 to hand them all to you. 27, 28, 29, 30, 31,
9 32, 33, 34, 35, 36, skip over to 38.

10 COURT REPORTER: Skip over 38 or to
11 38?

12 SOLICITOR STEINBERG: Skip over to
13 38, skip 37.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR STEINBERG:

16 Q. 39, 40, 31, 42, 43, 44, 45, 46, 47,
17 48, 49. Do those photographs accurately
18 depict the scene that you saw August 14th
19 and/or August 15th?

20 A. Yes.

21 Q. And on top of the photographs do you
22 have a notation to say when you took the
23 photographs? Specifically, any description?

24 A. (No verbal response)

25 Q. When you say green front, is there

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1 anything in greater detail?

2 A. No.

3 Q. Did you see a storm door at that
4 location?

5 A. I did.

6 Q. And how close was the storm door to
7 the residence?

8 A. It was right close to that side
9 porch.

10 Q. And did you notice how it had become
11 detached?

12 A. It just appeared to have been pulled
13 off of the frame of the door, the outside of
14 the side door.

15 Q. And did you seize that door?

16 A. Yes, I did.

17 Q. I'm going to show you or have you
18 explain what these photographs are that we
19 just marked.

20 SOLICITOR STEINBERG: I would move
21 the State's Exhibits that we just mentioned
22 into evidence.

23 THE COURT: All right. Any
24 objection? I think they were 19 through 37
25 and 39 through 49. Is that what you have?

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1 COURT REPORTER: Yes, sir.

2 MS. WICKER: No objection, Your
3 Honor.

4 THE COURT: All right. So
5 basically 19 through 49 with the exception of
6 38 -- is that what we're talking about -- are
7 all in without objection.

8 (SO ENTERED AS STATE'S EXHIBIT 19)

9 (SO ENTERED AS STATE'S EXHIBIT 20)

10 (SO ENTERED AS STATE'S EXHIBIT 21)

11 (SO ENTERED AS STATE'S EXHIBIT 22)

12 (SO ENTERED AS STATE'S EXHIBIT 23)

13 (SO ENTERED AS STATE'S EXHIBIT 24)

14 (SO ENTERED AS STATE'S EXHIBIT 25)

15 (SO ENTERED AS STATE'S EXHIBIT 26)

16 (SO ENTERED AS STATE'S EXHIBIT 27)

17 (SO ENTERED AS STATE'S EXHIBIT 28)

18 (SO ENTERED AS STATE'S EXHIBIT 29)

19 (SO ENTERED AS STATE'S EXHIBIT 30)

20 (SO ENTERED AS STATE'S EXHIBIT 31)

21 (SO ENTERED AS STATE'S EXHIBIT 32)

22 (SO ENTERED AS STATE'S EXHIBIT 33)

23 (SO ENTERED AS STATE'S EXHIBIT 34)

24 (SO ENTERED AS STATE'S EXHIBIT 35)

25 (SO ENTERED AS STATE'S EXHIBIT 36)

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1 (SO ENTERED AS STATE'S EXHIBIT 37)

2 (SO ENTERED AS STATE'S EXHIBIT 39)

3 (SO ENTERED AS STATE'S EXHIBIT 40)

4 (SO ENTERED AS STATE'S EXHIBIT 41)

5 (SO ENTERED AS STATE'S EXHIBIT 42)

6 (SO ENTERED AS STATE'S EXHIBIT 43)

7 (SO ENTERED AS STATE'S EXHIBIT 44)

8 (SO ENTERED AS STATE'S EXHIBIT 45)

9 (SO ENTERED AS STATE'S EXHIBIT 46)

10 (SO ENTERED AS STATE'S EXHIBIT 47)

11 (SO ENTERED AS STATE'S EXHIBIT 48)

12 (SO ENTERED AS STATE'S EXHIBIT 49)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR STEINBERG:

15 Q. What does this photograph show of
16 State's Number 19?

17 A. That's what we call an address
18 marker. We always try to take a picture of
19 an address marker of where we are when we're
20 processing a scene.

21 Q. State's Exhibit Number 20?

22 A. That is going to be the front of the
23 home. As we were speaking earlier there is
24 no front entrance. That is as you would see
25 it going down 3rd Avenue or 3rd Street.

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1 Q. Look right here, this area right
2 here, what would that be?

3 A. That is the living room, the den
4 area that we were speaking of.

5 Q. And the area right -- of those
6 steps?

7 A. Yes.

8 Q. I'm going to show you State's
9 Exhibit Number 21. What is this?

10 A. The front of the home is to the
11 right there. And the roadway is to the left.

12 Q. And who is the individual in the
13 chair next to the deputy, if you know?

14 A. I ---

15 Q. Seated?

16 A. I believe it's Mr. Hill.

17 Q. Thank you. Let me show you State's
18 Exhibit Number 22. First, please tell us
19 what this is and tell us what the item that
20 is next to the house?

21 A. That's the side porch of the home,
22 the front door of the home. And the storm
23 door off to the left of the steps and the
24 vehicle that was in the driveway.

25 Q. Was that storm door in that location

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1 when you arrived at the residence?

2 A. Yes, it was.

3 Q. And is this another view of the same
4 location?

5 A. Yes.

6 COURT REPORTER: And that number?

7 SOLICITOR STEINBERG: That was
8 State's Exhibit Number 23.

9 COURT REPORTER: Thank you.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR STEINBERG:

12 Q. State's Exhibit Number 24. I'm ask
13 you to look at this photograph and then also
14 tell us what these red marks are towards the
15 middle?

16 A. That is actually a picture of that
17 side porch near the driveway. And that's an
18 area of what I had perceived to be suspected
19 blood at the time.

20 Q. And you tested it and was it blood?

21 A. Yes, sir.

22 Q. Yes, there was blood?

23 A. Yes, sir.

24 Q. This next picture looks very
25 similar. I think it might just be a close

1 up. Please tell us what State's Exhibit
2 Number 25 depicts.

3 A. That is another photograph of --
4 just like the previous one, just a little bit
5 closer. I give you a little bit better
6 picture of that area that I was speaking of.

7 Q. I show you another photograph. Was
8 that farther out; state's Exhibit Number 26.
9 What are these red marks and what is this at
10 that location?

11 A. At the bottom of the picture is the
12 actual side entrance door and that is the
13 porch with the area of suspected blood. We
14 always put a scale next to it so we just try
15 to give us a size in case somebody needed to
16 use it for anything. The size of how much
17 that blood is on that surface.

18 Q. And I have you take a look at
19 State's Exhibit Number 27. What is this and,
20 again, what are these markings?

21 A. That, again, is the same photograph
22 we just saw with the white scale tape, just a
23 closer up picture. And JFH-A would be the
24 item number of the swab that I took of that
25 suspected blood.

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1 Q. Tell the jury what a swab is?

2 A. A swab is a cotton sterile -- just
3 like you'd use a Q-tip. It's in a tube
4 container with an opening at the bottom of it
5 that helps it to dry. We open up the brand
6 new swabs, swab the area and put them back in
7 the tubes. So that way it's sealed and
8 contained in its own container.

9 Q. Actually, it's State's Exhibit
10 Number 28?

11 A. That is the back left corner, as I
12 spoke of earlier, of the home. And the white
13 sheet is covering the victim.

14 Q. That was State's Exhibit Number 29.
15 Is that the same view with the body covered?

16 A. Yes. That's the victim but with the
17 cover removed on it.

18 Q. State's Exhibit Number 30. Please
19 tell us what this picture is and where it was
20 taken?

21 A. That picture is of the victim's face
22 and it was at the scene where I took the
23 picture.

24 Q. Approximate how long after you'd
25 been called out there did you take this

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1 photograph? I don't need an exact time, just
2 approximate.

3 A. I don't know it depends on the
4 investigation. Where we went from there,
5 what the walk-throughs were, how long it took
6 from the time I got there. I'd probably say
7 from the time that I arrived on scene until
8 the time I started photographing him, it
9 could be an hour, thirty minutes or to an
10 hour or more.

11 Q. Let's take a look at State's Exhibit
12 Number 31?

13 A. That is the picture of the victim's
14 chest. That would be his left side.

15 Q. Next photograph, State's Exhibit
16 Number 32.

17 A. Okay. This is another picture of
18 the victim. This is the right hand that's
19 extended outward, parallel to the back of the
20 home.

21 Q. Was the clothes in the same state of
22 disarray when you arrived there and when you
23 took these photographs?

24 A. Yes, they were.

25 Q. Did you manipulate the clothing at

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1 all while you were ---

2 A. Not at that point, no sir.

3 Q. State's Exhibit Number 33. What
4 part of the body does this show?

5 A. It should be the right side of the
6 body and the injuries that were observed
7 there.

8 Q. What is the item right here in the
9 middle?

10 A. That is an electrode the EMS workers
11 placed on the body, that they have to confirm
12 that the individual is deceased.

13 Q. State's Exhibit Number 34?

14 A. There again, another picture of the
15 victim at the same corner of the home, near
16 the air conditioning unit with more of the
17 air conditioning unit in the picture.

18 Q. I'm not going to publish State's 35
19 and 36. State's Exhibit Number 37?

20 A. That is a picture from inside the
21 home with your back, your back facing the den
22 and living room area in the hallway, looking
23 at Mr. Hill's bedroom.

24 Q. And what is this item right here
25 that I'm pointing to on the bottom, near the

1 floor?

2 A. It appeared to be at the time -- it
3 looked like to me a tree branch stick or
4 walking stick that people would use.

5 Q. Let me show you the close up of that
6 as State's Exhibit Number 38?

7 A. That is another picture just like
8 the one before except this is almost at a
9 ninety degree angle looking at the apex of
10 that door is sticking up.

11 Q. Is that the outside? State's
12 Exhibit Number 39. Where was this photograph
13 taken from and what does it show?

14 A. That is the picture at Mr. Hill's
15 bedroom and of the stick. This is just a
16 better picture of the upper area of the
17 stick.

18 Q. These same three pictures I just
19 showed you, are they same stick?

20 A. Yes.

21 SOLICITOR STEINBERG: In light of
22 that, I'm not going to show State's Exhibit
23 40 at this time. I will not be publishing
24 State's Exhibit 41 or 42 or 43.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR STEINBERG:

2 Q. I'm going to publish State's Exhibit
3 Number 44. I would like you to tell the jury
4 what room this was taken in and some of the
5 relevant items in it?

6 A. Okay. This is in the living room
7 area. If you're looking to your right, it's
8 the hallway going towards Mr. Barksdale and
9 Mr. Hill's room. You are looking straight at
10 the side or front entrance door of the home.
11 Couch, TV, a little coffee table area and a
12 chair.

13 Q. I'm going to point to the very base
14 of the door, right here.

15 A. Uh-huh.

16 Q. About two feet below the door
17 handle, was there anything of note at that
18 location?

19 A. That's where the area of suspected
20 blood was located.

21 Q. Was this room the same way you found
22 it? And you said the door and the blood, is
23 it inside the residence?

24 A. No, sir.

25 Q. I show you State's Exhibit Number

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1 45?

2 A. That is the front door -- side door.
3 Let's just say side door. That is the side
4 door of the home in the living room, looking
5 at the area of suspected blood down at the
6 bottom.

7 Q. Let me show you a close up, State's
8 Exhibit Number 46. What is this? What does
9 this photograph show you?

10 A. It's the door that's on this side.
11 It's the bottom area of the doorframe where
12 the suspected blood was located.

13 SOLICITOR STEINBERG: We're not
14 going to publish State's 47 at this time.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR STEINBERG:

17 Q. I'd like to show you State's Exhibit
18 Number 48. And please tell the jury why this
19 picture is taken and the vantage points so
20 we'll understand where the other items in the
21 living room were.

22 A. Okay. This is the living room, den
23 area. And if you look up to the left, the
24 top left of the picture, you'll see that that
25 is the entrance way of the hallway going back

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1 to the bedroom areas. Directly behind me
2 when I was taking that picture is the side
3 entrance door into the home.

4 Q. As you're taking this picture, what
5 would have been to your right at that
6 location?

7 A. A wall and a TV. There's a TV right
8 there.

9 Q. Was there anything unusual about the
10 TV? Was it in a State of disarray or
11 anything?

12 A. No, sir. Not that I could tell.

13 SOLICITOR STEINBERG: I'm not going
14 to publish at this time State's Exhibit
15 Number 49.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR STEINBERG:

18 Q. At the time when you first arrived
19 there on the 14th, did you recognize the
20 importance of a walking stick or a cane?

21 A. No. No, we didn't.

22 Q. Did you later on attend an autopsy?

23 A. Yes, I did.

24 Q. And did it become a little more of
25 greater concern to you at that point?

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1 A. Yes. At the autopsy, a lot of times
2 the pathologist will advise us of things that
3 we may need to go out -- investigations can
4 sometimes last more than just three hours. I
5 mean, the pathologist will look at his
6 findings. And he'll say 'hey, you may want
7 to look at objects like this.' In this case
8 he said it looks like it may be cylindrical
9 object that made that kind of injury to the
10 victim.

11 Q. Let's talk about the blood that was
12 inside the residence, the blood that you saw
13 in the photographs on the door frame. How do
14 you characterize that in your profession?
15 What kind of blood is that or blood pattern
16 is that?

17 A. It's a transfer pattern. It's a
18 transfer stain. I don't feel comfortable in
19 going any further than that. And basically
20 it's an object with blood touching another
21 object with no blood. So you have a blood
22 bearing object touching or hitting that non-
23 blood bearing object.

24 Q. Did it appear to have been dripped
25 or dropped onto that location?

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1 A. At the doorframe?

2 Q. On the doorframe?

3 A. I didn't see anything that appeared
4 to be a ninety degree drop down to the front.

5 Q. The blood that was the on the front
6 porch steps, how did that appear to be -- I
7 think you called it a transfer or contact
8 blood?

9 A. Uh-huh.

10 Q. Or does that appear to be drops of
11 blood?

12 A. It appeared to be more of a
13 transfer. It could have been a droplet of
14 blood that something had moved across it.
15 But at that time, it's just transferred onto
16 the porch floor.

17 Q. In addition to the photographs we
18 saw, did you take any other items into your
19 possession?

20 A. Yes, I did.

21 Q. Why do you take evidence into
22 possession that doesn't have immediate
23 evidentiary value?

24 A. It depends on the investigator.
25 There again we work with the different

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1 agencies in Greenville County. So when
2 Investigator Fortner gets onto a scene, he'll
3 assess it from the information that the
4 sheriff's office will have. And then he will
5 come to me and say this is what I've got.
6 This is what we're looking at so far. And
7 then both of us will go through the scene.
8 We'll make educated guesses and look at
9 things and see if there's anything of
10 evidentiary value at that point that we can
11 take in and use for the case.

12 Q. In Marshall Hill's bedroom ---

13 A. Uh-huh.

14 Q. --- did you seize that stick that
15 you saw -- pointed out in the photographs?

16 A. I did.

17 Q. I would ask you to open up State's
18 Exhibit ---

19 SOLICITOR STEINBERG: (Tenders
20 document to be marked as exhibit).

21 COURT REPORTER: State's Exhibit 83
22 for identification.

23 (SO MARKED AS STATE'S EXHIBIT 83)

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR STEINBERG:

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1 Q. I'm going to hand you State's
2 Exhibit Number 83. And please tell me ---

3 COURT REPORTER: Have you reviewed
4 this?

5 MS. WICKER: I've not seen it yet.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR STEINBERG:

8 Q. Will you -- do you have a pocket-
9 knife up to the stand?

10 A. Yes.

11 Q. Please open up the box and do not
12 present it to the jury. Just unseal the box.

13 A. (Witness complied) -- that should do
14 it.

15 Q. Okay.

16 SOLICITOR STEINBERG: I'm
17 presenting State's Exhibit Number 83 to
18 opposing counsel at this time.

19 (OFF RECORD DISCUSSION)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR STEINBERG:

22 Q. Let me show you State's Exhibit
23 Number 83. I would like to have you explain
24 what it is first, and where it was located?

25 A. It appears to be the same walking

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1 stick that we saw earlier.

2 Q. And tell us how it's packaged and
3 how you can be sure it's the same item?

4 A. Whenever I package -- let me
5 rephrase that. Whenever my division packages
6 anything, we always make sure that we use red
7 evidence tape and we try to seal any areas
8 now. Now, I sealed this box really well to
9 make sure that there was no holes open. So
10 that way if they wanted to use it for any
11 kind of DNA testing or any additional testing
12 that they could do that and it was sealed in
13 a box. Once the tape is applied, we then
14 place our initials on it to verify that I
15 placed this tape here. This is my initials.
16 Now, of course, it appears this box had been
17 opened after I initially packaged it.

18 Q. Does that appear to be the same box?

19 A. Uh-huh.

20 Q. And the same item?

21 A. It appears to be.

22 SOLICITOR STEINBERG: Your Honor,
23 the State would move State's Exhibit Number
24 83 into evidence.

25 THE COURT: All right. Any

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1 objection?

2 MS. WICKER: No objection, Your
3 Honor.

4 SOLICITOR STEINBERG: All right.
5 In without objection.

6 (SO ENTERED AS STATE'S EXHIBIT 83)

7 (DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR STEINBERG:

9 Q. Getting back to the body and the
10 crime scene itself, did you see any blood
11 drippings or blood droplets leading to the
12 victim?

13 A. No.

14 Q. What was the closet blood that you
15 saw to the victim?

16 A. At that point, I believe it was on
17 the side porch floor.

18 Q. Okay. In addition to your
19 photographs, did you also try to raise
20 fingerprints if necessary or available?

21 A. I believe, if you don't mind my
22 looking ---

23 Q. Please look at your notes if
24 necessary.

25 A. The scene itself, I don't believe

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1 ever fingerprints were ever processed.

2 However, the items that were seized from
3 there later on were -- there were certain
4 items process at our crime scene office.

5 Q. Do you know if any of the finger-
6 prints assisted in this investigation?

7 A. Once the forensics division
8 collections those latent fingerprints, we
9 send them to our latent division and they
10 handle any kind of matching and eliminations
11 at that point.

12 Q. Let's bring you to the autopsy. Did
13 you attend the autopsy?

14 A. Yes, I did.

15 Q. And who was the medical examiner?
16 Why was the physician?

17 A. Dr. Fulcher.

18 Q. And did you take photographs?

19 A. I did.

20 Q. And did Dr. Fulcher take photo-
21 graphs?

22 A. Yes, I believe he did.

23 Q. During the autopsy were you able to
24 see the amount of visible injuries in greater
25 detail?

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1 A. Yes. There become more visible once
2 we do the autopsy because at that point once
3 additional photographs are taken and evidence
4 is collected, the clothing is removed and the
5 body is washed. And it shows more of the
6 injuries.

7 Q. Do you notice anything about the
8 defendant's [sic] clothes or his pants?

9 A. Yes. I believe I made a note on it.
10 The front of his pants near where the button
11 and the zipper meet appeared that had been
12 torn or it was ripped in some way.

13 Q. I'm going to preset to you some more
14 photographs. What is State's Exhibit Number
15 57? And tell us what the markings are next
16 to State's Exhibit Number 57?

17 A. This is a picture of the suspected
18 blood that was on that doorframe that we were
19 speaking of earlier. And it's got that "L"
20 scale that we were talking about from the
21 porch. It's got the same "L" scale with an
22 item number of what I was going to collect
23 the swab from.

24 Q. I'm also going to have you take a
25 look at State's Exhibit Number 59, 60, 61,

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1 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72,
2 and 73.

3 A. All of these pictures appear to be
4 from the date of the autopsy.

5 Q. Okay. And those were taken at the
6 Greenville Medical Examiner's office?

7 A. 701 Grove Road, which is Greenville
8 Memorial Hospital, their morgue.

9 SOLICITOR STEINBERG: Your Honor,
10 the State's moving State's ---

11 THE COURT: Wait. Let her look at
12 them.

13 MS. WICKER: (Reviews exhibits)

14 THE COURT: Any objection to
15 those?

16 MS. WICKER: No objection, Your
17 Honor.

18 THE COURT: What's the numbers?

19 COURT REPORTER: 57 through 73.

20 THE COURT: So it's 57 through 73
21 are into evidence.

22 SOLICITOR STEINBERG: Thank you,
23 Your Honor.

24 (SO ENTERED AS STATE'S EXHIBIT 57)

25 (SO ENTERED AS STATE'S EXHIBIT 58)

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1 (SO ENTERED AS STATE'S EXHIBIT 59)

2 (SO ENTERED AS STATE'S EXHIBIT 60)

3 (SO ENTERED AS STATE'S EXHIBIT 61)

4 (SO ENTERED AS STATE'S EXHIBIT 62)

5 (SO ENTERED AS STATE'S EXHIBIT 63)

6 (SO ENTERED AS STATE'S EXHIBIT 64)

7 (SO ENTERED AS STATE'S EXHIBIT 65)

8 (SO ENTERED AS STATE'S EXHIBIT 66)

9 (SO ENTERED AS STATE'S EXHIBIT 67)

10 (SO ENTERED AS STATE'S EXHIBIT 68)

11 (SO ENTERED AS STATE'S EXHIBIT 69)

12 (SO ENTERED AS STATE'S EXHIBIT 70)

13 (SO ENTERED AS STATE'S EXHIBIT 71)

14 (SO ENTERED AS STATE'S EXHIBIT 72)

15 (SO ENTERED AS STATE'S EXHIBIT 73)

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR STEINBERG:

18 Q. I'm showing State's 59. What is
19 this a photograph of?

20 A. This is of the victim's upper torso
21 area, neck and face. And he was lying in the
22 body bag, which was what was used to
23 transport him from the scene to the morgue.

24 Q. Did you take the photograph, initial
25 photographs of these injuries?

1 A. Yes. What we do, normal protocol is
2 once the body bag has been unzipped we take
3 additional photographs as is the way that the
4 body is before anything's done to it, which
5 is including any visible injuries. This is
6 before us manipulating any clothing or taking
7 anything off the body.

8 Q. Thank you. I'm going to show you
9 State's Exhibit Number 60. Is that also the
10 same description?

11 A. This will be the right side of the
12 victims face and forehead and head.

13 Q. State's Exhibit 61, what is the
14 additional item that you have placed on his
15 head?

16 A. That's what we call an L scale, same
17 concept with the blood that we were talking
18 about at the scene. It's a plastic scale.
19 It's one piece that we place next to any
20 injuries or anything of evidentiary value to
21 show the measurement.

22 Q. On the opposite side of the face.
23 Is this also taken in the autopsy room?

24 A. Yes. It would be the left front of
25 -- well, actually, the center of his head and

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1 the left side of his face.

2 SOLICITOR STEINBERG: I'm not going
3 to publish State's Exhibit Number 63 at this
4 time.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR STEINBERG:

7 Q. State's Exhibit Number 64, what
8 angle is this of the head?

9 A. It would be the left side facing the
10 left side of his head and face.

11 Q. State's Exhibit Number 65, I'm going
12 to ask you to pay particular attention. The
13 marks in the middle, what are these? In this
14 area?

15 A. Bruising of some sort, discolora-
16 tion.

17 Q. And above the cloth that's over
18 there, right here. What are these injuries?

19 A. They appear to be more bruising of
20 some sort.

21 Q. I'm going to show you a close up on
22 State's Exhibit 66. What are these, I guess
23 dual lines in this area?

24 A. Those were the bruising marks that
25 the pathologist pointed out, the cylindrical

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1 looking object had made.

2 SOLICITOR STEINBERG: I'm not going
3 to show or I'm not going to publish State's
4 67.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR STEINBERG:

7 Q. Publishing State's 68. What does
8 this portion of the body show?

9 A. The right side of the body.

10 Q. I show you a slightly different
11 angle, State's 69. Please tell us what you
12 took a photograph of here?

13 A. The right arm, upper bicep, elbow,
14 and then you can also see the right side of
15 the chest as well as the right side of the
16 torso.

17 Q. And do you see any injuries on the
18 bicep, the tricep portion of his arm?

19 A. There was some bruising.

20 Q. I'm going to publish State's Exhibit
21 Number 70. Do you notice any injuries to his
22 arm at that location?

23 A. More bruising and redness.

24 Q. Let me show you -- do you know which
25 arm that was? That'd be his ---

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1 A. It appears to be his left from what
2 I can see from the picture, his left bicep in
3 the crease of his left arm.

4 Q. Let me show you another portion of
5 his body or his arm. Please tell us if you
6 can what part of the body this is and are
7 those additional injuries?

8 A. It would be the left arm, interior
9 aspect of the bicep.

10 Q. Okay. The picture I showed you a
11 second ago, before this, was that the outside
12 exterior of the arm?

13 A. It appeared to be. Yes, sir.

14 SOLICITOR STEINBERG: I'm going to
15 skip over publishing State's Exhibit Number
16 72.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. STEINBERG:

19 Q. I'm going to next present -- publish
20 State's Exhibit Number 73. What do you see
21 in this location in the middle of the screen?

22 A. Some major discoloration, redness,
23 bruising possibly.

24 Q. After the autopsy, did you go back
25 to that location?

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1 A. I did.

2 Q. Okay. And who was with you?

3 A. It was myself, the trainee and
4 Investigator Fortner and other units from the
5 criminal investigation division.

6 Q. What were you looking for in
7 particular on this time?

8 A. At that time, Investigator Fortner
9 was wanting to pay more closer attention to
10 what Dr. Fulcher had observed in his findings
11 during the autopsy for more objects with a
12 cylindrical value to them.

13 Q. I forgot to mention this earlier but
14 on this walking stick, this piece of lumber,
15 did you look to see if there was any blood or
16 any fluids of any sort on it?

17 A. We looked to see if there was any
18 visible signs of suspected blood. We
19 normally look to see.

20 Q. Was there any blood or suspected
21 fluids on that location?

22 A. Not that I could tell.

23 Q. If there had been any suspected
24 blood, would you have swabbed it?

25 A. I would have actually tested it with

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1 phenolphthalein and then once a positive
2 reaction was made or even if it wasn't made,
3 I would have still swabbed that area of
4 discoloration.

5 Q. Did you have any other additional
6 involvement in this matter?

7 A. No, I did.

8 Q. Thank you. Please answer any
9 opposing counsel's questions.

10 MS. WICKER: May it please the
11 Court?

12 THE COURT: Yes, you may proceed.

13 CROSS-EXAMINATION

14 BY MS. WICKER:

15 Q. Good afternoon, Sergeant.

16 A. Good afternoon.

17 Q. Just briefly. In addition to the
18 cane you seized a whole bunch of other
19 objects; correct?

20 A. Yes.

21 Q. Did you happen to collect any
22 cellphones belonging to either Mr. Barksdale,
23 Mr. Hill or the victim?

24 A. I did not but the investigating
25 officers did.

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1 Q. Okay. Do you know if any testing
2 was performed on those?

3 A. No, ma'am. I have no clue.

4 Q. And you didn't speak to either Mr.
5 Hill or Mr. Barksdale about what happened?

6 A. No. Not on these kind of cases.

7 Q. And do you recall seeing a Mason jar
8 of water next to the victim in this case?

9 A. I believe at the initial point when
10 I was there, there was a jar of some kind of
11 clear fluid next to him.

12 Q. Okay. And you didn't see any blood
13 or fluids on the cane?

14 A. Not that I saw, no.

15 Q. And you didn't recover any
16 fingerprints on it?

17 A. No.

18 Q. Okay. Thank you. I don't have any
19 further questions.

20 A. All right. Thank you.

21 THE COURT: All right. Any
22 redirect?

23 SOLICITOR STEINBERG: No, sir, Your
24 Honor. And we have no more witnesses at this
25 time.

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1 THE COURT: You can step down.

2 WITNESS: All right. Thank you.

3 THE COURT: Ladies and gentlemen
4 it is 12:30. It's a good time to break for
5 your lunch and you'll be on your own. Let's
6 start back at 2:00.

7 So we have a couple of other matters
8 to go over. Again, my four warnings are that
9 you're not to discuss the case among yourself
10 or with anyone else.

11 You're not to do any of your own
12 investigation, Google this or the parties or
13 anything about the law.

14 If you're contacted by anyone please
15 advise the bailiff. I don't expect that.
16 And if you see any media coverage, whether
17 it's newspaper or television or social media,
18 please disregard that and do not pay any
19 attention.

20 Otherwise, please have a very good
21 lunch and be back in your jury room at 2:00.
22 Thank you.

23 (JURY OUT AT 12:30 P.M.)

24 THE COURT: All right. Anything
25 further from the State?

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1 SOLICITOR STEINBERG: Your Honor,
2 we'd ask that Sergeant Hamilton be released
3 subject to recall.

4 THE COURT: Any objection?

5 MS. WICKER: No objection, Your
6 Honor.

7 THE COURT: All right. And then
8 anything else from the Defendant? I guess we
9 have to decide what y'all are going to do
10 with the video?

11 SOLICITOR STEINBERG: Yes, sir.
12 The State's position is that, as we stated
13 earlier, the video and the transcript have
14 very minor mentions of an arrest. I think
15 the best way to resolve this is to remind the
16 witnesses to testify -- as minimal this is,
17 we can just ignore it and the jurors can just
18 say 'well, he's arrested for a day.' I'm
19 very comfortable either way. I just don't
20 want to have to edit the video and have to
21 stop and start the video and then take care
22 of the transcripts. And even though my
23 understanding of what's on the transcripts
24 might be different than what opposing counsel
25 has to say. I just think this is a murder

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1 case. This is a bench warrant on a driving
2 charge.

3 THE COURT: All right. What's
4 your position.

5 MS. WICKER: No, Your Honor. I
6 would argue that it just needs to stay out
7 entirely. I mean yes, he is charged with
8 murder. It's improper character evidence and
9 I think it needs to stay out, Your Honor.
10 That would be my argument.

11 THE COURT: I'm going to grant
12 their Motion to have that redacted. I know
13 it is minor but I think that any reference.
14 Yeah, I don't know how the jury could take
15 that. I mean, we may all think of it being
16 minor but with that being said, ---

17 SOLICITOR STEINBERG: I'd ask that
18 opposing counsel tell me the portions that
19 she wants removed. I can't -- there's some
20 portion I think are obvious because of the
21 word "jail". But I don't want to play a
22 video and then have an argument that maybe I
23 didn't ---

24 THE COURT: Right.

25 MS. WICKER: I understand.

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1 THE COURT: Need to redact or mute
2 it however. It seems like we've always have
3 problems that the redaction didn't quite work
4 as well as everybody thinks that it should or
5 something.

6 SOLICITOR STEINBERG: Yes, sir.

7 THE COURT: And if y'all can't
8 redact it, you'll just have to mute it at the
9 right point.

10 SOLICITOR STEINBERG: Thank you,
11 Your Honor.

12 THE COURT: All right.

13 MS. JOHNSON: Judge, I don't know if
14 this is the appropriate time to deal with the
15 transcript issue?

16 THE COURT: Well, I guess it would
17 be the same with the transcripts.

18 SOLICITOR STEINBERG: Yes, sir.
19 Once they tell me what portions they want
20 redacted, the time and the page, I will make
21 another copy or copies -- have eighteen
22 copies. We'll make eighteen copies of the
23 items that they don't want introduced. We'll
24 have the copies made.

25 MS. JOHNSON: We actually object to

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1 this transcript being admitted.

2 THE COURT: Well, I haven't ruled
3 on that one way or the other being
4 admissible. So, I mean, I guess we need to
5 address it. I guess to prepare for whatever
6 you may want to redact whatever portions if
7 you're going to use the transcript from it.

8 SOLICITOR STEINBERG: Your Honor,
9 I'm prepared to use the transcripts. I think
10 opposing counsel wants the entire transcripts
11 kept out. I think it would be helpful to the
12 jury in this case to actually read the
13 transcripts once they're verified by the
14 officer. That's their argument I guess that
15 would have to be addressed.

16 THE COURT: What's your position
17 on the transcript?

18 MS. JOHNSON: Judge, my position on
19 the transcript, is Your Honor admitted the
20 video and the transcript would just be
21 cumulative, not necessary. That's my first
22 argument.

23 Number two, it's not a proper court
24 document. It's not authenticated. It was
25 not done by a court reporter. There are

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1 mistakes in it. I'm not saying the whole
2 thing is a mistake. There are mistakes.

3 It would be cumulative.

4 It's hearsay. I mean, there's no
5 need, no reason for that jury to have the
6 copy of that transcript when they've got the
7 video. We actually don't want the video in.
8 Your Honor ruled. But we certainly don't
9 think the transcript is admissible.

10 THE COURT: All right. Let me
11 think about that. I'll let y'all know.

12 SOLICITOR STEINBERG: Thank you,
13 Your Honor. The State would object there is
14 no allegation that there's anything
15 inaccurate.

16 THE COURT: Who transcribed it?

17 SOLICITOR STEINBERG: It was
18 transcribed by the secretary, proofread at
19 the time by Investigator Fortner and then
20 proofread again by Investigator Fortner about
21 a month or two ago.

22 THE COURT: All right. Let me
23 think about that. I'll let you know.

24 All right. Anything else?

25 SOLICITOR STEINBERG: No, sir.

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1 THE COURT: All right. We'll be
2 at-ease until 2:00.

3 MS. WICKER: Your Honor, just a
4 very brief housekeeping matter?

5 THE COURT: Yes.

6 MS. WICKER: Do you anticipate that
7 we'll be arguing and charging in the morning.
8 I think the State has several more witnesses.
9 I just ---

10 THE COURT: Yeah.

11 MS. WICKER: Because I think with
12 the video and the medical examiner ---

13 THE COURT: It looks like it's
14 going to be tough to put this case to the
15 jury today. When we come back at 2:00
16 there's going to be -- I don't want to put
17 this case to the jury at 4:00.

18 MS. WICKER: Okay. All right.
19 Thank you, Your Honor.

20 THE COURT: We will probably be
21 through in the morning.

22 MS. WICKER: Okay. Thank you, Your
23 Honor.

24 (LUNCH RECESS)

25 (DEFENDANT PRESENT)

1 THE COURT: All right. Did y'all
2 get resolved all your redacting issues?

3 SOLICITOR STEINBERG: Yes, Your
4 Honor.

5 MS. WICKER: I believe so, Your
6 Honor.

7 THE COURT: All right. I think in
8 light of -- my ruling at this point on the
9 transcripts since they've objected to them --
10 it sounds like some of those issues are minor
11 but as of right now -- well, I think it is
12 redundant and I'm not sure you laid a proper
13 foundation. Without further ado, so I'm
14 going to grant their motion.

15 SOLICITOR STEINBERG: Your Honor, I
16 do plan on redacting some more once the
17 officer has testified, but obviously I won't
18 do anything with the transcripts until Your
19 Honor rules.

20 THE COURT: All right. Okay.

21 All right. Are we ready to bring
22 the jury in?

23 SOLICITOR STEINBERG: Yes, sir,
24 Your Honor.

25 MS. WICKER: Yes, sir.

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1 THE COURT: Anything else from the
2 Defendant?

3 MS. WICKER: For now, Your Honor,
4 no.

5 (JURY IN AT 2:05 P.M.)

6 THE COURT: All right. Ladies and
7 gentlemen, I hope everybody had a good lunch
8 and we will now resume with the testimony
9 part of the trial.

10 SOLICITOR STEINBERG: Thank you,
11 Your Honor. The State calls Dr. Fulcher to
12 the stand.

13 (WITNES TAKES STAND)

14 JAMES W. FULCHER, having been duly sworn
15 to tell the truth, and nothing but the truth,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR STEINBERG:

19 Q. Dr. Fulcher, what is your occupation
20 and what is your title?

21 A. I am a medical examiner and forensic
22 pathologist.

23 Q. And please tell us about your
24 medical training?

25 A. Sure.

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1 Q. I'm originally from Virginia. I
2 went to college at the University of Virginia
3 Medical School and the Medical College of
4 Virginia, did a combined residence in
5 anatomic and clinical pathology, both at the
6 Medical College of Georgia in Augusta,
7 Georgia. And then two years at the Medical
8 College of Virginia back in Richmond. I then
9 did a fellowship in the office of the Chief
10 Medical Examiner in Richmond, Virginia. So
11 that's an additional training after high
12 school of thirteen years.

13 Q. In addition to having your medical,
14 being a medical doctor, an M.D., do you have
15 any additional titles or admitted to
16 additional courses or residences?

17 A. Sure. I am Board Certified in
18 Anatomic Pathology, Board Certified in
19 Clinical Pathology, and Board Certified in
20 Forensic Pathology.

21 I am a Diplomat of the National
22 Association of Medical Examiners, American
23 Academy of Forensic Science.

24 I am licensed to practice medicine and
25 surgery in this State and in North Carolina.

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1 Q. How many autopsies have you
2 performed in your career? I just need an
3 approximation.

4 A. Approximately two thousand.

5 Q. Please tell the jury what the field
6 of forensic pathology involves and includes?

7 A. Forensic pathology is the study of
8 the human body, particularly at autopsy.
9 That is when someone is dead. I examine the
10 body both externally and internally -- most
11 importantly, internally and actually external
12 too -- to determine cause and manner of
13 death.

14 Q. Have you been qualified as an expert
15 in the field of forensic pathology at a
16 criminal trial?

17 A. Yes, sir.

18 SOLICITOR STEINBERG: And at this
19 point, Your Honor, the State would move to
20 qualify Dr. Fulcher as an expert witness in
21 this field of forensic pathology.

22 THE COURT: All right. Any
23 objection or additional questions?

24 MS. WICKER: No sir, Your Honor.
25 No objection.

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1 THE COURT: All right. Ladies and
2 gentlemen, I'm going to qualify him as an
3 expert in forensic pathology.

4 Members of the jury, I want to let you
5 know that normally a person cannot give an
6 opinion testimony. They can only testify
7 about what they saw directly or heard or
8 sensed or smelled. But there's an exception
9 when somebody qualifies as an expert, they
10 can give their expert opinion in certain
11 areas in which they're qualified. I'm going
12 to qualify him in the field of forensic
13 pathology.

14 This does not mean that you're to give it
15 any more weight or accept his opinion, but
16 you're to consider it as all other evidence
17 that will be before you.

18 SOLICITOR STEINBERG: Thank you,
19 Your Honor.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR STEINBERG:

22 Q. Dr. Fulcher, did you conduct an
23 autopsy of the victim in this case, Billy
24 Patterson?

25 A. I did, sir.

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1 Q. When did you conduct this autopsy?

2 A. This autopsy was conducted on August
3 15th, 2013 at 9:00 a.m.

4 Q. And were you able to determine his
5 height and weight?

6 A. I was.

7 Q. And what was that?

8 A. At autopsy it was one hundred and
9 thirty-nine pounds and sixty-eight inches in
10 length. That is five foot eight.

11 Q. A hundred thirty-nine pounds, five
12 foot eight?

13 A. Yes, sir.

14 Q. Were you able to determine whether
15 this defendant (sic) had any other medical
16 issues short of injury, short of trauma, that
17 affected his health?

18 A. Yes, he did. He had arthersclerotic
19 cardiovascular disease. That is a blockage
20 in one of the vessels that feeds the heart.
21 His heart was not getting as much blood as it
22 should have because of the blockage in one of
23 the vessels. If you think of it like
24 plumbing, it's like a clog in the pipe, not
25 enough blood gets in the body.

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1 Q. How did you describe this as far as
2 a factor in your autopsy?

3 A. While it's not his immediate cause
4 of death, it certainly would have predisposed
5 him dying during injuries or assault. He was
6 a fairly sick man.

7 Q. Standing alone, did this injury, as
8 part of this disease, did it cause his death
9 on August 13th or 14th?

10 A. It did not.

11 Q. Without this condition, would he
12 have died from trauma? And if so, could you
13 give us any approximate risk, to the best of
14 your knowledge?

15 A. His risk of dying of trauma was
16 significantly greater with this condition.
17 Outside of that a health young man who's seen
18 this many blows may or may not have died,
19 depending on how quickly they got medical
20 care; especially with the injuries to the
21 head.

22 Q. Let's discuss the body. Were you
23 able to determine where the injuries were and
24 the amount of force used?

25 A. Yes, I was.

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1 Q. Do you create a chart in these
2 cases?

3 A. I do.

4 Q. Did you in this case?

5 A. Yes.

6 SOLICITOR STEINBERG: I beg the
7 Court's indulgence.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR STEINBERG:

10 Q. You made a chart of this?

11 A. Body diagram, sir.

12 Q. A body diagram. I call it a chart.
13 I'm going to show you State's Exhibits number
14 17 and Number 18. Will you please tell the
15 jury what these are?

16 A. These are lined drawings of the
17 human body and the human brain that I have
18 written on to show where the injuries are
19 located.

20 SOLICITOR STEINBERG: Let me show
21 these to opposing counsel.

22 MS. WICKER: (Upon review).

23 SOLICITOR STEINBERG: Your Honor,
24 the State would introduce State's Exhibits
25 Number 17 and 18 into evidence.

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1 THE COURT: Any objection?

2 MS. WICKER: No objection, Your
3 Honor.

4 THE COURT: All right. They're in
5 without objection.

6 (SO ENTERED AS STATE'S EXHIBIT 17)

7 (SO ENTERED AS STATE'S EXHIBIT 18)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR STEINBERG:

10 Q. I'm going to have you take a look at
11 these items on the screen.

12 A. Yes, sir.

13 Q. Showing first State's Exhibit Number
14 17.

15 SOLICITOR STEINBERG: Turn the
16 lights out, please?

17 BAILIFF: (Complies)

18 DIRECT EXAMINATION CONTINUED

19 BY MR. STEINBERG:

20 Q. First on the image on the far left
21 where we're standing ---

22 A. Yes, sir.

23 Q. --- from top to bottom on far left,
24 going in clockwise pattern, would you please
25 tell us the injuries that occurred?

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1 A. Sure. On the head -- I will start
2 at the top. We have multiple contusions and
3 lacerations. Those are described both on
4 this diagram and the autopsy report. I'll
5 refer to the autopsy report to make sure I
6 don't leave anything out. There is multiple
7 linear lacerations all ranging between a half
8 inch to one inch in length.

9 A very prominent contusion of the left-
10 sided periorbital tissue, that is the eye,
11 that area around the eye. A black eye, if
12 you will. That would be the common way to
13 say that.

14 There is a large one-inch contusion of
15 the posterior scalp at the hairline back
16 here.

17 And then additional superficial abrasions
18 around the face.

19 Internally -- would you like me to go
20 internally or just externally?

21 Q. Externally at this portion.

22 A. Okay. On the upper extremities on
23 the right arm, we have -- and you see those
24 two parallel lines at the top here. Yeah,
25 they're below that. Right there. Everywhere

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1 on this diagram -- this is very important.
2 When you see two parallel lines, that is
3 indicative of a very unique injury in terms
4 of pathology, called a tram track lesion.
5 It's called a tram track lesion because it
6 looks like train tracks. There are two
7 parallel lines that never cross, never ever
8 cross -- well, the two from the tram track
9 can alternate the pattern, you can. And they
10 have a central area in between. And what
11 that represents is the human skin being
12 struck very hard with a cylindrical object.
13 And what it does is it creates contusion on
14 outside margins of that -- that represents
15 the outside margins of that weapon, be it a
16 stick or a club or a pipe or a baseball bat.
17 But all of these parallel lines as a pair,
18 each pair of parallel lines represent one
19 direct impact from that cylindrical object.
20 So we have that.

21 We also have additional abrasions here,
22 abrasions above that on the upper portion
23 bicep which you described earlier.

24 Moving then to the lower leg, we have --
25 and this is on the -- I'm sorry. The right

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1 side. We're on the right side. On the left
2 side. I apologize. These parallel lines on
3 the thighs with these circles around them,
4 these represent the tram track injuries.
5 Once again, those cylindrical object
6 associated injuries all inflicted on the
7 anterior thigh in a parallel fashion. That
8 means this weapon strikes the leg at the same
9 axis or nearly the axis on every wound.

10 The little ovals I have drawn around the
11 legs represent a bruise, a contusion.

12 So the entire anterior leg there is
13 highly damaged.

14 Where you see the small abrasions on the
15 knees, those represent additional abrasions.
16 Those do not have tram track injuries.

17 On the right anterior thigh, we have the
18 exact same pattern as we had on the left
19 anterior thigh, tram track lesions, all
20 oriented across the body in the same plane or
21 the same axis.

22 The dark spot on the drawings at the
23 scrotum, unfortunately in this case
24 represents a rupture of decedent's right
25 testicle; not a contusion, the testicle

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1 itself is actually destroyed.

2 If we move up to the abdomen, we have
3 additional tram track lesions directly above
4 the base of the penis and around the base of
5 the penis. These are oriented diagonally.

6 Then as we go around to the right side of
7 the rib cage, we have additional tram track
8 lesions, a conglomeration of them. In this
9 case, we can note that these lesions, there
10 is some alternation of the plane. So the
11 shaft or weapon changes direction at this
12 spot for some reason.

13 On the posterior body, we have additional
14 wounds to the right and left flank, all
15 oriented diagonally. As you can see there,
16 there is a circle around the left flank. And
17 you can see there, that represents one very
18 large contusion at this site. What this
19 likely represents is the soft tissue damage
20 of the separate injuries. It's sufficient to
21 make one large bruise out of these injuries.

22 On the posterior right hand we have
23 additional lacerations and contusions,
24 particularly in the web of the fingers. We
25 would describe these as defensive injuries,

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1 which likely come from the decedent trying to
2 catch the club, bat, cylindrical object as it
3 is coming at him. Think of a blocking kind
4 of thing with the hands.

5 I don't think we have any wounds to the
6 posterior or back of the leg.

7 We do have a few small abrasions to the
8 posterior elbows and a small abrasion to the
9 right-sided posterior shoulder. The
10 abrasions in this case are nonspecific. They
11 can be from anything, floor, table, there's
12 no particular shape of an entity that causes
13 this. The tram track lesions are what
14 indicate the cylindrical object in this case.

15 Q. In regards to the shoulder, was
16 there any indications from a fall or from
17 being struck or can you tell?

18 A. It is difficult to tell on these
19 abrasions, sir.

20 Q. Thank you. I'm going to show you
21 State's Exhibit Number 15. Would you please
22 tell us what this shows?

23 A. This is a lined drawing of the human
24 brain. At the top left we have the upper
25 surface of the brain. And then beside that

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1 we have the left surface of the brain.

2 Below that we have the right surface of
3 the brain.

4 And then where I've drawn is the bottom
5 of the brain or the base of the brain. And
6 it shows various features.

7 The top of the brain in this drawing is
8 located at the top of the screen or the top
9 of the drawing.

10 The back of the head is located at the
11 back of the drawing. So what I've shown here
12 are contusions of the base of the brain.
13 These are associated with the injuries I
14 described previously on the outside of the
15 body. So we have contusions of the brain
16 from the blunt force trauma to the head and
17 face.

18 Q. What effect would that have on a
19 human being?

20 A. The brain will start to swell and
21 you have demise secondary to trauma to the
22 brain and cerebral edema and swelling.

23 Q. Could this be fatal?

24 A. Yes.

25 SOLICITOR STEINBERG: Please turn

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1 the lights on if you would.

2 BAILIFF: (Complies).

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR STEINBERG:

5 Q. In preparation for this trial did
6 you count the number of strikes and please
7 tell us what they were?

8 A. If you look at the total body, on
9 injuries that are discrete, that means I can
10 clearly see a distinction between that injury
11 and an adjacent injury, there are at least
12 twenty-three strikes with the cylindrical
13 objects, two-three, twenty-three (23).

14 There may be more because if you strike
15 the same area twice, the contusion, the
16 bruise may show as the same place. That's
17 why I used the word at least twenty-three
18 times.

19 Q. Were you able to determine the
20 number of strikes to the body versus number
21 of strikes to the head?

22 A. I can. Let me refer to my diagram.
23 Of our twenty-three total injuries, I have at
24 least the two contusions to the head and the
25 periorbital eye contusion, the laceration.

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1 They do overlap some. I would say at least
2 four separate strikes to the head out of the
3 twenty-three. It could be a little more
4 depending on how much intersection we have
5 and how many times that same area was hit, of
6 course.

7 Q. Yes, sir. On the back did you
8 notice any damage to the back or the spinal
9 column?

10 A. I did, yes. Because of the damage
11 to the head most likely, there is actually a
12 transection of the cervical spine between the
13 level of C6 and C7, which is at the very
14 bottom of the cervical spine. The bony
15 structure of the spine is actually torn apart
16 at this site. Interestingly, the spinal cord
17 shows some hemorrhage around this area, but
18 is not significantly transected at this
19 point, at this section.

20 Q. Would he have been paralyzed from
21 this injury?

22 A. Had there been a complete
23 transection of the cord, definitely. Given
24 the amount of hemorrhage I have in the area
25 -- let me refer back to my microscopic

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1 examination. I don't believe I described any
2 particular damage there. I do not. There is
3 definitely hemorrhaging. It is likely he
4 would have had some degree of paralysis, not
5 as complete as you would expect with a
6 complete transection, a complete cutting
7 apart of the spinal cord, but there's enough
8 damage here that I believe he would have lost
9 some ability, particularly in the lower
10 limbs.

11 Q. Before we talk about any more
12 interior damage, let's talk about the
13 exterior.

14 A. Yes.

15 Q. Let's talk about the type of
16 bruises. How would you characterize them?

17 A. Acute. Recent. Microscopic
18 sections of all injuries do not show any old
19 bruises. Everything is new. So these all
20 happened at or about the time he died.
21 Within, I would say, minutes.

22 Q. Would you consider these to be
23 superficial or deep wounds?

24 A. Oh, these are deep wounds. We have
25 significant damage into the tissue, deep

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1 tissue, fat, under the skin.

2 Q. Let's talk about interior. What
3 other damage did you see to the interior part
4 of the body, including any ribs, any bones?

5 A. Sure. I will refer to my autopsy
6 report at this point.

7 We do have the brain contusions as I
8 noted previously.

9 We do have the transection of the bony
10 portion of the cervical spine with associated
11 hemorrhage around that site, which means the
12 heart was beating when the spinal column was
13 damaged. Not the spinal cord, the spinal
14 column.

15 Upper extremities everything is muscle,
16 soft tissue, does not appear to be any
17 fractures there.

18 Lower extremities same thing.

19 Torso and abdomen, we have multiple
20 overlapping contusions with that severe
21 damage to the right testicle.

22 That is all, sir.

23 Q. What damage occurred to his ribs or
24 to his chest area?

25 A. I'm referring to my notes at this

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1 point. I do not show that he had any
2 fractures to the ribs, sir. I can't find
3 that. If I said that earlier, I'm not sure I
4 was correct. I do not have fractures of the
5 ribs.

6 Q. Well, now I'm going to show you
7 State's Exhibit Number 80. Is this the
8 document you referred to, your report?

9 A. Yes, sir. Where did I say that?

10 SOLICITOR STEINBERG: Well, first
11 of all I'm going to introduce it into record.
12 I'm showing this opposing counsel. The State
13 would move the document for the findings into
14 evidence.

15 WITNESS: Yes, sir. I've seen
16 this. I have this report.

17 MS. WICKER: No objection.

18 WITNESS: Oh, there it is. I'm
19 sorry. Yes, trauma.

20 THE COURT: And what exhibit
21 number is this?

22 SOLICITOR STEINBERG: Number 80,
23 Your Honor.

24 THE COURT: All right. In without
25 objection.

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1 (SO ENTERED AS STATE'S EXHIBIT 80)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR STEINBERG:

4 Q. And do you see that there is a
5 reference to ---

6 A. I do. I was looking in another
7 place. I can put it two places. There are
8 two different places in my autopsy report.
9 In my diagnostic report it was actually
10 hidden on the first page from me, but it does
11 say here we have left-sided rib fractures
12 number 6 through 9. So there are rib
13 fractures. Yes, sir.

14 Q. Tell us some more about these
15 bruises. How hard does someone have to be
16 hit to leave these type of bruises, which you
17 referred to as deep bruises?

18 A. This is significant injury. This is
19 not a tap. This is a solid strike with an
20 object. Think about a baseball player
21 swinging a bat. This is a significant amount
22 of force.

23 Q. Have you ever seen any injuries like
24 this in other incidents?

25 A. I have.

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1 Q. Would this be considered -- you said
2 it's not tapping. Would it be considered
3 with someone being prodded?

4 A. No, sir. This is a significant blow
5 with force.

6 Q. Are any of these bruises sufficient
7 standing alone to cause death?

8 A. Outside of the cortical contusions
9 on the external surface of the brain, I would
10 say no. But in conjunction with the brain
11 damage plus the total number of bruises plus
12 the heart disease, I would say yes.

13 Q. I want to make sure I follow this.
14 That is the strike or the strikes to the
15 head, are they are sufficient to have killed,
16 standing alone?

17 A. This man? Yes.

18 Q. With these type of wounds, would the
19 person die immediately?

20 A. No.

21 Q. Approximately how long would he be
22 able to survive assuming he had not gotten
23 medical attention immediately?

24 A. He died because of injuries to the
25 brain. It took some time for this hemorrhage

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1 to occur. Arguably, with his health he would
2 not have lasted as long as a young man, a
3 healthy young man. But I would give him
4 several minutes, up to maybe thirty minutes
5 to an hour with these injuries.

6 Q. What effects would these wounds have
7 had on his mobility?

8 A. This individual would not have been
9 able to move due to significant pain.
10 Injuries such as -- perhaps even he would
11 have been unconscious with the blows to the
12 head.

13 Q. Were you able to determine through
14 toxicology what his blood alcohol content
15 was?

16 A. Yes, sir. I was.

17 Q. Please tell us, tell the jury what
18 that was?

19 A. The toxicology was sent to my send-
20 out lab, National Medical Services, reports a
21 blood alcohol concentration of 0.338 percent
22 weight by volume or grams per hundred
23 milliliters, which are the same units. I
24 would refer to this as percent weight by
25 volume.

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1 So if you want to compare this to the
2 blood alcohol level that he would have from a
3 DUI or operating a motor vehicle, that number
4 in the state is .08.

5 Q. What effect would this level of
6 blood alcohol content have on his feeling of
7 pain, for example, or his ability to react
8 under pain?

9 A. His ability to react under pain
10 would be blunted. This is a significant
11 amount of alcohol. There are people that
12 would be functional but intoxicated at this
13 point. And there would be quite a few people
14 that probably would have passed out at this
15 point.

16 Q. What effect would this have on his
17 ability to defend himself from further
18 attack?

19 A. I would be highly suspect that this
20 person would be able to mount a significant
21 defense with this much alcohol in their
22 system.

23 Q. You mentioned that there was a
24 strike or strikes to a testicle.

25 A. Yes.

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1 Q. What color is the testicle, a male's
2 testicle normally?

3 A. At autopsy, it's covered by a firm
4 white membrane called the tunica albuginea.
5 It's glossy white like this paper.

6 Q. What color was Mr. Patterson's?

7 A. Darker red than the darkest red.

8 Q. In your experience, how often do you
9 see unintentional damage to the testicles?

10 A. It's very rare.

11 Q. And this may be a bit redundant to
12 just common knowledge but what effect would
13 the damage to the testicle cause on a man's
14 ability to flee or to fight back?

15 A. This would have been severely
16 painful even with that degree of alcohol and
17 would have inhibited his ability to function.

18 Q. You mentioned earlier tram track
19 injuries?

20 A. Yes, sir.

21 Q. If I struck something, struck a part
22 of a body with this pen ---

23 A. Uh-huh.

24 Q. --- the part where there's contact,
25 would that leave the most dark injury or

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1 would it be on the outsides.

2 A. It's an outside edge. So you have
3 compression of the central material with
4 damage to the outside.

5 Q. And you mentioned earlier, I think
6 the words "cylindrical", an object like a
7 pipe or a stick. What general dimensions --
8 would a baseball bat have been too large, too
9 small?

10 A. In this case, no. The space on
11 these tram track wounds is generally
12 consistent and they generally have a width of
13 three-quarters of an inch, with sparing of
14 one quarter of an inch in between. And that
15 is repeated across the body. Three-quarters
16 inch total with, one quarter inch sparing.
17 So this is a fairly narrow object, much more
18 like a pipe or a stick.

19 Q. Dr. Fulcher, I'm going to hand up to
20 you State's Exhibit Number 74, 75, 76, 77,
21 78, and 79. Please identify them and tell me
22 if you're the one that took these photo-
23 graphs?

24 A. I am the one who took these
25 photographs. These are autopsy photographs

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1 of the injuries present at autopsy.

2 SOLICITOR STEINBERG: Your Honor,
3 I'd move those items into evidence at this
4 time?

5 THE COURT: Any objection?

6 MS. WICKER: No objection.

7 THE COURT: All right. In without
8 objection. 74 through 79?

9 COURT REPORTER: Yes, sir.

10 SOLICITOR STEINBERG: Yes, sir.

11 (SO ENTERED AS STATE'S EXHIBIT 74)

12 (SO ENTERED AS STATE'S EXHIBIT 75)

13 (SO ENTERED AS STATE'S EXHIBIT 76)

14 (SO ENTERED AS STATE'S EXHIBIT 77)

15 (SO ENTERED AS STATE'S EXHIBIT 78)

16 (SO ENTERED AS STATE'S EXHIBIT 79)

17 SOLICITOR STEINBERG: Get the
18 lights for me, please.

19 BAILIFF: (Complies)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR STEINBERG

22 Q. Dr. Fulcher, please tell us on this
23 photograph what this entry is, or this item
24 is, this object is right here that I'm
25 pointing to?

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1 A. Those are lacerations. Those are
2 most likely caused by the cylindrical object.
3 The lines are slightly different on those. I
4 believe that's due to the curvature of the
5 brow. But that also likely represents an
6 injury from the cylindrical object. We also
7 see the periorbital contusion or the black
8 eye on this picture.

9 Q. This area is where you're talking
10 about right here?

11 A. Yes, sir.

12 Q. How about the injury right up here
13 at the very top?

14 A. That's two -- I describe those as
15 two discrete abrasions. They may represent a
16 tram track injury but they're less well
17 defined as other representations on his body.
18 There's a possibility, though.

19 Q. The damage that was caused to the
20 brain, do you think that occurred from these
21 injuries right here?

22 A. Yes.

23 Q. And I'm going to show you State's
24 Exhibit Number 75. Let me ask you. Are
25 these the things that you're talking about

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1 that are tram track?

2 A. Yes, sir. Those are the tram track
3 injuries.

4 Q. And approximately how many do you
5 see here in this photograph?

6 A. Quite a few. One, two, three, four,
7 five, six. At least six or seven. But you
8 can see how they overlap and the actual
9 number could be significantly more. It's
10 hard to pick them out discretely. The
11 picture, I would point out -- if you look at
12 the white EKG lead, which is the white dot on
13 the body ---

14 Q. (Indicating)

15 A. There you go. --- above and below
16 that those are classic -- take a picture of
17 them and put them with a text book for
18 forensic pathology tram track lesions,
19 they're so good they could be used for
20 testing purposes. They are really quite
21 beautiful. Really, students should see them.

22 Q. I'm going to show you a picture of a
23 leg. And I want you to tell me what you can
24 about this injury, what would cause it and
25 what effect it would have had?

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1 COURT REPORTER: Exhibit Number?

2 SOLICITOR STEINBERG: That is
3 State's Exhibit Number 76.

4 COURT REPORTER: Thank you.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR STEINBERG:

7 Q. State's Exhibit 76?

8 A. The lighting here is a little harder
9 but you see what I mean by the bruise or the
10 contusion that coalesces around all the
11 injuries. The tram track injuries are located
12 to the lateral aspect of this thigh or arm.
13 It's the left thigh. I believe it's the
14 thigh. Should be -- to the lateral aspect.
15 And you can see the sparing in these darker
16 areas if you take your red sticker or your
17 orange sticker, it's to the lateral side of
18 that. There you go right there. So down a
19 little bit there. Yeah. That area right
20 there below. That's where you have the
21 initial impact and this hemorrhage is
22 spreading across.

23 Q. Would this have been caused by one
24 or more strikes?

25 A. Oh, multiple strikes there.

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1 Multiple strikes. On the legs I had at least
2 three to four strikes per thigh. And that's
3 a minimum. It could be many more depending
4 on how many times the same area was struck.

5 Q. Thank you. I'm now going to show
6 you State's Exhibit Number 77. What is this
7 and can you see any injuries here?

8 A. This is the decedent's hand. And
9 here we have some small contusions and
10 lacerations to the fingers. These are likely
11 those defensive injuries that we had noted
12 previously, grabbing the weapon as it comes
13 down.

14 Q. Thank you. I'm now going to show
15 you State's Exhibit Number 78.

16 A. This is the back of the decedent
17 showing that abrasion that I have on the
18 surface of the back. There was no
19 significant underlying damage, other than
20 just the abrasion at the site.

21 Q. The injuries that were on the front,
22 did it wrap around or is this some separate
23 injury, separate striking of the back?

24 A. Oh, separate striking of the back
25 for sure. The injuries are not contiguous.

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1 There is distinct separation. So this
2 represents blows from both the front and the
3 back. Likely, as the decedent was rolling
4 around on the ground -- I don't know on the
5 ground -- but moving around, he was struck in
6 multiple areas.

7 Q. I'm going to show you one final
8 photograph, State's Exhibit Number 79? I
9 apologize. The lighting is not very good.
10 Look right here where the red pointer is.

11 A. Right.

12 Q. What are these injuries right here?

13 A. Once again, they're a classic tram
14 track injuries, those parallel lines. His
15 buttocks is fairly dirty in this picture.
16 But you can clearly see those tram track
17 lines all oriented -- as you look at it, it's
18 going to be from his left buttocks, butt
19 cheek, upwards towards his right axilla or
20 armpit. So those tram track lines are pretty
21 much parallel and go in that direction.
22 There is some contusion around there as well.

23 Q. The injury to his right hip, ---

24 A. Yes.

25 Q. --- does that have anything to do

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1 with the assault in this case?

2 A. Most likely. It is a very large
3 abrasion and contusion to that hip. It may
4 represent injuries from the cylindrical
5 object. Although, with that particular
6 injury it's so discolored I cannot
7 distinguish an exacting tram track injury.

8 Q. Thank you. Dr. Fulcher, were you
9 able to determine within the bounds of
10 recognized and reasonable medical certainty
11 what the cause of death for Billy Patterson
12 was?

13 A. I was, sir.

14 Q. And what was that?

15 A. I'll read from my report.

16 Q. Yes, sir?

17 A. (Reading): *"Blunt force trauma of*
18 *the head and torso."*

19 Q. And what was the manner of death?

20 A. Homicide.)

21 Q. Had the death been caused by his
22 existing medical condition, the blocking ---

23 A. Uh-huh.

24 Q. --- of the artery, would you have
25 determined this to be a homicide or some

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1 other cause?

2 A. Oh, it would have been a natural
3 death.

4 Q. Thank you, Dr. Fulcher. Please
5 answer any opposing counsel's questions.

6 THE COURT: You may proceed.

7 MS. WICKER: May it please the
8 Court?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MS. WICKER:

12 Q. Good afternoon, Dr. Fulcher?

13 A. Good afternoon.

14 Q. I know you can't give us an exact
15 time that the trauma occurred ---

16 A. Yes.

17 Q. --- but is it possible that the
18 trauma, the time between the trauma and the
19 time of death could have been up to a day?

20 A. A day? I will refer to my autopsy
21 report.

22 Q. Okay.

23 A. The gross description or appearance
24 of the wounds I think would indicate less
25 than a day. On my microscopic examination, I

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1 do a pretty detailed analysis of an area of
2 cortical contusions on page seven of the
3 autopsy report. In there I describe a
4 describe a subarachnoid hemorrhage, which is
5 blood overlying the brain. When there is
6 blood overlying the brain it is degraded or
7 degenerated at a recognized rate. In this
8 case, the amount of degradation of this blood
9 makes it unlikely that it was a day old, more
10 like several hours.

11 Q. Okay. So several hours, probably?

12 A. Several hours. I cannot give any
13 exact, more exact detail other than hours.
14 Certainly not days though.

15 Q. I know we talked about the marks on
16 the head.

17 A. Yes.

18 Q. And you said it was possible they're
19 tram track. But is also possible they're
20 also not tram track?

21 A. That's correct.

22 Q. Okay. And the victim's blood
23 alcohol level was .338; correct?

24 A. Yes, ma'am.

25 Q. And that level of alcohol would

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1 certainly contribute to the heart condition
2 that the victim had significantly -- posed
3 as a significantly greater risk of death from
4 this trauma?

5 A. Absolutely.

6 Q. Okay. Thank you. I don't have any
7 further questions.

8 A. Thank you.

9 SOLICITOR STEINBERG: Nothing from
10 the State, Your Honor. We'd ask that Dr.
11 Fulcher be released from subpoena.

12 THE COURT: Is there any
13 objection?

14 SOLICITOR STEINBERG: Oh, no
15 objection.

16 THE COURT: All right. You may
17 leave.

18 (WITNESS STEPS DOWN)

19 SOLICITOR STEINBERG: Your Honor,
20 the State's next witness is Investigator Tony
21 Bailey.

22 THE COURT: All right.

23 (WITNESS TAKES STAND)

24 (WITNESS DULY SWORN)

25 MS. JOHNSON: Your Honor, may we

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1 approach?

2 THE COURT: Yes.

3 (OFF RECORD BENCH CONFERENCE)

4 THE COURT: Anybody need to take a
5 break? Why doesn't everybody stand up for a
6 minute while we're chatting, if you want to.

7 (OFF RECORD BENCH CONFERENCE)

8 THE COURT: All right.

9 SOLICITOR STEINBERG: Thank you,
10 Your Honor.

11 THE COURT: You may proceed.

12 SOLICITOR STEINBERG: The State
13 calls Antonio Bailey.

14 (WITNESS TAKES STAND)

15 ANTONIO BAILEY, having been duly sworn to
16 tell the truth, and nothing but the truth,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR STEINBERG:

20 Q. Investigator Bailey, please tell us
21 where you're from originally?

22 A. Where I'm from originally? Edisto
23 Island, South Carolina.

24 Q. And what's your highest level of
25 education?

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1 A. I have a bachelor's degree in
2 criminal justice.

3 Q. And how many years do you have in
4 law enforcement?

5 A. Twenty-seven.

6 Q. How many years do you have as a
7 homicide investigator?

8 A. Seventeen years.

9 Q. On August 13th of 2013, did you go to
10 ■ 3rd Street in Judson in Greenville County?

11 A. Yes, sir.

12 Q. And what was your role?

13 A. I was a backup or assisting officer
14 for Investigator Fortner.

15 Q. Please tell us how the house
16 appeared when you got there, just the general
17 size of the house and type of house?

18 A. The house was located in the middle
19 of the street so both ends of the end of the
20 street were blocked off and several officers
21 there on the scene with crime scene tape
22 around the house. I did not go in at that
23 time. There were just several officers
24 around the house and the victim was located
25 in the back of the house.

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1 Q. Did you speak to or see the two
2 residents of the home, Mr. Barksdale and Mr.
3 Hill?

4 A. I did.

5 Q. Please tell us what was Mr. Hill's
6 condition, general appearance and the way he
7 looked at that point?

8 A. Mr. Hill was seated in the street.
9 One of the officers had gotten him a chair to
10 basically rest himself. Very intoxicated.
11 And mumbling certain things, but he was very
12 intoxicated.

13 Q. Approximately what time of day did
14 you get to this location?

15 A. I believe it was like 11:00 or
16 12:00. I'm not sure.

17 Q. Did Mr. Hill make any statements to
18 you while you were out there?

19 A. He did.

20 Q. What did he say?

21 A. He continually told officers that
22 the victim broke the storm door causing it to
23 be torn away from the wooden frame.

24 Q. Did he make any statements about his
25 own involvement?

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1 A. At that time, no, sir.

2 Q. At that point were you interviewing
3 him as a suspect?

4 A. No, sir.

5 Q. Was he in custody?

6 A. No, he was not.

7 Q. This door, was it, in fact, knocked
8 off?

9 A. The entire door and frame were
10 knocked off.

11 Q. On this date on August 14th of 2013,
12 did you feel it was appropriate to interview
13 Mr. Hill?

14 A. No, sir.

15 Q. And why not?

16 A. Because he was so grossly
17 intoxicated.

18 Q. Let's talk about Mr. Barksdale.
19 Did you speak to Mr. Barksdale?

20 A. Yes, sir. I did.

21 Q. And do not repeat what he had to
22 say. Just tell us, where did you interview
23 him?

24 A. I interviewed him at the law
25 enforcement center.

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1 Q. And was he sober?

2 A. Yes, he was.

3 Q. And was he cooperative?

4 A. Very cooperative.

5 Q. Did you on August 15th go back over
6 to this residence?

7 A. Yes, I did.

8 Q. The item that was marked, the
9 walking stick that was marked. Did you see
10 this inside the residence?

11 A. Yes, sir.

12 Q. And where was it?

13 A. In the Defendant's room.

14 SOLICITOR STEINBERG: And I'm
15 referring to State's Exhibit Number 83.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR STEINBERG:

18 Q. Did you request that it be seized?

19 A. Yes, we did.

20 Q. And what was your reasoning for
21 that?

22 A. After attending the autopsy that
23 morning, Dr. Fulcher had indicated that the
24 item that struck our victim was caused by a
25 symmetrical object, possibly a broom or cane.

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1 So, of course, when we went back to initiate
2 the search warrant, we found those items.
3 That's the reason why it was seized.

4 Q. On August 15th, did you interview
5 Marshall Hill?

6 A. The following day. Yes, sir.

7 MS. JOHNSON: Judge, at this time
8 I just renew all my previous objections.

9 THE COURT: Yeah. I'm going to
10 ask the jury to step out at this time. We
11 have some matters to address. Just, again,
12 don't be discussing the case.

13 (JURY OUT AT 2:50 P.M.)

14 THE COURT: I'll be glad to hear
15 from you.

16 MS. JOHNSON: No, Your Honor, I just
17 wanted to---

18 THE COURT: No, no. I'm having
19 some real concern here because now the facts
20 have come out a little bit different I guess
21 than I recognized before. In that all of the
22 statements were given after, you know,
23 specifically statement number three, there
24 was no *Miranda* warning given. Is that
25 correct?

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1 SOLICITOR STEINBERG: Yes, sir.

2 The statement and the copies -- the non-
3 recorded statement at the County was not
4 under *Miranda*.

5 THE COURT: You know, and I guess
6 -- and during lunch I read the *State v. Navy*
7 case. I mean, what I have a concern here is
8 you have -- somebody's seen the autopsy.
9 They see a stick they seized from the
10 Defendant's room, which they assume is the
11 murder weapon.

12 SOLICITOR STEINBERG: Yes, sir.

13 THE COURT: And then they go pick
14 him up to have -- to ask him questions. How
15 can he not be a suspect at that point?

16 SOLICITOR STEINBERG: Well, Your
17 Honor, I think he was probably to a degree a
18 suspect. But the court's been clear that
19 being a suspect and being in custody are two
20 different things. They also made the point
21 that just because the State's weight is
22 stronger that does not mean -- or that the
23 focus gets stronger on one person, does not
24 mean that it's custodial that has to be
25 Mirandized. In this particular case, they

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1 didn't know that this stick was seized.
2 Other items were also examined. They did not
3 realize which of the items were taken. The
4 officer talked about evidence collected from
5 the crime scene. Investigator Fortner also
6 talked about it. Numerous items were seized,
7 cylindrical items were seized. It wasn't
8 until this Defendant said during the
9 Mirandized interview that he identified the
10 wooden walking stick as the murder weapon.

11 THE COURT: Well, I mean, doesn't
12 he do -- doesn't he say something about
13 popping him with it in the un-Mirandized?

14 SOLICITOR STEINBERG: At the end of
15 the un-Mirandized he actually says I tapped
16 him. I don't know if he said tapped him with
17 the cane, but he certainly admitted tapping
18 him. And the officers at that point did take
19 him from the non-Mirandized room to videotape
20 a Mirandized interview.

21 THE COURT: So you're saying that
22 the fact that he was with law enforcement as
23 a suspect in a non-custodial situation,
24 interrogation doesn't ---

25 SOLICITOR STEINBERG: Yes, sir. I

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1 can find the case law if you need be. When
2 he became custodial, the officers -- you
3 almost see the moment when he said 'I tapped
4 him because he was taking my TV.' The
5 officers changed gears and put him into an
6 interrogator room and videotaped him. They
7 did everything they were supposed to. They
8 could not have jumped to that conclusion.
9 They can't just assume that a walking stick
10 was the murder weapon.

11 THE COURT: Well, I mean, at the
12 time they interviewed him they had a pretty
13 good suspicion that that was the murder
14 weapon. That's why he seized it, because it
15 was consistent with the autopsy.

16 SOLICITOR STEINBERG: Well, it was
17 consistent as were other items. But he had
18 never made any statement. It could have been
19 any stick, anyplace in the country. But now
20 the suspect has said, 'I am the one that
21 tapped him on the back.'

22 MS. WICKER: Thank you, Your Honor.
23 Your Honor, I would argue that you know,
24 maybe it's directly on point in this case. I
25 think this is exactly the type interrogation

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1 and the type of incriminating statements that
2 this case is designed to prohibit. He did --
3 the investigators knew. They had been to the
4 autopsy. They knew it was a cylindrical
5 object. It wasn't until Mr. Hill said, 'I
6 tapped him a couple of times.' And so they
7 pull him out and Mirandize him and then they
8 video record it and ask him again about.
9 They know. It's exactly on point with Navy.
10 He should have been Mirandized. The
11 statement should be suppressed, Your Honor.

12 THE COURT: Yeah. How does this
13 situation differ from Navy?

14 SOLICITOR STEINBERG: Your Honor,
15 I'm not reviewed Navy. Unfortunately, I am
16 not prepared to answer that.

17 I do want to point to the court
18 under *State v Williams*, which I have a copy
19 of, just because the officers have, in their
20 words, the narrowing of suspicion and the
21 strength of the investigation has changed,
22 that's not the relevant focus.

23 The key is, was the defendant
24 deprived of his freedom? He's not deprived
25 of his freedom until he makes the statement

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1 'I tapped him with a cane' or 'I tapped him
2 on the back', whichever it was.

3 At that point the officers had to
4 and, in fact, did Mirandize him. At that
5 point he was in custody. Everything before
6 that was not in custody. They were using a
7 witness form. They were not using a suspect
8 form. They were doing everything they were
9 supposed to.

10 I would like to have an opportunity
11 to review *State v Navy*. In light of Your
12 Honor's earlier ruling, I obviously did not.

13 THE COURT: Right.

14 SOLICITOR STEINBERG: And, again,
15 some of these cases, to include *Missouri v.*
16 *Seibert*, also state custody does not equal
17 the same thing as suspicion. You're allowed
18 to have suspicion. Officers are supposed to
19 be suspicious. That doesn't mean custody has
20 been ---

21 THE COURT: And I guess the
22 question is, could he have -- I mean, I guess
23 my decision comes down to could he really
24 have left if he wanted to at that point?

25 SOLICITOR STEINBERG: He could

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1 left. Up until the point ---

2 THE COURT: I mean, you're saying
3 that. But, I mean, you know ---

4 SOLICITOR STEINBERG: Your Honor
5 heard the testimony from both officers.

6 THE COURT: Well, of course
7 they're going to say that. I mean, I'm not
8 saying -- but, I mean, you know, I still have
9 to determine if any reasonable person would
10 have believed they could have left,
11 regardless of what was said.

12 SOLICITOR STEINBERG: Okay.

13 THE COURT: I mean, isn't that the
14 standard, what a reasonable person could
15 believe at that point?

16 SOLICITOR STEINBERG: Well, Your
17 Honor, in light of -- in the unsigned
18 statement and in light of, frankly, the
19 videotape, there's no pressure on this
20 defendant. There's talking, there's
21 discussion, there's no pressure. I would
22 ask Your Honor to consider all of that.

23 THE COURT: Well, and I think that
24 the thing about it is, is whether should
25 Miranda have been issued in the first

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1 statement, is what I'm looking at.

2 SOLICITOR STEINBERG: Your Honor,
3 if I could have a chance to review the *State*
4 *v Navy*?

5 THE COURT: Yes.

6 SOLICITOR STEINBERG: I have
7 reviewed *Missouri v Siebert* in the past but
8 the Navy ---

9 THE COURT: Right. Let's take a
10 break and I'll let you look at that. And you
11 said a *Williams* case was on point?

12 SOLICITOR STEINBERG: Yes, sir.
13 I'll find the *State v Williams* case.

14 THE COURT: Okay. All right.
15 We'll take five minutes and then we'll be
16 back.

17 (BRIEF RECESS)

18 (DEFENDANT PRESENT)

19 SOLICITOR STEINBERG: Thank you,
20 Your Honor.

21 THE COURT: Yes, I'll be glad to
22 hear from you.

23 SOLICITOR STEINBERG: Thank you,
24 Your Honor. While I'm addressing this, I'm
25 handing you a copy of *State v Williams*, 405

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1 S.C. 263. I would point out that this case
2 is more recent than the *Seibert* case and more
3 recent than *State v Navy*.

4 THE COURT: Okay.

5 SOLICITOR STEINBERG: Your Honor,
6 as to the *State v Navy* case, it actually
7 supports the State's argument.

8 The first -- I'm sorry.

9 THE COURT: Oh, okay.

10 SOLICITOR STEINBERG: The first
11 statement was found to be admissible. The
12 first statement the officers took -- they did
13 not have sufficient evidence to focus on him
14 as a suspect. They did not have to Mirandize
15 him in that statement, which is more akin to
16 our first statement which was, in fact,
17 introduced and found to be admissible.

18 There are also a number of
19 differences between *Seibert* and *Navy* and out
20 case.

21 In the *Navy* case the suspect argued
22 it was not voluntary as he had been
23 distraught and sleep deprived and shocked by
24 information that a child had been suffocated,
25 had other injuries. We have nothing of the

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1 sort.

2 Even the degree -- the Defendant
3 knew in this case that person had been
4 severely injured. He also argued that the
5 officers did a Texas two-step. The courts
6 used the term "a two-step", that this was a
7 plan to get a statement that's incriminating
8 and they don't go through Miranda. And then
9 they say oh, by the way, you also Miranda,
10 let's repeat it. It's almost a repetitious.

11 In Navy when they addressed this
12 issue, they looked at the factors that should
13 be considered. It said that there was a
14 practice -- basically that the court made fun
15 of how Missouri did it, Missouri was doing a
16 two-step, playing a game. We don't have that
17 here.

18 They said to look at the complete
19 detail of the question and answer in the
20 first round of interrogation, essentially
21 comparing it to the second. Compare what
22 Your Honor has in that typed statement to
23 what came out on this videotape. The fact
24 that they are so different, they were so
25 dramatically separate should resolve this

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1 issue in the State's favor.

2 In this case our first statement is
3 Billy arrived at this time. Billy showed up.
4 Billy left. Nothing involving the suspect's
5 role. During that conversation the officer
6 saw some hint of something. He asked about a
7 TV. There was no mention of the TV. No
8 indication that a TV was involved. The
9 officer asked about it. And then and only at
10 that point did the suspect make an
11 incriminating statement. He was clearly not
12 in custody. He was allowed to come. He made
13 a condition, 'I'll come if you give me a ride
14 back.'

15 And he makes these statements on
16 videotape after *Miranda*. And that, of
17 course, is all focusing on the suspect.

18 The timing and the setting of the
19 first and second are different, that also
20 goes to the State's role. The State has a
21 victim witness form and a rather, I guess a
22 somewhat more casual setting. Then the
23 suspect on his own elevates this. The
24 officers do exactly what they're supposed to,
25 exactly what the courts have asked them to

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1 do. They Mirandized him and they bring him
2 to an interrogation room.

3 And then another, last factor, the
4 fourth factor also supports the State's
5 argument that says the degree to which the
6 interrogators questions treat the second
7 round as continuous of the first.

8 Judge, they're totally separate.
9 One involves, 'Hey, just help us. Tell us
10 what happened because we don't know. What
11 time -- you're the only one in the house.
12 What time did Billy arrive? What time did
13 Billy leave? What was Billy's condition?'

14 And then the second interview it's,
15 'Why did you hit Billy? When did you hit
16 Billy? How hard did you hit Billy?' Those
17 kind of things.

18 Again, the *State v Navy* factors all
19 support the State's argument.

20 Again, I would like to point out on
21 *State v Williams*, which is a more recent
22 case, *State v Williams* has almost the perfect
23 language in this case, (reading): "To
24 determine whether a suspect is in custody for
25 purposes of *Miranda*, courts ask whether

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1 there's a formal arrest or restraint on
2 freedom of movement of degree associated with
3 a formal arrest. The threat to a citizen's
4 Fifth Amendment rights that Miranda was
5 designed to neutralize, has little to do with
6 the strength of the interrogator's
7 suspicions" -- the officer's suspicions.

8 And continuing on it says,
9 (reading): "Any inquiry into whether the
10 interrogating officers had focused their
11 suspicion upon the individual being
12 questioned, assuming the suspicion remained
13 undisclosed, is not relevant for purposes of
14 Miranda. The fact that officers are taking a
15 different tilt at some point in the case does
16 not mean that the defendant is now in
17 custody."

18 When he was in custody, he was
19 basically told he was in custody and he was
20 moved to the other location. And that's all
21 I need to address at this point.

22 Your Honor, I think that frankly
23 pages five through nine of *State v Williams*
24 should resolve the State's position. I'm not
25 going to requote it but it says essentially

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1 what I just told Your Honor.

2 THE COURT: Well, looking at
3 headnote A.

4 SOLICITOR STEINBERG: On which
5 case, Your Honor?

6 THE COURT: On *Williams*,
7 (reading): "*Simply because an interview*
8 *takes place at law enforcement center and is*
9 *initiated by a police officer, does not*
10 *render it custodial.*"

11 It also says that even though this
12 was a suspect and they looked at the fact in
13 this one that the defendant voluntarily agreed
14 to come to the investigator's office.

15 All right. I'll be glad to hear
16 from.

17 MS. WICKER: Thank you, Your Honor.
18 Your Honor, I would still maintain that this
19 is different from *Williams* and that he did
20 not -- Mr. Hill did not feel free to say no
21 to the investigators. He testified to that.
22 Two officers came to his house. If it
23 weren't meant to be custodial, they would
24 have just interrogated him there. Certainly,
25 law enforcement could have brought a laptop

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1 down there with them. He was interviewed for
2 over two hours. It was continuous police
3 personnel. They knew he was drunk. He's
4 immobile. He doesn't have his own ride to
5 get home, he was escorted in a law
6 enforcement vehicle. Your Honor, he absolute
7 was in custody at this time and he should
8 have been Mirandized.

9 SOLICITOR STEINBERG: Your Honor,
10 if I may ---

11 THE COURT: I mean, I've heard
12 enough.

13 SOLICITOR STEINBERG: Thank you,
14 Your Honor.

15 THE COURT: I don't mean to be
16 rude to y'all. No, I think, I mean, I
17 thought it was a -- I think it's a very close
18 call but I think *State v Williams* does sway
19 me that -- the fact that it was not a
20 custodial statement, so I'm going to stand by
21 my previous ruling.

22 SOLICITOR STEINBERG: Thank you,
23 Your Honor.

24 THE COURT: I'm glad to have
25 *Williams* because Navy bothered -- but

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1 *Williams* is close to Navy in most of those
2 factors so I'll go ahead and stand by my
3 previous ruling.

4 SOLICITOR STEINBERG: And, Your
5 Honor, you have ruled so I'm taking more time
6 just for the appellate record in case this
7 does come up. The defendant's already said
8 in the *Jackson v Denno* he didn't refuse to go
9 because he didn't want to be rude. That's a
10 far cry.

11 THE COURT: Right.

12 SOLICITOR STEINBERG: And also I
13 want to address the issue involving laptops
14 and whether or not we have laptops. Your
15 Honor, unless there's any further objection,
16 I'll bring Investigator Bailey back up.

17 THE COURT: All right.

18 MS. JOHNSON: I just wanted to renew
19 my objection, Your Honor. Thank you, Your
20 Honor.

21 THE COURT: We've got you on the
22 record. Mr. Bailey.

23 (WITNESS RETAKES STAND)

24 THE COURT: All right. If the
25 jury's ready, bring them in.

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1 (JURY IN AT 3:15 P.M.)

2 THE COURT: You may proceed.

3 SOLICITOR STEINBERG: Thank you,
4 Your Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR STEINBERG:

7 Q. On August 15th, 2013, did you have an
8 opportunity to go to Mr. Hill's residence?

9 A. Yes, sir.

10 Q. And did you meet him there?

11 A. We did.

12 Q. And in your opinion was he sober and
13 able to give a statement?

14 A. Yes, he was.

15 Q. Did you ask him to accompany you to
16 the law enforcement center?

17 A. We did.

18 Q. And why did you ask him to go to the
19 law enforcement center?

20 A. Basically investigating to get his
21 story, to find out what was going on and did
22 he want to do an interview.

23 Q. What is your agency's and your
24 division's policy on taking written
25 statements?

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1 A. We take the person to the office,
2 use a laptop and type out the statement as
3 it's being told to us.

4 Q. Typically, with a signed statement
5 afterwards?

6 A. Yes, sir.

7 Q. When you brought him to the law
8 enforcement center, was he under arrest?

9 A. No, sir.

10 Q. Did he agree to go?

11 A. (No verbal response).

12 Q. Did he hesitate at all to go?

13 A. No, sir. He didn't hesitate at all.

14 Q. Did he give you any conditions or
15 any requirements to going with you?

16 A. I think he wanted a ride back home.

17 Q. And at that point, did you intend to
18 give him a ride back home?

19 A. Yes.

20 Q. Is that very common for people that
21 don't have cars ---

22 A. Absolutely.

23 Q. --- you have to drive them home?

24 I'm sorry. I talked over you, what was your
25 answer?

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1 A. Absolutely.

2 Q. Thank you. While he was being
3 transported was he in handcuffs at the time?

4 A. No, sir.

5 Q. Tell us how this interview occurred?
6 Tell us essentially where did it occur and
7 the general terms?

8 A. The interview occurred on the second
9 floor of the law enforcement center in our
10 CID office. It's an office that consists of
11 six tables, six chairs. It's basically where
12 we conduct most of our work and most of our
13 interviews.

14 Q. Who did the primary questioning
15 during this interview?

16 A. Investigator Fortner.

17 Q. And what kind of form did you type
18 up his response on?

19 A. Investigator Fortner used the
20 victim/witness form.

21 Q. At this point, did you have
22 sufficient evidence to call him a suspect
23 that you were going to arrest?

24 A. No, sir.

25 Q. If he had been in custody or been a

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1 suspect that was in custody, what form would
2 you have used?

3 A. An advisement of rights form.

4 Q. I'm going to show you a document.

5 SOLICITOR STEINBERG: Madam Court
6 Reporter, what is the waiver of rights?

7 COURT REPORTER: State's Exhibit
8 Number 1.

9 SOLICITOR STEINBERG: Number 1?

10 COURT REPORTER: Yes, sir.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR STEINBERG:

13 Q. Let me show you State's Exhibit
14 Number 1, and State's Exhibit Number 3. Tell
15 us first about State's Exhibit Number 3.
16 What is it titled?

17 A. State's Exhibit 3 is a victim/
18 witness statement. It was filled out on
19 August 15th, 2013.

20 Q. And have you read that?

21 A. I have.

22 Q. And who typed it?

23 A. Investigator Fortner typed it.

24 Q. Does that accurately reflect what
25 the Defendant told you?

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1 A. Yes, sir.

2 Q. Generally, what did he say? I'll go
3 into more detail later on. But generally
4 what was his story during that interview in
5 the Greenville County interview room?

6 A. Basically that Billy stayed in an
7 empty house. He talks about the time, the
8 last he saw Billy. Talked about Billy, what
9 time Billy left and things of that nature.

10 Q. Does he incriminate himself in that
11 statement?

12 A. No, sir.

13 Q. Following his giving of that
14 statement did you go outside and speak with
15 Investigator Fortner?

16 A. We did.

17 Q. When you came back inside, what, if
18 anything did the Defendant have to say about
19 his involvement?

20 A. He made the comment that he became,
21 that he became angry when he came out of the
22 house or came out of a room and saw the
23 victim with a television under his arm, his
24 television under his arm.

25 Q. And what did he say he did at that

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1 point?

2 A. Became angry.

3 Q. Prior to this, had you ever heard
4 this story about the television being stolen
5 or his response?

6 A. No, sir.

7 Q. I'm going to hand you these two
8 documents. Again, I direct you to State's
9 Exhibit Number 3. Are these all his words?

10 A. Yes, sir.

11 Q. And there's a spot on the very
12 bottom where he could have signed this two-
13 page document. Did you have him sign it?

14 A. No, sir.

15 Q. And what is your reason for not
16 having him sign it?

17 A. After he made that statement, we
18 moved from the interview room to across the
19 hall.

20 Q. Before we talk about that, did you
21 think it was proper or appropriate for him to
22 sign this form, State's Exhibit Number 3?

23 A. No, sir.

24 Q. And why not?

25 A. Because based on the conversations

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1 I'd had with Investigator Fortner, there were
2 a lot of inconsistencies in that statement.

3 Q. Does this form require him to sign
4 that it is "true and correct as best as I can
5 recall"?

6 A. Yes, sir.

7 SOLICITOR STEINBERG: Your Honor,
8 I'd move State's Exhibit Number 3 into
9 evidence.

10 MS. JOHNSON: Judge, I do have an
11 objection to this. Would you like me -- if
12 I may be heard.

13 THE COURT: Yes.

14 MS. JOHNSON: It's bolstering Mr.
15 Hill. He hasn't signed it. And

16 THE COURT: And, also, since he
17 wasn't the one -- since this witness was not
18 the one that typed it, I'm not going to allow
19 it in through this witness.

20 SOLICITOR STEINBERG: Thank you,
21 Your Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR STEINBERG:

24 Q. When you brought him over -- well,
25 tell me again in general what you heard the

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1 Defendant say? Did he ever admit his own
2 involvement prior to the television issue
3 being raised? Had he ever mentioned anything
4 about his own involvement in the death or the
5 injury of Billy Patterson?

6 A. No, sir.

7 Q. In fact, what did he say during this
8 initial interview? What did he say about his
9 own relationship with Billy Patterson?

10 A. Let me see that?

11 Q. (Tenders Exhibit 3)

12 A. (Upon review), he speaks of how
13 Billy stays in an empty house around the
14 corner.

15 Q. Was Billy invited into the
16 residence?

17 A. Yes, sir.

18 Q. And what were they doing inside Mr.
19 Hill's residence?

20 A. They were drinking.

21 Q. In addition to drinking is there
22 mention of any other inebriating substance?

23 A. Smoking marijuanas [sic], smoked
24 some marijuana.

25 Q. Thank you. What did he say about

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1 Mr. Patterson's existing injuries, about how
2 they occurred?

3 A. That they were there when he had
4 come into the house.

5 Q. And what did he say about Billy on
6 the floor, Billy laying on the floor?

7 A. I don't remember exactly without
8 seeing his statement.

9 Q. Okay. I'm going to hand this back
10 to you. You can read the whole statement
11 because I will have some more questions. I'm
12 going to hand you back State's Exhibit Number
13 3.

14 A. (Upon review), okay. Just to follow
15 up on your previous question, it states in
16 here that "I did not notice any injuries that
17 he had", speaking of Billy.

18 Q. Did Mr. Hill ever mention that Billy
19 Patterson talked about not being able to
20 move?

21 A. Not that I can see.

22 Q. You can hand the form back to me.

23 A. (Tenders).

24 Q. Thank you. Investigator Bailey,
25 following the statement about the television

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1 and his response, what did you and
2 Investigator Fortner decide you should do?

3 A. We decided we needed to advise him
4 of his rights.

5 Q. Your interview room, in 2013 did the
6 sheriff's office have an interview room, a
7 recorded interview room?

8 A. We did not.

9 Q. At this time 2016, do you have one?

10 A. Yes, we do.

11 Q. In fact, how many do you have?

12 A. Two.

13 Q. And in 2013 when this incident
14 occurred, and you needed to use a video
15 recorded room, where did you go and where
16 is that in proximity to your office?

17 A. Directly across the hall to
18 Greenville City Police Department.

19 Q. Is that the same building?

20 A. Same building, just directly across
21 the hall.

22 Q. When you say across the hall, is
23 that a separate suite of rooms?

24 A. No, both on the second floor,
25 offices across the hall.

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1 Q. Okay. Do you have permission from
2 the Greenville City to use their interview
3 room?

4 A. Yes, we do.

5 Q. Okay. Did you tell the Defendant
6 his interview was going to be recorded?

7 A. Yes, I did.

8 Q. Did you advise him of his *Miranda*
9 Rights?

10 A. Yes, we did.

11 Q. And did you use a form that your
12 agency typically uses in this manner?

13 A. Yes, sir.

14 Q. I show you State's Exhibit Number 1.
15 Is this the form that you normally use and is
16 this the form that you used On this date,
17 this particular form?

18 A. This is the form that's normally
19 used and this is the form that was used on
20 that day.

21 Q. Did you advise him of his rights?

22 A. We did.

23 Q. And what were those rights?

24 A. (Reading): "Before we ask any
25 questions, you must understand your rights.

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1 *You have a right to remain silent.*
2 *Anything you say can be used against you in*
3 *Court.*

4 *You have the right to talk to a*
5 *lawyer for advice before we ask any questions*
6 *and to have him with you during questioning.*

7 *If you have no money to pay a*
8 *lawyer's fee, the court will appoint one to*
9 *represent you without cost if you wish.*

10 *If you decide to answer questions*
11 *now without a lawyer present, you will still*
12 *have the right to stop answering at any time.*

13 *You also have the right to stop*
14 *answering at any time until you talk to a*
15 *lawyer."*

16 Q. Thank you. And there's initials
17 next to those points. And whose initials are
18 those?

19 A. Mr. Hill's.

20 Q. And the waiver of rights at the very
21 bottom. Whose initials are attached to the
22 word coercion?

23 A. Mr. Hill's.

24 Q. Do you normally have a defendant
25 sign the waiver of rights portion of this?

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1 A. Yes.

2 Q. Not just initial but a full
3 signature?

4 A. Yes, we do.

5 Q. Have you had other cases where
6 defendants have been willing to speak and
7 unwilling to either sign a statement or sign
8 the waiver?

9 A. Yes, sir.

10 SOLICITOR STEINBERG: Your Honor,
11 the State would move State's Exhibit 1 into
12 evidence at this point.

13 MS. JOHNSON: Without objection,
14 Your Honor.

15 THE COURT: Okay. In without
16 objection. And that's what?

17 COURT REPORTER: Number 1.

18 SOLICITOR STEINBERG: State's
19 Exhibit Number 1, Your Honor.

20 (SO ENTERED AS STATE'S EXHIBIT 1)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR STEINBERG:

23 Q. This whole conversation we're
24 talking about here and you read the rights,
25 was this all on videotape?

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1 A. Yes, it is.

2 Q. When you read him his rights, did he
3 ever invoke his right to silence?

4 A. No, sir.

5 Q. Did he ever invoke his right to an
6 attorney?

7 A. No, sir.

8 Q. Did he hesitate to agree to speak
9 with you?

10 A. No hesitation at all.

11 Q. Okay. Did he agree at some point --
12 did he ever agree to sign the document
13 though?

14 A. Did not agree.

15 Q. Okay. Following this conversation,
16 did you have any legal concerns?

17 A. I did.

18 Q. Following these legal concerns, did
19 you agree to have him -- to let him speak
20 without having signed this?

21 A. I did. Yes, sir.

22 Q. Did he, in fact agree to speak with
23 you?

24 A. Yes, he did.

25 Q. How clearly was his response when

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1 you asked him are you willing to speak with
2 me?

3 A. Clear.

4 Q. At first generally, what did Mr.
5 Hill have to say?

6 MS. JOHNSON: And Judge, just for
7 the record, I renew my previous objections.

8 THE COURT: Right. And denied.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR STEINBERG:

11 Q. Essentially, as best you can
12 chronologically, talk about how this
13 defendant relayed the information to you
14 about what happened to Billy Patterson.

15 A. He was not direct, somewhat kind of
16 beat around the bush. Not really giving a
17 whole lot of details initially.

18 Q. And then what happened?

19 A. As the conversation progressed he's
20 told us basically what happened or what he
21 did.

22 Q. At first, what did he tell you his,
23 the assault consisted of?

24 A. He said that he hit Billy a couple
25 of times with a stick.

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1 Q. And did he say what type of stick he
2 used?

3 A. I'm not sure if he indicated a
4 walking stick or not. He just said a stick.

5 Q. Okay. Have you seen him walking
6 with a walking stick before?

7 A. Not that day, no, sir.

8 Q. Had you seen him walking without a
9 walking stick?

10 A. Yes.

11 Q. Okay. Following his statement that
12 he hit him, a couple of times in your words,
13 did he -- did you confront him about that?

14 A. I did.

15 Q. And what did he say at that point?

16 A. He said he may have hit him more
17 than a couple of times.

18 Q. Did he ever explain to you the parts
19 of the body where he hit him?

20 A. Well, he said the back and legs.

21 Q. Did he ever demonstrate with his
22 hands what parts of the body?

23 A. He demonstrated on the table, but I
24 don't remember if he actually demonstrated
25 with his hands.

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Testimony of Antonio Bailey - Cross Examination

1 Q. Okay. But all of this will be on
2 videotape.

3 A. Yes, it will.

4 Q. Thank you, Investigator Bailey.
5 Please answer any opposing counsel's
6 questions.

7 THE COURT: Cross-examination.

8 MS. JOHNSON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. JOHNSON:

11 Q. Good afternoon, Investigator Bailey.

12 A. Good afternoon. When you arrived on
13 scene, my client, Mr. Hill, was grossly
14 intoxicated?

15 A. Yes, ma'am.

16 Q. He couldn't be interviewed?

17 A. That's correct.

18 Q. You came by his house the next day?

19 A. I did.

20 Q. And he told you he had been drink-
21 ing?

22 A. Drinking but not drunk.

23 Q. Okay. But he was drinking?

24 A. Said he had had a drink, yes.

25 Q. Okay. He came with you to the law

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1 enforcement center?

2 A. He did.

3 Q. And he cooperated with you?

4 A. He did.

5 Q. Okay. And you actually did a report
6 in this case?

7 A. Yes, ma'am.

8 Q. And everything in that report is
9 complete and accurate?

10 A. Yes, ma'am.

11 Q. And do you remember putting in your
12 report about meeting with Mr. Barksdale?

13 A. I do.

14 Q. And Mr. Barksdale indicated to you
15 that he was stealing or -- excuse me -- that
16 Mr. Hill was afraid of Billy stealing?

17 A. (Reviews report).

18 Q. Page two of your report.

19 A. Okay. (Upon review), yes.

20 Q. Okay. And you met with Mr.
21 Barksdale a day before you met with Mr. Hill?

22 A. That's correct.

23 Q. Thank you, Lieutenant Barksdale.

24 SOLICITOR STEINBERG: No further
25 questions for this witness.

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Testimony of Michael Fortner - Direct Examination

1 THE COURT: All right. You may
2 step down.

3 (WITNESS STEPS DOWN)

4 SOLICITOR STEINBERG: Your Honor,
5 the State's next witness would be
6 Investigator Mike Fortner.

7 (WITNESS TAKES STAND)

8 MICHAEL FORTNER, having been duly sworn
9 to tell the truth, and nothing but the truth,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR STEINBERG:

13 Q. Investigator Fortner, please tell
14 the court where you're from originally.

15 A. I was born in Indianapolis, Indiana.

16 Q. And what's your highest level of
17 education?

18 A. Associates Degree from Greenville
19 Tech in criminal justice.

20 Q. How much experience do you have in
21 law enforcement, total?

22 A. I've been with the sheriff's office,
23 which is where I began at, for about twenty-
24 two and half years now.

25 Q. How long have you been an

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1 investigator?

2 A. I started in January of 1999, so a
3 little over seventeen years now in
4 investigations.

5 Q. How were you first notified of this
6 case? How did you first show up here?

7 A. We had received a phone call from
8 the uniform patrol that they had responded to
9 an assault call, was the way it came out.
10 When they arrived, they realized that the
11 victim was deceased.

12 Q. What time did you arrive on the
13 scene?

14 A. We probably would have gotten there
15 sometime around 12:30 in the afternoon.

16 Q. And who was the lead investigator in
17 this case?

18 A. Myself.

19 Q. And was Antonio Bailey who just
20 testified the primary backup?

21 A. He was.

22 Q. I'm not going over the things that
23 forensics has already gone over, but did you
24 accompany forensics during their search of
25 the interior and exterior of the residence?

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1 A. Yes. As Sergeant Hamilton explained
2 that he was up there (on witness stand), we
3 would do what we call like a walk-through.
4 Sergeant Hamilton and myself, we walked
5 around the outside of the house and then
6 walked through the house to see if there was
7 anything that looked like it needed to be
8 processed or collected for evidence.

9 Q. Was Mr. Barksdale sober?

10 A. Mr. Barksdale was, yes.

11 Q. And you keep him separated from Mr.
12 Hill?

13 A. Yes. Uniform patrol had kept them
14 separated prior to us arriving on scene.

15 Q. And, in your opinion, was Mr. Hill
16 sober?

17 A. Mr. Hill, no. No, sir.

18 Q. Let's talk about the residence.
19 Inside the residence was there a television?

20 A. There was, yes.

21 Q. In the living room?

22 A. Yes.

23 Q. And was there anything unusual about
24 the television?

25 A. No. It was just sitting on the

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1 little table right there by the side door
2 when you walk into the living room.

3 Q. Did it appear cracked or broken in
4 any way?

5 A. It did not, no.

6 Q. Did it appear to be properly set up
7 as a TV would be?

8 A. Yes, it did.

9 Q. At that time did you know of the
10 importance or possible importance of this
11 television?

12 A. No, we did not at this time. No,
13 sir.

14 Q. Inside the house did you see any
15 evidence of a fight?

16 A. No, sir. Outside of the door ---

17 Q. I'm sorry. Inside?

18 A. No.

19 Q. Was the couch and the chair, the
20 furniture were they in a normal location
21 where one would expect them to be?

22 A. They were. Nothing was tipped over,
23 knocked over, anything like that.

24 Q. Did you see blood inside the house?

25 A. We did. Yes, sir.

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1 Q. And where was this blood?

2 A. It was just right there by the
3 baseboard of that side door that you go in
4 and out of the house.

5 Q. Did you see any blood on the outside
6 of the house?

7 A. We did. Yes, sir.

8 Q. What did the blood on the inside of
9 the house, what did that lead you to believe?

10 A. That somebody at some point in time
11 was bleeding and rubbed up against that
12 portion of the wall there.

13 Q. Did it appear to be fresh blood to
14 you?

15 A. It did. It appeared to be
16 relatively fresh, yes.

17 Q. Did you feel it appropriate to
18 interview Mr. Hill at that location?

19 A. No. Due to his level of intoxi-
20 cation we decided it'd be best not to speak
21 with him at that time.

22 Q. In addition to yourself and
23 Investigator Bailey, did you have other
24 investigators out there?

25 A. There were. Yes, sir.

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1 Q. Please tell us just generally -- I
2 don't need specifics. Just generally, what
3 were their roles? What did they do?

4 A. A couple other investigators were
5 out there speaking with neighbors in the area
6 to see if they had seen or heard anything.
7 One investigator located a family member for
8 Billy Patterson, spoke with him a little bit
9 to try to figure out if he knew where he may
10 or may not have been at the prior -- the
11 night before.

12 Q. Did you interview or did anybody on
13 your behalf interview neighbors and the
14 victim's family?

15 A. Yes.

16 Q. Did you try to trace the victim's
17 footsteps?

18 A. Yes, we did.

19 Q. And did you try to locate any
20 possible motives for people that might want
21 to harm Billy Patterson?

22 A. We did, yes, sir. From everything
23 that we learned, he did not have any problems
24 with anybody in the neighborhood or anything.

25 Q. Did you attend the autopsy of Mr.

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1 Patterson?

2 A. Yes, sir. I did.

3 Q. And was that the next day after the
4 body was found?

5 A. Yes, sir. It would have been on
6 August 15th.

7 Q. Following the autopsy, did you know
8 the number of -- probable number of strikes
9 against Mr. Patterson?

10 A. After the autopsy I did. Yes, sir.

11 Q. And did you know the location of the
12 strikes?

13 A. Yes, sir. I did.

14 Q. Did you know the type of weapon that
15 the doctor expected would have been used?

16 A. Just a cylindrical-type object. He
17 suggested things similar to like either a
18 broom handle or handle to a shovel or
19 something along those lines.

20 Q. And did you know the level of force
21 used?

22 A. Just that it was a great force,
23 from what he told us, that the victim had
24 suffered.

25 Q. Following this autopsy, did you go

1 to [REDACTED] 3rd Street again?

2 A. Yes.

3 Q. Did you go with a search warrant?

4 A. Yes, sir. We did.

5 Q. And what was your reason for going
6 to this residence for the second time?

7 A. To see if we could find any type of
8 objects that was consistent with what Dr.
9 Fulcher had described to us that would cause
10 the type injuries that the victim had
11 suffered.

12 Q. And you brought this item here
13 today, I believe, State's Exhibit Number 83?

14 A. Yes, sir.

15 Q. And did you find this in the
16 residence?

17 A. That's one of several items that we
18 took. Yes, sir.

19 Q. Please tell the jury what other
20 items you thought might have been a potential
21 murder weapon at that time?

22 A. Like I say we seized -- I can't
23 remember what. But, I mean, I know -- I'm
24 thinking a rake, maybe a shovel. We also
25 took a handle, a wooden handle that would go

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1 to like maybe a rake or shovel that probably
2 had broken off at some point in time. And
3 the walking stick as well.

4 Q. At this point did you know that the
5 walking stick was more important or less
6 important than any other item that you
7 seized?

8 A. No, sir. The only thing we knew
9 they were all consistent with what Dr.
10 Fulcher was saying that we were looking for.

11 Q. Let's talk about the walking stick.
12 I keep referring to it as a walking stick.
13 It's the piece of wood you just showed. Have
14 you ever seen the Defendant walking without a
15 walking stick?

16 A. I have. Yes, sir.

17 Q. And have you seen him in the
18 neighborhood subsequent to this trial --
19 well, subsequent to this crime but before
20 this trial, walking around his neighborhood
21 without the walking stick?

22 A. I have. Yes, sir.

23 Q. Now, you don't dispute that he
24 sometimes uses a walking stick. Is that
25 correct?

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1 A. That's what I understand. Yes, sir.
2 I mean, every time I've ever seen him, he's
3 never been using one, but ---

4 Q. But you'd agree that sometimes he
5 would use a walking stick?

6 A. Yes.

7 Q. On August the 15th, did you interview
8 Marshall Hill?

9 A. Yes, sir, we did.

10 Q. You were present when Investigator
11 Bailey testified. Were you part of that
12 interview?

13 A. I was. Yes, sir.

14 MS. WICKER: Your Honor, we just
15 want to for the record renew our objection.

16 THE COURT: Yes. Okay. And
17 denied based on previous discussion.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITON STEINBERG:

20 Q. Did he agree to accompany you from
21 his residence to the law enforcement center?

22 A. He did. Investigator Bailey and I
23 had actually gone to his house and asked him
24 if he'd come down and speak with us. And he
25 agreed to do so.

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1 Q. Did he hesitate in his coming down
2 to speak with you?

3 A. No, sir, he didn't.

4 Q. Did he appear to be sober?

5 A. Yeah. He was sober. Yes, sir.

6 Q. Was he under arrest?

7 A. He was not under arrest, no.

8 Q. Was he in custody?

9 A. No, sir. He was not.

10 Q. Did he give any conditions or any
11 requirements or anything that he wanted you
12 to do before he would agree to come down to
13 the law enforcement center?

14 A. The only thing he asked was that we
15 give him a ride back home, which we agreed to
16 do.

17 Q. And was that your intention at that
18 time?

19 A. Yes, sir. Absolutely.

20 Q. Did things change during the
21 interview?

22 A. Yes, it did.

23 Q. Okay. Where did you interview him
24 and who else was present?

25 A. The initial interview that we did

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1 with him at the beginning was at my desk,
2 which is in the, what we call the CID office,
3 in the back room where the homicide
4 investigators are located at. There are six
5 other desks in this room and we sat at my
6 desk.

7 Q. So is this a dedicated interrogation
8 room or is this the general working space ---

9 A. It's just a common area where
10 anybody and everybody would be at. And at
11 this time it was -- I don't believe anybody
12 else was in the office at the time, so just
13 Antonio and myself.

14 Q. Antonio, you mean Antonio Bailey?

15 A. Investigator Bailey, yes.

16 Q. Okay. Do you record inside that
17 room?

18 A. No, we don't. It's just a common
19 area.

20 Q. What type of interview does the
21 sheriff's office call this interview when you
22 have someone in your office and they're not
23 in custody?

24 A. In this case Mr. Hill was being
25 looked at as a witness at this time since he

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1 was at home when this all took place.

2 Q. Was he willing to speak with you
3 during this interview inside your office?

4 A. He was. He did.

5 Q. Do you normally use this form,
6 State's Exhibit Number 3 to conduct a witness
7 statement?

8 A. Yes, sir. If we take a statement
9 for somebody who is either a victim or a
10 witness, this would be the form that we would
11 use.

12 Q. Tell the jury how this interview
13 occurred. Tell us the chronology of how this
14 interview came to be?

15 A. I mean, we went to his house and we
16 brought him back.

17 Q. I'm sorry. Once you got him in your
18 office. Start at that point. How do you go
19 about conducting the interrogation or an
20 interview?

21 A. We just sit down with them. I ask
22 them questions. They tell me what happened,
23 what they saw. They respond to my questions
24 and maybe from their answers, that brings up
25 another question to mind that I will ask

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1 them. And then after we get done going there
2 kind of like, we've kind of got an idea of
3 what's going to be said, we go back and we
4 type everything out.

5 Q. And did you type everything out in
6 this case?

7 A. We did. Yes, sir.

8 Q. And State's Exhibit Number 3, which
9 I just showed you, did you type this out?

10 A. I did. Yes, sir.

11 Q. Does that reflect what you and
12 Investigator Bailey heard in that room?

13 A. It does. Yes, sir.

14 Q. And at some point did you and
15 Investigator Bailey walk outside and speak to
16 each other?

17 A. We did. Yes, sir.

18 Q. When you were finished and you come
19 back inside, what concern(s) did you have?

20 A. That there was some discrepancies
21 between what Mr. Hill was telling us and what
22 Mr. Barksdale had told us.

23 Q. And don't repeat what Mr. Barksdale
24 said, but let me ask you this. Following
25 that, did you ask the suspect, Mr. Hill, any

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1 questions?

2 A. I did. Yes.

3 Q. What did you ask and why did you ask
4 him?

5 MS. WICKER: Your Honor, we would
6 again renew or objection.

7 THE COURT: Right. Subject to
8 your objection I overruled.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR STEINBERG:

11 Q. Well, while we were sitting there
12 talking, he started talking about his
13 television set and how he had bought it
14 because he wanted to watch football, the
15 upcoming football season that year. And it
16 was very apparent to me that Mr. Hill liked
17 his television set.

18 I then asked him was Mr. Patterson maybe
19 possibly trying to take your television set
20 and as a result you hit him. And at that time
21 he started -- tears started welling up in his
22 eyes. He said -- there was a change in his
23 demeanor. And he said, 'yeah.' I think the
24 exact words he used was, "I tapped him
25 twice."

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1 Q. State's Exhibit Number 3 has a
2 portion at the very bottom that says,
3 (reading): *"I have read the statement of one*
4 *of two pages and it is true and correct as*
5 *best as I recall."*

6 In a normal case, would you have had
7 the witness sign it at that location?

8 A. Yes, sir. We would have reviewed
9 the statement together, would have had him
10 read it to himself to ensure that he thought
11 that it was correct. And at that time I
12 would ask him to sign the statement.

13 Q. Okay. And in this case did you
14 think it was appropriate or even ethical for
15 him to sign a statement with that line on it?

16 A. No, sir.

17 SOLICITOR STEINBERG: Your Honor,
18 in light of that I do ask the statement be
19 introduced State's Exhibit Number 3.

20 MS. WICKER: And, Your Honor, I'm
21 going to object based on bolstering. The
22 investigator just testified to that.

23 THE COURT: Yeah. I'm going to
24 sustain the objection.

25 MS. WICKER: Thank you, Your Honor.

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1 SOLICITOR STEINBERG: Your Honor,
2 in light of bolstering, may I have the
3 officer read this though?

4 THE COURT: I mean, he's testified
5 to it and he didn't sign it so I'm going to
6 sustain the objection, okay?

7 SOLICITOR STEINBERG: Well, I have
8 some questions relevant to this document.

9 THE COURT: Yeah.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR STEINBERG:

12 Q. At any point in this interview room,
13 we'll call it the Greenville County Sheriff's
14 Office interview room, did the Defendant ever
15 make any statements prior to the mention of
16 tapping him over the TV?

17 Anything he mentioned about the victim
18 being either violent towards or Mr. Hill
19 being violent towards the victim?

20 A. No, sir. There's no mention of any
21 type of an altercation taking place between
22 Mr. Hill or the victim, Mr. Patterson.

23 Q. In fact, there's talk about they
24 smoked marijuana and drank together?

25 A. Yes, sir. That'd be correct.

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1 Q. Outside of that was there any
2 evidence of any hostility at that point?

3 A. No, sir. There was not.

4 Q. And during this interview did the
5 Defendant make any statements about Mr.
6 Patterson's physical abilities, how he was
7 standing or walking or sitting or anything of
8 that nature?

9 A. Just that he was complaining about
10 having a hard time moving.

11 Q. Did he say why this inability to
12 move occurred?

13 A. No, he did not. I think they were
14 just figuring it had something to do with the
15 drinking that was going on.

16 Q. What did he say about Mr.
17 Barksdale's involvement? What did Mr. Hill
18 say his roommate's involvement was in this
19 case?

20 A. At some point in time after Mr.
21 Patterson comes over to the house, he starts
22 to go out the door after complaining about
23 having a hard time being able to move. Gets
24 up to go outside. In the process of going
25 outside he stumbles and falls, grabs onto the

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1 screen door that he has ripped off the house
2 and falls down to the ground. Mr. Hill says
3 he goes outside to try to help Mr. Patterson
4 back inside at which time Mr. Barksdale, the
5 roommate comes outside and assists with
6 bringing him in, according to what Mr. Hill
7 was saying.

8 Q. Does Mr. Hill at any point talk
9 about his own involvement in the Defendant
10 going out the door and falling down?

11 A. No, sir. He does not.

12 Q. At any point does Mr. Hill talk
13 about the bloodstains on the patio or porch
14 area?

15 A. No, sir.

16 Q. Does he make any statements
17 concerning the blood transfer, the blood
18 contact on the inside door frame?

19 A. No, sir. He does not.

20 Q. When the Defendant made the
21 statement what was said and the tapping the
22 victim, did he make -- use any language that
23 you can recall?

24 A. Nothing other than he was upset and
25 that he tapped him twice because he saw him

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1 with the TV up underneath his arms.

2 Q. Did he make any statements at that
3 point about the victim, Mr. Patterson,
4 assaulting or tapping him?

5 A. No, sir. He did not.

6 Q. If he had, would you have put that
7 in your notes?

8 A. Yes, sir. I would.

9 Q. Let's talk about Mr. Hill some more.
10 When you took him into -- when you were done
11 with the interview in your room, where did
12 you take him to?

13 A. We went across the hallway of the
14 law enforcement center on the second floor,
15 across the hallway where the Greenville City
16 investigators are located at.

17 Q. And do you have an agreement or did
18 you have an agreement that you're allowed to
19 use their room, for example, a suspect in a
20 victim case?

21 A. Yeah. At the time we did not have
22 our own video equipment, recording rooms, so
23 Greenville City was kind enough to allow us
24 to use theirs if we needed to.

25 Q. I've already introduced State's

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1 Exhibit Number 1 through your coworker Mr.
2 Bailey, Investigator Bailey. I would ask you
3 about the language on the top left, is that
4 your handwriting?

5 A. Yes, sir. It is.

6 Q. How old was Mr. Hill and what was
7 his level of education?

8 A. He was born [REDACTED] of 1954, so
9 that would have made him fifty-nine, I guess
10 at the time. And his level of education is,
11 he's a high school graduate 1973 from Parker
12 High School.

13 Q. The highest level of education is
14 high school graduate?

15 A. Yes, sir.

16 Q. Was the Defendant, Mr. Hill, told
17 why he was going from the sheriff's office
18 interview room down the hall to the
19 Greenville City department, police
20 department's location?

21 A. He was told that we're going to go
22 somewhere where we can video record the
23 interview and the continuation of it.

24 Q. Did he agree?

25 A. He did. Yes, sir.

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1 Q. Before we talk about that, did you
2 have any evidence that the Defendant had --
3 well, that the victim, Mr. Patterson, had
4 really tried to steal Mr. Hill's TV?

5 A. No, sir. We did not.

6 Q. Was there any forensic or physical
7 evidence to show that?

8 A. No, sir. There was not.

9 Q. Outside of Mr. Hill's -- his not
10 anticipated statement, did you have any
11 reason to think that Mr. Patterson would try
12 to steal the TV?

13 A. No, sir.

14 Q. I'm not going to spend a great deal
15 of time on this since we've already been over
16 it with the other officer. But did you go
17 over his *Miranda* rights?

18 A. Yes, sir. We did.

19 Q. Did you promise him anything?

20 A. No, sir.

21 Q. Did you threaten him or coerce him
22 in any way?

23 A. No, we did not.

24 Q. Did you explain to him what the word
25 "coerce" means?

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1 A. Yes, sir. We did.

2 Q. On this form, did you normally have
3 him -- would he normally have signed this
4 form at the very bottom? Would he normally
5 sign this form where it says signed?

6 A. Yes. He normally would. Yes, sir.

7 Q. Did he agree to sign that?

8 A. No, sir. He was hesitant to sign
9 the form.

10 Q. What was his stated reason for this?

11 A. For whatever reason he was afraid
12 that if he signed the form, it would mess up
13 his disability that he was receiving.

14 Q. Do you agree that you told him what
15 his rights were and that he appeared to
16 understand them?

17 A. Yes, sir. We did.

18 Q. Did he agree to speak with you?
19 I'm going to separate that question from did
20 he agree to sign. Did he agree to speak with
21 you?

22 A. Yes, sir.

23 Q. In fact, did he agree to speak with
24 you more than one time?

25 A. Yes, sir. He did.

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1 Q. Did you explain to him how the
2 waiver process works and what you needed to
3 do?

4 A. Yes, sir. We did.

5 Q. In your experience have you had
6 suspects who are willing to talk to you but
7 not willing to sign a waiver?

8 A. Yes, sir. I have.

9 Q. Have you had cases where individuals
10 are willing to talk to you but not sign the
11 statement that's typed out?

12 A. Yes, sir. That's happened a time or
13 two as well.

14 Q. At this point, once the defendant
15 had agreed to speak with you, what did he
16 tell you?

17 MS. WICKER: Once again, we just
18 renew our objection.

19 THE COURT: Yes. So noted.
20 Overruled. Go ahead.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR STEINBERG

23 Q. Generally, what did he tell you?

24 A. That he had hit the victim, Mr.
25 Patterson, several times with what he

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1 described as a walking stick.

2 Q. What did he say the victim did
3 following the hit or tap with the walking
4 stick?

5 A. He ended up on the ground, on the
6 floor in the house.

7 Q. And did he stay inside the house,
8 the victim stay inside the house?

9 A. Initially, yes, sir. At some point
10 in time he does make him wait outside.

11 Q. Does he make any statements -- and
12 do not repeat what someone else had said.
13 Mr. Hill -- does the Defendant say what Mr.
14 Barksdale, his roommate, did?

15 A. He does. Yes, sir.

16 Q. And had you already spoken with Mr.
17 Barksdale or had other officers already spoke
18 with ---

19 A. Investigator Bailey had. Yes, sir.

20 Q. And how many times did Mr. Hill say
21 he hit Mr. Patterson?

22 A. By the time that the interview was
23 over, I think that the word he used was
24 either several or numerous times.

25 Q. And towards the end of the

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1 interview, did he mention parts of the body
2 where he hit Mr. ---

3 A. Yes, sir. He did. During the
4 course of the interview he, while sitting in
5 his chair, he -- basically, we asked him what
6 parts of the body he hit him on. And he like
7 did this little thing -- (demonstrating) --
8 kind of touches his head and his torso area
9 and legs.

10 Q. Okay. And, it's again, it's very
11 important -- the jury see, but the court
12 reporter has got to put this down. And you
13 touched the various parts of your body?

14 A. I did.

15 Q. Your head and your body?

16 A. Head, torso, legs.

17 Q. Thank you. Sounds silly but Madam
18 Court Reporter has to put that into her
19 report. You said this was videotaped; is
20 that correct?

21 A. Yes, sir. It was.

22 Q. Have you watched the videotape in
23 preparation for this trial?

24 A. Yes, I have.

25 Q. And have you determined that it is a

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1 complete and unaltered videotape?

2 A. Yes, sir. It is.

3 Q. Let's talk about the audio. Where
4 is the microphone in this Greenville City
5 interview room?

6 A. I believe it's part of the camera
7 itself. I think they're one and the same.

8 Q. Does he have a microphone actually
9 on his -- like in front of him or on, clipped
10 on him in any way?

11 A. No, sir. He does not.

12 Q. In preparation for this trial, have
13 you had one of your support staff type up a
14 transcript of this matter?

15 A. Yes, sir. I did.

16 Q. And did you read over it when it was
17 first prepared in 2013?

18 A. We did. Yes, sir.

19 Q. In preparation for this trial, have
20 you reviewed it again to make any
21 corrections?

22 A. Yes, sir. We have.

23 Q. And is the transcript accurate and
24 correct?

25 A. Yes, sir. It is.

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1 Q. Do you believe because of the
2 placement of the microphone it would help the
3 jury in watching the video to have a copy of
4 the transcripts with them?

5 A. Yes, sir.

6 SOLICITOR STEINBERG: I beg the
7 court's indulgence.

8 I'd like to have this marked as a
9 State's Exhibit.

10 COURT REPORTER: State's Exhibit 82
11 for identification.

12 (SO MARKED AS STATE'S EXHIBIT 82)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR STEINBERG:

15 Q. I'm going to show you this
16 transcript. It's State's Exhibit Number 82,
17 the transcript of this interview.

18 A. It is. Yes, sir.

19 Q. Okay.

20 SOLICITOR STEINBERG: Your Honor,
21 at this point I would like to move the
22 transcripts as well as the videotape into
23 evidence.

24 THE COURT: And are you going to
25 show the video?

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1 SOLICITOR STEINBERG: I'm going to
2 show the video. And also I could hand, once
3 I have a decision, hand a copy of the
4 transcript ---

5 THE COURT: No, I'm not going to
6 allow that. I will hear the video and if
7 there's any issue with the video then I'll
8 reconsider. But otherwise, I'm not going to
9 allow the transcript.

10 SOLICITOR STEINBERG: Thank you,
11 Your Honor.

12 Your Honor, at this point, I'm going
13 to introduce State's Exhibit Number 81.
14 Opposing counsel has a copy of this.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR STEINBERG:

17 Q. Is that your videotape from this
18 interview?

19 A. Yes, sir. It is.

20 SOLICITOR STEINBERG: Your Honor,
21 in light of that, I would ask that this be
22 introduced.

23 THE COURT: Right, subject to your
24 previous objection.

25 MS. WICKER: Thank you, Your Honor.

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1 (SO ENTERED AS STATE'S EXHIBIT 81)

2 SOLICITOR STEINBERG: For the
3 benefit of the court this will be
4 approximately a forty-three minute tape.

5 THE COURT: Can everybody see?
6 If everybody could, stand up for a second and
7 stretch -- (various jurors comply).

8 SOLICITOR STEINBERG: Your Honor,
9 I'm going to put on the record that at the
10 appropriate times I will need to be -- with
11 counsel's direction, both counsel's direction
12 -- muting small portions with Your Honor's
13 permission.

14 THE COURT: Okay.

15 DIRECT EXAMINATION CONTIUED

16 BY SOLICITOR STEINBERG:

17 Q. Investigator Fortner, did you make a
18 full and complete copy of this for both
19 counsel?

20 A. Yes, sir. I did.

21 (VIDEO PLAYING)

22 (VIDEO MUTED AT 10 MINUTES 12 SECONDS)

23 (VIDEO RESUMED AT 11 MINUTES 30 SECOND)

24 (VIDEO ENDED)

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR STEINBERG:

2 Q. Did you take the Defendant into
3 custody? And if so, for what charge?

4 A. Yes, sir, we did. For murder.

5 SOLICITOR STEINBERG: I beg the
6 Court's indulgence, (reviewing exhibits).

7 Your Honor, in light of that
8 testimony, I would again ask that the
9 transcripts be introduced.

10 THE COURT: Okay. And I'm not --
11 same ruling.

12 SOLICITOR STEINBERG: Thank you,
13 Your Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR STEINBERG:

16 Q. At any point did Marshall Hill tell
17 you why he didn't tell you the truth the
18 first time you interviewed him?

19 A. No, sir. He did not.

20 Q. You had in your possession or at
21 least in possession in the property and
22 evidence room this walking stick/cane. At
23 the time did you feel it necessary, following
24 this interview, to send it for any additional
25 testing or the fingerprints or DNA or

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1 anything?

2 A. Immediately we did not but we
3 initially did for the DNA testing.

4 Q. And upon whose request did you do
5 that?

6 A. Yours.

7 Q. And was there any useful informa-
8 tion, any DNA obtained from that test?

9 A. No, sir. There was none.

10 Q. Okay. Now, were you surprised by
11 that considering where the injuries were?

12 A. Taking into consideration that the
13 victim was wearing clothing no, not really.

14 Q. Thank you Investigator Fortner.
15 Please answer any opposing counsel's
16 questions.

17 MS. WICKER: May it please the
18 Court.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MS. WICKER:

22 Q. Good afternoon, Investigator.

23 A. Good afternoon.

24 Q. So you were the lead investigator in
25 this case; correct?

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1 A. Yes, ma'am.

2 Q. And when you initially responded on
3 scene, you noted that Mr. Hill could not be
4 interviewed because he was too intoxicated at
5 that time?

6 A. That's correct. He was grossly
7 intoxicated. Yes.

8 Q. Were fingerprints obtained through-
9 out the house? Do you know?

10 A. No, they were not.

11 Q. So you did attend the autopsy?

12 A. I did. Yes, ma'am.

13 Q. Okay. Did Investigator Bailey go
14 with you as well?

15 A. He did. Yes, ma'am.

16 Q. And let me just kind of go back to
17 when you initially were at the home, did you
18 see a Mason jar with water located next to
19 Billy Patterson?

20 A. There was a Mason jar with some type
21 of clear liquid in it. I'm not sure if it
22 was water, just noted a clear liquid.

23 Q. When you arrived, the victim was
24 lying on the ground; correct?

25 A. When I got there, he was on his

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1 back, yes.

2 Q. Are you aware that that was due to
3 the fact that EMS had instruct Mr. Barksdale
4 to lie him down to administer CPR in that
5 manner?

6 A. Yes, I was. Yes.

7 Q. Was EMS on scene when you arrived?

8 A. Not when I arrived. EMS had already
9 cleared the scene when I got there.

10 Q. Through the course of your
11 investigation were you aware that EMS tore
12 Mr. Patterson's shirt, the one he was wearing
13 in those photos?

14 A. That was a possibility that I had
15 considered. Yes, ma'am.

16 Q. Okay. Then again when you went to
17 Mr. Hill's residence on August 15th, he told
18 you he'd been drinking that day; correct?

19 A. He did mention that he had been
20 drinking. Yes.

21 Q. He did accompany you and
22 Investigator Bailey to the law enforcement
23 center though?

24 A. He did. Yes, ma'am.

25 Q. And he sat with you and Investigator

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1 Bailey in your office?

2 A. He did, yes.

3 Q. And that's the one that is not
4 recorded for us?

5 A. That is correct. Yes, ma'am.

6 Q. Okay. How long between that
7 interview where it's not recorded and the
8 interview that you did record, how much time
9 had lapsed between that. Do you know?

10 A. Fifteen minutes at the most. It
11 wouldn't be any more than that.

12 Q. Okay. Do you recall what time you
13 actually picked him up from his residence?

14 A. I can't remember what time it was
15 that we started that interview in there. But
16 I mentioned it's like three o'clock or
17 something like that when we get to the law
18 enforcement with him. So it was probably a
19 little before three or so in the afternoon
20 when we picked him up.

21 Q. Okay. I don't have any further
22 questions. Thank you, Investigator.

23 SOLICITOR STEINBERG: Just very
24 briefly.

25 REDIRECT EXAMINATION

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1 BY SOLICITOR STEINBERG:

2 Q. And to be fair to the Defendant, do
3 you have any reason to disbelieve that he
4 brought a jar of water, that his hands held
5 the water that was brought out to defendant
6 [sic]?

7 A. Yeah. I have no reason to
8 disbelieve that he took it to him, no.

9 SOLICITOR STEINBERG: That's all
10 the questions the State has.

11 THE COURT: All right. Thank you.

12 WITNESS: Yes, sir.

13 (WITNESS STEPS DOWN)

14 SOLICITOR STEINBERG: Your Honor,
15 before the next stage I have to address some
16 issues with the court reporter.

17 (OFF RECORD DISCUSSION)

18 SOLICITOR STEINBERG: Your Honor,
19 I'd like to move items 5 through 16 in.
20 These are photographs that Sergeant Hamilton
21 discussed and I believe actually were --
22 these were shown and published already so
23 they should be introduced.

24 THE COURT: Which ones?

25 SOLICITOR STEINBERG: I've been

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1 told items 5 through 16 are photographs.
2 They are photographs that were shown to the
3 jury. I would ask that State's Exhibits 5
4 through 16 be introduced at this time.

5 THE COURT: All right. Any
6 objection?

7 MS. WICKER: If I could see them.

8 THE COURT: Go ahead and show ---

9 MS. WICKER: I'm not sure I recall
10 exactly which ones he's talking about.

11 MS. WICKER: No objection, Your
12 Honor.

13 THE COURT: All right. They're in
14 without objection.

15 (SO ENTERED STATE'S EXHIBIT 5)

16 (SO ENTERED STATE'S EXHIBIT 6)

17 (SO ENTERED STATE'S EXHIBIT 7)

18 (SO ENTERED STATE'S EXHIBIT 8)

19 (SO ENTERED STATE'S EXHIBIT 9)

20 (SO ENTERED STATE'S EXHIBIT 10)

21 (SO ENTERED STATE'S EXHIBIT 11)

22 (SO ENTERED STATE'S EXHIBIT 12)

23 (SO ENTERED STATE'S EXHIBIT 13)

24 (SO ENTERED STATE'S EXHIBIT 14)

25 (SO ENTERED STATE'S EXHIBIT 15)

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1 (SO ENTERED STATE'S EXHIBIT 16)

2 SOLICITOR STEINBERG: Madam Court

3 Reporter is there anything else that ---

4 COURT REPORTER: Yes, there is.

5 (OFF RECORD DISCUSSION)

6 SOLICITOR STEINBERG: Your Honor,

7 I'd also ask to introduce items 50 through
8 56.

9 THE COURT: Show them to the
10 defense.

11 SOLICITOR STEINBERG: Yes, sir.

12 MS. WICKER: No objection.

13 (SO ENTERED STATE'S EXHIBIT 50)

14 (SO ENTERED STATE'S EXHIBIT 51)

15 (SO ENTERED STATE'S EXHIBIT 52)

16 (SO ENTERED STATE'S EXHIBIT 53)

17 (SO ENTERED STATE'S EXHIBIT 54)

18 (SO ENTERED STATE'S EXHIBIT 55)

19 (SO ENTERED STATE'S EXHIBIT 56)

20 (OFF RECORD DISCUSSION)

21 SOLICITOR STEINBERG: I am going to
22 hand Exhibit Number 81 back to the court
23 reporter.

24 THE COURT: All right.

25 SOLICITOR STEINBERG: And the State

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1 at this point rests their case.

2 THE COURT: All right. Ladies and
3 gentlemen as the State has indicated that is
4 the conclusion of their case in chief. So at
5 this point, that's a good time for us to
6 break for the day.

7 We will start back in the morning at
8 10:00, all right? So you need to be back in
9 jury room at 10:00.

10 So, again, my four rules I give you.
11 There's no discussion about the case amongst
12 yourselves, among your family or friends
13 anything like that. That's not permissible.
14 We've not gotten to that stage yet.

15 Number two, don't do any independent
16 research at all. Any of the information that
17 you're to consider in this matter is
18 admissible evidence to come in this courtroom
19 as I've ruled on.

20 The third thing is if there's any
21 type of media coverage by newspaper, radio,
22 TV or social media of any type, please
23 disregard it. Do not review such
24 information.

25 And lastly, if you're contacted in

1 any way, get as much information about the
2 person who contact and advise the bailiff. I
3 don't expect it, but the only person that
4 should contact you would be possibly the
5 clerk's office.

6 Other than that, again, you're to be
7 back in your room at 10:00 in the morning.
8 Thank you. Have a good evening.

9 (JURY OUT AT 5:16 P.M.)

10 THE COURT: Mr. Steinberg, I
11 wanted to, I guess, elaborate on my ruling a
12 little bit on your -- because I know you went
13 to a lot of trouble on the transcripts. My
14 view of the transcripts is if the jury -- if
15 people generally have problems understanding
16 what they're saying, then I think that's up
17 to the jury to decide what that is.

18 I mean, otherwise, we're relying on
19 that person that typed it. And how do we
20 know that she has better ears or understood a
21 little better than we did.

22 I think it gets to a point -- in the
23 parts that -- the primary parts, you know, I
24 don't think there's any question that you
25 could understand those. But I think if there

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1 are any issues of understanding then I --
2 it's not like a certified court reporter or
3 certain situations at that point. I think
4 then you become relying on that transcript.
5 They put more faith in whatever that person
6 typed. So that's kind of where I was going
7 with that. I'm sorry I didn't explain that
8 more earlier, but that's kind of the way I
9 feel about transcripts. And that's one of
10 the basis for that.

11 But we've had enough versions of the
12 statement.

13 SOLICITOR STEINBERG: Yes, sir.

14 THE COURT: They have plenty of
15 versions to consider. So -- anyway. I guess
16 we want to talk -- well, let's go ahead and
17 hear your Motions.

18 MS. WICKER: Your Honor, I would
19 just for the record renew all our Motions
20 that we've made. I also make a Motion for
21 directed verdict at this time.

22 THE COURT: All right. And I
23 think that clearly in light of the -- first,
24 I would stand by my rulings previously and
25 deny those Motions. I think there's clearly

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Advice & Examination of Defendant's Right to Testify

1 factual issues to be presented to the
2 jury in this matter.

3 So I assume -- y'all want to go over
4 with your client in the morning. About not
5 testifying and y'all can let me know at that
6 point.

7 MS. WICKER: Yes, sir. That would
8 be all right.

9 THE COURT: And then do y'all have
10 requests to charge?

11 MS. WICKER: Judge, we probably
12 will. Could we e-mail those to your clerk
13 this evening?

14 THE COURT: Yes. Well -- yeah.
15 Just e-mail me and my law clerk. How about
16 that?

17 MS. WICKER: Okay.

18 THE COURT: Do you have some?

19 SOLICITOR STEINBERG: Yes, sir,
20 Your Honor. I do.

21 THE COURT: Let's just generally.
22 Y'all want to discuss maybe kind of generally
23 what everybody's thinking about now?

24 MS. WICKER: Yes, sir. Your Honor.

25 THE COURT: Because we've got a

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1 draft of it. And let's kind of -- just
2 so everybody can be -- because if your client
3 doesn't testify then we'll be going straight
4 into, you know, closing argument again. If
5 he does testify, we won't. All right. Let
6 me see here.

7 All right. And I'll just kind of go
8 through what my charge will be. And then
9 y'all, you know -- at some point when I get
10 it kind of finalized, I'll be glad to e-mail
11 it to y'all so y'all can have it. All right.
12 All right.

13 The general charge about
14 consideration of indictment and charge not
15 evidence.

16 Presumption of innocence charge.

17 Reasonable doubt.

18 A general discussion about duties of
19 jury and the trial judge.

20 Direct and circumstantial evidence.

21 Credibility of witnesses.

22 Expert witness.

23 If your client does testify then
24 this won't be included. But if he doesn't
25 testify then the standard one about failure

1 to testify.

2 Prior inconsistent statements.

3 At this point there's no discussion
4 about prior -- I mean, if he doesn't testify
5 there won't be anything about record. If he
6 does and there is a prior record, which, I
7 mean, I don't not whether there is or not.
8 Then we would put in the information about
9 the prior record.

10 Statement of Defendant. We do need
11 to put that in there since there's clearly
12 been statements made.

13 General charge on murder regarding
14 various definitions of malice and malice
15 aforethought.

16 Deadly weapons.

17 What about voluntary manslaughter?
18 What's going to be y'all's position on that?

19 MS. WICKER: I understand that the
20 State is going to ask for it. Your Honor, I
21 think our issue is going to be we would be
22 asking for involuntary as well as self-
23 defense. But that's obviously -- Mr. Hill,
24 would need to testify.

25 THE COURT: Right.

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1 MS. WICKER: But that would really
2 be what we were considering outside of what
3 you had already considered, Your Honor.

4 THE COURT: Right. As of now, I
5 think there's testimony that would support
6 voluntary manslaughter.

7 SOLICITOR STEINBERG: Your Honor,
8 I am opposed to it. However, just again in
9 hearing this, the defendant actually does say
10 the magic words. He said, "I lost it." I
11 think he actually repeated it. He said 'I
12 lost it because someone was stealing my
13 property.' I think that's going to be the
14 only thing that -- no voluntary manslaughter
15 charge.

16 THE COURT: And I think -- again,
17 that's my big -- and as of now, I mean, I've
18 got a nothing for a voluntary manslaughter.
19 Again, there's nothing in the record now that
20 would support that or any self-defense.

21 MS. WICKER: Right.

22 THE COURT: And then discuss about
23 a jury verdict.

24 MS. WICKER: Those are just any
25 other that we would be ---

1 THE COURT: Right. Anyway, those
2 are my -- what I would be -- and I'd be glad
3 to take up any particular charges from y'all
4 and review them as well.

5 SOLICITOR STEINBERG: Thank you,
6 Your Honor. I want to hand up a copy of my
7 request to charge. This, of course, was
8 prepared prior to trial.

9 I'm asking for voluntary
10 intoxication.

11 I'm asking for murder..

12 Could this be marked as a Court's
13 Exhibit.

14 COURT REPORTER: Yes, sir. It'll
15 be Court's Exhibit Number 2.

16 (SO ENTERED AS COURT'S EXHIBIT 2)

17 SOLICITOR STEINBERG: I'd ask that
18 voluntary manslaughter be charged essentially
19 in the guidance provided by the request to
20 charge. I am not in favor and I am opposing
21 involuntary manslaughter being charged and
22 self-defense or defense in habitation.

23 THE COURT: Well, I don't think
24 there's any request for that at this point.

25 MS. WICKER: Not yet, Your Honor.

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1 SOLICITOR STEINBERG: Just
2 basically disregard that. That's just --
3 that was almost preemptive.

4 I do ask that voluntary intoxication
5 be charged and that malice aforethought be
6 charged.

7 THE COURT: All right. Anything
8 else?

9 MS. WICKER: I don't think so at
10 this time, Your Honor.

11 THE COURT: All right. And I've
12 got another matter in the morning. That's
13 why we're a little bit later until 10:00 so
14 I should be in my chambers by 9:30.

15 MS. WICKER: Okay.

16 THE COURT: All right.

17 SOLICITOR STEINBERG: Thank you,
18 Your Honor.

19 MS. WICKER: Thank you, Your Honor.

20 THE COURT: Y'all have a good
21 evening and we'll see y'all in the morning.

22 The verdict form, again, it would be
23 a standard just the indictment, "We, the
24 jury, find him" guilty of murder or guilty of
25 voluntary manslaughter or not guilty based on

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1 what we have now.

2 MS. WICKER: Okay. Thank you,
3 Judge.

4 (COURT IN RECESS)

5 (TRANSCRIPT CONTINUED ON NEXT PAGE)

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10:00 A.M.

(DEFENDANT PRESENT)

THE COURT: Good morning. I guess we can go over Defendant's right to testify.

MS. WICKER: Yes, Your Honor

THE COURT: Okay. Mr. Hill, good morning. If you'll stand up.

DEFENDANT: (Complied)

THE COURT: And I'll swear you in and if you need to sit down that's fine. Whatever's comfortable. If you'll raise your right hand.

DEFENDANT: (Complied)

(DEFENDANT DULY SWORN)

THE COURT: All right. And all the questions I'm going to ask you, I'm going to go through with you is just about your right to testify.

First of all, as you probably know, it's totally up to you whether you testify or not, okay?

DEFENDANT: (Affirmative nod).

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1 THE COURT: I'm sure you've talked
2 with your attorneys at length about this and
3 whether you need to testify or whether you
4 want to testify. But ultimately that
5 decision is up to you. And first of all, I'm
6 going to explain your rights and get some
7 additional -- you can sit down if you need
8 to.

9 DEFENDANT: (Seated).

10 THE COURT: I just need to get
11 some additional information and then I'm
12 going to go further.

13 First of all, you have the right to
14 testify in your trial. But you also have a
15 right to remain silent. And that's your
16 constitutional right. And what that means is
17 you don't have to testify. Nobody can force
18 you to testify.

19 If you decide you don't want to
20 testify then I will instruct this jury that
21 they're not to consider that at all in their
22 deliberations whether you testify or not
23 because it's still up the State to meet their
24 burden, to prove you guilty beyond a
25 reasonable doubt. And you don't have to prove

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1 yourself innocent.

2 So, do you understand that that's
3 your right?

4 DEFENDANT: Yes, sir.

5 THE COURT: Okay. And first of
6 all, if you do testify you realize what as
7 I'm sure your attorneys have discussed with
8 you, there are strategy reasons to testify or
9 not to testify because of last arguments and
10 stuff like that. I mean, you know, there's
11 some strategy reasons in addition to
12 substantive reasons. And you understand that
13 and you've talked to your attorneys about
14 that?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. Also know
17 if you testify, then you're just like any
18 other witness and you're subject to being
19 cross-examined about prior statements and
20 also possibly, just like any witness, where
21 it could be -- you may have a criminal record
22 that is relevant.

23 And at this time -- Mr. Steinberg, I
24 know I started a little bit early do you have
25 the information as far as his criminal record

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1 that could be used?

2 SOLICITOR STEINBERG: Yes, Your
3 Honor. I informed opposing counsel. He has
4 no record I could use against him unless he
5 opens the door to a CDV, which also involved
6 a television of all things. I've told
7 counsel not to bring that up unless the
8 defendant specifically opens that door.

9 THE COURT: Okay. Do you
10 understand then what he said?

11 DEFENDANT: (No verbal response).

12 THE COURT: In other words he said
13 there's no criminal record that he can use
14 against you unless you bring up certain
15 information, which your attorneys have told
16 you, it could be that your prior record with
17 a criminal domestic violence could be
18 relevant. But as of now, it's not. It
19 depends on how the testimony goes. But other
20 than that, there's no other criminal record
21 that could come into play.

22 So I would ask you, do you need any
23 additional time. And we'll have just a few
24 minutes before we actually testify. But do
25 you need any additional time to talk with

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1 your attorneys about whether you want to
2 testify or not?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay. Do you need any
5 more time to talk with your attorneys?

6 DEFENDANT: I'm gonna testify.

7 THE COURT: You want to testify?

8 DEFENDANT: Yes, sir.

9 THE COURT: Okay. Again, I will
10 tell you before we bring the jury out, you
11 can change your mind. You know, by telling
12 me now doesn't mean you have to testify. But
13 when you get ready -- when the jury is out
14 and you stand up and at that point, you know,
15 the next step is up to you.

16 And you're making this decision. Is
17 this your decision?

18 DEFENDANT: Yes, sir.

19 THE COURT: And you've made it
20 with advice of your attorneys?

21 DEFENDANT: Yes, sir.

22 THE COURT: And this decision is
23 made freely and voluntarily. Nobody's
24 forcing you to do it?

25 DEFENDANT: No, sir.

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1 THE COURT: Nobody's coercing you
2 to do it, are they?

3 DEFENDANT: No, sir.

4 THE COURT: Again, do you have any
5 questions of me about your right to testify
6 and/or your right not to testify?

7 DEFENDANT: No, sir.

8 THE COURT: All right. Well, I
9 find that you understand your rights. That
10 you have made a voluntary decision to testify
11 and we'll bring the jury in in just a few
12 minutes and that will be your right again.
13 If you change your mind between now and then,
14 just let your attorneys know. So this is not
15 the final decision, you can change your mind
16 should you decide to.

17 DEFENDANT: I understand.

18 THE COURT: All right. Anything
19 else?

20 SOLICITOR STEINBERG: No, sir.
21 Your Honor.

22 THE COURT: And you expect how
23 many witnesses?

24 MS. WICKER: Your Honor, I really
25 only have Mr. Hill.

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1 THE COURT: Okay.

2 MS. WICKER: I wouldn't anticipate
3 that his testimony will be particularly -- I
4 don't know what ---

5 THE COURT: Right. Do y'all
6 expect any -- I mean, I know you can't
7 anticipate, but do you expect any additional
8 testimony from your side?

9 SOLICITOR STEINBERG: No, sir. I
10 don't expect any. I think cross-examination
11 might be lengthy.

12 THE COURT: All right. Well, then
13 we should be able to go to the jury this
14 morning then?

15 SOLICITOR STEINBERG: Yes, sir.

16 (OFF RECORD DISCUSSION)

17 THE COURT: Mr. Hill, you're still
18 going to testify, right?

19 DEFENDANT: Yes, sir.

20 THE COURT: Okay.

21 (BRIEF RECESS AWAITING JUROR)

22 BAILIFF: We're ready, Your
23 Honor.

24 THE COURT: All right. Bring them
25 in.

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Testimony of Defendant Marshall Hill - Direct Examination

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1 (JURY IN AT 10:00 A.M.)

2 THE COURT: Good morning, ladies
3 and gentlemen. I hope everybody had a nice
4 evening. We will now continue with the trial
5 of this case. Ms. Wicker?

6 MS. WICKER: May it please the
7 Court, Your Honor. The Defense calls
8 Marshall Hill to the stand.

9 THE COURT: All right. Mr. Hill
10 if you'll come around.

11 (WITNESS TAKES STAND)

12 MARSHELL HILL, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. WICKER:

17 Q. Good morning, Mr. Hill.

18 A. Good morning.

19 Q. Mr. Hill, would you state your full
20 name for the record, please?

21 A. Marshall Hill.

22 Q. Mr. Hill, are you working now?

23 A. No.

24 Q. Why aren't you working?

25 A. I'm on disability.

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Testimony of Defendant Marshall Hill - Direct Examination

1 Q. Well, what are you on disability
2 for?

3 A. I need a hip operation.

4 Q. Is that why you use the cane?

5 A. Yes.

6 Q. How long has that been a problem for
7 you?

8 A. It started out slow but it gradually
9 got worse and worse.

10 Q. Does that limit your mobility?

11 A. Yes.

12 Q. What did you do in the past? What
13 did you do before? Before you went on
14 disability, where were you working?

15 A. Carolina Fab (phonetic).

16 Q. How long did you work there?

17 A. About eighteen, nineteen years.

18 Q. All right. Mr. Hill, how do you
19 know Billy Patterson?

20 A. We drinking partners.

21 Q. I'm going to ask you about August
22 13th, 2013, okay? Did Billy come over to your
23 house that day?

24 A. It was later, that evening.

25 Q. Why did he come over?

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Testimony of Defendant Marshall Hill - Direct Examination

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1 A. Well, we have drinks.

2 Q. Is that what y'all were doing all
3 the day or the time that y'all were hanging
4 out?

5 A. The time that we was together, yes.

6 Q. Did you invite Billy into your home?

7 A. After we had set outdoors for a
8 while.

9 Q. After you set outdoors for a while?

10 A. Yes.

11 Q. Why did you invite him in?

12 A. Well, I was still feel like drinking
13 so I invited him in.

14 Q. Did he come into your house?

15 A. Yes, he did.

16 Q. Do you know how long he was over at
17 your house?

18 A. I don't remember.

19 Q. Okay. Did you, at any point, ask
20 Billy to leave your house?

21 A. When I had got a little too
22 intoxicated.

23 Q. What happened when you asked Billy
24 to leave?

25 A. He didn't want to.

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Testimony of Defendant Marshall Hill - Direct Examination

1 Q. Did you ultimately let him stay?

2 A. Yes, after my roommate come.

3 Q. Why did you let him stay?

4 A. Because I didn't think that he could
5 make it. We was all drunk.

6 Q. Okay. So were you letting him sleep
7 it off basically?

8 A. Basically, yes.

9 Q. When did you next see Billy?

10 A. Uh -- (pause).

11 Q. Or let me back up. After you
12 decided to let him sleep it off, what did you
13 do?

14 A. I went and lay down.

15 Q. And where did you go lay down?

16 A. Across my bed.

17 Q. And where was Billy?

18 A. Still in the chair.

19 Q. And where was the chair?

20 A. In the living room.

21 Q. So after you went into your bedroom
22 -- when did you next see Billy?

23 A. Standing behind my TV.

24 Q. Do you remember when that was?

25 Morning, later that night?

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1 A. It was late that night.

2 Q. What was Billy doing?

3 A. He was fumbling around in the back
4 of the TV.

5 Q. Okay. What did you think he was
6 trying to do by fumbling around back there?

7 A. To take the TV.

8 Q. Did you say anything to Billy about?

9 A. I asked him what was he doing.

10 Q. What was his response?

11 A. He did not say anything.

12 Q. Did he just stand back there or what
13 did you do? What did he do?

14 A. He stood there for a minute.

15 Q. What did you tell him when he was
16 standing there?

17 A. "You have to leave."

18 Q. And did he leave?

19 A. No.

20 Q. What did he do?

21 A. He just stood there and was start
22 walking towards me.

23 Q. And what did you think when he
24 started walking towards you?

25 A. I got scared because I never seen

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1 him do that before.

2 Q. What did you think he was going to
3 do?

4 A. I was thinking that he was going to
5 hurt me.

6 Q. Did he -- what did you do because
7 you were -- when you felt like he wasn't
8 going to stop coming towards you, what did
9 you do?

10 A. I hit him.

11 Q. Well, why did you hit him?

12 A. Because I was fearing for my life.

13 Q. Do you remember how many times you
14 hit him?

15 A. I don't recollect.

16 Q. What were you trying to accomplish
17 in hitting him?

18 A. Get him out of the house.

19 Q. Were you ultimately able to get him
20 out of your house?

21 A. After a few minutes I got him to the
22 door and I pushed him on out the door.

23 Q. Anything happen with the door when
24 you pushed him out?

25 A. He tore the hinges and stuff off the

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1 screened door.

2 Q. When he was out of the house and
3 after he'd torn off the door, what was he
4 doing?

5 A. He was standing in the yard.

6 Q. What did you do?

7 A. I -- I told him not to come back and
8 I slammed the door.

9 Q. And what did you do after you
10 slammed the door?

11 A. I went back to my room. I kind of
12 was shook up so I drunk some more.

13 Q. Okay. When did you next see Billy?

14 A. That morning.

15 Q. Where was he?

16 A. On the back side of my house.

17 Q. Why were you back there?

18 A. I'd come out to feed the dog.

19 Q. When you saw Billy, was he breathing
20 at that point or not ---

21 A. Yes.

22 Q. He was? Okay. Did the two of you
23 say anything to each other?

24 A. Yes.

25 Q. What did you say?

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1 A. I just said what was he still doing
2 up here.

3 Q. What did you do?

4 A. Nothing.

5 Q. Did he ask you for anything?

6 A. A glass of water.

7 Q. What did you do when he asked you
8 for the water?

9 A. I went in the house and put some ice
10 in a glass and filled it up with water and
11 took back out to him.

12 Q. What did you do after you brought
13 him the water?

14 A. I finished feeding the dog.

15 Q. Okay. Did you hang out in the back
16 yard or where did you go after that?

17 A. I went back in the house.

18 Q. After that, when did you next see
19 Billy?

20 A. When I come back out again.

21 Q. How was he then?

22 A. He was slumped over.

23 Q. When you saw him slumped over, what
24 did you do?

25 A. I went to him and put my hand up

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1 under his lungs.

2 Q. Was he breathing?

3 A. No.

4 Q. So what did you do?

5 A. I ran in the house and got
6 Barksdale.

7 Q. Do you remember when the deputies
8 came out that day after Barksdale called
9 9-1-1?

10 A. Yes.

11 Q. Were you sober when they arrived?

12 A. No.

13 Q. Do you remember really what you said
14 to them?

15 A. No.

16 Q. Okay. How about the next day? Do
17 you remember when Investigators Bailey and
18 Fortner came back out to talk to you?

19 A. Yes.

20 Q. What had you been doing before they
21 got there?

22 A. Drinking.

23 Q. How much had you had to drink?

24 A. A pint.

25 Q. A pint of what?

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1 A. Vodka.

2 Q. Do you recall much of your
3 conversation with them?

4 A. In spurts.

5 Q. Did you tell the investigators that
6 you'd been drinking?

7 A. Yes.

8 Q. Mr. Hill, we've talked about how you
9 were drinking the night that you were with
10 Billy. How you were drinking when you were
11 talking to law enforcement. How can you
12 remember what happened with Billy?

13 A. It was just like vaguely.

14 Q. Vaguely?

15 A. Yes.

16 Q. Do you remember your mental state
17 when you were with Billy, how you felt when
18 you saw him with the TV?

19 A. Frustrated.

20 Q. How did you feel when he started
21 walking towards you?

22 A. Scared.

23 Q. What did you think would happen if
24 Billy got towards you?

25 A. I think if he would have pushed me

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1 down, I would have been over.

2 Q. What was your intent in hitting
3 Billy with the stick, with your cane?

4 A. To get him to leave.

5 Q. Did you think you had any other
6 option at that time?

7 A. No.

8 Q. Mr. Hill, will you answer any
9 questions the Solicitor has for you?

10 A. Yes, ma'am.

11 SOLICITOR STEINBERG: Thank you,
12 Ms. Wicker.

13 CROSS-EXAMINATION

14 BY SOLICITOR STEINBERG:

15 Q. Mr. Hill, I'm going to probably have
16 a few more questions that even your counsel
17 had. Let's talk about August 13th.

18 You said -- and you seemed to be pretty
19 clear about this, that when you woke up from
20 sleeping in your room, that you walked into
21 the living room and Billy was behind the TV
22 and he was fumbling with the TV; is that
23 correct?

24 A. Yes.

25 Q. Are you positive about that?

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1 A. Yes, sir.

2 Q. Even though you'd been drinking, you
3 were positive about that?

4 A. Yes, sir.

5 Q. Other times you've been drinking you
6 don't seem to be very positive or very sure
7 of things; isn't that true?

8 A. Yes, sir.

9 Q. And when you said the victim, Billy,
10 was walking towards you, do you remember that
11 very well, very clearly?

12 A. Yes. I can tell when somebody is
13 walking towards me, sir.

14 Q. Well, can you tell -- you can't tell
15 other things like when you spoke to with
16 officers and time lines. How come you can't
17 tell that?

18 A. Well, it was like a blur. It was
19 just like -- I really couldn't say, sir.

20 Q. Well, how come some things are a
21 blur and other things are not a blur?

22 A. I couldn't say, sir.

23 Q. Well, if you can't say, nobody else
24 can. I'm going to have to ask you.

25 A. I know, sir.

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1 Q. I'm going to have to ask you, do you
2 think alcohol, your alcohol, played any role
3 in this case?

4 A. Yes, sir.

5 Q. Did it play a significant role?

6 A. Yes, sir.

7 Q. Thank you. I bring you to August
8 14th around noon when the officers arrived
9 there?

10 A. Yes, sir.

11 Q. Deputy Napolitano, he was the deputy
12 that was in civilian clothes. He's now a
13 civilian. Do you remember talking to him?

14 A. Vaguely.

15 Q. Okay. Did you tell him that you
16 were not involved in the assault on Billy?

17 A. I don't remember, sir.

18 Q. That was the alcohol?

19 A. Yes, sir.

20 Q. And do you remember speaking to
21 Deputy Downey? He is now an investigator.
22 And telling him that the victim just fell
23 back, Billy just fell back. It had nothing
24 to do with you?

25 A. I don't remember, sir.

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1 Q. Okay. Do you remember speaking to
2 the two coroners that showed up?

3 A. Vaguely.

4 Q. Okay. Do you remember telling them
5 that a verbal altercation led to the door
6 coming off?

7 A. I can't remember.

8 Q. Okay. I mean, is that because of
9 alcohol?

10 A. The alcohol and it's been a while.

11 Q. Do you agree that on August 15 that
12 you agreed to meet with -- or went with
13 Investigator Fortner and Investigator Bailey,
14 who are both in the courtroom, to the law
15 enforcement center?

16 A. Yes.

17 Q. You agree you were not handcuffed?

18 A. Sir?

19 Q. You agree that you were not hand-
20 cuffed?

21 A. Yes, sir.

22 Q. You were not forced?

23 A. Yes, sir.

24 Q. And they first spoke to you in their
25 own office; is that correct?

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1 A. Yes, sir.

2 Q. Would you agree that they were
3 polite and they did not threaten you during
4 this interview?

5 A. Yes, sir.

6 Q. Okay. And this is introduced,
7 there's no dispute, so I'm not misstating
8 anything that was not recorded, okay? Do you
9 understand which interview I'm talking about?

10 A. Yes, sir.

11 Q. Okay. Do you agree they typed up a
12 statement?

13 A. Sir?

14 Q. Do you agree that they were typing
15 up the statement as you spoke?

16 A. I think so, sir.

17 Q. Do you agree that you told them that
18 Billy was not injured by you. And that he
19 came over and he simply was unable to leave
20 at some point?

21 A. Yes, sir.

22 Q. Was everything that you told those
23 officers true?

24 A. It was very vague but I think I told
25 just what I could remember.

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1 Q. Well, how come you didn't tell them
2 what you say you can remember today, which is
3 that the victim was trying to take your TV,
4 in your words?

5 A. I was scared.

6 Q. You knew that the investigators were
7 there conducting a murder investigation,
8 correct?

9 A. I don't remember.

10 Q. You don't remember what you were
11 being interviewed about?

12 A. Oh, I remember them investigating,
13 yes, sir.

14 Q. Okay. Do you think it was
15 appropriate to tell them a falsehood?

16 A. No, sir.

17 Q. So you agree that was wrong?

18 A. Yes, sir.

19 Q. Why did you tell that falsehood?

20 A. I was scared and I had been
21 drinking.

22 Q. Do you agree that you told that
23 falsehood because you wanted to avoid the
24 consequence of what happened to Billy?

25 A. No, sir. I was just frightened,

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1 drunk and scared.

2 Q. You agree they gave you an
3 opportunity to talk about that; didn't they?

4 A. Yes, sir.

5 Q. And you didn't mention anything in
6 that interview about forcing Mr. Patterson
7 out of your house with a stick, did you?

8 A. No, sir.

9 Q. Did one of the investigators,
10 specifically Investigator Fortner, did he ask
11 you a question about a TV?

12 A. Yes, sir.

13 Q. And what did he then say?

14 A. I don't remember.

15 Q. Do you deny that you told the
16 investigator that you tapped Billy on the
17 back with a stick?

18 A. I don't remember that.

19 Q. Okay. Is it possible you said that?

20 A. Yes, sir.

21 Q. All right. Do you agree they took
22 you to the Greenville City, the videotaped
23 interview room?

24 A. Yes, sir.

25 Q. And you agree that you were told

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1 that this was going to be videotaped?

2 A. Yes, sir.

3 Q. I have to go through a couple of
4 points here. Do you agree they told you that
5 you had the right to remain silent?

6 A. Yes, sir.

7 Q. And anything you say could be used
8 against you?

9 A. Yes, sir.

10 Q. And that you had the right to a
11 lawyer?

12 A. Yeah, I understood some of that,
13 sir.

14 Q. In fact, had you heard that on TV
15 and just throughout your life? Have you
16 heard those terms?

17 A. I have heard it, sir.

18 Q. Okay. Would you agree that they
19 told you repeatedly that you could end the
20 interview at any time?

21 A. Yes, sir.

22 Q. Did you understand your rights?

23 A. Vaguely, sir.

24 Q. Did the officers treat you fairly in
25 that interview?

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1 A. I would say so.

2 Q. Did they offer you water?

3 A. Yes, sir.

4 Q. Did they offer to have just one
5 officer interview you instead of having two
6 in the same room with you?

7 A. Yes, sir.

8 Q. Did you try to negotiate so that you
9 could go home? Specifically, what I'm
10 talking about is if you asked them 'if I sign
11 this document, this waiver, can I go home?'

12 A. Yes, sir, I did.

13 Q. And did they agree?

14 A. No, sir.

15 Q. And, in fact, did they say that they
16 could not make any offers or try to pressure
17 you in any way?

18 A. Yes, sir.

19 Q. Do you remember the officers talking
20 to you about this case and about how it
21 occurred?

22 A. Vaguely.

23 Q. Do you remember at about the twenty
24 minute mark -- when I say twenty-minute mark,
25 I'm talking about on the videotape. Have you

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1 had a chance to review the videotape?

2 A. Yes, sir. I've seen it.

3 Q. Did you ask the officers what did
4 they want to know?

5 A. Yes, sir.

6 Q. In fact, did you cooperate at that
7 point?

8 A. I don't remember that part, sir.

9 Q. Did you tell them specifically that
10 you only tapped him two times or so?

11 A. I really couldn't remember that.

12 Q. You saw the videotape yesterday;
13 correct?

14 A. Yes, sir.

15 Q. And on that videotape did you tell
16 the officers ---

17 A. Yeah. Yes, sir.

18 Q. Okay. And tapping him twice, you
19 agree you tapped him with this wooden stick
20 over here?

21 A. Yes, sir.

22 Q. Okay. I'll hold the stick. Which
23 end did you hold, this end I'm holding?

24 A. Yes, sir.

25 Q. The thicker end is that the part

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1 you're holding?

2 A. Yes, sir.

3 Q. Why did you tell them you only hit
4 him twice?

5 A. I didn't -- I couldn't remember
6 everything, sir.

7 Q. Well, why did you tell them twice
8 instead of say, twenty times?

9 A. Like I said, sir, I couldn't
10 remember.

11 Q. Couldn't remember?

12 A. Well, I remember hitting him but the
13 number of times, I couldn't relate, sir.

14 Q. I guess my concern is how can you
15 remember some things very well, like he was
16 fumbling with wires, allegedly, or walking
17 towards you. And sometimes you can't
18 remember something as serious as hitting a
19 person? How come you can't remember that?

20 A. Well, sir, it's -- you know, the
21 moment, sir. Things kind of foggy.

22 Q. How many seconds was there a delay
23 between you seeing him touching the TV,
24 fumbling with the TV, your words, and you
25 hitting him with a stick?

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1 A. I couldn't say, sir.

2 Q. Well, why is that such a problem.
3 Why do you remember the TV incident so well
4 but don't remember such a serious matter as
5 slamming that stick we just saw against a
6 human being?

7 A. Like I said sir, it was all like a
8 blur, like a dream.

9 Q. Do you think maybe all of this was a
10 dream?

11 A. No, sir.

12 Q. Why not?

13 A. It's reality, sir.

14 Q. Well, why do you think that maybe
15 the picking up the TV was a dream?

16 A. Something like that, sir, wouldn't
17 be hard to remember. I remember that.

18 Q. Do you remember informing the
19 officers that you had gone too far in hitting
20 Mr. Patterson?

21 A. As far as my recollection, I think I
22 did, sir.

23 Q. Do you think that -- you've already
24 answered part of this question. I want to
25 ask you a very specific question. The actual

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1 hitting, the actual striking of Mr.
2 Patterson, do you think that was in any way
3 caused by you smoking marijuana earlier or
4 drinking earlier?

5 A. Yes, sir.

6 Q. Thank you. Let's talk about Billy
7 touching the TV some more. He was fumbling,
8 in your words, with the TV. Did he pick it
9 up and move it at all?

10 A. No, it looked like to me, sir, like
11 he was taking something, you know, because I
12 got cable.

13 Q. Right.

14 A. He had to unscrew all the stuff to
15 move it.

16 Q. So you think he was unscrewing the
17 cable wires?

18 A. Yes, sir.

19 Q. Do you think that was a reason to
20 beat Billy Patterson like you did?

21 A. There's never a reason for violence,
22 sir.

23 Q. Thank you. Approximately how many
24 times do you think you hit Billy Patterson
25 before he put the TV down?

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1 A. It was -- I'm thinking myself it was
2 one or two times. But like I said, the
3 drinking was a worser. You know, like.

4 Q. Had he already put the TV down when
5 you hit him the first time or was he still
6 holding the TV when you hit him?

7 A. No, he moved away from the TV set
8 when I tapped him.

9 Q. So how many times do you think you
10 hit him after he put the TV down?

11 A. To be honest, sir, I couldn't tell
12 you because everything went blank.

13 Q. Where on his body did you hit him
14 first?

15 A. Around the legs and waist.

16 Q. Okay. And do you agree that he was
17 not fighting back?

18 A. He was trying to.

19 Q. Well, the next morning about -- I
20 mean, I don't know how many hours later, you
21 didn't have any injures on you, did you?

22 A. No, sir, aside of just being sore in
23 my hip area.

24 Q. Did you tell the officers that you
25 were sore from being assaulted?

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1

A. No, sir.

2

3

Q. You saw EMTs at that location, did you tell them that you were injured?

4

A. No, sir.

5

6

7

8

Q. Okay. You said that you hit him across the legs and across his -- I think you pointed to your mid-section, your hip area maybe.

9

A. Yes, sir.

10

11

12

Q. Why didn't you stop hitting him at that time? Why did you keep on hitting him after that?

13

A. I seen -- I don't remember.

14

Q. Did you hit him across the eye?

15

A. No, sir. I don't think so.

16

Q. You say you don't think so.

17

A. Well, I don't know what happened.

18

19

Q. Is it possible you went too far and did hit him in the eye?

20

A. I could have.

21

22

23

24

Q. Okay. When you were interviewed on that videotape we played yesterday, did you say that it was possible that you did hit him in the eye?

25

A. Anything is possible, sir, when you

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1 are mad.

2 Q. Being mad doesn't justify taking
3 human life; does it?

4 A. No, sir.

5 Q. Do you agree that after you hit him
6 a certain number of times he was not able to
7 fight back with you?

8 A. I couldn't say, sir.

9 Q. Would you agree that once he is on
10 the ground, you cannot -- you don't have fear
11 from him?

12 A. When I seen he was on the ground --
13 so I did not come down the steps, sir.

14 Q. I'm sorry. When he was on the
15 ground in your house near the couch area?
16 When he was on the ground there, did you hit
17 him on the back?

18 A. I don't remember.

19 Q. Is it possible that you hit him on
20 the back?

21 A. I don't think so.

22 Q. You saw those strikes that the
23 doctor pointed out on the back?

24 A. Yes, sir.

25 Q. Do you agree that those were caused

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1 by you?

2 A. Just like I said, sir, I don't
3 remember.

4 Q. Do you agree that once you ruptured
5 the man's testicles that he wasn't able to
6 fight back?

7 A. I really didn't know that, sir.

8 Q. Do you agree that you hit him in
9 that area?

10 A. I couldn't say.

11 Q. Now, let's talk about your fear.
12 Billy, had he ever attacked you before?

13 A. No. We've been very good friends,
14 sir.

15 Q. And you allowed him in your house in
16 the past, haven't you?

17 A. No.

18 Q. You're saying Billy had never been
19 in your house before?

20 A. No.

21 Q. Very good friends, he lives in the
22 neighborhood, he's never been in your house?

23 A. Well, see when we -- mostly when I'm
24 up I be outdoors because I have a dog. And
25 we drink out there on the back. In the

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1 summertime drink on the back 'cause the sun
2 hit on the front.

3 Q. And your fear -- you think that your
4 fear was totally justified or do you think
5 now that maybe alcohol had something to do
6 with your fear?

7 A. I believe it was the alcohol and
8 reefer, sir.

9 Q. Alcohol and reefer?

10 A. Yes, sir.

11 Q. And I thank you for your being
12 candid. I didn't know Billy Patterson when
13 he was alive. Dr. Fulcher said he weighed
14 139 pounds was only 5'8". Is that correct in
15 your understanding about that size?

16 A. I think so, sir.

17 Q. And you would agree he was not a
18 violent person?

19 A. I couldn't say, sir.

20 Q. I think you said you were good
21 friends with him; didn't you?

22 A. He never did display any violence
23 around me, sir.

24 Q. Thank you, sir. Thank you, Mr.
25 Hill.

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Testimony of Defendant Marshall Hill - Redirect Examination

1 A. Thank you, too, sir.

2 MS. WICKER: Your Honor, a brief
3 redirect?

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MS. WICKER:

7 Q. Just briefly, Mr. Hill. I just want
8 to clear up a couple of things, okay?

9 A. Yes, ma'am.

10 Q. After Billy left, after you got him
11 out of your house, did you continue to drink?

12 A. Yes.

13 Q. When you saw Billy the next morning
14 and he wasn't breathing, why didn't you
15 administer CPR?

16 A. I thinks from a previous job, that
17 if you don't know what you're doing, you
18 would do worse damage.

19 Q. Mr. Hill, did you hit Billy because
20 he moved the TV or because he was coming
21 towards you?

22 A. Because he was coming towards me.

23 Q. Do you remember -- when he was
24 coming towards you, do you remember being
25 scared at that time?

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1 A. I was very scared.

2 Q. Thank you, Mr. Hill. I don't have
3 any further questions, okay?

4 THE COURT: Thank you. You may
5 step down.

6 (WITNESS STEPS DOWN)

7 THE COURT: All right. Anything
8 else from the Defense?

9 MS. WICKER: Your Honor, at this
10 time the Defense rests.

11 THE COURT: All right.
12 All right. Ladies and gentlemen, we are at
13 another stopping point. And because the
14 Defense has rested they are not going to be
15 putting up any other testimony and evidence
16 at this time.

17 So, therefore, I'm going to send you
18 back to your jury room and talk with the
19 attorneys and we'll bring you back out as
20 soon as possible.

21 Again, as I -- I know y'all get
22 tired of hearing me say this. You're saying
23 it in your sleep, do not discuss this case.
24 After it's through you can discuss it as long
25 as you want to to anybody, as you please.

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1 But don't discuss the case and we'll bring
2 you back out in just a few minutes. Thank
3 you.

4 (JURY OUT AT 10:32 A.M.)

5 THE COURT: All right. Anything
6 further from the State at this point?

7 SOLICITOR STEINBERG: No, sir, Your
8 Honor.

9 THE COURT: All right. Anything
10 else from the Defendant?

11 MS. WICKER: No, sir.

12 THE COURT: All right. So you're
13 not going to be putting up any other
14 testimony?

15 SOLICITOR STEINBERG: No, sir.

16 THE COURT: Okay.

17 MS. WICKER: Your Honor, we just
18 need to, for the record, renew all of our
19 previous objections and our motions.

20 THE COURT: All right. And I
21 renew my rulings.

22 Now, do y'all want a charge on self-
23 defense?

24 MS. WICKER: Absolutely. Yes, Your
25 Honor.

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1 THE COURT: You indicated
2 involuntary. I don't see how that fits in
3 here.

4 MS. JOHNSON: Judge, I would ask for
5 a charge on involuntary manslaughter.

6 THE COURT: The courts have
7 instructed on a self-defense in a murder case
8 is not entitled to instructions on
9 involuntary manslaughter because the self-
10 defense itself is an intentional hitting of
11 another. So how can that be negligent?

12 MS. JOHNSON: Well, by him
13 defending his property and person ---

14 THE COURT: Which is self-defense.

15 MS. JOHNSON: Well, the second
16 definition says the unintentional killing of
17 another without malice while engaged in a
18 lawful activity with reckless disregard for
19 the safety of others. He's engaged in a
20 lawful activity by beating him, protecting
21 his house, his person and maybe was a
22 reckless or careless in that.

23 And another reason -- Judge there
24 was testimony that a healthy person could
25 have survived these injuries.

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1 THE COURT: So intending to kill
2 somebody because they're weak and a healthy
3 person would have survived, then that should
4 give you an involuntary manslaughter charge?

5 MS. JOHNSON: Well, no.

6 THE COURT: Scratch it.

7 MS. JOHNSON: I think -- yeah, I
8 mean I think it's definitely an unintentional
9 killing.

10 THE COURT: Which is voluntary
11 manslaughter. I mean, I don't see any -- I
12 mean, it's either he intentionally killed him
13 or he intentionally killed him by self-
14 defense.

15 MS. JOHNSON: Well, my co-counsel
16 pointed out that in *State v. Light* a self-
17 defense charge and an involuntary
18 manslaughter are not mutually exclusive.

19 THE COURT: I don't see any
20 criminal negligence here. That's what the
21 statute says on something like that.

22 MS. JOHNSON: I understand.

23 THE COURT: We think that maybe
24 that there's some evidence that, you know, a
25 jury a could see he was reckless in whatever

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1 he did that night.

2 SOLICITOR STEINBERG: Your Honor,
3 very briefly. I think that's where Your
4 Honor is leading, but I want to put some
5 things on the record.

6 THE COURT: She said -- I believe
7 counsel said the defendant wasn't
8 particularly reckless. Of course, that's not
9 the standard. It has to be almost criminal
10 negligence. And in that decision making the
11 -- decision making did not allow you to say
12 'I don't intend the actions.'

13 There is some case law that will
14 allow for both self-defense and involuntary
15 manslaughter. It's a very unique situation
16 where you're defending yourself and a gun
17 goes off. But I cannot imagine any case
18 involving a cane being involuntary
19 manslaughter and, most assuredly, not
20 multiple strikes.

21 I think what the cases represent
22 here, there was a self-defense involuntary
23 where the guy's getting his gun out of his
24 car, the defendant, and it accidentally goes
25 off.

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1 SOLICITOR STEINBERG: Yes, sir.

2 There are actually a number of cases. They
3 all are where there's no other witnesses and
4 the defendant is saying 'we struggled over
5 the gun' or 'I was cleaning the gun and it
6 went off.'

7 THE COURT: Right. I appreciate
8 your Motion but I just -- you know, my view
9 of the fact in the light most favorable to
10 y'all, I just don't see there is a basis for
11 involuntary manslaughter. You know, my
12 thought is murder, voluntary manslaughter and
13 self-defense.

14 SOLICITOR STEINBERG: Your Honor,
15 what self-defense charge are you using? I
16 want to make sure my language is not ---

17 THE COURT: Do y'all have -- do
18 you have access to your computer?

19 SOLICITOR STEINBERG: No, sir. I
20 don't.

21 THE COURT: I can send it to you.

22 SOLICITOR STEINBERG: I'm sorry,
23 Your Honor. Do you want me to repeat the
24 standard of *State v Davis* language:
25 objectively reasonable behavior, appropriate

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1 force used, reaction cannot last longer, must
2 be without fault. Is there anything
3 different than that you ---

4 THE COURT: Well, let me go
5 through my little thing here because it's
6 actually pretty lengthy.

7 The State has the burden of
8 disproving self-defense beyond a reasonable
9 doubt. The elements are, first the defendant
10 must be without fault bringing on the
11 difficulty. If the Defendant's conduct was
12 of the type which was reasonably calculated
13 to provoke the deadly assault, the defendant
14 would be at fault in bringing on the
15 difficulty and would not be entitled to
16 acquittal.

17 Imminent danger. The defendant was
18 actually in imminent danger. Describes
19 imminent danger. I've got in here right to
20 act on appearance. The defendant does not
21 have to show that he was actually in danger.
22 It is enough that defendant believed he was
23 in imminent danger, such that a reasonably
24 prudent person of ordinary firmness and
25 courage would have had the same belief.

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1 The relative sizes, ages and weights
2 of the defendant and victim may be considered
3 in deciding the actual need for force.

4 Intoxication of victim may be
5 considered in deciding whether defendant's
6 fear of death was reasonable.

7 Then the third element, no other way
8 to avoid danger.

9 Duty to retreat. The Defendant was
10 on his own premises. Defendant had no duty
11 to retreat before acting in self-defense.

12 SOLICITOR STEINBERG: Judge, that's
13 correct. However, we have to be clear that
14 he can't just use force.

15 THE COURT: Right, then I go into
16 the degree of force.

17 SOLICITOR STEINBERG: Thank you,
18 Your Honor.

19 THE COURT: A person cannot be
20 required -- yeah. A person cannot be
21 required to make an exact calculation to the
22 degree of the force necessary. A defendant
23 has the right to use the force needed to
24 avoid death. The force used in self-defense
25 does not have to be limited. A defendant has

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1 the right to use so much force as appeared to
2 be necessary and that he believed he needed
3 to prevent death or serious bodily harm. All
4 right.

5 Anything else on that? (No
6 response). That's the extent of the self-
7 defense charge.

8 SOLICITOR STEINBERG: Judge, that's
9 all the State would request.

10 THE COURT: Anything else y'all
11 want to add to that?

12 MS. WICKER: Not to that charge,
13 Your Honor. But I would -- I understand your
14 ruling on the Castle Doctrine immunity. I
15 would, just for the record, ask that you
16 charge on that as well.

17 THE COURT: Well, I kind of touch
18 on it a little bit in my self-defense.

19 MS. WICKER: Yes, sir.

20 THE COURT: So -- all right. And
21 I am taking out the involuntary. All right.

22 Prior record?

23 All right. Let me just briefly read
24 through this.

25 Do y'all need some time then? Y'all

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1 need a few minutes?

2 MS. WICKER: Just a couple would be
3 helpful.

4 THE COURT: Would you instruct the
5 jury that we'll be a few more minutes and
6 we'll bring them. I just kind of like to let
7 them know what's going on.

8 BAILIFF: Yes, sir.

9 THE COURT: How about ten minutes?
10 And that way we can make sure my charge --
11 oh, how about the verdict form? Y'all want
12 to look at this and see? Yeah, that's your
13 copy.

14 SOLICITOR STEINBERG: These are our
15 copies?

16 THE COURT: Yes, sir.

17 MS. WICKER: Oh, great.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Ready?

21 SOLICITOR STEINBERG: Your Honor,
22 just one minor issue. Yesterday I requested
23 a jury charge on voluntary intoxication. I
24 don't know if you responded.

25 THE COURT: Well, I've got it in

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1 the charge. It just says voluntary
2 intoxication isn't a defense to a criminal
3 charge in South Carolina.

4 SOLICITOR STEINBERG: Yes, sir.
5 Thank you.

6 THE COURT: Okay. All right.
7 Anything else before we bring the jury in?
8 From the State?

9 SOLICITOR STEINBERG: No, sir,
10 Your Honor.

11 THE COURT: Anything from the
12 Defense?

13 MS. WICKER: No, sir.

14 THE COURT: All right. Bring them
15 in. The verdict form was okay with
16 everybody?

17 MS. WICKER: Yes, sir, Your Honor

18 SOLICITOR STEINBERG: Yes, sir.

19 (JURY IN AT 11:05 A.M.)

20 THE COURT: All right. Ladies and
21 gentlemen, we are now at the final stage of
22 the trial. The parties have rested and
23 that's -- all the testimony and evidence
24 that's going to be presented in this case has
25 been presented. So all the facts and all of

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1 the evidence that you are to consider is now
2 before you. So, now we get to the final
3 stage.

4 First, it's my understanding y'all
5 have all ordered lunch. And what we
6 anticipate is that we'll have closing
7 arguments from the attorneys. Then I will
8 charge you on the law, which should put us
9 some time probably after 12:00. At that
10 point you can go back to your room and begin
11 deliberations when I instruct you to. But
12 that way, too, we'll have lunch being
13 delivered about 12:30 so that you can --
14 we'll have to take a break in your
15 deliberations and we'll have lunch. And
16 that's kind of why we did a little
17 differently than we did yesterday.

18 MADAM FORELADY: (Raises hand)

19 THE COURT: Yes.

20 MADAM FORELADY: We thank you for
21 our lunch.

22 THE COURT: Oh, you're welcome.
23 Well, no, thank the County of Greenville, the
24 clerk's office. That doesn't come out of my
25 budget.

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1 All right. And as I said now we'll
2 have closing arguments from the attorneys and
3 listen carefully. And, again, these are
4 arguments. This is not evidence. This is
5 their summary of the case. And then when
6 they conclude I will give you the law of the
7 case or the jury charge, instruction.

8 All right. Counsel.

9 MS. WICKER: May it please the
10 Court?

11 THE COURT: Yes.

12 CLOSING STATEMENT

13 BY MS. WICKER: We're here on a very
14 serious matter, Billy Patterson's death. And
15 we're here dealing with a very serious
16 charger, murder.

17 Marshall Hill is not guilty. He was
18 acting to protect himself. He was acting in
19 self-defense.

20 On August 13th of 2013, Marshall Hill and
21 Billy Patterson were hanging out. They were
22 drinking buddies. They drank quite a bit.
23 Marshall said, 'Hey look, it's time for you
24 to go home, I'm tired.'

25 Billy said, 'I don't want to.'

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1 Marshell's roommate Barksdale says,
2 'Look, just let him sleep it off' and
3 Marshell Hill said 'okay, fine.'

4 He's awoken a short time later and finds
5 Billy behind his TV unfastening the cable,
6 trying to steal it. Marshell confronts him
7 about 'what are you doing?' Billy comes at
8 Marshell Hill. Billy's not in the best of
9 shape but he's certainly better off than Mr.
10 Hill, who needs a cane to get around.

11 Marshell says 'look, you got to go.'

12 Billy continues to come after him.

13 So Marshell uses the only thing he has
14 available to him. Because he's afraid he is
15 going to be seriously hurt. He takes his
16 cane, which he has, and hits Billy until he
17 can get him out of his house.

18 Marshell goes back to bed after seeing
19 Billy walk off, sleeps it off.

20 Comes out the next morning sees Billy
21 back around by the side of his house.
22 Marshell come out to take care of his dog.
23 He goes, 'Hey, what are you still doing here?
24 You've got to go.' Billy asked for some
25 water. Marshell goes in the house and brings

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1 him some ice water and says 'look, have the
2 water but you've got to go.'

3 Marshall goes back inside, comes out a
4 little while later and finds Billy and he is
5 not breathing. He doesn't want to administer
6 CPR and hurt him so he goes and gets his
7 roommate who works in the healthcare
8 profession. They call 9-1-1.

9 That's the truth.

10 That's what happened that night.

11 We've heard a lot about Mr. Hill's
12 conflicting statements that Marshall told
13 different law enforcement officers. Downey,
14 Mr. Napolitano, the coroners, they come out
15 and they talk to him. They say he told them
16 a bunch of different things. They also told
17 you that he was very drunk.

18 He even goes back after getting Billy out
19 of his house and he keeps drinking. He's
20 shaken up. That frightened him. He's
21 grossly intoxicated.

22 In fact, Investigators Bailey and Fortner
23 won't take a statement from him because he's
24 way too drunk. 'No, we can't take a
25 statement from him. He's got slurred

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1 speech.' Yes, he's jumping around in his
2 statements. He's outside in his underwear.
3 He's very drunk. So, yeah, he told them a
4 bunch of different things.

5 And he's not really being interrogated.
6 He's got people saying 'hey, can you give me
7 an idea about what's going on. I want to let
8 the next of kin know.' He rattles something
9 off, he just rattles something off.

10 The next day investigators Bailey and
11 Fortner come back and they take him with
12 them. Marshall tells them now I've been
13 drinking. And he'd been drinking a lot. He
14 had a pint of vodka. They still take him and
15 they interview him.

16 Maybe he's not as drunk as he was the day
17 before but he is still drunk. You saw the
18 video. He's slurring. He's slouched. He
19 takes his shoes off at one point. He even
20 references the Jolly Green Giant at one point
21 in that video. He's clearly not sober.

22 So, yes, statements to law enforcement
23 are all over the place and very different.
24 He's drunk in each of these interviews. He's
25 not lying to them, he's just drunk and he

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1 doesn't know exactly what he's telling them.
2 No one tells him 'Hey, you know what, sober
3 up. Let's make an appointment for a later
4 time and then we'll really hammer out what
5 happened here.'

6 Law enforcement speaks to Mr. Barksdale,
7 his roommate. And he's got some
8 discrepancies too. Of course he would. This
9 happened almost three years ago. He comes
10 home from work. He sees Billy passed out.
11 He sees Marshall Hill drinking and drunk.
12 And that's nothing unusual. Nothing really
13 stands out to him. So he can't remember.
14 He's not real sure about the timeframe.

15 Investigator Bailey does confirm that
16 Marshall told Mr. Barksdale that 'hey, I
17 really am concerned about Billy stealing my
18 TV.' There was nothing really out of the
19 ordinary for Michael Barksdale to remember
20 about that night, what happened before law
21 enforcement became involved.

22 But we do know that he worked in health
23 care for over twenty years. If he had seen
24 something when he got home that really seemed
25 off to him, he would have called the police.

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1 He would have done something. He went on to
2 bed.

3 He's continued to be Marshell Hill's
4 roommate since this incident.

5 Physical evidence in this case matches to
6 what Marshell Hill told you happened. Wanted
7 his drinking buddy to leave, Billy refused.
8 Let him sleep it off, wakes up to find Billy
9 taking his TV. Marshell confronts him about
10 it and he stands up and starts coming towards
11 him. He's not leaving. So he hit him with
12 his cane to defend himself and get him out of
13 his house. He didn't go find a gun or knife
14 to really hurt Billy. He's just trying to
15 get him out and protect himself.

16 You heard a lot about what forensics did.
17 The photographs, there's evidence tested.
18 Not a lot of fingerprint evidence, none on
19 the TV. They didn't even test it to see if
20 Billy's fingerprints were on there. There's
21 no evidence of blood throughout the house.
22 They said they collected suspected blood
23 samples. Nothing to say 'hey, that was
24 Billy's blood that was found there.' They
25 tested the cane not once but twice for any

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1 evidence of blood or any other fluids,
2 fingerprints. Nothing.

3 Dr. Fulcher, the medical examiner,
4 testified that there were cuts on Billy.
5 Well, if that cane caused his cuts, wouldn't
6 Billy's blood be on there? Mr. Barksdale
7 said, you know, 'when I saw Billy, I didn't
8 notice all these bruises but I saw a little
9 cut on him.'

10 Billy Patterson was transient. Homeless.
11 Who knows what kind of injuries he showed up
12 with that day and how he got them all.

13 We also heard a lot about these tram
14 tracks made by a cylindrical object. But
15 where are they really? They're on the torso
16 and on the legs and Billy Patterson's front,
17 exactly where you would expect to find them
18 if somebody's defending themselves with
19 somebody coming at them. There's not twenty-
20 three marks all over his back like somebody
21 lying on the floor defenseless. Or twenty-
22 three marks to the head like somebody bashing
23 in somebody's head. There are twenty-three
24 marks to Billy Patterson's torso and to his
25 legs. Maybe a couple on the side. What you

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1 would expect to hit somebody when you're
2 protecting yourself and trying get them out
3 the door. Somebody's still coming at you.
4 These are twenty-three marks, not twenty-
5 three separate strikes. One strike can cause
6 multiple marks.

7 The pictures are certainly not pretty to
8 look at but when you take them back to your
9 jury room, look at them.

10 There are marks on the thighs where a
11 cane could have hit right here, straight
12 across, bilateral marks from one strike.

13 We don't know what trauma happened to the
14 head to cause that injury. I would submit to
15 you the most likely explanation is exactly
16 what Marshall Hill told you, that in getting
17 Billy out of his house and trying to protect
18 himself, Billy fell down and hurt himself and
19 hurt his eye. That's how he got those
20 injuries.

21 Dr. Fulcher also mentions these injuries
22 to the webbing in his fingers. Well, if that
23 was caused by the cane and there were cuts
24 and it was bleeding, then where is that blood
25 on the cane? Again, I would submit to you

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1 that when Marshall Hill told you that he was
2 gripping the door is what would have caused
3 those.

4 I don't know the effect the alcohol level
5 in Billy Patterson of .338 would it have on
6 him. But we do know that that amount of
7 amount of alcohol coupled with the heart
8 disease that he had significantly,
9 significantly increased the likelihood that
10 he would die or could have suffered a stroke.
11 There is every chance that a healthy person
12 would have been fine.

13 We also know that that alcohol level
14 substantially blunted the reactions of Billy
15 to feel pain. I've seen somebody fall down
16 drunk at a party, at a wedding, take a pretty
17 nasty fall, hop up and act like nothing
18 happened, the next day realize, 'I really
19 hurt myself.'

20 The person with a BA level like that is
21 not going to register this amount of pain and
22 they're not going to act normally. One hit
23 might not be enough to get them out the door
24 and protect yourself. If they're still
25 coming at you, they're not feeling it.

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1 They're not acting like a sober person would.
2 So Marshall Hill has to use what he had at
3 his disposal to protect himself and get Billy
4 Patterson out of his house. That is his
5 right. Someone is in his home. He's afraid.
6 He is trying to get them out. He's asked
7 them to leave. Not leaving, he has every
8 right to use that force to get him out. If
9 it takes one time trying to get him out with
10 his cane, if it takes ten times trying to get
11 him out, if it takes twenty times, fifty
12 times, he has that right to protect himself
13 and use that force necessary to protect
14 himself and get him out of his house.

15 There's a "motive" in Mr. Hill's
16 interview with law enforcement that says he
17 was mad about the TV. Yeah, he probably was
18 mad when he saw it. But that anger was
19 quickly overridden by the fear when Billy
20 Patterson comes at him and he feels
21 threatened and afraid.

22 Marshall Hill has bad hips. He can't
23 run away. He's going to use what he has
24 available to defend himself.

25 Now, there were no signs of disturbance

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1 in the house. It was not a barroom brawl.
2 It was not a fistfight. This is Marshall
3 Hill defending himself and just trying to get
4 Billy Patterson out of his house and protect
5 himself.

6 The marks are to his front, to his torso
7 and legs, not just twenty-three marks to the
8 back or right into the head. This happened
9 exactly how Marshall Hill said it happened.
10 Yes, he is vague on some of the details
11 because of the alcohol. But he's sober here
12 today and he remembers from that night.

13 What he says makes sense and lines up
14 with the physical evidence that's been
15 presented. Billy Patterson came over for a
16 drink. They were hanging out drinking.
17 Marshall Hill said, 'Time for you to go. I'm
18 tired. I want to go to bed.' Billy
19 Patterson refused. Marshall Hill wakes up
20 finds Billy trying to steal his TV. Marshall
21 says, 'Hey, you've got to go. That's not
22 okay.' Instead of just leaving, Billy comes
23 at him and he's afraid. And to protect
24 himself he uses the only thing he has
25 available to him, his cane, his walking stick

1 and he hits Billy, again to protect to
2 protect himself and get him out of the home.
3 He has every right to defend himself in his
4 own home. He was afraid.

5 CLOSING STATEMENT

6 BY SOLICITOR STEINBERG: Madam Foreman,
7 ladies and gentlemen and the Court, this is a
8 sad, unwarranted case. A case that nobody
9 wants to be here for. The State doesn't want
10 to be here. The Defense doesn't want to be
11 here. Y'all don't want to be here. This is a
12 sad -- it's almost a pathetic case.

13 The State has no animosity towards Mr.
14 Hill. He's not an enemy. However, justice
15 must be served.

16 Judge Gravely is going to instruct you on
17 the law of this case. You must accept the
18 law as he gives it. If you have some
19 understanding of the law that you've learned
20 from television or your studies that is
21 different from what the Judge has to say, you
22 must follow what the Judge says.

23 If you have heard something from opposing
24 counsel or you hear from myself that is
25 different from what the Judge has to say, you

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1 must put that aside and only follow what the
2 Judge has to say.

3 Murder is the most serious crime we have.
4 Murder means in South Carolina the unlawful
5 killing of another human being with malice
6 aforethought.

7 Unlawful killing is simply that.

8 Malice aforethought means that you have
9 an evil or wicked or unwarranted or
10 unjustified reason for what you did.

11 Now "aforethought" does not mean that the
12 intent had to exist for any particular length
13 of time. The Judge will instruct you on the
14 law of malice aforethought. But aforethought
15 simply means a decision. Not a desire to
16 kill.

17 I'd have to say most murderers probably
18 have the desire to kill. But it means you
19 make a decision. The decision, for example,
20 to pull a trigger on a gun. That's the
21 classic -- in this courthouse that's the
22 classic example we use of malice
23 aforethought. I intended to pull the
24 trigger. I might not intend for you to die.
25 I might not want you to die. But I intended

1 to point the gun at you and pull the trigger.
2 That is malice. Stabbing someone is malice.
3 A decision, the mind and the body, together
4 as one. That decision is malice
5 aforethought. Swinging a cane is classic
6 malice aforethought. You might regret your
7 decision. You might wish you had done
8 something different, but you can't undo the
9 damage. You can't un-murder Billy Patterson.
10 And that's why we're here.

11 South Carolina has only one degree of
12 murder. We don't have murder in the first,
13 murder in the second. We have a very broad
14 definition of murder.

15 You will not be deciding the sentencing.
16 Sentencing will not be an issue for you.
17 Sentencing in South Carolina is decided by a
18 jury only when dealing with death penalty
19 murders. This is not a death penalty.

20 You'll be deciding in the broad spectrum
21 of murder, was this an unlawful killing and
22 was there malice? Did he make a decision
23 that was wrong?

24 The Court's also going to charge a lesser
25 charge. It's not murder in the second

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1 degree. It's voluntary manslaughter.
2 Voluntary manslaughter means the unlawful
3 killing of a person in both the sudden heat
4 of passion or because of sufficient legal
5 provocation. Not any legal provocation, but
6 sufficient legal provocation. The
7 provocation also has to be done by the
8 victim, not by a third party. And in this
9 case not by your own drunken rage, own
10 drunken haze, which the Defendant himself
11 talked about.

12 He even admitted on the stand that this
13 was action was because of his drinking.
14 Billy Patterson should not have to pay the
15 price for what Marshall Hill did. He
16 shouldn't have to pay with his life.
17 Marshall should have to pay for taking
18 Billy's life.

19 Now, for you to accept voluntary
20 manslaughter, you'd have to ignore certain
21 things. You'd have to ignore that the
22 defendant, while drunk, told multiple
23 stories. And he's still scheming. He knows
24 he's telling a falsehood. He knows enough to
25 lie. He's formulating sentences. He's

1 telling falsehoods to the officers. We'll
2 talk more about that in a minute.

3 You also have to disregard his initial
4 statement to Investigator Fortner where he
5 said he had no role in the death.

6 His subsequent videotape confession where
7 he says nothing whatsoever about self-
8 defense. Nothing about he came towards me.
9 It's simply 'I was upset. He was taking my
10 TV, so I beat him.' He eventually says that.

11 You have to overlook the fact that Mr.
12 Hill was not only drunk but so drunk that he
13 thinks that -- he is able to make this
14 decision that he's allowed to keep on beating
15 him. You can't get so drunk that your
16 actions cloud your decisions and then say 'I
17 was just drunk.' That may have worked for
18 Mr. Hill in the past but does not work here.
19 You cannot say I am going to get drunk and
20 then I'll just explain it away.

21 There's also no evidence to support the
22 crime scene story, that is that there was a
23 TV being stolen and that it appears to be --
24 there's only the evidence from the Defendant
25 and we know he has told a number of false-

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1 hoods in the past.

2 But let's say you get past each and every
3 one of those. You have to then overcome the
4 greatest hurdle. Even if you believe his
5 story, though you should not, that Billy
6 Patterson was a thief, was taking his TV or
7 unscrewing the cable from the TV, you then
8 have to believe and agree beyond a reasonable
9 doubt that the suspect, Mr. Hill, was perhaps
10 either justified or allowed or excused in
11 some way or lessened in some way the life of
12 Billy Patterson that you should be allowed to
13 beat someone to death and get away with it
14 being anything other than murder.

15 The Court is also going to instruct you
16 on self-defense and perhaps defense of
17 property. The law does not allow you to kill
18 someone who's on your property. It does not
19 allow you to kill someone who you don't want
20 to be on your property. It requires you only
21 to kill someone who's on your property if
22 they pose a threat to you. You have some
23 certain benefits. But you don't have the
24 benefit of just saying, 'I didn't want him
25 here so I started hitting him.'

1 And you also don't have to believe what I
2 call a "manufactured defense", and after-the-
3 fact made up defense that he was doing this.
4 When, in fact, all the evidence shows he was
5 not and all his prior statements show he was
6 not stealing anything.

7 You also can't be an invitee. If
8 someone's invited into your house they have
9 a right to leave when told. They're not
10 allowed to be prodded out of the house. You
11 are allowed to use force if they, in fact,
12 are assaulting you or a person would
13 reasonable feel they're being assaulted.
14 We'll talking about reasonable belief in a
15 minute.

16 Now, self-defense there's a couple of
17 things that all must be present. If any of
18 these are not present, you cannot consider
19 self-defense. Self-defense would be not
20 guilty. For you to find self-defense, you'd
21 have to agree that Mr. Hill is without fault.
22 That means without any fault. If he's at
23 fault in bringing on this problem either
24 because of his actions or because he got
25 drunk and committed his actions, then you

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1 cannot come back with self-defense. Self-
2 defense is off the table.

3 He also must be acting objectively and
4 with a reasonable belief that he was in
5 danger. A reasonable belief he is in danger,
6 not a drunken hazy belief that he is in
7 danger. And, again, that's in danger of
8 death for serious bodily harm. That's not in
9 danger of having his cable damaged or his TV
10 damaged.

11 Also the reaction must be appropriate to
12 the force used by the assailant. And his
13 reaction, very important, cannot be any
14 longer or any greater degree than is
15 necessary for this circumstance.

16 All four of those must be present to find
17 he acted in self-defense. If you find any of
18 this does not apply to Mr. Hill, self-defense
19 is off the table.

20 The Court, I believe, will also inform
21 you that excessive force can only be done
22 until the threat has been removed. Every
23 strike, every single strike, every assault
24 that occurred after the threat was over is
25 improper. He'd already put the TV down.

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1 That was very clear from Mr. Hill's own
2 testimony. The TV was put down and then the
3 strikes begin.

4 Just a little bit more on self-defense.
5 Mr. Hill's story today is significantly
6 different than his story to the officers just
7 a day after the body was found. You have
8 this videotape. It is at odds with what he
9 has testified. This is his own words. They
10 said he's drunk, I submit he was not drunk at
11 the time the video was made. He may have had
12 something to drink, but he does not appear to
13 be drunk. He appears to be like Mr. Hill is.
14 And he's given every opportunity to say
15 something different. He did not.

16 This self-defense comes up sometime
17 between August 15th and today's date. That's
18 the first that we have any reason to hear
19 self-defense was involved in this matter.

20 Ms. Wicker made a big deal about the
21 autopsy, said the autopsy supports Mr. Hill's
22 version of events. It does not. Dr. Fulcher
23 testified the victim was 139 pounds,
24 testified there were at least twenty-three
25 strikes. Some strikes may have been over and

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1 over in the same spot. He specifically said
2 this was not a "tap."

3 Opposing counsel made a couple of
4 gestures, that he's allowed to be pushed out
5 of the house. Dr. Fulcher was specifically
6 asked what degree of force was used? And he
7 said it was hitting like this. I think he
8 may have made a motion of a baseball bat. If
9 there's any dispute as to what Dr. Fulcher
10 said versus what I'm saying versus what
11 opposing counsel says, we can play Dr.
12 Fulcher's testimony for you again.

13 I don't think that's necessary because he
14 was fairly clear. I just want you to know
15 it's available if there is a dispute as to
16 what was said.

17 So self-defense is essentially a throw-
18 away argument in this case. Mr. Hill did not
19 claim he truly acted in self-defense. Even
20 on the stand on cross-examination the
21 Defendant even said this was probably the
22 alcohol. His own actions. Not the actions
23 of the other party.

24 The Judge is also going to instruct you
25 what is the law, and has been the law for

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1 many years, that voluntary intoxication is
2 not a defense in South Carolina. You cannot
3 voluntarily consume alcohol or drugs and then
4 escape the consequences. You are responsible
5 for all your actions. A drunken, unplanned
6 murder is still a murder in South Carolina.

7 Also, drinking doesn't affect your
8 ability to give a statement. The officers
9 made a decision -- it was not a legal
10 decision. It was a decision they were not
11 going to interview him on August 14th because
12 he was obviously drunk. On August 15th they
13 determined he could be interviewed, they did
14 interview him and we have that interview.
15 And we know he wasn't too drunk because some
16 of the things he said made sense.

17 Eventually, toward the end of the tape he
18 actually agrees, 'Yes, I hit him there. I
19 hit him there. I hit him many, many times.'
20 He's done with the "two taps to the back."
21 He now starts pointing to the parts of his
22 body. So he can still give a statement.

23 I would also point out, as you can
24 probably tell, one of my concerns during his
25 cross-examination was the Defendant was

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1 suffering what we call facetiously selective
2 intoxication. He remembers some things very,
3 very well if it helps his case. There are
4 some things he can't help us with, he can't
5 talk about. Selective intoxication.

6 Let's go to his time line. Billy
7 Patterson comes over to Marshall Hill's house
8 some time before 11:00 p.m. on August 13th.
9 At some point, he is assaulted, beaten by Mr.
10 Hill.

11 Mr. Barksdale gets home around 11:00 p.m.
12 2300 hours, Mr. Hill is drunk and Mr.
13 Patterson, the victim, is on the floor in the
14 front/living room. Mr. Barksdale does not
15 know if the victim was alive or dying. He
16 assumes that he's just drunk.

17 Next morning, Mr. Barksdale's shown the
18 body, dials 9-1-1. EMTs arrive, police
19 arrive.

20 We have an autopsy.

21 Then an interview of the suspect.

22 The autopsy shows the victim was too
23 drunk to defend himself, most likely. It
24 shows that the victim was hit at least
25 twenty-three times, not tapped. Not just a

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1 tap. Those were fractures. They cracked the
2 orbital socket. The victim was hit in such
3 areas that he could not truly defend himself.
4 He could not even make a decision to flee if
5 he wanted to. The man was hit in his groin.
6 He was hit about his head. He had ribs
7 fractured.

8 This (indicating exhibits) is your
9 evidence. This belongs to you. You get to
10 look and you get to count all the many
11 strikes, all the bruises, all the damage to
12 the skull, to the brain. This is evidence.
13 This goes back with you. I'd urge you to
14 stare at this and then say this is a crime
15 that doesn't involve self-defense.

16 I'd ask you to ask yourselves, does this
17 really involve a crime with no malice? Every
18 strike there was malicious.

19 I'm talking very briefly -- well, not too
20 briefly -- but I'm not going to play the
21 whole videotape for you. Sometimes people
22 make a big deal. They want to show clips
23 here and clips there. I'm not going to do
24 this. That videotape is for you to review if
25 needed. The video was just shown yesterday.

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1 You might not need it. If you do, it's
2 available for you.

3 The suspect gave a statement to Brandon
4 Napolitano. He said he was drunk that
5 morning. He said his drinking buddy was the
6 victim but says he doesn't have anything to
7 do with the injury.

8 Then he tells Investigator Downey that
9 not only does he have nothing to do with the
10 injuries, the victim never even got in the
11 house. The victim came to the door and then
12 the door opened and he fell back. That's how
13 Mr. Hill explains the storm door coming off.
14 No mention of assault.

15 Then the coroner gets there. The coroner
16 speaks to him, trying to find the next of kin
17 and just generally what happened. And he
18 said a verbal altercation occurred between he
19 and Billy. And the door came off. Verbal
20 altercations never cause storm doors to get
21 ripped off of the frame. It does not happen.

22 The initial interview of Mr. Hill by
23 Investigator Bailey in the Greenville County
24 office, the Defendant mentioned a lot of
25 things about Billy Patterson but doesn't talk

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1 about his own involvement, doesn't say
2 anything about hitting Billy. Says nothing
3 about the TV, says nothing about self-
4 defense. And the officer on his own raised
5 the idea of television, the television set,
6 and then Mr. Hill makes an incriminating
7 statement.

8 The officers knew exactly what society
9 and the law requires of them and brings him
10 over and Mirandizes him. They're not
11 required to do a videotaped interview, but
12 they decided to use Greenville City's, a
13 different agency's, video room.

14 He's advised of his rights. He was
15 assured he could invoke it at any time,
16 invoke his rights. But when asked if he
17 wanted to speak he says, "What do you want to
18 know?" Those were his words.

19 At the seven minute mark, he says he
20 wants to cooperate. He was pretty emphatic
21 about that. He says 'yes', when asked if he
22 wanted to cooperate.

23 At the fifteen minute mark he said 'my
24 cane must have left some bruises on him.'

25 At the twenty minute mark he specifically

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1 says, "I want to cooperate. I want to speak.
2 Billy had my TV. I tapped him on the back.
3 Billy runs away." Billy can't run away.

4 He makes no mention of self-defense.

5 He says Barksdale wanted him back inside.
6 Barksdale didn't say anything about wanting
7 him back inside. It's just another
8 falsehood. Just another one of the many
9 falsehoods.

10 At the twenty-two minute mark on that
11 videotape, "I tapped him one or two times,
12 that was about it." His words.

13 At the twenty-three mark, how did he get
14 out? "I pushed him out the door." No
15 mention of self-defense, none.

16 At the twenty-four minute mark the
17 Defendant says, "I knew I did wrong. I could
18 have done something different."

19 Twenty-five minute mark, "I was angry."
20 He was angry. Anger doesn't justify the
21 beating death of a human being.

22 He, again, I say falsely, discusses Mr.
23 Barksdale's involvement. Officers then told
24 him to be truthful. The Defendant then
25 admits, "Nobody did this but me. I wanted to

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1 teach Billy a lesson for stealing the TV."
2 And there's still no real legitimate evidence
3 that he's trying to steal the TV.

4 At the twenty-eight minute mark, the
5 suspect really starts to confess. "...that's
6 the whole, I tapped him once or twice." He
7 said, "It was all me. I did the beating.
8 Barksdale was not involved. I beat on him
9 several times." Mr. Hill then demonstrates
10 where he beat him, legs, mid-section, chest.
11 I think he even pointed to or said I hit him
12 on the back. There's no mention of self-
13 defense.

14 He says he only stopped when Mr.
15 Barksdale came in and Billy was on the floor.

16 At the twenty-nine minute mark he said,
17 "I over-did it." He agrees he should have
18 handled it differently. But he cannot undo
19 what he did. Those are his words. Those
20 aren't mine. He agrees he should have
21 stopped beating Billy Patterson but he
22 continued to do it.

23 He agrees he possibly hit Billy in the
24 eye with the stick.

25 Admits he hit the victim on the legs.

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1 The victim was already on the floor, I
2 believe.

3 And you saw the injuries. This was done
4 consciously. It was a conscious malicious
5 act.

6 At the thirty-eight minute mark the whole
7 assault occurred inside the residence.
8 There's no reason for DNA. The suspect
9 admitted everything happened here, that all
10 the action occurred inside the house. And
11 then at the thirty-eight minute mark the
12 Defendant says, "I lost control." That is
13 why you're allowed to hear the term voluntary
14 manslaughter. Because the Defendant uttered
15 those words, "I lost control." He took the
16 stand. He said "I lost control", for a
17 different reason but he says "I lost
18 control." Now you're allowed to at least
19 consider voluntary manslaughter.

20 Voluntary manslaughter requires him to
21 have lost control but it requires more. That
22 just doesn't give him voluntary manslaughter.
23 You have to agree that it would cause a
24 reasonable person to do what he did. You
25 would also have to agree that the victim did

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1 exactly what the Defendant said he did.

2 At the forty-two minute mark, he agrees
3 his actions caused the welts to the back, the
4 back of Billy Patterson. Again, clearly, not
5 self-defense.

6 Antonio Bailey, who is still in the
7 courtroom, gave the Defendant the opportunity
8 to say anything else, gave him a free chance:
9 "What else do you want to tell us?" No
10 mention of self-defense, nothing. He just
11 confirmed that he was the only one to assault
12 Billy and that he used that walking stick.

13 Then at the very end, very end of the
14 statement, Investigator Fortner also gives
15 him one more opportunity, 'Is there anything
16 else you want to say?' The Defendant had
17 nothing else to say. He didn't have to speak
18 if he doesn't want to.

19 But I would submit under these
20 circumstances self-defense was not raised
21 until today. That video is yours. The first
22 twenty minutes or so are what's called rights
23 waiver discussion. After that, you have the
24 confession, going from mild involvement to
25 full-fledged confession of the murder.

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1 Now, the Court's going to talk to you
2 about some defenses. The Defendant has
3 raised some defenses. We've already gone
4 over self-defense, defense of habitation. I
5 want just to touch just once or twice more
6 that it has to be an ordinary person's belief
7 that they are in danger. How would an
8 ordinary person respond to someone coming
9 towards them?

10 If you find that the Defendant was not
11 acting as an ordinary person in the way he
12 decided to assault and then continued to
13 assault Billy Patterson, then you cannot find
14 self-defense. And that makes it a very easy
15 case to decide.

16 The Defendant agreed "my drinking, my
17 alcohol, affected my decision to do that."

18 The Defendant made an issue involving
19 DNA. In this courthouse, in our profession,
20 we call this a C.S.I. thing, the belief that
21 somehow there's DNA flying all over the
22 place. There might be DNA on this pen. I'm
23 touching it. I'm holding it. But there
24 might not. There might be my fingerprints on
25 this pen. There might, there might not. If

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1 this was a different case without so much
2 evidence, we may have had to have done some
3 additional testing. But in this case we get
4 a cane that the Defendant admitted was the
5 weapon he used. And there's no reason -- no
6 blood injuries, no internal injury, no reason
7 for you to think that there is any DNA there.

8 I had Investigator Fortner, I think --
9 Sergeant Hamilton, a Forensics officer
10 testified there was no trace evidence to be
11 had. And, of course, the Defendant had
12 approximately a day and a half with this
13 stick before it was taken as evidence. The
14 officer did not pick it up until the
15 afternoon of the 15th.

16 Let me summarize. This is a very simple
17 case. It's a sad case. It's an unusual
18 case. It involves a very lengthy malicious
19 case. Typical murders are just a gunshot and
20 people run away. This was a repeated
21 beating. It's a little bit different than
22 most but it's still a simple case.

23 In summary when a guest, a human being
24 comes over to your residence, comes into your
25 house with your permission, you cannot beat

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Charge by The Court

1 him to death and call it anything other
2 than murder. You cannot get drunk, use a
3 piece of wood, drink alcohol, get drunk, then
4 get upset with your guest for something he
5 did or didn't do and then beat him twenty-
6 three times.

7 If you find this really senseless and
8 unwarranted, unjustified death is a killing
9 should not have happened, and that before he
10 used his cane to either hit Billy or to
11 continue to hit Billy he intended to hit him
12 it would be murder. If you find any malice
13 whatsoever, it is murder.

14 It is not any less of a murder because
15 the victim was also drunk and also perhaps
16 homeless. It is also not any less murder
17 because the Defendant was drunk or because he
18 was using a cane instead of a gun. It is
19 still murder.

20 Under South Carolina law all of this is
21 murder and that is the verdict I ask you to
22 return. Thank you for your time and your
23 consideration in this matter.

24 THE COURT: All right. Ladies and
25 gentlemen, now it's my turn. First of all, I

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Charge by The Court

1 want to thank you for your attention to this
2 case. I can tell that every one of you have
3 been very attentive and paid very close
4 attention to the witness and the attorneys
5 and I appreciate your attention in that
6 matter.

7 All right. First of all, as I
8 indicated to you in the beginning, and you've
9 heard reference to charges and arrests and
10 indictments and that the Defendant was
11 indicted on this matter. That is merely the
12 paper -- the indictment is merely the paper
13 that brings this matter into the Court.

14 To this matter, he has pled not guilty.
15 So the fact that he's indicted, charged or
16 arrested should not be considered by you in
17 any way as any inference or presumption that
18 he's guilty of what has been charged. It is
19 still the burden of the State to prove each
20 element of those charges beyond a reasonable
21 doubt.

22 So he is entitled to the presumption of
23 innocence. I've mentioned that several times
24 and you've heard that mentioned. The
25 Defendant has pled not guilty and that plea

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Charge by The Court

1 puts the burden on the State to prove that he
2 is guilty.

3 A person charged with committing a
4 criminal offense in this state is never
5 required to prove himself innocent. It is an
6 important rule of law that a defendant in a
7 criminal trial, no matter what the
8 seriousness of the charge may be, will always
9 be presumed innocent of the crime for which
10 the indictment was issued, unless it has been
11 proven by evidence satisfying you of that
12 guilt beyond a reasonable doubt.

13 This presumption of innocence does not
14 end when you begin your deliberations, but it
15 accompanies the Defendant throughout the
16 trial until you have reached a verdict. You
17 kind of hear, it kind of relates or can be
18 compared to -- that the presumption of
19 innocence is like a cloak of righteousness, a
20 robe of righteousness placed about the
21 shoulders of a defendant. And that remains
22 with the defendant until it has been stripped
23 by evidence satisfying you, the jury, beyond
24 a reasonable doubt that he's guilty.

25 This presumption of innocence is not

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Charge by The Court

1 merely just a legal theory. It's not just
2 a phrase that we throw around. It's a
3 substantial right in our criminal system and
4 it is a substantial right that is guaranteed
5 by both our state and federal Constitutions.

6 So what is reasonable doubt? And that's
7 the standard that you have to decide. Has
8 the State proven the guilt of a defendant
9 beyond a reasonable doubt?

10 Different types of cases have different
11 standards. In a civil case, it's not beyond
12 a reasonable doubt. You may have heard if
13 you've served on a civil jury or seen on TV
14 that the standard in a civil case is proof by
15 the preponderance of the evidence. That's
16 not what we're talking about here. We're
17 talking beyond a reasonable doubt.

18 Reasonable doubt is the kind of doubt
19 that would cause a reasonable person to
20 hesitate to act. Proof beyond a reasonable
21 doubt is proof that leaves you firmly
22 convinced that the Defendant is guilty.

23 There are very few things in this world
24 that we know with absolutely certainty. And
25 in criminal cases the law does not require

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Charge by The Court

1 that the State overcome every possible doubt
2 and prove to an absolute certainty. But if
3 based on your consideration and the evidence
4 you are firmly convinced that the Defendant
5 is guilty of the crimes charged, then you
6 must find him guilty of those charges.

7 On the other hand, if you think there's a
8 real possibility that the Defendant is not
9 guilty, then that is reasonable doubt and you
10 must give the Defendant the benefit of that
11 doubt and find him not guilty.

12 Also understand there's two different
13 duties that you and I have. They're both
14 very important and they're very distinct
15 duties.

16 As the trial judge it's my responsibility
17 to preside over the trial of the case. I
18 rule, as you've noticed throughout the trial,
19 on admissibility of certain evidence, on
20 objections and evidence which has been
21 offered in. I also determine what the law is
22 to be charged to you.

23 You are the triers of fact, you
24 determine the facts of this case. You are to
25 consider only the competent evidence before

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Jury Trial of April 11-13, 2016

Charge by The Court

1 you. You're to consider the testimony which
2 has been presented from the witness stand,
3 any exhibits which have been made a part of
4 the record, which you will have when you're
5 in your jury room, and any stipulations that
6 counsel have presented.

7 As I said, my duty as the judge of the
8 law, that means that I'm the sole judge of
9 the law in this case. And it's your duty to
10 accept that as I also indicated that. You
11 may think that the law should be different or
12 you may think the law is something different
13 or you may have a different perception of
14 what the law is. And y'all are to disregard
15 that because the law in this matter is the
16 law that I charge you. And when you took
17 your oath you agreed, you swore to apply the
18 law as I give it to you.

19 And, again, you are the sole and
20 exclusive judge of the facts of the case. I,
21 as a Judge, I can't intimate, I can't infer
22 anything about the facts of the case. At any
23 point in this trial if I have inferred or
24 indicated or you felt like I had an opinion
25 on the facts, then you are to disregard that

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1 because I do not and am not permitted to have
2 any opinion about the fact. That is solely
3 in your discretion.

4 As jurors you determine, you need to
5 determine the effect and the value, the
6 weight, the truth of the evidence which was
7 presented.

8 There's two types of evidence to be
9 considered in addition to not -- you know,
10 there's two ways to present it. And that's
11 either by witnesses or evidence. But there's
12 two types of evidence and that's direct and
13 circumstantial evidence. Though there are
14 two types, there's no difference as to how
15 you're to consider these types of evidence.

16 Direct evidence is the testimony of a
17 person who claims to have actual knowledge of
18 certain facts, such as an eyewitness. It's
19 evidence which immediately established the
20 fact for which they're trying to prove.

21 Circumstantial evidence, on the other
22 hand, is a chain of facts, which would all
23 prove together, they're trying to prove
24 another fact by way of inference. So
25 circumstantial evidence is based on inference

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1 and not necessarily personal knowledge or
2 observation.

3 The law makes absolutely no distinction
4 between the weight or the value which is to
5 be given to either direct or circumstantial
6 evidence. There's not a greater degree of
7 certainty required of circumstantial evidence
8 than of direct evidence. You should weigh
9 all evidence the same and that is the way
10 that you feel is appropriate. It's your
11 standard.

12 If you're not convinced of the guilty of
13 the Defendant beyond a reasonable doubt, then
14 you must find the Defendant not guilty.

15 One of the important things that you have
16 to decide, any jury has to decide in any case
17 is credibility of the witnesses. And that
18 just merely means the believability of the
19 witnesses. And that's -- one of the things
20 you use there is your own common sense. You
21 bring your experiences with you. It becomes
22 your duty to kind of evaluate the evidence
23 and determine which evidence convinces you of
24 the truth in this case.

25 In determining the believability of

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1 witnesses who've testified, you can believe
2 one witness over several witnesses or several
3 witnesses over one witness.

4 You may believe a part of the testimony
5 of a witness and reject the remaining part or
6 you may accept the entire part or reject a
7 part of it. You may believe the testimony of
8 a witness in its entirety.

9 You may consider whether a witness has
10 exhibited to you certain interests or bias or
11 prejudiced or other motive in the case.

12 You can consider the appearance and
13 manner of a witness on the witness stand.
14 Again, it's your own common sense. It's your
15 own determination of how you perceive the
16 credibility of that witness.

17 As I indicated and charged you during the
18 trial, there are certain times where expert
19 witnesses are allowed to testify as to their
20 expertise in certain matters. Normally the
21 rules of evidence do not permit a witness to
22 testify about their opinion or any
23 conclusions. The exception of this, again,
24 is an expert witness, a witness who by his
25 education or experience qualifies as an

1 expert in a particular field. And that
2 expert may state an opinion in that field
3 which is relevant and material, and may also
4 state the reasons for their opinion. You
5 should consider any expert's opinion received
6 in evidence in this case like any other, you
7 give it the weight you think it deserves. If
8 you decided that the opinion of an expert is
9 not based on sufficient education and
10 experience or if you conclude that the
11 reasons given in support of the opinion are
12 not sound or that the opinion is outweighed
13 by other evidence, you may disregard the
14 opinion entirely. As an expert witness'
15 testimony is to be given no greater weight
16 than that of the other witnesses simply
17 because that witness is an expert. Further,
18 you're not required to accept an expert
19 opinion even though it is not contradicted.

20 So, again, you must weigh that testimony
21 with all other evidence as you deem
22 appropriate.

23 There's been evidence presented that
24 witnesses and/or parties have made prior
25 statements which are not consistent. You may

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Charge by The Court

1 use this evidence to decide whether to
2 believe the witness. You may also use the
3 evidence of the earlier contradictory
4 statements to determine the truth of those
5 statements. It is up to you to decide
6 whether to believe the earlier statements or
7 the testimony given at trial. If the witness
8 is shown to knowingly testify untruthfully
9 concerning any material matter, you may
10 consider this in determining whether to trust
11 the witness testimony as to other matters.

12 You may reject all testimony of that
13 witness or give all or part of the testimony
14 the weight you think it deserves.

15 There's also been evidence of a prior
16 statement made by the Defendant, which was
17 admitted into evidence in this case. While
18 the Court has determined that this statement
19 is admissible, I instruct that you must make
20 the ultimate decision of whether or not the
21 Defendant made the statement. If the
22 Defendant made the statement, you must
23 determine whether the statement was made by
24 the Defendant voluntarily, you know, of his
25 own freewill. This means that the statement

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Charge by The Court

1 was not caused by pressure, force, fear,
2 threats, coercion or any type of intimidation
3 or by hope or a promise of leniency or a
4 reward of any kind. In determining whether
5 the statement was voluntary, you should
6 consider both the characteristics of the
7 Defendant and the details of the questioning.
8 Some of the factors that you must consider
9 are the age of the Defendant, the Defendant's
10 education or lack of education, the
11 Defendant's mental ability or capacity. The
12 Defendant's IQ or intelligence, the
13 Defendant's background and environment. The
14 place and length of the detention, the nature
15 of the questioning and the advice or lack
16 thereof to the Defendant of his
17 constitutional rights, which including but
18 are not limited to the right to remain
19 silent, that any statement could be used
20 against him a court of law. The right to
21 have a lawyer present and if he could not
22 afford a lawyer, a lawyer could be appointed
23 to represent him without any cause. And that
24 he could stop making his statement at any
25 time. You must carefully consider all of the

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Charge by The Court

1 surrounding circumstances before you give any
2 weight to an alleged statement.

3 The State has the burden of proving
4 beyond a reasonable doubt that the alleged
5 statement was voluntary. If you determine it
6 was, you may give the statement any further
7 consideration that you deem appropriate. You
8 must decide what weight if any should be
9 given to the alleged statement.

10 If you determine the alleged statement
11 was not the free and voluntary statement of
12 the Defendant, you should not consider the
13 statement at all.

14 The charge in this matter, the initial
15 charge, which I'll go over with you is the
16 charge of murder. The State must prove
17 beyond a reasonable doubt that the Defendant
18 killed another person with malice
19 aforethought. That's the magic language for
20 murder. That's the definition of murder is
21 the killing another person with malice
22 aforethought.

23 Now, let me define these terms, malice
24 and aforethought. They sound very legal.
25 "Malice" is hatred, ill will, or hostility

1 towards another person. It is the
2 intentional doing of a wrongful act without
3 just cause or excuse and with an intent to
4 inflict an injury or under circumstances that
5 the law would infer an evil intent.

6 "Malice aforethought" does not require
7 that the malice exist for any particular time
8 before the act is committed but malice must
9 exist in the mind of the Defendant just
10 before and at the time the act is committed.
11 Therefore, there must be a combination of the
12 previous evil intent and the act itself.

13 Malice aforethought may be expressed or
14 inferred. These terms, "expressed" and
15 "inferred" do not mean different kinds of
16 malice but merely the manner in which the
17 malice be shown to exist. That is either by
18 direct evidence or by inferences from the
19 facts and circumstances or circumstantial
20 evidence which are proved.

21 Express malice is shown when a person
22 speaks words which express hatred or ill will
23 for another or when the person prepared
24 beforehand to do the act, which was later
25 accomplished.

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Charge by The Court

1 If you find that the State has failed to
2 -- that's the first charge we'll discuss and
3 that's of murder.

4 If you find that the State has failed to
5 prove beyond a reasonable doubt that the
6 Defendant committed murder, then you may
7 consider what's called a lesser-included
8 offense. In other words, the same act but
9 not the same exact element, but lesser
10 elements. And that is you may consider
11 whether the State has proved beyond a
12 reasonable doubt that the Defendant committed
13 voluntary manslaughter. It's a totally
14 different charge, but it's one for you to
15 consider as well.

16 To prove voluntary manslaughter the State
17 must prove beyond a reasonable doubt that the
18 Defendant took the life of another in a
19 sudden heat of passion based on sufficient
20 legal provocation. Both heat of passion and
21 sufficient legal provocation must be present
22 at the time of the killing to constitute
23 voluntary manslaughter.

24 Sudden heat of passion may, for a time,
25 affect a person's self-control and

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Charge by The Court

1 temporarily disturb a person's reason.
2 Sudden heat of passion must be the type that
3 would make an ordinary person unable to
4 coolly reflect on his actions and would
5 produce an uncontrollable impulse to do
6 violence.

7 Sufficient legal provocation must be the
8 type that would make a person of ordinary
9 reason to caution to become enraged into
10 losing control temporarily.

11 The provocation needed for voluntary
12 manslaughter must come from some act or
13 related to the victim. Words alone, however
14 vulgar or insulting, are not enough to be
15 legal provocation.

16 Where death is caused by the use of a
17 deadly weapon, the words must be accompanied
18 by some overt threatening act which could
19 have produced the heat of passion.

20 The exercise of a legal right, no matter
21 how offensive it is to another, is not
22 sufficient legal provocation for voluntary
23 manslaughter. If the heat of passion had
24 cooled or there is enough time between the
25 provocation and the killing for the passion

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Charge by The Court

1 of a reasonable person to cool, the killing
2 would not be voluntary manslaughter. In
3 deciding whether a reasonable person would
4 have had enough time to cool off, you should
5 consider all of the circumstances surrounding
6 the killing. You may consider the nature of
7 the provocation, if any, the Defendant's
8 mental and physical state and the
9 circumstances in relationship between the
10 parties.

11 I would also charge you that under South
12 Carolina law, voluntary intoxication is not a
13 defense to a criminal charge.

14 Also, there has been evidence and the
15 Defendant has raised the defense of self-
16 defense.

17 So what you're basically going to be
18 doing is just first determining whether the
19 State has met the burden of murder.

20 If not, then you will go to whether
21 they've met the burden on voluntary
22 manslaughter.

23 And then you should consider also whether
24 the Defense has proven the defense that they
25 have raised, which is self-defense.

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Charge by The Court

1 Now I'll go over the elements of self-
2 defense. Self-defense is a complete defense
3 and if it is established you must find the
4 Defendant not guilty. The State has the
5 burden of disproving self-defense by proof
6 beyond a reasonable doubt. So it's not up to
7 the -- I said that wrong a minute ago. It's
8 not up to the Defendant to prove that, but
9 the State must disprove that there was self-
10 defense used in a matter once it was raised.
11 So make sure it does not shift the burden
12 there. It's still up to the State as the
13 burden.

14 If you have a reasonable doubt of the
15 Defendant's guilty after considering all of
16 the evidence, including the evidence of self-
17 defense, then you must find the Defendant not
18 guilty.

19 On the other hand, if you have no
20 reasonable doubt of the Defendant's guilt
21 after considering all of the evidence,
22 including the evidence related to self-
23 defense, then you must find the Defendant
24 guilty.

25 The following elements are required to

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Charge by The Court

1 establish self-defense:

2 First, number one, the Defendant
3 must be without fault in bringing on the
4 difficulty. If the Defendant's conduct was
5 the type which was reasonably calculated to
6 and did provoke a deadly assault, the
7 Defendant would be at fault in bringing on
8 the difficulty and would not be entitled to
9 an acquittal or a verdict of not guilty based
10 on that self-defense.

11 The second element is imminent
12 danger. And that means that the Defendant
13 was actually in imminent danger of death or
14 serious bodily injury or that the Defendant
15 actually believed he was in imminent danger
16 or death or serious bodily injury. If the
17 Defendant was actually in imminent danger, it
18 must be shown that the circumstances would
19 have warranted a ordinary person with the
20 ordinary firmness and courage to strike the
21 fatal blow to prevent death or serious bodily
22 injury to themselves. If the Defendant
23 believed he was in imminent danger of death
24 or serious bodily injury, it must be shown
25 that a reasonably prudent person of ordinary

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Charge by The Court

1 firmness and courage would have had the same
2 belief. In deciding whether the Defendant
3 actually was or believed he was in imminent
4 danger of death or serious bodily injury, you
5 should consider all the facts and
6 circumstances surrounding the crime,
7 including the physical condition and
8 characteristics of the Defendant and the
9 victim. The Defendant does not have to show
10 that he was actually in danger. It's enough
11 that he believed he was in imminent danger
12 and a reasonably prudent person of ordinary
13 firmness and courage would have had the same
14 belief.

15 A defendant has the right to act on
16 appearances even though the defendant beliefs
17 may have been mistaken. It is for you to
18 decide whether the Defendant's fear of
19 immediate danger of death or serious bodily
20 injury was reasonable and would have been
21 felt by an ordinary person in the same
22 situation. In making this analysis the
23 relative sizes, ages and weights of the
24 Defendant and the victim may be considered in
25 deciding the apparent or actual need for

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Charge by The Court

1 self-defense and the amount of force needed.
2 The intoxication of the victim may also be
3 considered in deciding whether the
4 Defendant's fear of death or bodily harm was
5 reasonable. All right.

6 So as I've told you, there's three
7 elements to self-defense: One, without
8 fault. Defendant was without fault bringing
9 it about. Number two, that the Defendant was
10 in imminent danger of death or serious bodily
11 injury or believed so. And third there was
12 no other way to avoid the danger. The final
13 element is that the Defendant had no other
14 probable way to avoid the danger of death or
15 serious bodily injury than to act as the
16 Defendant did in this particular instance.

17 Now, the Defendant was on his own
18 premises. The Defendant had no duty to
19 retreat for acting in self-defense. And I
20 further charge you that in this self-defense
21 analysis, a person cannot be required to make
22 an exact calculation as to the degree or
23 amount of force which may be needed to avoid
24 death or serious bodily harm. Therefore, in
25 self-defense the Defendant has the right to

1 use the force needed to avoid death or
2 serious bodily harm. The force used in self-
3 defense does not have to be a limited degree
4 or amount of force used by the victim. The
5 Defendant has the right to use so much force
6 as appeared to be necessary for complete
7 self-protection in which a person of ordinary
8 reason and firmness would have believed to be
9 needed to prevent his own death or serious
10 bodily injury.

11 All right. Now, at this time --
12 Madam Bailiff, if you will hand this to the
13 foreperson.

14 BAILIFF: (Complies).

15 THE COURT: I'm going to now --
16 that's the law. Now I'm going to go through
17 with the verdict form, Madam Forelady, so
18 that -- when you're deliberating it is
19 important -- the law is you have to have a
20 unanimous verdict. This is not just a
21 majority of you who have to come up with a
22 verdict. It must be an unanimous verdict.
23 All twelve of you must decide.

24 When I say all twelve, that basically --
25 as the alternates are not allowed to

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1 participate in the deliberation. But I don't
2 want to minimize your importance in this
3 trial. You've going to think 'wow, I sat
4 through this whole trial and now I'm not able
5 to deliberate and be involved in that.' But
6 it's very important because oftentimes when
7 we have trials something may -- there may be
8 a conflict with somebody. A juror may get
9 sick or may realize that they can't give a
10 fair trial. It happens every week. If you
11 don't have alternates, then you have to
12 basically throw the whole thing out and start
13 over. So I want to first tell y'all, your
14 role in this is very important even though
15 you don't get to be involved in the final leg
16 of it.

17 But, anyway, of the remaining twelve it
18 must be unanimous verdict. And here the
19 verdict form, I'll go through it because
20 you're the one in charge of actually
21 completing this. And you'll have it back
22 there with you.

23 The first part is just the caption of the
24 case. It says verdict form. And it says as
25 to indictment number 2014-GS-23-2209, the

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1 charge of murder. "We, the jury, find the
2 Defendant, Marshall Hill,..." -- and you would
3 check one of those.

4 If you find -- again, using the analysis
5 that you find the State has met its burden
6 beyond a reasonable doubt on the charge of
7 murder, then you check the first one, guilty
8 of murder.

9 If you find they did not meet that burden
10 but they met their burden on voluntary
11 manslaughter, then you'd check that one.

12 But if you find that the State did not
13 meet its burden of proving that or that self-
14 defense was appropriate, then you'd check Not
15 Guilty.

16 So there's one of those three that the
17 twelve of you have to unanimously decide.
18 Once you complete your verdict, then you will
19 complete this form. You will sign it as the
20 foreperson and date it. And then you will
21 knock on the door -- no, y'all have lights
22 here. The bailiff will let you know, there's
23 a light. And then we will give you further
24 instructions as far as what to do at that
25 point.

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1 Also, if you have any questions, as the
2 Foreperson you are to write those questions
3 down, sign it and give that to the bailiff.
4 And the bailiff will bring that to me and
5 then I will let you know how I need to
6 respond to that question.

7 So at this point, I get to tell you one
8 more time that you cannot discuss the case.
9 Because what I have to do now is I'm going to
10 send all of you including the alternates back
11 to the jury room. First of all, will you put
12 the verdict form up on the bar there?

13 FORELADY: (Complies).

14 THE COURT: I'll send it back to
15 you in just a few minutes.

16 But I'm going to send you back to
17 your jury room here in just a minute. And
18 the reason you can't begin deliberating is I
19 need to talk to the attorneys to make sure
20 that I have not left something out or I've
21 not misstated something. And if that's the
22 case, I'll bring you back in and give you the
23 additional information, okay? If not, then
24 your signal that you can finally begin
25 deliberating is the bailiff will bring into

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1 your jury room all of the exhibits with the
2 verdict form. The bailiff will bring that in
3 and he or she will exchange that for the two
4 alternates.

5 At that point, the Alternates will be
6 instructed to step out of the room. I'll be
7 glad to talk with you back in the hallway and
8 give you any other additional instruction.

9 So do not begin any deliberations until
10 you get that signal by receiving the exhibits
11 and the Verdict form.

12 But all of you are to return to your jury
13 room and then we'll give you further
14 directions in just a few minutes.

15 (JURY OUT AT 12:10 P.M.)

16 THE COURT: All right. Any
17 exceptions on the charge from the State?

18 SOLICITOR STEINBERG: No, sir.
19 Your Honor.

20 THE COURT: Anything from the
21 Defendant?

22 MS. WICKER: No, sir, Your Honor.

23 (COUNSEL APPROVAL OF EXHIBITS)

24 (JURY IN DELIBERATION AT P.M.)

25 (ALTERNATE JURORS DISMISSED)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARSHELL HILL,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of August, 2017.



Scott Leverett
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 8th day of August, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires July 5, 2027