

ORIGINAL

VOLUME II OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY GRAY,

APPELLANT

APPELLATE CASE NO. 2012-209426

RECORD ON APPEAL

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****STATE 'S EXHIBIT #51-57, #80-83 AND # 87 (PHOTOGRAPHS), IS
BEING TRANSPORTED TO THE COURT OF APPEALS. ****

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1 Q And then you said that they were punching
2 and kicking the guy?

3 A Yes.

4 Q Did they all leave together?

5 A After the guy jumped up and ran, yes, all
6 of them went across to the store, including the
7 young lady.

8 MR. FARLEY: Okay. Well, thank you,
9 Mr. Weathers, please answer any questions
10 Mr. Chaplin has.

11 CROSS EXAMINATION

12 BY MR. CHAPLIN:

13 Q Good morning, Mr. Weathers.

14 A Good morning.

15 Q Mr. Weathers, you live in Gonzales Gardens?

16 A Now? No.

17 Q But I mean, have you ever listed there?

18 A I lived there quite a while, my mother,
19 uncle.

20 Q Okay. Your Honor, I'd like to go to the
21 board?

22 THE COURT: Go ahead.

23 MR. CHAPLIN: Thank you.

24 CROSS EXAMINATION CONTINUED

25 BY MR. CHAPLIN:

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- 1 Q Mr. Weathers, I just want to ask you some
2 questions about this diagram. Can you see it
3 pretty well? We've identified this as Forest
4 Drive.
- 5 A Okay.
- 6 Q This is McDuffie?
- 7 A Okay.
- 8 Q These are the stores that I think you said
9 people went to?
- 10 A Okay.
- 11 Q This is the ---
- 12 A J building.
- 13 Q J and O and stuff is up here, right. Okay.
14 All right. Way down here is F and G, okay?
- 15 A. (Affirmative nod).
- 16 Q Well, we know it's down or okay. You're
17 okay with that?
- 18 A I'm okay with it.
- 19 Q All right. You've may have to speak up a
20 little bit for the court reporter. All right.
21 So what you saw occurred in this area?
- 22 A On McDuffie.
- 23 Q On McDuffie?
- 24 A By the L building.
- 25 Q By the L building. I got it. And then

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

4 A Yes, I did.

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

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

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

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

14 A At the same time.

15 A Yes.

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

18 A Four.

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

21 A That's correct.

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

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

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1 punching.

2 Q And then at some point I think you saw the
3 man get slapped or get hit by the girl?

4 A Yes.

5 Q Okay. So you've got another attack up
6 here?

7 A All that went on at the same time.

8 Q At the same time, okay. All right. I'm
9 just trying to break it down, but I don't mean
10 to put words in your mouth. All right. And I
11 think you gave -- thank you very much. I'm
12 going to step down. I think you gave a
13 statement to the police wherein you said in
14 general what you saw occurring up there was that
15 the victim was getting kicked, beaten with
16 fists, kicked and stomped?

17 A Yes.

18 Q Correct. All right.

19 Q Now, you also said these guys kind of
20 travel together?

21 A Well, as old as I am ---

22 Q Sir?

23 A As old as I am, I hang with them myself. I
24 mean, everybody in the Gardens is a family.

25 Q Okay.

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1 A We're all hanging together. We were all
2 out there that day when that occurred.

3 Q Okay.

4 A It wasn't nothing special about us hanging
5 together. We do it every day.

6 Q And Marcellius Brooks Brooks was part of
7 that group?

8 A He was there.

9 Q Okay. Can you tell me who else was there.
10 If you know nicknames, I'm okay with that?

11 A Yes, I do.

12 A Go ahead.

13 Q I guess we all gave statements anyway,
14 Trigger.

15 Q Trigger?

16 A Little Ricky.

17 Q Okay?

18 A Juve. And I don't know the other guy.

19 Q I'm sorry. I'm a little -- and then Juve.
20 All right. So the other people that you know
21 were there were Trigger, Little Ricky and Juve.

22 A That's correct.

23 Q Okay.

24 A All of them would be interviewed by the
25 police.

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- 1 Q All of them were interviewed by the police?
- 2 A Yes, they were.
- 3 Q Okay.
- 4 Q Now, you said when this was finished, this
5 group went to the store?
- 6 A Yes.
- 7 Q Okay. So all of them kind of went as a
8 group?
- 9 A They all went to the store.
- 10 Q You all went to the store?
- 11 A Everybody was going their way when that
12 alleged -- when this allegedly happened. They
13 were going to the store anyway.
- 14 Q Right. Did you go to the store anyway?
- 15 A I was already heading to the store.
- 16 Q So you ---
- 17 A When we got to the store, they were all in
18 the store together.
- 19 Q So who'all was in the store together?
- 20 A Same names.
- 21 Q Same names: Marcellius Brooks, Trigger,
22 Little Ricky and Juve.
- 23 A Yes.
- 24 Q What were they doing in the store, do you
25 know?

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1 A First they took the young lady to her

2 mother. Her mother was at the store.

3 Q Right.

4 A And I loaded my stuff and I left out.

5 Q Okay.

6 A I left out. I mean, I didn't have nothing
7 to do with it.

8 Q I understand.

9 Q Did you ever see my client, Henry Gray, up
10 there?

11 A No, sir.

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

14 THE COURT: Any redirect?

15 MS. CAMPBELL: No, sir.

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

18 (WITNESS STEPS DOWN)

19 THE COURT: Next witness.

20 MS. SAMPSON: May it please the Court.

21 The State would call Dr. Bradley Marcus.

22 (WITNESS TAKES STAND)

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

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1 DIRECT EXAMINATION

2 BY MS. SAMPSON:

3 Q Doctor, where are you employed?

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

6 Q What do you do there, sir?

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

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

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

13 A I perform autopsies for the coroner's
14 office.

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

17 A Yes.

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

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

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

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

14 A Yeah.

15 Q What's the definition of pathology itself?

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

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

23 A That's correct.

24 Q One of the areas your mentioned is anatomic
25 pathologist?

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1 A That's correct.

2 Q What else the definition of that in order
3 to become board certified for it?

4 A Anatomic Pathology is the study of diseases
5 in all the organs in the body: lungs, different
6 types of cancer -- all the organs of the body.

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

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

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

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1 what caused their death.

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

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

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

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

15 A No.

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

18 A Yes.

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

21 A Yes, there are.

22 Q Those are the areas that you chose?

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

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

3 Q So you are at your limit?

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

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

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

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

14 A For about a year now, yes.

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

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

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

23 A Yes.

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

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1 we're focusing on Forensic Pathology.

2 A Yes, I have.

3 Q Approximately how many times have you been
4 qualified as a Forensic pathologist?

5 A. Approximately twenty-five times.

6 Q And currently you're the chief medical
7 examiner?

8 A Yes, I am.

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

12 THE COURT: Any *voir dire* or
13 objection?

14 MR. FARLEY: No objection, Your Honor.

15 MR. CHAPLIN: No objection.

16 DIRECT EXAMINATION CONTINUED

17 BY MS. SAMPSON:

18 Q Doctor, all your training and everything
19 has been in the last ten or fifteen years, as
20 far as your medical training?

21 A Yes, ma'am.

22 Q So do you take any effort or attended any
23 additional training to make sure you are up to
24 date and current with your expertise in the
25 field of forensics pathology?

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

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

11 A Yes, I was.

12 Q And where did that autopsy actually take
13 place?

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

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

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

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

24 A Absolutely.

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

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- 1 A I did.
- 2 Q What information was provided to you
- 3 initially?
- 4 A I was notified of a death and notified that
- 5 a victim had sustained some blunt head trauma in
- 6 an assault and was notified that an autopsy was
- 7 to be performed.
- 8 Q Had the victim actually been transported to
- 9 the hospital and had lifesaving efforts been
- 10 made with him?
- 11 A Yes, yes, they had.
- 12 Q Was he transported actually to Richland
- 13 Memorial Hospital?
- 14 A Yes. He was.
- 15 Q That's the actual hospital you work out of;
- 16 is that correct?
- 17 A That's correct.
- 18 Q Were life saving procedures performed in an
- 19 effort to save his life?
- 20 A Yes, they were.
- 21 Q Were they successful -- obviously?
- 22 A No, they were not successful.
- 23 Q In fact, was he declared -- when was he
- 24 actually declared to be deceased?
- 25 A He was declared brain dead on

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1 February 13th, 2010.

2 Q So that was shortly after his admission to
3 the hospital?

4 A That's correct.

5 Q And, in fact, did he remain on life support
6 for a period of time?

7 A Yes, he did remain on life support for a
8 period of time.

9 Q Is that normal?

10 A Yeah, and I'm noting here why he was on
11 life support.

12 Q Why is that?

13 A Some of his organs were donated to Life
14 Point. His family had allowed some of his
15 organs to be donated here and they were procured
16 following his brain death status.

17 Q And when all the life support equipment in
18 order to keep his organs alive that were to be
19 donated, when were those actually removed?

20 A I don't have the actual time when that was
21 here. I don't have that.

22 Q But you performed the autopsy on the
23 morning of what date?

24 A I performed the autopsy on February 16th,
25 2010, so it would be in his actual medical

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1 record when that was, so it was before the 16th.

2 Q And the time period between when he was
3 declared brain dead on the 13th and you
4 performed an autopsy on the 16th, and he had been
5 removed from life support the night before,
6 would that affect your ability to perform an
7 autopsy in any way?

8 A Absolutely not.

9 Q Is that standard?

10 A That's standard. That's standard.

11 Q And any area(s) which sustained injuries
12 would have been kept intact?

13 A Absolutely.

14 Q Yes. Was that done in this case?

15 A Yes. That was.

16 Q When you performed this autopsy on this
17 young man -- when you first come in contact with
18 a person who is deceased to perform the autopsy,
19 what do you initially do?

20 A Initially what we do is basically what --
21 well, what we do is we photograph the body. The
22 body is photographed. As soon as the body is
23 opened, the body is photographed and I back up
24 the photographs with -- I make diagrams just in
25 case something happened to the photographs, so

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

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

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

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

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

18 A. Yes, it would be.

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

21 A Yes. It would.

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

24 THE COURT: Any objection?

25 MR. CHAPLIN: No objection.

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1 MR. FARLEY: No objection, Your Honor.

2 (SO ENTERED AS STATE'S EXHIBIT 86)

3 (SO ENTERED AS STATE'S EXHIBIT 87)

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

6 THE COURT: Yes.

7 DIRECT EXAMINATION CONTINUED

8 BY MS. SAMPSON:

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

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

14 So again the label on the case, all right.

15 These are just my standard measurements
16 what we have here.

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

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

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

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

8 A laceration here, that actually is a line
9 here -- it's not supposed to be there. It is
10 0.5-inch. That's right over here on the left
11 eyebrow. A laceration. A laceration is a break
12 in the skin, okay? It's a break in the skin,
13 again due to blunt trauma, okay.

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

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

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

25 Q When you say the word "hemorrhage", does

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1 that mean ---

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

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

6 The rest of this is just the medical
7 therapy here.

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

10 A That's just to help him breathe.

11 Q And that would be ---

12 A In an effort to keep him alive.

13 Q -- an effort to save him?

14 A Yes. There is an abrasion right here --
15 0.3 inch abrasion right there. I can't really
16 relate that to trauma. A lot of times when
17 people are in the hospital, one of the things
18 they do is try to pinch them, try to get a
19 response out of them, so I can't say like that's
20 trauma. I will not go there. It could be but
21 in my opinion I'm not going to say that to you
22 guys.

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

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1 Q And I show you State's Exhibit 87, I
2 believe. Yes. What does this diagram show?

3 A Now, we completely -- now we start the
4 autopsy, we do all the internal work. Some of
5 the internally organs were absent for
6 procurement of organ donation.

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

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

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

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

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

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

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

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

25 Q You mentioned it wasn't a significant

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1 amount of blood that you saw on the other side
2 of his head?

3 A Right. Clearly there was more injury here
4 on the right side, but he had blunt trauma. No
5 question about this. This confirms there was
6 blunts trauma to his head.

7 Q And that's the extent of your findings?

8 A Yes, that's the extent of the external
9 findings on his head.

10 Q I want to show you what else been marked as
11 State's Exhibit 51 through 57 and first ask you
12 to look at those?

13 A Okay.

14 Q Were those photographs taken at the
15 autopsy, actually after the autopsy was
16 completed?

17 A These photos were taken I believe before
18 the autopsy.

19 Q Okay. These were actually taken -- I'm
20 sorry, before the autopsy?

21 A Before the autopsy, yes.

22 Q And these illustrate some of the injuries
23 you have demonstrated to the head area and also
24 the eye area and some of the lack of injury to
25 the back.

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1 A Yes.

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

4 MR. CHAPLIN: I would like to see
5 them.

6 MS. SAMPSON: Sure, (tenders).

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

10 MS. SAMPSON: May I approach?

11 THE COURT: What grounds?

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

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

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

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

2 WITNESS: Could I use the restroom?

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

6 MS. SAMPSON: May I hand these up?

7 THE COURT: Absolutely.

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

10 THE COURT: Yes, tell me what you want.

11 (OFF RECORD BENCH CONFERENCE)

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

14 THE COURT: Yes.

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

17 THE COURT: I want the -- go ahead.

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

21 THE COURT: Of what?

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

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

3 THE COURT: Have you seen these?

4 MR. CHAPLIN: I have not.

5 THE COURT: Why didn't you see these?

6 MR. FARLEY: I have.

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

9 THE COURT: You didn't give them those?

10 MS. SAMPSON: What?

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

14 MS. SAMPSON: We gave them all the
15 pictures.

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

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

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

23 MS. SAMPSON: With all of them?

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

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

5 THE WITNESS: Yes, they do.

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

8 MR. FARLEY: I'm sorry.

9 (RECEIVED NOTE FROM JUROR)

10 (OFF RECORD BENCH CONFERENCE)

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

13 MS. SAMPSON: I believe I started with
14 51 -- through 57, Your Honor.

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

19 MS. SAMPSON: Can I ask him a
20 question?

21 THE COURT: Yes.

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

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1 THE WITNESS: Yes, they do.

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

5 THE WITNESS: Yes, they do.

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

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

15 MS. SAMPSON: And these would be
16 crucial?

17 THE COURT: What numbers?

18 MS. SAMPSON: Eighty-one (81) through
19 83 -- to illustrate to the jury what you're
20 talking about.

21 THE WITNESS: Yes.

22 THE COURT: Three photographs?

23 MS. SAMPSON: Four.

24 THE COURT: You said 81 through 83.

25 MS. SAMPSON: Maybe I misstated it.

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1 THE COURT: Yes.

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

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

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

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

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

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

22 MR. FARLEY: Thank you, Your Honor.

23 THE COURT: Mr. Chaplin.

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

25 THE WITNESS: Yes, sir?

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

4 THE WITNESS: Yes, sir.

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

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

9 MR. CHAPLIN: Okay.

10 THE WITNESS: Blunt trauma.

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

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

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

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

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

21 THE WITNESS: Yes, blunt force
22 trauma.

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

25 THE WITNESS: I believe so, yes.

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1 MR. CHAPLIN: Okay.

2 THE COURT: All right. The objection
3 is overruled.

4 MS. SAMPSON: Thank you, Your Honor.

5 THE COURT: Bring the jury.

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

7 BAILIFF: All jurors are present, Your
8 Honor.

9 THE COURT: Thank you. You may
10 continue.

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

13 THE COURT: Yes.

14 DIRECT EXAMINATION RESUMED

15 BY MS. SAMPSON:

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

21 A Yes.

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

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1 A That's correct.

2 Q In addition, you also talked about some
3 areas on the head which did note some
4 significant trauma?

5 A Yes.

6 Q I show you State's Exhibit 51 and 52. What
7 do those show?

8 A Okay. So this photo, 52, shows the
9 contusion or the black and blue mark around the
10 right face area that I will described on the
11 diagram for you guys due to blunt trauma.

12 Q And this ---

13 A That is a head on view of that injury.

14 Q We also noted that there was actual
15 laceration over the eye in Exhibit 53?

16 A. Yes, that's the lacerations over the left
17 area of the eye.

18 Q The left area of the eye?

19 A Yes.

20 Q And then you also mentioned some
21 hemorrhaging in the eye?

22 A The white area. The sclera hemorrhage that
23 we talked about.

24 Q And finally there is some injury, State's
25 Exhibit 55, of ---

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1 A Yeah, there was an inner lip. There was
2 some hemorrhage right in there.

3 Q And all that is consistent with blunt force
4 trauma to the head?

5 A Yes.

6 Q Once you noted all the external, you
7 mentioned that you then start performing your
8 actual autopsy?

9 A Uh-huh.

10 Q And based only this case and based on your
11 observations I think you said you were focused
12 on the head area?

13 A Focused on the head area. We did the
14 remainder of the autopsy in this area.

15 Q Just the remainder of the body and looking
16 at the internal organs that had to be removed
17 and all that, was there any other causation of
18 death other than head trauma?

19 A No. The cause of the death was the head
20 injury.

21 Q I'll get back to that. Once you actually,
22 I believe you said, reflected the skull and
23 actually started making your observations, what
24 did you observe once you were able to observe
25 the actual underneath the skin?

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

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

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

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

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

18 Q What is the skull made out of?

19 A The skull is made of bone.

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

24 A Yeah, there was a skull fracture also.

25 Q Where was the skull fracture located?

1 A The skull fracture was located in the right
2 parietal area, right about here.

3 Q Towards the back of the head?

4 A Towards the back of the head and I'll show
5 you on the diagram where it was, right about
6 where this hemorrhage was.

7 Q Kinda behind that ear right there, in the
8 back of the head?

9 A Yeah, the parietal area.

10 Q What kind of force does it take to cause a
11 skull fracture?

12 A Significant amount of force.

13 Q And we're talking about a significant
14 amounts of force. Would that be consist with
15 someone saying having their feet swept out from
16 under them and landing on their head?

17 A Absolutely.

18 Q Would that be consistent in this case with
19 what could have caused the skull fracture?

20 A Absolutely.

21 Q In addition to that, once you actually
22 removed the skull and were able to look at the
23 brain, were there other findings which backed up
24 your conclusions in this case?

25 A Yes.

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1 Q What were those?

2 A Well, he had a massive amount of subdural
3 hemorrhage on the left side, he had subarchnoid
4 hemorrhage which is another area of hemorrhage.
5 He also had cerebral contusions, which is
6 actually hemorrhage in the brain itself, which
7 again is due to usually blunt trauma to the
8 brain itself.

9 Q And the cerebral hemorrhage to the brain
10 itself, what kind of trauma or force are we
11 talking about?

12 A Significant, significant amount of trauma.
13 Again that hemorrhage was right around this area
14 of the brain where the skull fracture was, right
15 around that area.

16 Q When you say significant, what types of
17 accidents or causation have you seen cause the
18 type of injury you see in this case?

19 A Blunt trauma. I see -- the brain usually
20 floats in a spinal fluid. I see cerebral
21 contusions when the brain bangs up against the
22 skull itself. That's when you get cerebral
23 contusions. Normally the brain is in a sludge
24 liquid, floating.

25 Q Is this something you often see, shall we

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1 say, in car accidents?

2 A Yep.

3 Q High impacts?

4 A Yes.

5 Q Falls from running?

6 A Yes.

7 Q Doctor, I want to show you what's being
8 marked State's Exhibit 80 through 83. Are
9 these photographs that actually illustrate what
10 happened to this man's brain?

11 A Yes.

12 Q Would these aid you in describing the
13 injuries to the jury?

14 A Yes.

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

17 THE COURT: Over the objection of the
18 defendants.

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

20 DIRECT EXAMINATION CONTINUED

21 BY MS. SAMPSON:

22 Q Starting with State's Exhibit 82, does that
23 show the laceration to the ---

24 A Yes.

25 Q These are graphic.

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

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

8 A Eighty-one (81)

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

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

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

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

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

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

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

8 A Yeah, about three days old.

9 Q If it were not that ---

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

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

15 A Yes.

16 Q Could he have have survived these injuries?

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

25 Q And the cerebral contusion that you

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

3 A That's correct.

4 Q And those would be corresponding ---

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

7 MS. SAMPSON: Your Honor,
8 permission to publish?

9 THE COURT: Yes, ma'am.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. SAMPSON:

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

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

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

25 A. It's consistent, yes.

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1 Q And in making your determinations as to the
2 cause of death, what was the cause of death in
3 this case?

4 A The cause of death was a closed head
5 injury.

6 Q And that was due to?

7 A Due to blunt head trauma.

8 Q During the course and after -- before and
9 after performing this autopsy, were you given
10 updates on the history in this case?

11 A Yes, I was.

12 Q Did you become aware that there were two
13 separate assaults that occurred fifteen to
14 twenty minutes apart?

15 A I was.

16 MR. CHAPLIN: Objection, Your Honor.

17 THE COURT: What's the objection?

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

22 THE COURT: Approach the bench.

23 (OFF RECORD BENCH CONFERENCE)

24 THE COURT: The objection is overruled.

25 MS. SAMPSON: Thank you, Your Honor.

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1 DIRECT EXAMINATION CONTINUED

2 BY MS. SAMPSON:

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

6 A Yes.

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

10 A Yes.

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

14 A Yes.

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

19 A Yes.

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

24 A Yes.

25 Q And was never conscious?

1 A Yes.

2 Q E.M.T.s said when they got there that he
3 was posturing?

4 A Yes.

5 Q What does posturing refer to?

6 A He's in a condition like this.

7 Q That's indicative of what kind of injury?

8 A Central nervous system injury, brain
9 injury.

10 Q Would that be consistent with the type of
11 injury you observed in the brain during your
12 autopsy?

13 A In my opinion it's a severe brain injury,
14 in my opinion.

15 Q Once a person is posturing as in this case
16 he never got up again and was declared dead
17 shortly thereafter?

18 A That's correct.

19 Q Was that consistent with the type of
20 injuries you found from your examination in this
21 case?

22 A Yes.

23 Q Can you say which injuries absolutely were
24 done in the first assault versus the second
25 assault, because you mentioned some not so

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

4 A No, I cannot.

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

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

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

15 A Absolutely.

16 Q No doubt about that?

17 A No doubt about that.

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

21 A May not have.

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

25 A Yes, absolutely.

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1 Q And then finally for the final anatomical
2 diagnosis in your report, what specific findings
3 as to injuries to this man's head?

4 A I put his cause of death -- the final
5 anatomical diagnosis as blunt head trauma which
6 resulted cerebral hemorrhage, subdural
7 hemorrhage, edema/swelling to the brain as a
8 result of bleeding on the brain; herniation,
9 which is again swelling of the brain due to the
10 bleeding on the brain. Subscalp herniation,
11 resulting in more bleeding on the brain. Scalp
12 hemorrhage. Pericranial injury, skull fracture,
13 facial contusions and lacerations. The cause of
14 death I put as a closed head injury due to blunt
15 head trauma sustained in a physical altercation.

16 Q And the most significant injury that you
17 saw to his brain, talking about cerebral
18 hemorrhage, ---

19 A Subdural hemorrhage, subarachnoid
20 subcranial, cerebral contusions.

21 Q Were those all over or ---

22 A The subdural was on the left side and the
23 subdural contusions were located on the right.

24 Q And the significant skull fracture that you
25 found was where?

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1 A On the right side.

2 Q On the right side, on the right side
3 towards the back of his head?

4 A Towards the back of his head right about
5 here.

6 Q And again would that consistent with
7 someone falling from some higher area to the
8 hard ground, gravel or concrete?

9 A (Affirmative nod).

10 Q And the resulting of bruising to his brain
11 was in the same area where you found that skull
12 fracture?

13 A Yes.

14 Q Thank you, sir.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. FARLEY:

18 Q Thank you, Dr. Marcus. Just to clarify,
19 you said the sclera were unremarked in one part
20 of your report and in another part it said that
21 they were hemorrhaging?

22 A. Yes, that's on external examination -- and
23 that's a typographical error there. I -- the
24 Evidence and Injury is too far apart and I -- go
25 to the other Injury area, down there

1 (indicating).

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

6 A That's correct.

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

11 A That's correct.

12 Q I mean, how many injuries. Totality?

13 A That's correct.

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

17 A That's correct.

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

21 A That's correct.

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

25 A Significant force. That's correct.

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1 Q And I know you said earlier something about
2 a toxicology report?

3 A Yes, that's in the report here.

4 Q And what were the results of that
5 toxicology report?

6 A There was some marijuana and some Lorazepam
7 .125mg.

8 Q I'm sorry, can you tell me what the second
9 was again?

10 A Lorazepam.

11 Q Lorazepam.

12 A Yes.

13 Q Can you tell me, is there a laymen's term
14 or marketing term for that?

15 A Ativan.

16 Q I am just not familiar with that name.

17 A. There's multiple names of these drugs.
18 There's multiple different names.

19 Q What does that drug do? I just don't know.

20 A Ativan is a -- it can be used as an anti-
21 anxiety agent, a sleep agent. It's part of the
22 benzo -- another name for it could be
23 benzodiazepine, a Valium-type drug that relaxes
24 you.

25 Q So is it fair to say it's like Valium?

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1 A That's exactly right, that's exactly right.

2 Q That's a handle for me. I understand
3 Valium.

4 A Valium has very long, like an 18-hour half
5 life in your blood, it's a little longer than
6 for benzodiazepine. They'll use that for a
7 medical procedure like a colonoscopy because it
8 wear off in like an hour.

9 Q Is it fair to say that it is a Valium
10 light?

11 A That's exactly right.

12 Q Is it possible to determine from your
13 diagnosis if they were under the influence of
14 these drugs at the time of either incident? A He
15 was under -- well, it was admission blood that
16 was drawn. So as soon as he came into the
17 Palmetto Richland, they pulled blood from him.
18 So he had marijuana in his system, so he had
19 smoked marijuana probably earlier in the day at
20 some point.

21 Q So he could have still been under the
22 effects of that?

23 A Yeah. Well, I'm not a toxicologist so I
24 can't ---

25 Q Right, right?

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

5 Q That's fine.

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

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

13 A The expected range of treatment.

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

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

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

22 A That's correct.

23 Q Not like ---

24 A Exactly.

25 Q But he was under the influence of a type of

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1 Valium?

2 A That's correct.

3 Q If through the Valium was a prescription --
4 can I just change it to that word and say
5 prescription level?

6 A That's fine.

7 Q Is there -- I just have one last question
8 really. Is there any -- I know you said
9 earlier that there was a significance force that
10 would have to be against Mr. Mack in order to
11 create that injury.

12 A (Affirmative nod).

13 Q Is there any other -- is it possible for
14 you to have an opinion about any other thing in
15 that significant force. I mean, that has to be
16 something akin to, as I said, falling from a
17 great height and striking your head; is that
18 correct?

19 A Well, I really, you know, I can't -- you
20 give me scenarios. It's hard for me to just
21 pull out an example for you. It's hard for me,
22 you know. You give me a scenario and I could
23 tell you could that cause an injury, yes or no.
24 Your skull is very thick. It's an extremely
25 thick bone and you need a significant amount of

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

3 Q Right.

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

7 Q Right.

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

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

15 CROSS EXAMINATION

16 BY MR. CHAPLIN:

17 Q Dr. Marcus, ---

18 A Yes, sir.

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

21 A Hundreds.

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

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

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

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

5 A Yes, sir.

6 Q Can you say specifically how they were
7 caused?

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

10 Q Can you be any more specific?

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

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

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

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

7 A All right.

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

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

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

17 A Right. I examined body on the 16th.

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

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

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

25 A No, I do not.

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1 Q Okay.

2 A I only testified to the age of the subdural
3 because -- I'll tell you why. Subdurals are
4 pretty, pretty accurate. Contusions are not. I
5 don't date contusions.

6 Q Okay. So the contusion could have occurred
7 any time before you examined body?

8 A Well, it definitely occurred before I
9 examined the body, the contusion.

10 Q But a month earlier?

11 A No, no absolutely not.

12 Q Two weeks?

13 A No, because it would have healed by then.

14 Q A week?

15 A No, it wouldn't have been that color.

16 Q Three days?

17 A Possible.

18 Q Now, you also said you noticed there were
19 lacerations?

20 A There was a laceration.

21 Q A laceration?

22 A Yes.

23 Q Now, where was that laceration?

24 A That lacerations was right here, sir.

25 Q Okay.

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1 A Right there.

2 Q Now, based on your examination, could you
3 tell whether that laceration occurred -- in your
4 examination, could you tell whether the
5 laceration occurred at the second attack or at
6 the first attack?

7 A No, I can't tell when that occurred, sir.

8 Q Okay. My questions about the other
9 injuries are pretty similar. What about the
10 sclera hemorrhage in the eye. Could you tell
11 whether that occurred at the first attack or the
12 second attack?

13 A I can't tell.

14 Q Okay. And then the bruise on the side of
15 the head. Could you tell you tell if that
16 occurred at the first attack or the second
17 attack?

18 A I can't tell.

19 Q Now, you indicated that there was something
20 going on the right side of the skull?

21 A That's correct.

22 Q And that's where you say that you saw
23 something that was caused by a great impact?

24 A That's correct.

25 Q And I think the State asked you a follow-up

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

5 A That's possible.

6 Q Okay.

7 A That's possible.

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

12 A That's correct.

13 Q How did you learn of that?

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

16 Q Okay.

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

23 Q Basically what you got was something from
24 the police?

25 A Well, yeah, we work with the police.

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1 Q I understand?

2 A We get all the facts together and we then,
3 you know, get the police together and sign the
4 autopsy report out on the cause of death.

5 Q So the information with regards to the
6 different attacks that you received is as
7 reliable as the report that you got from the
8 police?

9 A Right, right, that's correct.

10 Q And you were just doing your job by reading
11 what you got?

12 A Well, I don't actually get the actual -- I
13 just get information. That's correct, that's
14 correct, sir.

15 Q Okay. Now, you indicated that the victim
16 was under the influence of marijuana and also
17 maybe a prescription doze of Lorazepam, Ativan?

18 A That's correct.

19 Q What's the street name for that?

20 A I don't know street names, sir.

21 Q What's your medical opinion as to the
22 effect that would have on someone taking
23 marijuana and Lorazepam at the same time?

24 A I -- I'm not a toxicologist so I don't
25 feel -- I don't feel I'm an expert in this area,

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

3 Q Is marijuana a stimulate or a depressant?

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

5 Q Depressant?

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

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

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

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

17 A No, sir.

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

22 A No, I don't know.

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

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

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

8 A Yes.

9 Q Okay.

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

12 Q And nothing else?

13 A Uh-huh.

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

16 A I have nothing about that.

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

19 A Uh-huh.

20 Q All right. I think that's all my
21 questions. Let me just look at my notes.

22 (Upon review), thank you. I think that's it.

23 Thank you very much

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

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1 BY MS. SAMPSON:

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

7 A No, no.

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

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

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

15 A No.

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

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

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

6 A. (Affirmative nod).

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

10 A Yes.

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

14 A No.

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

19 A Yes.

20 MS. SAMPSON: Thank you, sir.

21 THE COURT: Anything further?

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

24 RE CROSS EXAMINATION

25 BY MR. CHAPLIN:

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

9 A Right, not in the levels of him.

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

13 A At the lethal level, yes.

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

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

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

22 A Because Lorazepam is an anti-anxiety.

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

25 A It could probably make you drowsy, a little

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1 bit; at very high levels, absolutely.

2 Q So it could make you drowsy?

3 A It could make you drowsy.

4 Q And you don't know what the impact of the
5 two drugs mixed together would do to someone?

6 A No, I don't know. I'm not a toxicologist
7 but marijuana, marijuana -- I don't think
8 marijuana would affect these two in my opinion,
9 but again I'm not a toxicologist. Marijuana --
10 I don't combine -- you can't overdose on
11 marijuana.

12 Q So when you offer us testimony that
13 marijuana and Lorazepam definitely didn't have
14 an impact as to the cause of death, that's based
15 on your limited knowledge about toxicology?

16 A Yes. My opinion based on this case.

17 Q Right.

18 A That's based on this case.

19 Q But I think you also said that you really
20 don't know a whole lot about the impact or the
21 effects of these drugs?

22 A I don't know a lot about the effects of
23 these two drugs on marijuana mixing with
24 Lorazepam; no, I don't.

25 Q So it's possibly that it could have had an

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1 impact as to his death?

2 A I guess.

3 Q Okay. All right. You also stated that --
4 you testified in your opinion the first attack
5 and the second attack were significant?

6 A Yes.

7 Q Is it your medical opinion that a kick and
8 a slap is significant?

9 A Yes, ---

10 Q Thank you very much.

11 A --- it depends on where you are hit.

12 Q Oh, excuse me. I didn't let you finish.
13 Go ahead.

14 A Yes.

15 Q And you were going to say it depends on --
16 what?

17 A Depends on -- yes.

18 Q Okay. Final answer?

19 A Yes.

20 MR. CHAPLIN: Thank you very much.

21 THE COURT: All right. Doctor, you may
22 come down. Thank you very much.

23 (WITNESS STEPS DOWN)

24 THE COURT: May this witness be
25 excused?

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1 MR. FARLEY: No objection.

2 THE COURT: Without objection.

3 MR. CHAPLIN: No objection.

4 THE COURT: Next witness.

5 MS. CAMPBELL: The State would call

6 Sergeant Pegram. I'm sorry, can I switch that?

7 THE COURT: Yes, ma'am.

8 MS. CAMPBELL: State would call

9 Campbell Streeter.

10 (WITNESS TAKES STAND)

11 CAMPBELL STREETER, being duly sworn to
12 tell the truth, the whole truth and nothing but
13 the truth, testified, as follows:

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q May it please the Court, Mr. Streeter,
17 where are you employed?

18 A I am employed with the 5th Circuit
19 Solicitor's office.

20 Q The 5th Circuit Solicitor's Office. That's
21 where I work?

22 A Yes, ma'am.

23 Q How long have you been employed there, sir?

24 A Right at a year.

25 Q Okay. Can you tell this jury a little bit

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

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

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

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

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

14 A I did.

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

17 A I did.

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

20 A My first contact with Ms. Chase was on the
21 27th of this month.

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

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

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

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

8 A Yes, ma'am.

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

11 A Dated February 16th, 2010.

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

14 A Yes, ma'am.

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

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

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

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1 remembering this on the 27th?

2 A She stated the statement was correct and
3 that's what her recollection was when she gave a
4 statement.

5 Q When you went over the statement with her -
6 - I believe you read it to her word for word; is
7 that correct?

8 A Yes, ma'am.

9 Q Even the part in her own handwriting?

10 A She did.

11 Q Did she indicate any of that was incorrect?

12 A No, it was all correct.

13 Q And that was the information she gave you
14 when you went through all these pages with her?

15 A I went through this entire statement with
16 her.

17 Q Did you give her an opportunity to dispute
18 the parts that were written down?

19 A I did, and she indicated that it was all
20 correct.

21 Q Did she tell you that any parts of what
22 she'd written down in her own handwriting, if
23 they were wrong of anything like that?

24 A. She indicated that it was all correct.

25 Q Did you have a second statement with you

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

3 A I went through an additional statement with
4 her were that she -- this would have been on the
5 29th, yesterday morning. I went through an
6 additional statement. I went through this
7 statement again with her on yesterday morning
8 along with another statement which were the
9 investigator's notes of the interview that he
10 did with her.

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

13 A Yes, ma'am.

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

16 A It does.

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

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

22 Q Of 2010?

23 A Yes, ma'am.

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

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

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

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

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

12 Q And everything in there was correct?

13 A Everything's correct.

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

16 A Not to me, no.

17 Q Prior testimony?

18 A No, ma'am.

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

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

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1 She was here to testify.

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

4 Ladies and gentlemen, your lunch is not
5 going to be here until 12:30, so we still have a
6 little while to go but I will need to take a
7 short break. This is probably a good time, it's
8 11:30. I will take this up with the attorneys
9 and we will call you in just a few minutes.
10 Don't discuss the case among yourselves.

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

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

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

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

22 THE COURT: Let me hear your objection.

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

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

10 THE COURT: Which they can do.

11 MR. CHAPLIN: Sir?

12 THE COURT: Which they can do.

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

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

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

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

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

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

16 THE COURT: She said they're not true.

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

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

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

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1 extrinsic evidence of a prior inconsistent
2 statement of a witness.

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

9 MS. CAMPBELL: Yes.

10 THE COURT: It is.

11 MS. CAMPBELL: We admit it is
12 extrinsic.

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

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

20 MS. CAMPBELL: The original ---

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

22 MS. CAMPBELL: McCracken.

23 THE COURT: McCracken. All right.

24 Well, for right now we are going to mark it for
25 identification. The only question I have, I

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

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

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

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

16 THE COURT: Well, ---

17 MS. CAMPBELL: I could bring McCracken
18 back.

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

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

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

3 MR. CHAPLIN: And then -- excuse
4 me.

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

9 MR. CHAPLIN: Yes.

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

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

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

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

24 THE COURT: Under 613(b).

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

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1 limit it to that statement.

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

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

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

8 MS. CAMPBELL: Yes, sir.

9 THE COURT: Okay. Bring the jury.

10 MS. CAMPBELL: Can we run to the
11 restroom?

12 THE COURT: Restroom break.

13 (BRIEF RECESS)

14 (DEFENDANTS PRESENT)

15 THE COURT: State ready for the jury?

16 MS. CAMPBELL: Yes.

17 THE COURT: Defense ready for the
18 jury.

19 MR. FARLEY: They are.

20 THE COURT: Come in.

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

22 (OFF RECORD BENCH CONFERENCE)

23 BAILIFF: All jurors are present,
24 Your Honor.

25 THE COURT: Thank you. Ms. Campbell,

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1 you may continue.

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

4 THE COURT: Any questions of this
5 witness?

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

8 CROSS EXAMINATION

9 BY MR. FARLEY:

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

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

16 Q But you didn't take the statement?

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

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

22 A I did not.

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

25 Q You just brought a copy to her later on?

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1 A On two occasions.

2 Q But that was after the incident?

3 A Yes.

4 Q But you didn't hear her give that statement
5 and you weren't present at the statement?

6 A She gave me a statement.

7 Q Yes, sir, what I'm saying is the statement
8 you carried to her, you weren't present when
9 that statement was taken; is what I'm saying?

10 A I was not.

11 MR. FARLEY: Thank you Mr. Streeter.

12 THE COURT: Anything?

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

15 THE COURT: Anything further questions?

16 MS. CAMPBELL: Just a couple questions.

17 REDIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q You did. I show you State's Exhibit 84 and
20 85, when you went over these statements with
21 her, what did she tell you about what was in
22 these statements?

23 A I went over this handwritten statement on
24 two occasions for her, and I went over this
25 statement on one occasion with her. She

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

3 Q Thank you, sir.

4 THE COURT: Anything further?

5 MR. FARLEY: Just one other
6 question.

7 RECROSS EXAMINATION

8 BY MR. FARLEY:

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

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

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

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

17 MR. FARLEY: Thank you Mr. Streeter.

18 MR. CHAPLIN: Nothing from
19 Mr. Streeter.

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

22 (WITNESS STEPS DOWN)

23 THE COURT: Next witness.

24 MS. CAMPBELL: The State would call
25 Investigator McCracken.

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1 (WITNESS TAKES STAND)

2 ROBERT McCracken, having previously
3 been sworn to tell the truth, further testified:

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

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

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

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

13 A Yes, ma'am.

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

16 A Yes, ma'am.

17 Q Do you have a copy of the original?

18 A The original, yes, ma'am.

19 Q Can I see that.

20 A. (Tenders)

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

23 DIRECT EXAMINATION CONTINUED

24 BY MS. CAMPBELL:

25 Q State's Exhibit 88 is the actual original

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1 of that statement?

2 A Yes, ma'am.

3 Q And what's been marked as State's

4 Exhibit 84 is just a copy of that?

5 A Yes, ma'am.

6 Q Your Honor, at this time, I would offer

7 State's Exhibit 88 into evidence?

8 MR. FARLEY: Your Honor, I would object

9 and renew my previous objection that this is

10 inadmissible hearsay.

11 THE COURT: And ---

12 MR. CHAPLIN: Your Honor, again I would

13 renew the objection that I've made, as well, and

14 -- I'll leave it at that.

15 THE COURT: All right. The objection

16 is overruled.

17 (SO ENTERED AS STATE'S EXHIBIT 88)

18 MS. CAMPBELL: Permission to

19 publish the statement, Your Honor?

20 THE COURT: Yes, ma'am.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. CAMPBELL:

23 Q Can you read to the jury the statement she

24 gave you back on February 16th when she came to

25 the station?

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- 1 A Yes, ma'am. (Reading): "I saw the victim
2 in between the F and G buildings of Gonzales
3 Gardens having a conversation with another man.
4 The other man grabbed the victim and went to
5 walk him down the sidewalk. The victim snatched
6 back and the other man swept the victim from
7 under his feet causing the victim to hit his
8 head on the pavement..." -- a few seconds later.
9 Excuse me. "...hit his head on the pavement. A
10 few seconds later a female runs up the street
11 saying "That's him." She begins kicking the man
12 repeatedly, picking up an old metal chair,
13 throwing it on top of the victim. The other man
14 continued to kick and stomp the man in his face.
15 Once the female stopped, the victim laid on the
16 ground the whole time this was occurring."
- 17 Q That's the first page of that statement?
- 18 A Yes, ma'am.
- 19 Q In whose handwriting is that in?
- 20 A That would be Ms. Kara Chase's handwriting.
- 21 Q And then the next two pages, second page
22 of that statement, did you follow up with some
23 questions and answers?
- 24 A Yes, I did.
- 25 Q In whose handwriting was the question?

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

4 Q Thank you, sir. Go ahead.

5 A Finish reading it?

6 Q Yes, sir.

7 A Okay. (Reading):

8 Question: Do you know the victim?

9 Answer: No.

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

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

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

17 Answer: She is Six's sister.

18 Question: Did you hear any --
19 did you hear any conversation between the victim
20 and the people assaulting him?

21 Answer: Yes, the victim said, "I
22 am not going anywhere. Just do what you're
23 doing to do to me here."

24 Question: Do you know of any other

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1 witnesses to this fight?

2 Answer: Sanovia, Diane and
3 Donetti.

4 Question: Describe the chair the
5 female hit the victim with.

6 Answer: A metal, rusty old chair
7 (lawn).

8 Question: Where did you last see
9 this chair?

10 Answer: In front of the G-3
11 building.

12 Question: Anything particular
13 about the clothing of Six or Six's sister?

14 Answer: He had construction boots
15 on.

16 Question: Do you know Six or Six's
17 sister's real names?

18 Answer: No.

19 Question: Did you see the
20 victim fight back or attempt to flee?

21 Answer: No. He didn't have a
22 chance to fight back or flee.

23 That's the end of the statement.

24 MS. SAMPSON: Thank you, sir. I don't

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1 have any further questions.

2 THE COURT: Any questions of this
3 witness?

4 MR. FARLEY: Thank you. Confront and
5 cross-examine.

6 CROSS EXAMINATION

7 BY MR. FARLEY:

8 Q Investigator McCracken, ---

9 A Yes, sir.

10 Q Again, I was going to ask -- the part where
11 it said, and I believe you read the statement,
12 that she threw the chair on top of the victim; I
13 believe, are the exact words?

14 A I'll have to find it.

15 Q It's in the ---

16 A "Threw it on top of the victim." That's
17 what it says in the statement.

18 Q But you're not here to clarify what that
19 means because you can't clarify what that means?

20 A She wrote the statement.

21 Q She wrote the statement. So you are not
22 exactly sure what that means. You just have the
23 words in front of you?

24 A From looking at the words I can make my own
25 interpretation, but ---

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1 Q But that could be open to speculation; is
2 that correct?

3 A That's correct.

4 Q We're not sure. Because she is here to
5 testify, only she can say what she ---

6 A Only she could say exactly what that means.
7 She would testify to that.

8 Q Is it fair to say that that could have
9 several interpretations?

10 A I can only think of one.

11 Q That's fine. Well, let me ask you this,
12 later on, I think the second page or so I
13 believe, and please correct me if I'm wrong, you
14 were the one who was asking the questions?

15 A Correct.

16 Q So those are your words and you could
17 testify those, what you meant.

18 A Yes.

19 Q But it's your words, question, do you know
20 who -- maybe you can make sure I get the
21 sentence correctly, who hit the victim with the
22 chair, something to that end?

23 A "Do you know the man that was fighting with
24 the victim?" Is that the question.

25 Q No. Give me one second and I'll --

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1 "Describe the chair that the female hit the
2 victim with."

3 A Yes.

4 Q Those are your words, correct?

5 A Yes, they are.

6 Q Nowhere else in this statement is it
7 described as hitting the victim?

8 A "Kicking" the victim.

9 Q I'm sorry?

10 A "Kicking" the victim.

11 Q But with regards to the chair?

12 A. With regards to the chair, no.

13 Q The only sentence in here that says the
14 female hit the victim with a chair are your
15 words?

16 A I wrote that question, yes, sir.

17 Q Thank you, Investigator McCracken.

18 CROSS EXAMINATION

19 BY MR. FARLEY:

20 Q Investigator McCracken, I just want to back
21 up a little bit. It's true that Kenneth Mack
22 was attacked on the 13th of February, 2010,
23 correct.

24 A I couldn't tell you that. I mean, that
25 should be published. My case notes started on

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1 the 15th, I believe. I don't have them in front
2 of me. That's when I got involved. I wasn't
3 involved in the initial.

4 Q Okay. All right, sir. So on the 15th of
5 February, 2010, Marcellius Brooks was arrested
6 for murder?

7 A I don't know that either.

8 Q Okay.

9 A I wasn't -- (pause).

10 Q And then on the 16th of February 2010, Kara
11 Chase, Donetti Perry and Mary Anderson came to
12 your police department?

13 A I can testify that Kara Chase did. That's
14 who I took the statement from.

15 Q Okay. And the statements were taken -- you
16 took the statements from Kara Chase?

17 A That's correct.

18 Q Her at the same time at that time said what
19 you just read?

20 A Correct.

21 Q But to this day Marcellius Brooks is still
22 charged with murder, correct?

23 A I'm assuming so. I don't know.

24 Q All right. Thank you very much.

25 THE COURT: Anything further?

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1 REDIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q Mr. Farley asked you about being "hit".

4 A. Yes.

5 Q If I take a ball and throw it at you, could
6 it hit you?

7 A. Yes.

8 Q If I take a chair and throw it at you,
9 could it hit you?

10 A. Absolutely.

11 MS. CAMPBELL: Thank you, sir.

12 THE COURT: Anything further.

13 MR. FARLEY: Just one question.

14 THE COURT: Yes, sir.

15 RECROSS EXAMINATION

16 BY MR. FARLEY:

17 Q Just to say it again, your words were
18 "hit"?

19 A I wrote that question.

20 MR. FARLEY: Thank you.

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

23 (WITNESS STEPS DOWN)

24 THE COURT: Next witness?

25 MS. CAMPBELL: Thank you, Your Honor.

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1 The State calls Sergeant Pegram.

2 (WITNESS TAKES STAND)

3 WILLIAM PEGRAM, being duly sworn to
4 tell the truth, the whole truth and nothing but
5 the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Sir, where are you employed.

9 A Columbia Police Department.

10 Q What do you do there?

11 A I'm the supervise of the Violent Criems
12 Unit.

13 Q As a supervisor of the violent crimes unit,
14 what do your duties include?

15 A Two assign cases to dictate the direction
16 of cases, just to supervise ten people.

17 Q How long have you been a police officer,
18 sir?

19 A September is twenty-nine years.

20 Q How many?

21 A Twenty-nine (29).

22 Q Prior to becoming a supervisor over the
23 violent crimes unit, did you actually
24 participate as an investigator?

25 A I did.

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1 Q Specifically back in February of 2010, were
2 you the investigator that was assigned to be the
3 lead investigator in this case?

4 A I was.

5 Q What were your duties involved in
6 investigating a case such as this?

7 A First to determine whether or not a crime
8 has been committed, then determine who the
9 principle are in that crime.

10 Q And when you do an investigation, does this
11 all the happen, say, on the day that the body
12 was found or things of that nature or is it an
13 evolving process?

14 A It's dynamic. I mean, it starts with the
15 location of the crime.

16 Q In this case, especially in this case, did
17 information evolve through the course of this
18 investigation?

19 A Yes.

20 Q Specifically starting with February 13th,
21 how did you become involved in this case?

22 A I was notified to come to Gonzales Gardens
23 in reference to an assault.

24 There were questions about where the
25 assault occurred. We had a victim, so what I

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1 did was I responded to the hospital to determine
2 what kind of case we were looking, whether the
3 victim had survived or whether the victim was
4 deceased.

5 Q Okay When you got to the hospital that
6 day, was the victim already there?

7 A Yes, he was.

8 Q So you went directly there rather than
9 going to the Gardens first?

10 A Yes.

11 Q What information were you trying to get
12 before you got to the hospital that day?

13 A The condition of the victim. I spoke with
14 the Neurologist, Dr. Smith. He informed me
15 that, when I got there, the victim was
16 considered brain dead.

17 Q And you responded directly to the hospital
18 that afternoon?

19 A I did.

20 Q So with that information and at that point
21 though, he wasn't being taken off life support;
22 is that correct?

23 A That's correct.

24 Q And when did he actually get taken off all
25 life support even though he had been declared

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1 brain dead that afternoon?

2 A The thirteenth is when he was declared
3 dead.

4 Q And then he was taken off life support
5 though a day or two later; is that correct?

6 A That's correct.

7 Q The autopsy in this case occurred on
8 February 16th, that morning?

9 A That's correct.

10 Q Once you had gotten the information from
11 the hospital, what if anything did you do?

12 A I went back to the crime scene. I started
13 designating certain investigators to handle
14 certain task. Generally what I will do is with
15 ten investigators I split. I keep some
16 investigations out of the investigation just in
17 case we have something else that occurs and then
18 I involve three or four investigators to assist
19 with the investigation. We initially will start
20 canvassing the area trying to locate witnesses.
21 Just whatever information we can gather right
22 from the beginning is where we start.

23 Q That afternoon, without going into what was
24 said, did you interview a certain witness in the
25 case as far as his observations of an assault

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1 that occurred near McDuffie street.

2 A I did.

3 Q You can't say what he said to you, but with
4 that information later that day, did you also
5 get additional information from another source
6 as to a possible participant in one of the
7 assaults in this case?

8 A I did.

9 Q And what name was given to you?

10 A Henry Gray. Actually I think the tip came
11 in as Robert Gray, Jr.

12 Q And how did you get that information?

13 A That was an anonymous tip that came in
14 through a telephone response unit.

15 Q Later that day, did you also interview a
16 Mr. Weathers, Isaacs weathers?

17 A He was interviewed.

18 Q Was an interview conduct -- you didn't
19 actually interview him?

20 A I don't believe I did.

21 Q But as the chief investigating officer in
22 the case, all the information is forwarded to
23 you; is that right?

24 A It is. I reviewed all the statements.

25 Q And that would be Mr. Weathers who

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1 testified earlier today?

2 A Yes.

3 Q Was information obtained from him about one
4 of the people that participated in the first
5 assault?

6 A Yes.

7 Q At this point, do you know how many
8 assaults had actually occurred?

9 A No.

10 Q And tell the jury why that was going on,
11 the confusion that initially presented in this
12 case that was later resolved.

13 A The way it began is that the information
14 was that an assault occurred near the L building
15 on McDuffie Street. In fact, that's where the
16 crime was actually established. We had no
17 information at the beginning of the second
18 assault.

19 So what was confusing was the information
20 that came in regarding Mr. Gray and the
21 information about a chair. We went back out to
22 the L building to search for a chair. We didn't
23 find a chair. So that's what we were facing.
24 We had no idea at that point of a second assault
25 and nobody was talking.

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1 We did however take the name, provided a
2 cross reference to that name, get a location and
3 things like that. We tried to identify him just
4 based on the information.

5 Q Okay. Did you become aware during the
6 course of your investigation that Mr. Gray's
7 father lived at the G building?

8 A Yes.

9 Q And that he would stay there sometimes?

10 A Yes.

11 Q You were also aware that the body was
12 found, the unresponsive body was found between
13 the F and G buildings?

14 A That's correct.

15 Q But at this point you only had eyewitness
16 testimony as to an assault that occurred up at
17 L; is that correct?

18 A Yes.

19 Q Is that why the area where the body was
20 found was not processed initially?

21 A That's right.

22 Q But the chair was later processed?

23 A Yes. No one came forward initially about
24 the second assault; is that unusual for this
25 area?

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1 A Not in Gonzales Gardens.

2 Q Explain?

3 A If I could back a little bit.

4 Q Yes, sir.

5 A. In 2006, I was assigned to the FBI. My job
6 with the FBI was to investigate the GKB, the
7 Gangster Killer Bloods. In fact, there was a
8 documentary on TV about it called the Bloods
9 South. Everything focused on Broad River Road
10 and Gonzales Gardens. Gonzales Gardens was
11 actually identified by the FBI as a hot spot for
12 the Bloods street gang. People in that
13 neighborhood generally will not talk to the
14 police, because -- it's not TV, this is the
15 actual thing. You'll talk to the police in
16 Gonzales Gardens, there is a very good
17 likelihood that you will be killed. That's
18 fact. That's not TV. Generally when we have
19 problems in Gonzales Gardens, people will not
20 talk with the police. That's significant for
21 us.

22 Q Especially when the police presence is
23 there in Gonzales Gardens, as well?

24 A Yeah, we had a lot of the marked patrol
25 cars, a lot of uniformed cops. People are not

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1 going to be seen talking to the police. That's
2 just not what they do. In fact, with
3 investigators they -- they're reluctant to talk
4 to plainclothes police, even unmarked cars.

5 One thing that we do. For situations like
6 Gonzales Gardens is our car, our windows are
7 blacked out. We black them out simply so that
8 people can't see who is in our cars to come back
9 for retaliation later on.

10 Q Sometimes it's not unusual, once things
11 have quieted down a bit, they may come to
12 headquarters to talk to you or get away from the
13 area and talk to you?

14 A Yeah. A lot of times they will start by a
15 Crime Stoppers tip or they will make anonymous
16 calls, or they will show up at the police
17 department. They won't talk to you or provide
18 statements generally in the Gardens. They come
19 on their own to the police department. That
20 separates them from that element and people
21 don't know that they're at the police
22 department.

23 Q In this case, the first tip you got about
24 Mr. Gray was when?

25 A That was on the first day, on the 13th.

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1 Q And that's not unusual?

2 A No, it's not.

3 Q That day, based on information that you
4 were able to get there, did you try to interview
5 Ms. Vallery Goodwin?

6 A I did.

7 Q Specifically was she able to give you some
8 information that later became significant in the
9 overall investigation of the case?

10 A She did.

11 Q Specifically was -- that information about
12 whom?

13 A About Bloom.

14 Q That's Marcellius Brooks?

15 A Correct.

16 Q Was she able to confirm information you had
17 about Bloom going to her apartment at some point
18 after the first assault?

19 A She did. Officer Delage, when he initially
20 responded to the crime scene, he reported -- in
21 his report, he noted that she saw an individual
22 matching this description of one of the suspects
23 go into an apartment. I believe it's S-6.

24 What we did on follow up is Investigator Sumpter
25 and I went back to the apartment to actually

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1 make contact with the resident. We did. I
2 spoke to Vallery. She said she didn't know the
3 person's real name. She said that his name was
4 "Bloom." That's all she could tell us, but she
5 could provide a cell phone number and that was
6 significant. It came into play later on. When
7 we asked reasons why Bloom was there, she told
8 us that she actually called him to come to the
9 Gardens.

10 Q Okay. You can't give us the substance of
11 what she said.

12 A Okay.

13 Q She was able to give you a phone number and
14 a nickname?

15 A Yes.

16 Q Were you able too, based on that
17 information, identify Bloom as Marcellius
18 Brooks?

19 A I was.

20 Q Either later that day or the next day did
21 you also become aware during the course of your
22 investigation, and you can't say specifically
23 what people said to you, that a thirteen year
24 old female was involved in the initial assault?

25 A Yes.

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1 Q Were you able to identify her?

2 A Yes.

3 Q What was her name?

4 A Melquanna S. [REDACTED]

5 Q Did she have a nickname?

6 A People called her Melquan [REDACTED]

7 Q Were you also able to identify who her
8 mother was?

9 A Yes.

10 Q What was her mother's name?

11 A Robin Reese.

12 Q Did you know anything about Ms. Reese being
13 involved in a second assault, or a first
14 assault?

15 A No.

16 Q Did you make any attempts to talk to them?

17 A I did.

18 Q Why were you specifically trying to talk to
19 the thirteen year old about?

20 A I needed the details on what occurred in
21 the assault.

22 Q Was she actually brought into headquarters?

23 A She was.

24 Q What date was that?

25 A That would have been on the 14th.

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1 Q On the 14th?

2 A Yes.

3 Q On that day, did you actually take a
4 statement from her, as well as Ms. Reese?

5 A Yes.

6 Q The thirteen year old, was she able to give
7 you information specifically about Marcellius
8 Brooks?

9 A Yes.

10 Q Based on all the people you interviewed,
11 you can't talk about what they said to you, all
12 the people you interviewed at that point, were
13 you able to get a warrant that day for
14 Marcellius Brooks?

15 A Yes.

16 Q What was that warrant for?

17 A Murder. No. I'm sorry. It wasn't that
18 day I don't believe -- on the 14th. Let me
19 confirm this, (review of file).

20 Q Okay.

21 A No, the warrant was -- I'm sorry, that was
22 cell phone. The 15th was when the warrant was
23 issued for Brooks for murder.

24 Q And that was Marcellius Brooks?

25 A Yes.

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1 Q At that point, are you still only aware,
2 other than the tip you got about Henry Gray, of
3 one assault occurring?

4 A That's right.

5 Q And you're still investigating?

6 A Yes.

7 Q Is this unusual?

8 A No, it's not.

9 Q That day did you also get a search warrant
10 for some cell phone records?

11 A The cell phone records were on the 14th, I
12 believe, and it was a Nextel cell phone search
13 warrant for [REDACTED] 8124, which was associated with
14 Mr. Brooks.

15 Q What was that phone call, I'm sorry?

16 A It's [REDACTED] 8124.

17 Q And whose phone is this?

18 A That's Mr. Brooks'.

19 Q And tell this jury how you go about getting
20 cell phone records and why those can be so
21 significant in investigations as far as
22 corroborating or disproving?

23 A What we do is if we identify a number to a
24 witness, suspect, whoever, one thing if they
25 provide information is we receive information

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1 about the use of that phone. We send a search
2 warrant to the service provider, and they in
3 return send us the subscriber information, the
4 cell phone records, income/outgoing calls,
5 telemetry, things involving the identification
6 of cell sites. It's significant because we can
7 show who called who and who received calls from
8 who. That either proves or disproves
9 information.

10 Q And that became significant in this
11 investigation at a later time?

12 A It did.

13 Q Then the next day, on the 15th, did you and
14 Investigator Sumpter go and look at some video?
15 Try to look for some video?

16 A We went to the Blue Ocean, the fish market.

17 Q The Blue Ocean Fish Market?

18 A (Affirmative nod)

19 Q What kind of video were you trying to get
20 there and why?

21 A We were aware of an external camera. We
22 had information that individuals leaving the
23 first assault had gone to the store. They would
24 have had to pass in front of this fish market,
25 so we reviewed the video to see if, in fact,

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1 that was true.

2 Q I'm showing you'll what's been marked as
3 State's Exhibit 93, the video. Have you had an
4 opportunity to review that video?

5 A (Affirmative nod)

6 Q Where was it?

7 A Blue Ocean Fish Market.

8 Q About did you review it that day?

9 A Yes.

10 Q Does that fairly and accurately reflect
11 what you reviewed that day right there at the
12 fish market?

13 A Yes.

14 MS. CAMPBELL: Your Honor, at this
15 time we'd offer State's Exhibit 93?

16 MR. FARLEY: I have no objection.

17 MR. CHAPLIN: No objection.

18 THE COURT: So entered.

19 (SO ENTERED AS STATE'S EXHIBIT 93)

20 DIRECT EXAMINATION CONTINUED

21 BY MS. CAMPBELL:

22 Q When you reviewed this -- and this will be
23 in evidence for the jury, but when you reviewed
24 this, what did you observe?

25 A I observed two females walking in front of

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1 the camera with one on the cell phone followed
2 by four or five males.

3 Q And was that significant in your
4 investigation, specifically as to the two
5 females and four males following them?

6 A Yes.

7 Q Why was that significant?

8 A It corroborated information that after the
9 assault, Marcellius Brooks went to the store,
10 told Ms. Reese about the assault with her
11 daughter and that she had left with her daughter
12 and that she was on the cell phone at the time
13 when she walked out the door.

14 Q Let me back up. I messed up something.
15 The day before when you took the statement from
16 Ms. Singletary, the thirteen year old, the
17 person that ultimately was the victim in this
18 case was she able to identify him to you?

19 A Yes.

20 Q How did she know him?

21 A She knew him by the name "Ken."

22 Q And that was the information she gave you?

23 A That's what she gave me, (affirmative nod).

24 Q When you reviewed the video, you mentioned
25 there were two females. Would that be

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1 consistent with one of the females being
2 Ms. Reese and her daughter?

3 A Yes.

4 Q You mentioned that one of those two on the
5 phone?

6 A Yes.

7 Q Which one was that?

8 A It appeared Ms. Reese was on the phone.

9 Q Did you attempt to actually obtain the
10 video that day?

11 A I did. There were some technical problems.
12 A lot of these stores that have surveillance
13 cameras usually don't have a tape, a tech there
14 who can download it. The videos, a lot of times
15 you have to download the software down with the
16 video in order for us to play. We were unable
17 to get it when we went to get it so we watched
18 it. We reviewed it.

19 Q And it had on what you indicated to this
20 jury?

21 A Yes.

22 Q Later on that day you mentioned you had
23 already gotten a warrant outstanding for
24 Marcellius Brooks. Were you making any attempts
25 to contact him or get him in?

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1 A Yes.

2 Q Tell the jury what happened next?

3 A I know during one conversation, I called
4 him and I told him that we needed him to come
5 in. He stated that he would and he did show up.

6 Q And when did he actually turn himself in?

7 A He agreed to come in on the 15th.

8 Q On that evening, did you actually make
9 contact with him when he turned himself in?

10 A I did.

11 Q Where did he turn himself in?

12 A To the Columbia Police Department.

13 Q Prior to talking to him, did you advise him
14 of his rights?

15 A. I did.

16 Q Is that proper procedure for someone that's
17 been charged with a crime, that's in custody?

18 A It is.

19 Q And that was done in this case?

20 A It was.

21 Q Did he want to talk to you?

22 A He did.

23 Q At any time did he tell you he didn't want
24 to talk to you anymore?

25 A No.

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1 Q And he talked to you; is that correct?

2 A Yes.

3 Q And just for the record, Ms. Reese, Robin
4 Reese had been in the day before, but at that
5 point you didn't know about any of her
6 involvement in this case?

7 A Right.

8 Q So she was not given her *Miranda* rights?

9 A She wasn't a suspect.

10 Q At that point?

11 A Right.

12 THE COURT: All right. Ms. Campbell,
13 let me see you a minute.

14 (OFF RECORD BENCH CONFERENCE)

15 (DEFENDANT GRAY LEFT COURTROOM,

16 ESCORTED BY DEPUTY)

17 (PAUSE IN PROCEEDINGS)

18 (DEFENDANT GRAY RETURNED TO COURTROOM)

19 THE COURT: You may continue.

20 MS. CAMPBELL: Thank you, sir.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. CAMPBELL:

23 Q You mentioned that Marcellius Brooks turned
24 himself in?

25 A He did.

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- 1 Q And then you advised him of his rights?
- 2 A We did.
- 3 Q Did he provide you information about the
- 4 first assault and also what he heard about the
- 5 second assault?
- 6 A Yes.
- 7 Q Was he completely forthcoming?
- 8 A No.
- 9 Q Has he ever been?
- 10 A No.
- 11 Q During the time period, were you also
- 12 trying to reach out to the community to see if
- 13 anyone could come forward with any information
- 14 about what had happened that day?
- 15 A Yes.
- 16 Q After talking to Mr. Brooks that night on
- 17 the 15th, how did the investigation continue?
- 18 A Mr. Brooks identified one person named
- 19 Little Ricky. We identified him as Angelo
- 20 "Ricky" Boyd. He was actually picked up and
- 21 brought to headquarters voluntarily and provided
- 22 a statement.
- 23 Q And was he charged at that time?
- 24 A He was not.
- 25 Q And why not?

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1 A Because I was still trying to determine
2 what we had and who the principal party was in
3 the case. By law -- in my opinion of the law,
4 everybody involved in this case was guilty but I
5 had to determine the principal parties in the
6 case.

7 Q And at this point you had charged
8 Marcellius Brooks and you had interviewed Ricky
9 Boyd or Angelo Boyd?

10 A Yes.

11 Q What happened next in your investigation?

12 A Well, after we spoke to Angelo Boyd, he was
13 able to give us the names of Juve, which was
14 Kenneth Archie; Trigger, who is Thomas Joseph;
15 and he gave another street name of Genesis --
16 and we have not found Genesis.

17 Also on that day we had people from the
18 community show up at the Police Department.

19 Q And this was on what day?

20 A This was the 16th.

21 Q That morning, did you actually go to the
22 autopsy itself?

23 A I did.

24 Q And you were there for at least part of
25 that?

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1 A Yes.

2 Q And then you mentioned that witnesses
3 started showing up at headquarters?

4 A Yes.

5 Q And were some of those witnesses whose
6 names had been provided to you by Marcellius
7 Brooks?

8 A Yes.

9 Q And which witnesses were those?

10 A Kara Chase, Sanovia Thompson, and Donetti
11 Perry..

12 Q And those three people knew each other and
13 were familiar with each other from the Gardens;
14 is that correct?

15 A Yes.

16 Q That morning however another young woman
17 showed up at headquarters wanting to give you
18 information about what she had witnessed?

19 A Yeah, that lady was Mary Anderson. She was
20 interesting to me simply because she wasn't
21 affiliated with anybody. She basically kept to
22 herself and didn't have any real friends out
23 there. Normally when I talk to people, I have
24 to weigh credibility, and I felt that she was a
25 very credible person.

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1 Q And when she came forward, was she able to
2 give you information that actually corroborated
3 what the other people that were out there that
4 day at the second assault had told you?

5 A Yes.

6 Q And each of these witnesses were
7 interviewed independently, right?

8 A Yes, they were.

9 Q Each of these witnesses were interviewed
10 independently, weren't they?

11 A Yes, they were.

12 Q In this case it appears that different
13 people -- say what Sanovia saw compared to what
14 Kara saw -- they different parts of what
15 happened. Is that unusual?

16 A No, actually it makes more sense. If you
17 have three people give the exact same statement
18 you can pretty much discount the statements. If
19 you have three people giving independent
20 statements with variations in what they saw,
21 that makes sense. No two people are going to
22 see the same thing exactly alike.

23 Q And does it depends on where they are, if
24 they are walking, looking back and forth?

25 A That's correct.

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1 Q If two people just see a car wreck on
2 different corners, are their perceptions
3 sometimes a little different?

4 A They're almost always a little different.

5 Q In your opinion, does that make them more
6 credibility?

7 A It does.

8 Q In this case, with Ms. Anderson, was she
9 able to give information that totally
10 corroborated what the others said?

11 A Yes.

12 Q That day did you also the -- what else did
13 you do?

14 A Well, because of the interviews, we were
15 able to identify a chair that everyone said was
16 used. As a result of that, I had an officer go
17 to the scene, secure the chair. I instructed
18 Investigator Menendez, who was not a part of
19 this investigation until this happened, I asked
20 her to obtain a search warrant and go to that
21 location and secure that chair. The reason the
22 chair was significant is it was evidence of what
23 we believe was a crime and the chair had to be
24 protected, brought and secured at a secure
25 location in order to be tested for DNA.

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1 Q Was the chair secured on that day, on the
2 16th, by Investigator Menendez?

3 A It was.

4 Q It was then processed by lead investigator
5 Gillian?

6 A It was.

7 Q Basically you were trying to get DNA swabs
8 off of it?

9 A Yeah, I actually asked to look for
10 everything. Anything visible. Anything latent.
11 He processed the chair and, as a result, he
12 ended up using BlueStar.

13 Q When he used the BlueStar, were you there
14 and saw the positive reaction indicating there
15 was blood on the chair?

16 A I was.

17 Q However, he did swab and those swabs were
18 forwarded to SLED for later testing?

19 A Yes.

20 Q In the course of your investigation, did
21 you immediately become aware of what the results
22 of the DNA testing were?

23 A Not immediately.

24 Q In fact, DNA testing was not done until
25 later that summer; correct?

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1 A That's correct.

2 Q Is that unusual in cases such as this?

3 A No, it's not, the backlog is pretty
4 significant with SLED. They have a lot of
5 business.

6 Q As far as you know, the chain of course
7 custody and everything in this case was properly
8 submitted, or it wouldn't have been tested?

9 A Yeah, the intake people at SLED, if you
10 have an envelope that is torn or looks like it's
11 been tampered with or they have any indication
12 that any evidence has been tampered with, they
13 refuse to process it. They just won't have
14 anything to do with it.

15 Now, with us if evidence is tampered with,
16 it doesn't leave our evidence room. It's a
17 really secure system.

18 Q Okay. What else did you do that day -- we
19 are on the 16th, is that correct?

20 A Yes.

21 Q Just for the record, State's Exhibit 72,
22 this chair over here, is that the chair that was
23 recovered and ultimately swabbed?

24 A Yes, that's it.

25 Q When DNA did come back, whose DNA was found

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1 on the chair?

2 A The DNA came back to our victim, Kenneth
3 Mack.

4 Q But, again, you didn't have those results
5 until later on in the year?

6 A That's correct.

7 Q Was that significant, the results of that?

8 A Very.

9 Q Why?

10 A Well, it corroborates the information that
11 Kenneth Mack was there, the chair was there,
12 that the chair was used to assault him, so it
13 connects the two. It connects the victim to
14 that chair, and that corroborates with all of
15 our witnesses have said.

16 Q What were your next steps in this
17 investigation?

18 A Well, after I have started developing all
19 the information about both assaults, it -- let
20 me explain this. You've heard a lot about two
21 assaults. The way I'm looking at this in my
22 investigation is that it one event. The first
23 assault occurred -- well, the second assault was
24 just an ongoing of the first assault, so I'm
25 considering it one event.

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1 I did contact Dr. Marcus. I provided him
2 with the information giving him details of both
3 the first event and the second event in order
4 to -- we do keep in touch with him to provide
5 information of what we find. Our thing is we're
6 in the middle. You know, we collect
7 information. The more information we collect
8 and we forward it to the pathologist -- and so
9 he received it at that time. He received
10 information of both events.

11 Q And you can't say what he told you, but was
12 he able to relay information to you that was
13 consistent with his testimony today?

14 A Yes.

15 Q What happened next in the investigation of
16 this case?

17 A When I was reviewing the cell phone or the
18 statements, there were two telephone numbers on
19 Robin Reese's statement-- if I can go into
20 that.

21 Q Sure.

22 A Those two telephone numbers became very
23 important. One telephone number was her cell
24 phone number that she provided as 513-9396.

25 The other ---

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1 Q And who did that belong to?

2 A That was Robin Reese's cell phone. The
3 home number she advised, was significant as
4 well. That was 256-6285.

5 Q And that was the home number?

6 A That was the home number.

7 Q Why was that significant?

8 A What I did from there, I took -- both of
9 the cell phone numbers I identified in the
10 search warrant. I sent a search warrant to
11 Robin Reese's cell phone provider, which I
12 believe was Nextel. The purpose for that would
13 be to corroborate their information of her own
14 cell phone and who she called. I did receive
15 that information back from Nextel.

16 Q Okay. At this point to, one thing I
17 skipped over, in addition to taking witness
18 statements from Donneti Perry, Ms. Chase, Kara
19 Chase, Ms. Anderson, did they also -- were they
20 shown photo lineups?

21 A I wasn't present but yes, they were.

22 Q That was done on the 16th as well?

23 A Yes.

24 Q So at this point you've identified the two
25 people that were involved in the second part of

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1 this assault?

2 A Yes.

3 Q And who were those two people?

4 A Mr. Gray, sitting there at the table with
5 his attorney, dressed in blue, and Ms. Reese who
6 is sitting with her attorney. She is dressed in
7 brown.

8 Q You mentioned that you were getting more
9 cell phone records at this point?

10 A Yes.

11 Q Were there any other cell phone records
12 that you got in during the course of this
13 investigation?

14 A No. The two significant cell phones that
15 we went after was Brook's cell phone and Reese's
16 cell phone.

17 Q Have you had an opportunity to review the
18 cell phone records in this case?

19 A I have.

20 Q I show you what's been marked as State's
21 Exhibit 75 and 76, which are copies out of
22 certain page of the records out of the cell
23 phone records. They are numbers that are
24 highlighted in red.

25 A Red.

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1 Q What -- can you just go through each of
2 those with this jury and tell them what is
3 significant?

4 A Okay. The first number is the customer
5 number. The customer number in this case is the
6 ones [REDACTED] 8124. That's Mr. Broke's cell phone
7 number. That is on February 13th, 2010, at
8 3:11 p.m. That is actually -- that's actually
9 an incoming call to his phone from Ms. Reese.

10 Q Okay. And that would have been just after
11 or before this assault?

12 A That would have been after the assault.

13 Q Okay. Was that significant?

14 A It was.

15 Q As far as -- how was it significant in your
16 investigation?

17 A It showed deception, number one, and it
18 disproved that the two weren't acquainted.

19 Q Which was?

20 A Marcellius Brooks and Robin Reese.

21 Q Because they were trying to distance
22 themselves?

23 A They were trying to distance themselves and
24 Mr. Brooks minimized everything he told me, so
25 he wasn't forthcoming with any of his

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1 information. He minimized his participation.

2 Q Did you have also information from an
3 independent witness, a Mr. Kenneth Archie, about
4 that phone call? Do you recall that?

5 A I do recall something about that.

6 Q Was that -- you can't say what he said,
7 what was said, but did he give you information
8 about comments made between Ms. Reese and
9 Mr. Brooks after the second part of the assault.
10 You can't say what he said.

11 A Yes.

12 Q And we have tried to find Kenneth Archie
13 for this trial?

14 A Yes.

15 Q And we have been unsuccessful?

16 A That's correct.

17 Q As far as Kenneth Archie, he would have
18 been friends with Henry Gray, Ms. Reese?

19 A Yes.

20 Q As far as the phone calls continuing, what
21 was significant as far as your investigation?

22 A Well, the one phone call that was very
23 significant was receiving the information that
24 when Ms. Reese left the store she was on the
25 cell phone. At that point it was my belief that

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1 she was contacting someone in regards to what
2 happened to her daughter. I identified that
3 call and it's consistent with the timeline. On
4 February 13th, 2010, at 3:07 p.m. there is a
5 call from her cell phone to her home phone..

6 Q Who lived at that house?

7 A. Mr. Gray.

8 Q Her brother?

9 A That's where he was at.

10 Q That phone call, as reflected in those
11 records, how long did that phone call last?

12 A The duration of that call was eleven
13 seconds.

14 Q And were there any other phone calls that
15 were significant in this investigation?

16 A Yes, there is -- as I said, again, both
17 records from Mr. Brooks and Ms. Reese show the
18 calls back and forth to each other.

19 At 6:43 p.m. there is another call from
20 Ms. Reese back to Marcellius Brooks and that
21 shows a continuation of communication after the
22 events between Brooks and Ms. Reese.

23 Q I may have missspoken. This was the phone
24 call that was referred to as later. It was
25 later in the afternoon?

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1 A Later in the afternoon.

2 Q Okay. But there was a phone call between
3 Ms. Reese and where Mr. Gray lived?

4 A Yes, at 3:07.

5 Q Is that the timeframe about which this
6 assault occurred?

7 A That would be the timeframe she was leaving
8 the store, shown on the video on the cell phone.

9 Q Was there also information from
10 eyewitnesses about Mr. Gray being on the phone
11 about the same timeframe?

12 A Yes, the witnesses -- there was information
13 that when he first encountered the victim that
14 he told him that he had received a phone call.
15 He was, I assume, pleasant based on what I have
16 heard initially but after he received this phone
17 call he flipped. So now he is the aggressor
18 towards our victim.

19 Q At this time you took the statement from
20 the 13-year-old where she identified the victim
21 by name?

22 A First name.

23 Q So that could have been information that
24 was expressed to her mother or would have been?

25 A That was important information.

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1 Q What happened next?

2 A After receiving all the information, cell
3 phone records, the witness' statements, I
4 actually presented my case to the solicitor's
5 office.

6 Q Okay. And were determinations made about
7 charging additional people besides Marcellius
8 Brooks?

9 A Yes. The determination made to charge
10 Brooks, Gray and Reese with lynching first.

11 Q At a later date, I believe, there were
12 additional charges added by the grand jury?

13 A Yes.

14 Q Is that unusual to go with initial charges
15 and later add charges?

16 A No, it was not.

17 Q And that was done in this case?

18 A Yes.

19 Q You also mentioned that you had identified
20 several other people that were involved in the
21 first part of this assault that weren't involved
22 in the second part?

23 A Yes.

24 Q Were ultimately determinations made as to
25 whether or not a charge, say, the thirteen year

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1 old or the sixteen year old in this case?

2 A Yeah, the determination was made not to
3 charge them.

4 Q And who were the principals as far as your
5 investigation went?

6 A The principals were Marcellius Brooks,
7 Robin Reese and Henry Gray. Brooks is
8 significant for the first assault, he was a
9 principal for that. He continued the assault by
10 going to Ms. Reese. Ms. Reese was significant
11 as a principal when she left and went down to
12 the bottom section and she met up with Mr. Gray,
13 so those -- that's where I believe the fatal
14 blow happened. So that makes those three the
15 principals in this case.

16 The information of the others involved,
17 there wasn't -- the information was that they
18 participated but it was superficial type things
19 that you would see in an assault but nothing to
20 rise to the level of homicide.

21 Q During the course of all this going on, at
22 some point did Marcellius Brooks actually call
23 you from jail?

24 A He did.

25 Q Did you have a conversation with him?

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1 A I did.

2 Q And what was discussed in that conversation
3 with Mr. Brooks?

4 A Well, part of that conversation was that
5 I -- I don't know if I have this word for word
6 but I told him that he should have been straight
7 with me from the beginning. So I'm, in fact,
8 telling him that he's been lying to me -- and I
9 believed that. There was some confusion about
10 the two charges because I initially charged him
11 with murder. With the solicitor's office, we
12 discussed lynching first so that was our
13 conversation about the two charges and how I
14 believe what happened with the two charges.

15 Q And at that point, were you talking to him
16 about what could happen?

17 A Yeah, I told him what I thought could
18 happen.

19 Q And it's ultimately up to like the grand
20 jury and the solicitor's office to decide what
21 charges are appropriate?

22 A That's correct.

23 Q Did he also talk to you about some phone
24 records?

25 A I did. I did. In fact, with the phone

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1 records, I told him I had the phone records,
2 that's when I told him he should have been
3 honest with me. Because I was basically telling
4 him, 'look, you told me something that I
5 actually disapproved.' So, you know, I told him
6 that on the phone.

7 Q The people that you interviewed in addition
8 to Angelo or Ricky Boyd in this case, was there
9 a Kenneth Archie that you interviewed?

10 A Yes, Kenneth Archie was a/k/a Juvie.

11 Q Juvie?

12 A. (Affirmative nod).

13 Q He was interviewed and gave you
14 information?

15 A. He was interviewed him. I did not
16 interview him.

17 Q That was done, though?

18 A Yes, that was done.

19 Q And finally another man with the nickname
20 of Trigger?

21 A Yes, Thomas Joseph.

22 Q Was he also interviewed?

23 A He was.

24 Q Again, we did not locate him for this
25 trial?

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1 A Excuse me, I didn't hear that.

2 Q We haven't located him?

3 A No, we have not located him. That occurred
4 on the 18th.

5 Q Ultimately, I believe you actually got
6 arrest warrants in this case for Robin Reese and
7 Henry Gray; is that correct?

8 A That's correct.

9 Q Were they arrested on these charges or
10 turned themselves in?

11 A They both turned themselves in on the 19th
12 of February. They turned themselves in to
13 headquarters. They were not interviewed.

14 Q Did you also meet with a Malik Akbar in
15 this case?

16 A I did.

17 Q And what was the purpose of you trying to
18 meet with him?

19 A He was the controller of the video system,
20 and I was having trouble getting them to find a
21 person to give me the video so ultimately what
22 we did was obtained a search warrant and take
23 his entire system. We took his system from him.
24 We sent that system to SLED to be processed.
25 When we are ready to return the video equipment,

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1 we called him and he came down to headquarters
2 to sign for it.

3 Q Were you able to actually observe the video
4 that worked yesterday, on the equipment that
5 could actually play it?

6 A Yes.

7 Q What did you observe when you saw the video
8 parts of which weren't we were not able to play
9 yesterday? Hopefully we will get better
10 machinery.

11 A Yeah, the system is set up on a multiplexer
12 with motion sensor cameras. The problem with
13 that type of system is, as he explained it, when
14 you go in front of one camera it activates and
15 turns on the camera and causes the active camera
16 to "blip." Well, so - you see time delays and
17 that's confusing to start with. But on the
18 multiplex when one camera shuts down, the other
19 camera picks it up. You see the entire motion.
20 It's still in that jerking type motion.

21 Q When you observed it, were you able to see
22 what happened inside the store?

23 A Yes.

24 Q And what were your observations?

25 A Initially you could see the individuals

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1 come in who we believed were the persons from
2 the first entity. You can see Ms. Gray, she is
3 playing video games. Her daughter is in there.
4 The daughter appears to not be distraught. They
5 were just hanging out. At one point, one of the
6 people came up doing something called the Bloods
7 bounce. The Bloods bounce, if you've never
8 heard of it, is -- there is a another dance
9 called "Sea Walk" or the "Crip Walk", associated
10 with individual gangs. This one person was
11 doing what they call the Bloods bounce, which
12 was shuffling their feet.

13 Q And as far as Ms. Reese's daughter is
14 she affiliated -- there's been questions about
15 gangs by the defense. Is she affiliated with a
16 gang?

17 A Our information is she is.

18 Q Which is?

19 A GKB.

20 Q Is that for ---

21 A Gangster Killer Bloods.

22 Q Isn't she young to be affiliated with that?

23 A No.

24 Q That's not young to be affiliated with
25 that.

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1 A Thirteen?

2 Q Yes

3 A No, absolutely not.

4 Q As far as your conspire investigation to
5 this case as to the first part of the assault
6 and the second part of the assault which
7 actually were by separate people, who all was
8 charged?

9 A Mr. Brooks, Mr. Gray and Ms. Reese.

10 Q That was appropriate based on your version?

11 A That's correct.

12 Q We have some diagrams of the actual areas
13 I've asked you to review of Gonzales Gardens,
14 which have been marked as State's Exhibit 89
15 through 92. Have you had an opportunity to look
16 at those?

17 A I have.

18 Q Look at them again just to make sure. I
19 have them upside down (arranging charts) and
20 then just the general area overview.

21 Do these fairly and accurately depict the
22 general area.

23 A Yes.

24 They may not have been taken that day but it
25 shows the general areas we've been talking

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1 about?

2 A It does.

3 MS. CAMPBELL: We'd offer them into
4 evidence.

5 THE COURT: Any objection?

6 MR. FARLEY: No objection.

7 MR. FARLEY: No objection.

8 (SO ENTERED AS STATE'S EXHIBITS 89 THRU 92)

9 MS. CAMPBELL: Your Honor, may the
10 witness step down?

11 THE COURT: Yes, ma'am.

12 WITNESS: (Complies)

13 DIRECT EXAMINATION CONTINUED

14 BY MS. CAMPBELL:

15 Q If you can come over on this side so the
16 court reporter can hear you.

17 A (Complies)

18 Q I'm going to show you this State's Exhibit
19 92. Does this show the general area of town
20 where Gonzales Gardens is?

21 A The general area of Gonzales Gardens,
22 (affirmative nod).

23 Q And where is Providence Hospital in
24 relation to Gonzales Gardens?

25 A It's across the street.

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1 Q You just circled the general area. What
2 streets?

3 A Well, it's Forest Drive, Lion and
4 Washington and McDuffie.

5 Q And there's been a talk about a Building L
6 on McDuffie street, is that shown there?

7 A Yes.

8 Q Where is that shown?

9 A Building L is right here.

10 Q And then the open air market, Cousin's
11 Market and Blue Ocean?

12 A Blue Ocean.

13 Q Fish store, where are those located?

14 A Right here.

15 Q In that lit area?

16 A Yes.

17 Q And the first one I believe is Blue Ocean?

18 A Blue Ocean and the Cousin's.

19 Q Okay. And then finally we've heard a lot
20 about the area between F and G, are those
21 reflected on there?

22 A They are.

23 Q Where are those reflected, sir?

24 A It identifies/appears those are buildings F
25 and G.

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1 Q Specifically a closer up view is State's
2 Exhibit 91, does that show a closer up view of
3 Gonzales Gardens?

4 A Yes it does.

5 Q Apartment complex?

6 A Yes.

7 Q As far as the first assault in your
8 investigation, where did the first part of this
9 assault, where did that take place?

10 A Right in the white area of building L.

11 Q Right there on McDuffie street?

12 A Yes.

13 Q As far as the area down where the second
14 part of the assault occurred, where did that
15 occur?

16 A All the way down here.

17 Q And that's in the white area between that
18 is that in a sandy area?

19 A Right, sidewalk.

20 Q And the sidewalk is there, too?

21 A Right.

22 Q Specifically as to that area, State's
23 Exhibit 89, does that show the open air market,
24 as well as the sidewalks?

25 A F, G, and Forest Drive.

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1 Q Forest Drive would be -- you mean there?

2 A Right.

3 Q And this is all in Richland County, is it
4 not?

5 A It is and in the City of Columbia.

6 Q And the disk that we put in yesterday which
7 was the video from the country or the open air
8 market, whatever you want to call it, the one
9 that we put was malfunctioning, this is 94.

10 Q And you reviewed that shortly after this
11 happened?

12 A Yes.

13 Q And that fair and accurate depiction of

14 A Yes.

15 MS. CAMPBELL: Your Honor, at this
16 time offer State's Exhibit 94 into evidence.

17 MR. FARLEY: No objection, Your Honor.

18 MR. CHAPLIN: No objection.

19 (SO ENTERED AS STATE'S EXHIBIT 94)

20 MS. CAMPBELL: That's all that we
21 have.

22 MR. FARLEY: May we approach?

23 THE COURT: Sure.

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: Cross examination.

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1 CROSS EXAMINATION

2 BY MR. FARLEY:

3 Q Investigator Pegram, ---

4 A Yes, sir?

5 Q --- I want today ask you, at the beginning
6 of your testimony, you kind of went into some of
7 the gang affiliations and your job at the FBI
8 and what you were doing in 2006 with Gonzales
9 Gardens and the nature of the people that were
10 there?

11 A That's correct.

12 Q And I think taking statements from people
13 through the course of your investigation,
14 especially as its relates to gang activities.

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q You also went on to say that you found that
19 they weren't always forthcoming with you, that
20 they were reluctant to speak with police and it
21 was often different to take statements from
22 them?

23 A That's correct.

24 Q That was because of fear of reprisals, or
25 violence that could be done to themselves after

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1 you left from other people in the neighborhood?

2 A Yes.

3 Q And is -- given the statements that you do
4 receive out of the people, don't you believe it
5 could be possible that those are just given
6 because they think that's what you want to hear?

7 A No.

8 Q So you have a hard time getting statements
9 from people in Gonzales Gardens because of their
10 gang affiliation but when they do give a
11 statement, they are always right.

12 A Well, no. What I said is I have to weigh
13 credibility where I think -- In this situation,
14 the people actually came forward days after, so
15 for me makes them a little more credible because
16 they're taking the effort to get out of the
17 Gardens and come to the police.

18 Q So ordinarily you discount most of their
19 statements, but if they're not in the Gardens
20 your believe that their statements are
21 completely accurate?

22 A No, I'm not going to say that I ever
23 believe a statement is completely accurate.

24 Q So these statements might not be completely
25 accurate?

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1 A The information I have on this case, I
2 belief that the statements are accurate with the
3 exception of Mr. Brooks. I think he has proven
4 some deception.

5 Q So by your own admissions you said these
6 people are reluctant to speak with the police
7 and you have a hard time getting accurate
8 information out of them, but in these case these
9 statements are accurate?

10 A These statements are accurate as to how
11 they were obtained. The fact that these people
12 came forward away from the Gardens, I believe
13 them to be accurate. It's not the same if you
14 walk up to a gang member and try to take a
15 statement in front of everybody. It's not the
16 same thing.

17 Q I understand. So again let me -- well, I'm
18 sorry, not again but, uh, -- let me go into a
19 little bit of what you testified to as far as
20 these phone records. Actually, before I do
21 that, before I do that, one small thing, you do
22 say that you brought in -- (coughing in
23 courtroom).

24 A I'm sorry, I couldn't hear your.

25 Q I'm sorry. I believe you said you brought

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1 in Melquanna Singleton to interview? Otherwise
2 known as Melquann

3 A Yes.

4 Q And I believe it's in your report that you
5 took her statement relating to the assault that
6 she suffered?

7 A That's correct.

8 Q And that it was from that that you obtained
9 information that she was assaulted and then the
10 resulting incident and that Marcellius Brooks,
11 known as Bloom, took her to the open air market
12 or the Cousin's Mini Mart?

13 A That's correct.

14 Q So at the beginning of the investigation,
15 you were aware that there was an assault against
16 Melquanna Singletary?

17 A She was involved in an altercation, that's
18 correct.

19 Q But you're not willing to say it was an
20 assault even though the same -- I just -- I
21 mean, according to your report, I think you said
22 that he became aggressive, grabbing her jacket
23 she slapped him in the face, and he knocked her
24 to the ground. Is that not an altercation?

25 A. Yes.

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1 A Yeah, you know, two people involved at that
2 point.

3 Q Okay.

4 A Both involved as were aggressors.

5 Q Both involved as an aggressor?

6 A They're both striking each other.

7 Q Right. But -- well, the prosecution asked
8 you earlier if she was a young girl being
9 involved with the GBK, I think it was?

10 A No. You can't get into the age of anybody
11 who is a member of the GKB. Number one, there's
12 several ways to get into the GKB.

13 Q I'm not asking you about that?

14 A Well, if you're asking about age, I'm
15 trying to explain -- you can't put an age on a
16 member.

17 Q But she is an age?

18 A Right, and if I can explain.

19 Q I'm just saying she is a very young age.

20 A Well, thirteen is not young for that.

21 THE COURT: Just ask him questions.

22 CROSS EXAMINATION CONTINUED.

23 BY MR. FARLEY:

24 Q Same thing. I think you are repeating your
25 answer. You also -- now I was going to ask you

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1 about the phone records. You were speaking
2 about when the phone calls were made and you
3 said at 3:07 she called -- I'm sorry, Ms. Reese
4 called her home?

5 A She called her number that she provided as
6 a home number.

7 Q You have that in front of you?

8 A Yeah.

9 Q And then you went on to say it was your
10 belief that Mr. Gray was there?

11 A Yeah, and that's based on the totality of
12 everything.

13 Q I'm not sure what you mean.

14 A Well, when the cell phone records came
15 back, it was days later after they were
16 requested. By that time, we had already
17 determined where Mr. Gray was staying. With the
18 information that we obtained to that point, we
19 were certain that he was at that location where
20 she was calling.

21 Q How were you certain he was at that
22 location?

23 A Based on the information we received from
24 people out there.

25 Q Well, I'm just -- I have a lot of

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1 information, as well. I didn't see anything
2 that located. Well, I can't -- I can't testify
3 to hearsay. One thing that was significant was
4 an anonymous tip that came in through TRU, which
5 is telephone response unit, which is our
6 telephone response unit which identified him out
7 there.

8 Q Out where?

9 A In the Gardens.

10 Q I'm asking about Ms. Reese's apartment,
11 though?

12 A You're asking about a number that she
13 associated with what she placed as a home
14 number.

15 Q Right. She called her house?

16 A Right.

17 Q But it's an suggestion to say that she was
18 calling Mr. Gray?

19 A That's right.

20 Q Okay. So I'm just saying I don't know of
21 anything that puts Mr. Gray at the house at that
22 time. She just called back to her house.

23 THE COURT: Is that a question? Put it
24 in the form of a question.

25 CROSS EXAMINATION

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1 BY MR. FARLEY:

2 Q She just called her home. There is no
3 indication who she was trying to call or see who
4 was at her house?

5 A Based on the totality of the information, I
6 would say that she was calling Mr. Gray and
7 Mr. Gray answered the phone.

8 Q But that's an assumption on your part.
9 There is nothing to indicate Mr. Gray answered
10 the telephone or that Mr. Gray was there?

11 A There again you go back to the statements
12 of the witnesses.

13 Q Yes, I am. I don't mean -- okay. Again,
14 you say then at 3:11 he ---

15 A 3:07.

16 Q No, I'm moving to the next call 3:11?

17 A Okay.

18 Q Marcellius Brooks was the next number she
19 dialed?

20 A That's correct.

21 Q And you said -- in responding to the
22 solicitor, you said you found that noteworthy?

23 A Yes, very noteworthy.

24 Q And you found it -- what were your words?

25 A I couldn't tell you what my words were

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1 exactly. What's interesting to me is this
2 disproves Mr. Brook's acquaintance with
3 Ms. Reese.

4 Q Well, just -- I thought if I remember
5 correctly, you said it showed deception?

6 A On his part, (affirmative nod).

7 Q On Mr. Brook's part showed deception?

8 A Without the getting into what he said.

9 Q Okay, but because she called Mr. Brooks,
10 you thought he was deceptive.

11 A Yes.

12 Q I am just asking, it struck odd that Ms.
13 Reese called Marcellius Brooks?

14 A Given the circumstances I had, yes, it was
15 odd.

16 Q Given the circumstances that her daughter
17 had just been assaulted and he brought her to
18 the air market?

19 A No, was odd is the information that I
20 received regarding the acquaintance between Ms.
21 Reese and Mr. Brooks.

22 Q About okay. I'm just saying Marcellius
23 Brooks brings her daughter, who was just
24 assaulted, to the air market, then she makes a
25 phone call to Marcellius Brooks shortly after

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1 that, you found that odd?

2 A She made a call to Marcellius Brooks after
3 she had left the air market and gone down to the
4 bottoms with Mr. Gray.

5 Q Well, that's -- we don't know if she went
6 with Mr. Gray?

7 A I'm certain she was down there with
8 Mr. Gray.

9 Q What I said is you don't know for certain
10 that she went to bottom with Mr. Gray?

11 A I do, based on the information with the
12 witnesses.

13 Q So it's your belief that she traveled to
14 the bottom with Mr. Gray?

15 A She traveled to the bottom and was with
16 Mr. Gray at the same -- about the time that she
17 is calling Mr. Brooks, which I felt was odd.

18 Q You felt that was odd?

19 A Yes, her contacting Mr. Brooks.

20 Q The person who just brought her daughter
21 back after she was assaulted.

22 A Yeah.

23 Q That was odd?

24 A That was odd.

25 Q Okay.

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1 Q And is -- let me just ask some final
2 questions here. Why didn't you charge anyone
3 else other than Ms. Reese, Mr. Gray and
4 Marcellius Brooks. I mean, I know there were a
5 lot of other people involved?

6 A Well, it goes back to the totality of
7 everything that we. Ultimately when everybody
8 was charged. It came down to who the three
9 principle people were. The other people -- and
10 at that point once the decision was made, I
11 didn't feel that the other people in the assault
12 were significant as far as principals. Yes,
13 they did committed an assault, but they didn't
14 commit an assault that those rose to the level
15 of the death of the victim. So those three were
16 the principals who were the people that I
17 determined to be directly involved with the
18 death of the victim. That's how you've got the
19 three people that we have.

20 Q But that was the totality of the
21 circumstances that led you to assume that
22 Mr. Gray was at the apartment, as well, same
23 totality of the circumstances in these cases?

24 A There again, it goes back to the collection
25 of statements and investigation, pathologist

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1 report, everything that was presented here to do
2 the with the case. That's with the decision
3 came in.

4 Q The decision to charge them, you mean?

5 A Yeah, to go forward with those three as
6 principals.

7 Q I see. Okay.

8 MR. FARLEY: Thank you, sir. Please
9 answer any questions Mr. Chaplin has.

10 CROSS EXAMINATION

11 BY MR. CHAPLIN:

12 Q Investigator Pegram, so you believe that
13 Marcellius Brooks is a liar?

14 A I believe he minimized everything he told
15 me. I believe some of the things he said was
16 accurate, but other things were not. I can't
17 say that 'yes, he's completely believable or
18 yes, he's a liar.' I know for a fact that he
19 gave misinformation.

20 Q Okay. And Marcellius Brooks is the first
21 person charged in this matter?

22 A He was.

23 Q And then at that time, Macellious gave you
24 the names of his witnesses, correct?

25 A No, I don't know exactly when he gave me

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1 the names of the witnesses.

2 Q Okay.

3 A As far as dates go, but he did provide
4 three names.

5 Q All right. And at some point you and
6 Mr. Brooks had a conversation which you alluded
7 to in which you said that you wished he had been
8 straight with you?

9 A Absolutely.

10 Q And in that conversation, you heard
11 Mr. Brooks say that he asked you -- he asked you
12 whether or not he was going to get this murder
13 charge.

14 A I don't remember that. I'd have to hear
15 that.

16 Q Okay.

17 A I'm not saying that question wasn't asked.
18 I'd have to hear it.

19 Q And then at that time you told Mr. Brooks
20 that after his witnesses give their statements
21 and the autopsy is done, it's very likely that
22 the solicitor would dismiss his charges?

23 A No. Your taking it a bit out of context.

24 Q Okay.

25 A That conversation occurred after the case.

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1 We did a lot of the things that we needed to do.
2 One thing that was important is the
3 determination from an autopsy as to which event
4 caused his death. That was key. I was a little
5 bit confused at first between the lynching-first
6 and the murder charge, because when I charged
7 him initially I was focusing on the first
8 assault. So then as the case began to change,
9 the other two principals becomes involved, there
10 was fleshing out of what had happened along the
11 way. I think the whole gist of the conversation
12 was, 'Yes, it is up to the solicitor's office to
13 make a determination on how we would go forward.
14 They're the only ones that can make a
15 determination.' I was basically telling him how
16 I felt the solicitor's office, that the
17 solicitor's office felt they had to pursue it.

18 Q And how did you feel?

19 A I really didn't know. I mean, I know that
20 we discussed a lynching first, but I know I
21 charged him with murder, so I really wasn't sure
22 how that would go with having a murder charge
23 and a lynching first charge. I just didn't
24 know.

25 Q So you were waiting on the autopsy report

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1 to determine whether or not the cause of death
2 was the first attack or the second attack?

3 A. Yeah, I had actually made contact with the
4 coroner's office a couple of times just to be
5 sure that we knew what assault was what.

6 You know, it comes down to -- if you have
7 two assaults, it confusing. You have to
8 determine where the fatal fall occurred. I
9 think ultimately we did that and there again,
10 you've got to understand that, you know, I hope
11 you appreciate that, that he called me. My
12 position is I'm neutral. I'm going to talk to
13 whoever calls me and I'm not going to take
14 sides. I'm going to be as honest with them as I
15 possibly can to an extent.

16 Q. I understand. But Marcellius Brooks is
17 still charged with murder, as well?

18 A. That's not up to me. I don't have anything
19 to do with that. I don't make that decision.

20 Q. So were you ever able to determine whether
21 it was a first attack or a second attack?

22 A. Yes, I feel that was proved today.

23 Q. Pardon?

24 A. I feel I can say it was the first attack
25 and the second that were the fatal attacks.

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1 Q And you say that based on ---

2 A. --- the information provided by the
3 pathologist, the witnesses, the fact that the
4 chair was used.

5 Q Okay. So the -- just one second. Okay.
6 All right. Now, you indicate on the morning of
7 the 16th these witnesses came to you at the
8 police office?

9 A That's correct, on the 16th.

10 Q On the 16th. All right. And they all came
11 together.

12 A I don't know.

13 Q They were all interviewed within the hour.

14 A I really don't know. I didn't conduct the
15 interviews. I designated people to conduct the
16 interviews. So how they got there, I couldn't
17 tell you, but they all were there within close
18 proximity at this time from what I understood.

19 Q Okay. Would I surprise you if I said that
20 they were all interviewed within an hour's
21 timeframe?

22 A. No, that wouldn't surprise me.

23 Q Pardon?

24 A. No, it would not surprise me.

25 Q Now, on 217 you met with Mr. Brooks again,

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1 did you not?

2 A I believe I did.

3 Q Okay. And at that time, you went even
4 further to ask him was he involved in a second
5 attack on the victim, correct?

6 A I don't recall if I implicated him or not.
7 I don't remember. Unless you've got something
8 in writing, I don't remember that.

9 MR. CHAPLIN: Beg the Court's
10 indulgence.

11 CROSS EXAMINATION CONTINUED

12 BY MR. FARLEY:

13 Q Do you a copy of your report?

14 A I do. Where do you want me to go to?
15 Are you referring to the case notes?

16 Q I am referring to your report.

17 MS. CAMPBELL: Objection. Your
18 Honor, may we approach?

19 THE COURT: I haven't event heard a
20 question. What is the question?

21 MS. CAMPBELL: That's what I need to
22 object to.

23 THE COURT: I can't object (sic)
24 until a question is asked.

25 MS. SAMPSON: Your Honor, we have a

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1 matter of law. May we approach?

2 CROSS EXAMINATION CONTINUED

3 BY MR. CHAPLIN:

4 Q Did you ever ask Mr. Brooks was he involved
5 in a second attack?

6 A Let me look at this it. You said it was
7 the 17th? What date did you say you found it?

8 Q At any time. I believe it was the 17th?

9 A It should have a date on there.

10 Okay. I found it. It says I contacted
11 Dr. Marcus. No. That's discussing the second
12 attack with him.

13 Okay. Here we go. 1300, that would be on
14 the 17th, Marcellius Brooks returned to
15 headquarters, so I apparently did talk to him.

16 Q Okay. And you inquired as to whether or
17 not he was involved in a second attack?

18 A I don't see that in my case notes.

19 Q Let's do it this way.

20 A I really think your trying to go somewhere
21 where you don't need to go as far as these
22 questions on these case notes, if I understand
23 what you're trying to get at.

24 THE COURT: Just try to answer his
25 question.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. CHAPLIN:

3 Q Did you ever get in touch with Mr. Brooks
4 and ask if he was involved in a second attack on
5 Mr. Mack?

6 A I did not.

7 Q Did you ever get information back that
8 suggested maybe he was lying to you?

9 A Okay, this calls for my opinion. My
10 opinion was yes, I thought that he was lying but
11 then when I got the cell phone records back and
12 compared those with the witness statements from
13 the lower end, I believe at that point he was
14 not there and not involved in the second attack.

15 Q So based on his witness's testimony, you
16 don't believe he was involved in the second
17 attack?

18 A I'm basing that on electronic evidence
19 combined with statements from people at the
20 lower end.

21 Q Okay.

22 A And just to clarify that for you, that
23 explains why the call at 3:11 was significant to
24 me.

25 Q Did you ever tell Marcellius Brooks that if

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1 his story panned out that you would speak to the
2 solicitor about dismissing his murder charge?

3 A I don't recall that.

4 Q So you don't know if you did or not?

5 A I don't recall that but, now, you know, it's
6 not unusual for -- and I've done this in the
7 past, to say that I would speak to the solicitor
8 about a case.

9 Q Right.

10 A But as far as recommending, no, I can't do
11 that.

12 Q Okay.

13 A But now you have to understand I consult
14 with the solicitor's office on every major case
15 we have.

16 Q Now, did Marcellius tell you he kicked the
17 victim once or twice?

18 A I believe he did.

19 Q Do you believe that?

20 A All I can say is I believe he assaulted the
21 victim. As far as the number of strikes I can't
22 say. I mean, I have information that more
23 strikes came in. I got information that less
24 strikes came in. My position is I believe he
25 struck the victim.

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1 I can say that with confidence.

2 Q In your review of this entire case file,
3 did you go over the statement of Amber Hardy?

4 A I did and that was one of the reasons why
5 I'm taking the position I am now. I think
6 she -- her position was that she witness a
7 brutal attack, all right. On the other hand, we
8 have other witnesses that claim that it was a
9 simple, simple assault where they left and he
10 got up and ran away.

11 Q And who were those witnesses that say it
12 was a simple assault?

13 A Well, Marcellius Brooks for one.

14 Q Okay.

15 A You've got Trigger and you've got Juve who
16 say that it was an assault but was not elevated
17 to the crime of murder.

18 Q Two people that you can't find?

19 A Well, you've asked me who said that. Where
20 am I going to find them.

21 Q Can you locate them?

22 A Remember now, I'm in the middle, I'm not
23 going to take one person's side based on what
24 another ---

25 Q I understand. But you're not able to

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1 locate Juve and Trigger?

2 A I haven't located them, no.

3 Q Okay. And then you also reviewed Isaac
4 Weathers report, correct.

5 Q Yes, ma'am -- okay. So the only person who
6 says that it was a simple assault is Marcellius
7 Brooks and Angelo Boyd?

8 A That's not what I said. I said with the
9 information from Juve, the information from
10 Trigger, the information from Miss Amber, and
11 add -- all the information that we received,
12 it's like I said, none of the statements are
13 exactly same.

14 So my answer to your question is this:
15 Yes, Marcellius Brooks assaulted the victim. I
16 don't know how many sometimes he struck him.

17 Q Do you have any reason to doubt what Amber
18 Hardy said?

19 A No, I do not.

20 Q You indicated that you saw a video of a
21 Bloods bounce.

22 A Yes.

23 Q Okay. And that was over at the?

24 A That was in the Cousin's Mini Mart while
25 they were over by the poker machines where

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1 Ms. Reese was.

2 Q And why was that significant?

3 A Well, it was significant to me simply
4 because I work gangs. That is a Bloods area and
5 that is sign distinguishable to the Bloods.

6 Q Have you ever been aware of the Bloods
7 forcing people to make statements?

8 A Absolutely.

9 Q Beg the Court's indulgence.

10 MR. CHAPLIN: Okay. That's all I have.
11 Thank you very much.

12 MS. CAMPBELL: A couple of
13 questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Specifically Mr. Farley asked you questions
17 that we couldn't go into this before, as far as
18 people being afraid of the Bloods and
19 everything. Who is affiliated with Marcellius
20 Brooks, the Blood in this case?

21 A Henry Gray and Robin Reese.

22 Q If anyone was to be afraid of anyone in
23 this case, who would they be afraid of?

24 A Robin Reese and Henry Gray.

25 Q Specifically they talked about Marcellius

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1 Brooks witnesses. What names have they provided
2 you?

3 A Trigger, Juve/Juvie, -- and Marcellius
4 Brooks provided Boyd.

5 Q And as far as Ms. Perry and Ms. Thompson?

6 A (Affirmative nod), and Kara Chase.

7 Q And my point is, does Mary Anderson have
8 any affiliation with any of these members?

9 A No, that's what made her interesting.
10 She's not a part of that.

11 Q She came forward on her own?

12 A Yes, she did.

13 Q Do you know why she came forward?

14 A She was appalled by what she saw.

15 THE COURT: Anything further?

16 MR. CHAPLIN: Yes.

17 THE COURT: Well, hold on.

18 MR. CHAPLIN: I'm sorry. Go
19 ahead.

20 RECROSS EXAMINATION

21 BY MR. FARLEY:

22 Q Mr. Pegram, whether or not to my client or
23 anyone else might be a part of the Bloods or
24 not, I have no knowledge of. However, isn't
25 it -- wouldn't it be fair to say that those

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1 other witnesses, even if they were gang
2 affiliated or not, could still fear reprisal
3 also just by being in there?

4 A It's possible, but as I said before it's a
5 different scenario when you have people there on
6 scene in view of everyone else giving a
7 statement as opposed to someone who comes
8 secretly to a police department days later,
9 voluntarily, and provides information. That
10 would be one way for a person who was in fear
11 for their life to come to the police without
12 being concerned about being attacked by people
13 seeing them in Gonzales Gardens.

14 Q In your experience, would you say that
15 these people don't really like to speak with the
16 police?

17 A I would say that.

18 MR. FARLEY: Thank you, sir.

19 MR. CHAPLIN: Anything else?

20 MR. CHAPLIN: Your Honor, may I
21 approach?

22 THE COURT: For what purpose?

23 MR. CHAPLIN: A matter of law.

24 THE COURT: Cross-examine.

25 CROSS EXAMINATION

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1 BY MR. CHAPLIN:

2 Q Mr. Pegram, you just testified that you
3 have evidence that my client is a member of the
4 Bloods?

5 A I have information that they're members of
6 the Bloods.

7 Q What information?

8 A It's hearsay information.

9 MR. CHAPLIN: Your Honor, Motion to
10 strike. It's extremely prejudicial and not
11 based on anything that's admissible.

12 THE COURT: Well, you raised the issue.
13 You've brought it up yesterday. Overruled.
14 All right, sir. You've may come down.

15 WITNESS: Thank you, sir.

16 THE COURT: Thank you very much.

17 (WITNESS STEPS DOWN)

18 THE COURT: All right. Ladies and
19 gentlemen of the jury, we're going to take our
20 lunch break at this time. You're lunch should
21 be here. We're going to reconvene at 2:30.
22 Just -- you can eat here, you can take it with
23 you. Just be back in the jury room at 2:30.
24 You're welcome to stay. The jury room Lexington
25 County is secure, but if you want to eat and

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1 then go for a walk, it's up to you. All right.
2 Thank you very much. Don't discuss the case
3 among yourself when is you return to the jury
4 room. Thank you very much.

5 (JURY OUT @ 1:28 p.m.)

6 THE COURT: All right. Stand at-ease
7 until 2:30.

8 MR. CHAPLIN: Thank you very much.

9 (LUNCH RECESS)

10 (NOTE: Blair hearing in unrelated case.)

11 (DEFENDANTS PRESENT)

12 MR. CHAPLIN: Your Honor, may we
13 approach.

14 THE COURT: I don't know why. There
15 are no jurors.

16 MR. CHAPLIN: Well, I was just
17 trying to -- Your Honor, we have a scheduling
18 issue wherein I have a pathologist, Mr. Farley
19 has a pathologist. They both need to testify so
20 that they can leave today. We need to go out of
21 order in order to that.

22 THE COURT: You can go out of order.
23 I don't have any problem with that. I mean,
24 there's no -- there's no order.

25 MR. CHAPLIN: What I am saying is

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1 that I'm not -- that is not my complete case. I
2 am just going to do and then give us a following
3 chance to put his up.

4 THE COURT: Any objection.

5 MS. CAMPBELL: The only thing I have is
6 confusing to the jury as to who is putting up
7 what defense.

8 THE COURT: Well, I don't know. How
9 many more witnesses does the State have?

10 MS. CAMPBELL: None.

11 THE COURT: The State going to rest?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: At least we -- I thought
14 your doctor is from Charleston.

15 MR. FARLEY: She is, Your Honor.

16 THE COURT: Is she not available
17 tomorrow?

18 MR. FARLEY: I don't know. I assumed
19 that we would be calling her today, so I don't
20 know about her availability tomorrow.

21 THE COURT: Well, y'all figure out how
22 you want to organize your case. It's up to you.

23 MR. FARLEY: As far as I go first, I
24 don't mind Mr. Chaplin calls his doctor first.

25 MS. CAMPBELL: Judge, the only other

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1 thing I have is a question about out of order
2 for cross-examination.

3 THE COURT: What's the question?

4 MS. CAMPBELL: Say Farley puts up, then
5 do I go and then he goes. I assume he has the
6 right ---

7 THE COURT: I would assume you.

8 MR. FARLEY: I don't have no problem
9 with Ms. Campbell going now.

10 THE COURT: By consent.

11 MR. FARLEY: What would make
12 Ms. Campbell happy?

13 MS. CAMPBELL: I'm just asking for
14 guidance.

15 THE COURT: All right. Who is the
16 first witness?

17 MR. FARLEY: Dr. Adel Shaker.

18 THE COURT: All right.

19 THE COURT: You may cross-examine Dr.

20 -- well, why don't you cross-examine his doctor.

21 Then you cross-examine his there.

22 MS. CAMPBELL: That's. That's all I
23 want to know.

24 THE COURT: Same procedure with
25 Mr. Farley's doctor, Mr. Chaplin to go first,

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1 then you'll go.

2 MS. CAMPBELL: That's fine, Your Honor.
3 Are we putting up both of those this afternoon?
4 I mean, is he going to do his case then.

5 THE COURT: No, he is asking that it be
6 taken out of order.

7 MS. CAMPBELL: You will just tell
8 the jury that?

9 THE COURT: Yes.

10 THE COURT: All right. Is she
11 available now?

12 MR. FARLEY: Beg your pardon?

13 THE COURT: Is she available now?

14 MR. FARLEY: My doctor, yes, she
15 is in the hall.

16 THE COURT: Just hold it because I
17 assume somebody is going to make a motion.

18 MS. CAMPBELL: There should be motions,
19 yes.

20 THE COURT: All right. The State has
21 advised the court that they plan to rest. Now,
22 I can either bring the jury in, let them
23 announce it and sent the jury back out -- which
24 is just counterproductive. I'll hear any
25 Motions now.

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1 MR. FARLEY: Since the State has
2 rested, Your Honor, for Ms. Reese, we would like
3 to make a directed verdict motion.

4 And then -- we believe that the
5 prosecution has failed to prove the essential
6 elements of their case, and we would ask that
7 you rule on that motion as well we would like
8 to make a motion to preserve and renew all
9 objections made up to this point.

10 THE COURT: All right. Does the
11 State have a position on Ms. Reese's motion.

12 MS. CAMPBELL: Respectfully, Your
13 Honor, I think the light most favorable to the
14 State is we have proven each of these elements
15 in each of this indictments. Respectfully I ask
16 that you deny the Motion.

17 THE COURT: With regard to
18 Ms. Reese's motion for a directed verdict, I
19 feel the evidence goes beyond that of mere
20 conjecture or suspicious, that there is
21 evidence, either direct or circumstantial or
22 some combination of both, which reasonably tends
23 to prove the guilt of the defendant or from
24 which the guilt of the defendant might be
25 logically and reasonably deduced if that

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1 evidence is taken in the light most favorable to
2 the State, so I must respectfully deny your
3 Motion for a directed verdict. Mr. Chaplin?

4 MR. CHAPLIN: Thank you very much,
5 Your Honor. On behalf of Mr. Henry Gray, we
6 would make a Motion for a directed verdict, Your
7 Honor, based on the same logic, that the State
8 has failed to prove beyond a reasonable doubt
9 each element of the offenses of murder and
10 lynching. We believe that there is -- we would
11 respectfully ask that a directed verdict be
12 granted:

13 We also would like to renew all the
14 previously-made objections to preserve them for
15 the record.

16 THE COURT: All right. As to the
17 Motion for Mr. Gray for directed verdicts, I
18 feel that the evidence goes beyond that of mere
19 suspicious or conjecture which reasonably tends
20 to prove guilt of the defendant or from which
21 that guilt might be logically and reasonably
22 deduced if that evidence is taken in the light
23 most favorable to the state, so I will must
24 respectfully deny your Motion for a director
25 verdict on behalf of Mr. Gray.

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1 All right. Ready for the jury?

2 MR. FARLEY: Ready for the jury, Your
3 Honor.

4 MR. FARLEY: Yes, sir.

5 THE COURT: Why don't you go ahead and
6 call your next witness.

7 MR. FARLEY: Thank you very much, Your
8 Honor.

9 THE COURT: Oh, I need to advise --
10 let me talk to your client, Mr. Farley. Have
11 your client stand.

12 MS. REESE: (Standing).

13 THE COURT: Ms. Reese, at this time I
14 am going to explain certain of your rights to
15 you. If you do not understand anything I say,
16 please let me know. If you want me to explain
17 anything in detail, please let me know. Do you
18 understand?

19 DEFENDANT REESE: Right. Yes, sir.

20 THE COURT: We have now reached the
21 stage of the trial where you present your
22 defense. You have the right to claim the
23 protections given to you by the 5th Amendment to
24 the Constitution of the United States. That
25 amendment provides in no part no person shall be

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1 compelled in any criminal case to be a witness
2 against himself or herself. This means that you
3 cannot be required to testify in this case. You
4 have a right to testify on your own behalf.
5 However, no one can make you testify. This is a
6 personal right. No one can waive this right
7 except you. Do you understand.

8 DEFENDANT REESE: Right. Yes, sir.

9 THE COURT: If you decide to testify,
10 you will be governed by the same rules that
11 govern other witnesses. You may be examined or
12 cross-examined on any relevant issue in this
13 case. In addition, if you have any convictions
14 involving dishonest or false statement or for
15 crimes punishable by imprisonment for more than one
16 year and this court determines that the
17 probative value of admitting this evidence
18 outweighs its prejudicial effect to you, the
19 solicitor will be able to introduce your record
20 to attack your credibility.

21 If you decide to testify, this decision
22 on your part must be freely and voluntarily made
23 with the knowledge and protections given to you
24 by the 5th Amendments of the Constitution and
25 the consequences of your decision to testify.

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1 If you decide not to testify, I will
2 instruct the jurors that they are not to give
3 the fact that you did not testify any
4 consideration whatsoever and that there is to be
5 absolutely no prejudice to you whatsoever
6 because you did not testify. It's left entirely
7 up to you whether or not you testify.

8 You may talk with your attorney, your
9 family or friends or anyone else, but the final
10 decision will be left entirely up to you. Do
11 you understand what I've explained to you?

12 DEFENDANT REESE: Yes, sir.

13 THE COURT: Do you have any questions
14 about what I have explained to you?

15 DEFENDANT REESE: No, sir.

16 THE COURT: Have you discussed with
17 your lawyer whether you should testify or not.

18 DEFENDANT REESE: Yes.

19 THE COURT: All right. Well, at this
20 stage of the trial, Ms. Reese, since the order
21 of testimony is going to go a little out of
22 order, I'm not going to ask you whether you
23 choose to testify at this time. I just need to
24 advise you of your rights with regard to
25 testifying. Do you understand?

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1 DEFENDANT REESE: Yes, sir.

2 THE COURT: All right. Thank you very
3 much, ma'am.

4 Mr. Gray, ---

5 DEFENDANT GRAY: (Standing)

6 THE COURT: --- at this time, I'm
7 going to explain to you certain of your rights.
8 If you to not understand anything I say, please
9 let me know. If you want me to explain anything
10 in more detail, please let me know. Do you
11 understand?

12 DEFENDANT GRAY: Yes, sir.

13 THE COURT: We have now reached the
14 stage of the trial where you may present your
15 defense. You have the right to claim the
16 protection given to you by 5th Amendment of the
17 Constitution of the United States. This
18 amendment states in part no person shall be
19 compelled in any criminal case to be a witness
20 against himself or herself. This means you
21 cannot be required to testify in this case. You
22 have the right to testify on your own behalf.
23 However no one can make you testify. It's a
24 personal right. One can waive that right except
25 you.

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1 If you decide to testify, you will be
2 subject to the same rules that govern other
3 witnesses and you may be examined and
4 cross-examined on any relevant issue in this
5 case. In addition if up have any convictions
6 involving dishonesty or false statement or
7 crimes punishable by imprisonment for more than
8 one year and this court determines that the
9 probative value of admitting this evidence
10 outweighs the prejudicial effect to you, the
11 Solicitor will be able to introduce your record
12 to attack your credibility.

13 If you decide to testify, the decision
14 on your part must be freely, voluntarily,
15 intelligent made with knowledge of the
16 protections given to you by the Fifth Amendment
17 to the Constitution and the consequences of your
18 decision to testify.

19 If you decide not to testify, I will
20 tell the jury that they cannot give the fact
21 that you do not testify any consideration
22 whatsoever. That there is to be absolutely no
23 prejudice to you because you did not testify.
24 It's left entirely up to you whether or not you
25 wish to testify. You may talk with your

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1 attorney, your family and friends, or anyone
2 else but the final decision will be left
3 entirely up to you.

4 Do you understand what I've explained
5 to you?

6 DEFENDANT GRAY: Yes, sir.

7 THE COURT: Do you have any questions
8 about what I have explained to you?

9 DEFENDANT GRAY: No, sir.

10 THE COURT: Have you discussed with
11 your lawyer whether you should testify or not
12 testify?

13 DEFENDANT GRAY: Yeah.

14 THE COURT: I'm not going to ask you
15 any further questions at this time. You may be
16 seated.

17 DEFENDANT GRAY: (Complies).

18 THE COURT: Ready for the jury?

19 MS. CAMPBELL: The State is ready.

20 THE COURT: Defendant ready for the
21 jury?

22 MR. FARLEY: Yes, Your Honor.

23 MR. CHAPLIN: Yes, sir.

24 THE COURT: Bring the jury, please.

25 (JURY IN @ 2:46 P.M.)

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1 BAILIFF: All jurors are present, Your
2 Honor.

3 THE COURT: All right. Thank you very
4 much. Ms. Campbell.

5 MS. CAMPBELL: May it please the
6 Court, the State would rest at this time.

7 THE COURT: All right. That's it
8 ladies and gentlemen. The State has rested
9 their case. As I indicated to you at the time
10 of the beginning of this trial, the defense has
11 the opportunity to present a defense to you but
12 need not do so. They can rest on their position
13 that the State has failed to prove their case.

14 I'm not sure exactly what's going to
15 take place right now so I'll call on counsel to
16 inform me, does the defense wish to present a
17 defense?

18 MR. FARLEY: Yes.

19 THE COURT: All right. Mr. Chaplin?

20 MR. CHAPLIN: At this time the
21 defense for Mr. Henry Gray calls Dr. Adel
22 Shaker.

23 (WITNESS TAKES STAND)

24 THE COURT: All right.

25 ADEL SHAKER, being duly sworn to tell

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1 the truth, the whole truth and nothing but the
2 truth, testified, as follows:

3 DIRECT EXAMINATION:

4 BY MR. CHAPLIN:

5 Q Good afternoon, Dr. Shaker?

6 A Good afternoon to you.

7 Q For the record, would you spell your name.

8 A My name is Adel Shaker.

9 Q And Dr. Shaker, what is your business or
10 profession?

11 A I'm a medical examiner, forensics
12 pathologist.

13 Q Okay. And do you have a specialty within
14 the field of medicine?

15 A Yes.

16 Q Okay. And what is that specialty?

17 A I specialize in pathologist -- in anatomic
18 pathologist and subspecialize in forensics
19 pathologist.

20 Q And where do you practice your profession?

21 A At the moment I'm an independent medical
22 examiner.

23 Q And where do you live?

24 A In Alabama.

25 Q Would you please explain to the jury your

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1 educational background in preparation for
2 becoming a forensics pathologist?

3 MS. CAMPBELL: I hate to interrupt
4 but is there any way you can move so I can see
5 him. Either way is fine. I apologize.

6 MR. CHAPLIN: No problem.

7 DIRECT EXAMINATION CONTINUED

8 Q Would you like for me to restate?

9 A I got my medical degree and law degree. I
10 have an M.D. and an L.L.D. as well as a J.D.
11 degree from overseas. When I came to the United
12 States, in the '50s, I had to repeat everything
13 -- from the individual, go through the residency
14 and fellowship and studying for my board exams
15 as a requirement of the American Board of
16 Pathologist to be a board-certified forensic
17 pathologist. I did that.

18 Q So does that mean you earned a degree as a
19 medical doctor?

20 A Yes.

21 Q Please state what you did in the medical
22 field after you've earned the degree?

23 A I've been all my life involved in the
24 branch of forensics pathologist, for
25 approximately twenty-seven plus years, on a

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1 national and international level.

2 Q Did you attend law school?

3 A Yes.

4 Q Where?

5 A That was overseas in Egypt.

6 Q Okay. And what is forensics pathologist?

7 A It's simplest definition, forensics
8 pathology deals with the cause and manner of
9 death.

10 Q And how does being a forensics pathologist
11 different from being an ordinary pathologist?

12 A An ordinary pathologist is a general one
13 who can just be employed by the hospital, do
14 exploratory pathology, tests. But a forensic
15 pathologist is specialized to determine the
16 cause and manner of death. We have to attend
17 more training in that subspecialty.

18 Q Okay. Do you have any medical specialties
19 certifications from any boards?

20 A Yes. In anatomic pathology and forensics
21 pathology.

22 Q Okay. And what were those requirements to
23 become certified?

24 A You have to finish a residency program and
25 a fellowship program in that subspecialty and

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1 you have to sit for two different exams to be
2 qualified as a diplomat of the American Board of
3 Pathology.

4 Q Dr. Shaker, do you have any teaching
5 activity?

6 A I used to teach when I was working for the
7 State Law Enforcement Division, staff and
8 medical students.

9 Q Are you licensed to practice medicine?

10 A Yes, I am.

11 Q In what states?

12 A I'm licensed to practice medicine in
13 Alabama, Mississippi, Texas, Oklahoma, New
14 Jersey, New York, Virginia, Pennsylvania and
15 California.

16 Q Do you belong to any medical societies?

17 A Yes. I'm a Fellow of the College of
18 American Pathologists, a Fellow of the National
19 Association of Medical Examiners. I'm a Fellow
20 of the American society of Chemical
21 Pathologists. I'm a member of the American
22 Medical Association, associate member of the
23 American academy of Forensics Scientists, and
24 many other societies.

25 Q Dr. Shaker, have you performed and

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1 witnessed any autopsies in your career?

2 A Yes, on a regular basis I do that.

3 Q How many autopsies have you performed on
4 your career?

5 A In my career I performed over eight
6 thousand-plus cases.

7 Q Have you ever testified in legal
8 proceedings?

9 A On a regular basis, yes.

10 Q And what kind of proceedings have you
11 testified in?

12 A Criminal and civil, both.

13 Q How often have you testified for the
14 Government and how many times have you testified
15 for a defendant being prosecuted by the
16 government?

17 A Because of my former job as medical
18 examiner for the government, I used to take the
19 stand for the District. Now, when I started
20 recently to be in the business of medical
21 examiner, this is one of the few cases to take
22 the defense side.

23 Q Do you also evaluate cases for attorneys?

24 A Yes, I do.

25 Q What amount of time would you estimate you

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1 spend in medical legal practice as opposed to
2 medical examiner's activities?

3 A It was like seventy to fifty percent
4 approximately.

5 Q When you perform an autopsy, how do you
6 decide what to do?

7 A Basically we receive the deceased.

8 We take photographs of the deceased.

9 We have to make a label with a ruler and
10 put the name of the deceased, the date of the
11 autopsy and the medical examiner's number and
12 put that label on the body of deceased.

13 After that we have to examine externally
14 the deceased.

15 We may need to do some x-rays or blood
16 tests. If so, we do that prior to starting
17 performing the autopsy, which is basically
18 opening the three cavities: the cranial cavity,
19 chest cavity and the abdominal cavity.

20 Then I compose my report and I submit.

21 Q Thank you. Dr. Shaker, what were you asked
22 to do in this case?

23 A I was asked to review the investigative
24 report, police report, autopsy report. In fact,
25 I reviewed the autopsy report but all the

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1 medical reports pertaining to the deceased, that
2 led to the deceased.

3 Q And what were your findings?

4 A My finding was consistent with the final
5 cause of death written in the autopsy report,
6 blunt force trauma to the head was the main
7 cause of death.

8 MR. CHAPLIN: Your Honor, at this
9 time I present Dr. Adel Shaker as an expert in
10 the area of forensic pathologist?

11 THE COURT: Any *voir dire* or
12 objection?

13 MS. CAMPBELL: No *voir dire*.

14 MR. FARLEY: No objection or *voir dire*.

15 THE COURT : You may proceed.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. CHAPLIN:

18 Q Dr. Shaker, as a forensics pathologist,
19 have you ever done any work with DNA.

20 A Sometimes, yes, I do that in one of the
21 high profile cases where I work for the American
22 government and for the federal government
23 overseas. It was for the former regime of
24 Saddam Hussain, where I did pull the mass graves
25 for purposes of identification and reaching the

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1 cause and manner of death.

2 Q So Dr. Shaker, what is transferable DNA?

3 A In its simplest definition you can get,
4 contact somebody, Person A and Person B, they
5 can shake hands. So if Person A is a good
6 shedder -- and what I mean by that is the
7 flaking cells from his hand -- he can transfer
8 his DNA to Person B.

9 Similarly, if Person B touches another
10 object, he can transfer the DNA for Person A to
11 Object C.

12 Q So?

13 A Just simple definition, so this is called a
14 primary transference. A more and beyond
15 complicated theory is called secondary
16 transference, but it's beyond the scope of this
17 honorable court.

18 Q So if I shook your hand and then touched
19 this podium, is it possible your DNA might end
20 you mean on this?

21 A If I am a good shedder.

22 Q I am not quite sure what that word is.

23 A Shedder?

24 Q Would you please spell that word?

25 A Shedder, s-h-e-d-d-e-r.

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1 Q Thank you very much. Now, when you
2 evaluated the records in this case, did you
3 review any toxicology reports?

4 A Yes, I did.

5 Q Okay. Tell us about that.

6 A I reviewed the toxicology report and I
7 found that the deceased had two medications in
8 his blood. One is a legal drug which is called
9 benzodiazepam, which is similar to Lorazepam or
10 Ativan, some type of antianxiety medication,
11 which people use to sleep at night.

12 The other one is marijuana, which we call
13 THC, tetrahydrocannabinol, which is an illegal
14 medication -- drug in South Carolina. It is not
15 a medication.

16 A Yes.

17 Q Can you tell approximately what timeframe
18 the marijuana was taken in?

19 A This is an active ingredient which means it
20 was recently smoked to still be in his
21 bloodstream.

22 Q So you mentioned that there was marijuana
23 and there's ---

24 A. Ativan.

25 Q Ativan -- or another word is Lorazepam?

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1 A. Yes.

2 Q So what's the medical effect of combining
3 those two drugs at the same time in your system?

4 A Each drug has a central nervous system
5 depressant effect, so basically the first one,
6 we'd call it a "downer" on the street, or a
7 "nerve pill." It will depress the central
8 nervous system.

9 The second one, of course we are all aware
10 of, marijuana of course can be a depressant on
11 the central nervous system.

12 Combined, it would increase the depression
13 of the central nervous system, especially on the
14 respiratory center and heart center.

15 Q Would combining these two drugs or maybe
16 even just one of them alone make you unable on
17 your feet?

18 A It can.

19 Q It can.

20 A (Affirmative nod)..

21 Q Tell us how?

22 A I mean, losing the balance.

23 Q Now, did you do the autopsy in this
24 particular case?

25 A No, I did not.

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1 Q Okay. But you did review the entire file
2 in order to come here today and testify?

3 A Correct.

4 Q Why don't you go through for the jury the
5 records that you reviewed to prepare for today's
6 testimony?

7 A I have gone through the medical records,
8 the emergency room, the C.T. and x-rays
9 performed on the deceased and all the medical
10 records at the operative theater performed to
11 him and the investigative report including the
12 police report and the three autopsy reports, the
13 provisional one, the first one and the amended
14 one, and all the autopsy photographs.

15 Q Speaking of the autopsy photographs, when
16 you reviewed those photographs did anything
17 strike you as out of the place?

18 A Yes. It's one thing only, which is not
19 according to the manual of procedures or the
20 standard of procedures set by the National
21 Association of Medical Examiners. We have to
22 have a label, a ruler, which at first will
23 identify any injury in terms of measurements.
24 Number two, identify the deceased in the form of
25 his name, date of the autopsy, the case number,

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1 so there was no ruler. So there -- this
2 pertains to the deceased, but I could not really
3 tell that it pertained to that autopsy case.
4 That's the only exception. Otherwise there are
5 beautiful pictures and good ones.

6 Q Now, the report mentioned closed head
7 trauma. Tell us about that?

8 A Simply closed head trauma, if somebody
9 falls down or is involved in a motor vehicle
10 accident or falls from a high place or is hit by
11 any blunt force object like a baseball bat or
12 anything like that, it leads to injury inside
13 the cranial cavity without exposing the
14 internally cavity to that vehicle. What I mean
15 is that there is no extensive lacerations or
16 wounds. There is no depressed fractures or
17 comminuted smashing of the skull or anything
18 like that. It was contained inside the cranial
19 cavity. That is what is meant by closed blunt
20 force trauma to the head.

21 Q Now, I may get you to go back over that a
22 little bit more in a minute but let's try to
23 move on. Now, as far as the blunt force trauma,
24 based on the reports that you received, can you
25 tell what caused that trauma?

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1 A I cannot say a specific object because on
2 here to present to the honorable jury there are
3 no facts nor fiction. I am not doing a C.S.I.
4 like on TV, I cannot say what was the cause of
5 that. It could be anything.

6 Blunt force injury means somebody is
7 knocked down, punched, kicked, stomped on, in a
8 motor vehicle accident, fall from a height, --
9 there are lots of possibilities.

10 Q So are you saying that the appropriate
11 standard is to review the facts only?

12 A Yes.

13 Q On something like that?

14 A I'm a fact finder, so I have to review that
15 and say it's a blunt force trauma, yes.

16 Q Did you'll notice if there are any
17 abrasions in the area?

18 A Yes.

19 Q Tell us about that?

20 A There were very small abrasions on the
21 front area of the deceased. That means he was
22 involved in an altercation with somebody and
23 some also lacerations upon on the left upper
24 frontal scalp with some contusions on the right
25 side.

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1 Q Could you tell what caused those abrasions?

2 A Again, abrasions would be like finger means
3 or stretches against the surface of a concrete
4 or prior surface and bruise and lacerations due
5 to blunt force trauma to the head.

6 Q Okay. Now, did you notice any evidence in
7 your examination of this report of something --
8 of injuries consistent with something like a
9 metal chair?

10 A I did not see that, simply because if a
11 metal chair was used to cause this blunt force
12 trauma it would have led to extensive
13 lacerations of the scalp and depressed fracture
14 of the cranial cavity, smashing it like a bowel
15 or extensive lacerations inside the cranial
16 cavity to that area. I did not note anything,
17 and the C.T. and x-ray did not show any
18 lacerations to the brain, extensive lacerations
19 to the scalp or multiple commuted fracture of
20 the cranial cavity.

21 Q And how certain are you of that analysis?

22 A My diagnosis and evaluation is beyond any
23 reasonable doubt.

24 Q Thank you. Now, you said that -- I think
25 when you reviewed the report, did you notice

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1 anything as far as injuries to the back of the
2 victim's head?

3 A There was contusions on both sides.

4 Q On the sides?

5 A On the sides, yeah.

6 Q Okay. So if someone fell on their side,
7 that might cause the contusion?

8 A It can be due to any blunt force, yes.

9 Q Any blunt force?

10 A Yes.

11 Q Now, you also noted -- did you notice any
12 small linear fractures?

13 A Yes, that was located at the right post
14 posterior parietal skull bone, the small bone.

15 Q So when you reviewed these photos, you
16 notice most of the injuries were in this area?

17 A On the side, yes.

18 Q Could kicking cause those injuries?

19 A Yes.

20 Q Could being stomped cause those injuries?

21 A Yes.

22 Q Dr. Shaker, is it possible for someone --
23 and I'm going to walk up here to the board.

24 There's some writing on it already -- but for
25 someone to have been injured here and actually

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1 make their way down here and actually die as a
2 result of those injuries?

3 A It could have happened in one situation.
4 We call it lucid interval, which might lead the
5 doctor who performed the autopsy mentioned in
6 his autopsy report and the other medical doctor
7 in the medical records mentioned it.

8 What I mean, by loose interval, it is
9 defined between an attack that can happen to a
10 certain person and he collapses. During that
11 time, the deceased (sic) can walk, can talk, can
12 do regular activities for a few minutes, up to a
13 max of half an hour to one hour. Lucid
14 interval.

15 During that time, the lucid interval, the
16 blood would have accumulated on the surface of
17 the brain. Because the cranial cavity is a
18 limited area, it cannot expand, the blood which
19 is accumulating on the surface of the brain will
20 press on the brain stem, damaging that vital
21 symptom on the brain leading to what we call
22 herniation.

23 That happened to the deceased. He had
24 herniation leading to stopping of the
25 respiratory and cardiac activity.

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1 Q And you referred to that as a lucid
2 interval?

3 A Yes.

4 Q And you said that that terminology was used
5 in the reports that you reviewed, as well?

6 A In both the autopsy report and in the
7 medical records that he was lucid -- that he was
8 in a lucid interval, yes.

9 Q Now, what would happen at the end of that
10 lucid interval?

11 A Simply anybody who is experiencing bleeding
12 inside that cranial cavity, because of the
13 restricted space inside the cranial cavity, the
14 blood would damage the vital cells from brain,
15 also for lung and heart. Eventually it would
16 lead to the demise of that individual.

17 Q Earlier you'll said marijuana and Lorazepam
18 could affect your balance. Could the end
19 portion of a lucid interval, could someone be
20 unsteady on their feed?

21 A Of course, they could be unsteady because
22 there is bleeding inside the cranial cavity.

23 Q Your testimony is, after reviewing the
24 reports, that there is no way for you to
25 determine when these different injuries

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1 occurred; is that true?

2 A The sequence of injuries, I cannot -- with
3 reasonable medical certainty, I cannot say that.

4 Q You can guess at it?

5 A I can say -- you're asking me a question
6 about using a metal chair, and I said beyond a
7 reasonable doubt it never happened. It would
8 have lead to other injuries, so this is not
9 consistent with that one.

10 But other forms of beating, kicking,
11 stomping and falling down, it's consistent with
12 this one.

13 Q When you do these autopsies and different
14 examinations, and I think you've said you've
15 done over eight -- eight hundred?

16 A Eight thousand ---

17 Q Eight thousand. Have you noted a danger in
18 relying on police reports?

19 A I rely number one, upon my facts, my
20 findings, what I see with my eyes.

21 Then I review the medical records because
22 those are the witnesses who should not lie. I'm
23 not biased to doctors, but medical records
24 should not lie and I have seen those.

25 But relying upon other witnesses, if they

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1 have a hidden agenda, it can compromise my
2 approach to rely on such witness.

3 Q So if I had asked you to come here and
4 testify that the only way but for a certain
5 attack he would have died, would you have done
6 that?

7 A No. That's fiction, not facts. I cannot
8 say which attack led to his demise.

9 Q Would you have problems doing that
10 ethically, as well?

11 A Of course.

12 Q But you did point out that you're
13 self-employed, right?

14 A Yes.

15 Q But -- now, I did retain your services to
16 come here today and provide this report?

17 A Correct.

18 Q But had you ever seen me prior to today? I
19 mean, prior to last night, had you ever seen me?

20 A No.

21 Q Okay. And prior to maybe a month ago, had
22 you ever spoken to me?

23 A No.

24 Q And you may not ever talk to me again after
25 today?

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1 A Yes.

2 Q So it's your goal to be as objective as
3 possible when you do these reports?

4 A This is the role of any physician or
5 pathologist.

6 Q So let's talk about possible ways that
7 unfortunately the victim in this case could have
8 fallen or lost balance or maybe hit the ground.
9 He could have lost his balance and hit his head
10 at that time?

11 A Yeah.

12 Q He could have fallen as a result of a lucid
13 interval?

14 A Yes.

15 Q Somebody that has sustained numerous kicks
16 and different injuries to their head could
17 eventually pass out and fall?

18 A Yes.

19 Q Okay. He could have -- these injuries
20 could have been caused by the metal chair?

21 A Not by a metal chair, but punching is
22 acceptable because the medical record shows, the
23 C.T. shows, fracture of the nasal bones
24 consistent with somebody punching him here. He
25 has hematoma, collection of blood in this area,

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1 so the fracture of the nasal bones is consistent
2 with somebody punching him, yes.

3 Q And he also could have fallen as a result
4 of the mixture of the Lorazepam and the
5 marijuana?

6 A Combined effect.

7 Q And you also said he could have fallen
8 because somebody punched him?

9 A Yes.

10 Q Okay. But you don't know how this man
11 fell?

12 A No.

13 Q But you just list maybe like maybe five
14 different -- well, you ruled out the chair?

15 A Yes.

16 Q You listed like five different reasons why
17 that might be possible?

18 A Correct.

19 Q To include him being punched?

20 A Yes, kicked, punched, stomped.

21 Q Now, did you see anything in your
22 examination to suggest that the victim received
23 a single attack? I mean, can you make that
24 statement?

25 A No, I cannot make that statement.

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1 Q Can you say that the victim sustained two
2 attacks?

3 A I can say multiple people were beating him,
4 but I cannot say one or two.

5 Q And you say that based on the different
6 types of lacerations and contusions and
7 hematomas and everything else that you see?

8 A Correct.

9 Q And that could have all been done by one
10 person, too, though; right?

11 A Could be, yes.

12 Q Okay. And again if I were to ask you to
13 give me a "but for" analysis in this case, "but
14 for the second attack", Kenneth Mack wouldn't
15 have died; but for the first attack, the second
16 attack wouldn't have eventually occurred. Is
17 that your place to do that?

18 A No, I cannot say which one. If there is a
19 second, third or only first, it is impossible
20 scientifically to say that.

21 Q And you're just being objective?

22 A Yes.

23 MR. CHAPLIN: Okay. All right.

24 Answer any questions that counsel for the State
25 or Ms. Gray (sic) might have, and I think you'd

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1 like to go first.

2 THE COURT: Mr. Farley.

3 DIRECT EXAMINATION

4 BY MR. FARLEY:

5 Q Mr. Shaker, I'll be brief. I just have a
6 few followup questions I'd like to ask you. In
7 your opinion, do you believe that this autopsy
8 was thorough?

9 A I'm sorry?

10 Q Was this a thoroughly done autopsy?

11 A I think it was a hospital autopsy, not a
12 forensics one.

13 Q I'm sorry, you said hospital. Yeah.

14 A Done by a general pathologist.

15 Q And?

16 A Not a forensics pathologist.

17 Q Can you elaborate on what the difference is
18 between a hospital and a forensics?

19 A Yes, there is a great difference. The
20 forensics one would be a detailed one. Even
21 when they approached me for vital organs to be
22 harvested in a homicide case, I object. I said
23 'No, don't touch him. Do not retrieve eyes. Do
24 not retrieve heart, or anything' because this
25 might make a great difference.

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1 Q Do you think those internal organs and
2 things that were taken away by life source would
3 have been important to your analysis or
4 diagnosis?

5 A Yes.

6 Q So just to be clear, this in your opinion
7 was a hospital autopsy and not a ---

8 A --- forensic.

9 Q A forensic?

10 A It is not a forensic. It's a hospital.

11 Q And you define a hospital autopsy as being
12 less detailed?

13 A Not only less detailed, it does not address
14 the whole issue. It's a homicide case. No one
15 can deny that, so a forensics pathologist would
16 be in a better position to handle this matter.

17 Q So this would be more like a
18 run-of-the-mill autopsy that could have been
19 done on anyone no matter what the cause of
20 death?

21 A It's different from our manual of
22 operation's standard of procedures for medical
23 examiners and forensics pathologists.

24 Q But still your conclusion, if I remember
25 your previous testimony correctly, was that it

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1 was -- that the cause of death was a result of
2 the a blunt force trauma?

3 A There is no doubt, blunt force.

4 Q But you're not here to speculate on how
5 that occurred necessarily.

6 A No.

7 Q You said that -- well, let me ask you this.
8 In your field, is it fair to say a laceration
9 can be explained to the jury as like a tear?

10 A Yes.

11 Q A tear in the skin?

12 A A tear in the skin and the subcutaneous
13 tissue. The skin contains seven layers, so it
14 tears through all of the those layers.

15 Q So -- and, of course, that's different than
16 a bruise which has black and blue?

17 A Yes.

18 Q And it's different than an incision?

19 A Yes, correct.

20 Q Because in an incision it's cut precisely.
21 In a laceration, the skin is actually torn?

22 A Exactly, yes.

23 Q Okay. And I remember from your previous
24 testimony, you were saying in your opinion if a
25 chair had been used, then -- and you -- it's

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1 your opinion that that chair could have caused a
2 great deal of lacerations on the head and neck;
3 is that what you testified to?

4 A Yes, not only lacerations. Lacerations and
5 the type of the fractures would be specific. We
6 call it comminuted, like when you smash a ping-
7 pong ball or depress the fracture. You depress
8 that fracture of the area and it creates a brain
9 laceration. There was no brain lacerations. No
10 extensive lacerations to substantiate or say
11 this was consistent with beating with a metal
12 chair.

13 Q I guess you anticipated my next series of
14 questions, was there was no lacerations
15 indicative or that nor any depressions that
16 would have put lacerations on brain?

17 A Correct.

18 Q All right. And one last topic I wanted to
19 cover. You were speaking of DNA -- transferable
20 DNA or DNA transference.

21 A. Right.

22 Q The term that I guess is a term of art in
23 your field is if a person is a good shedder?

24 A Yes.

25 Q They shed DNA?

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1 A Yes.

2 Q Is it fair to say, then that different
3 people shed in different manners?

4 A Exactly and different tissues -- it's
5 beyond the jurisdiction of this honorable court
6 to go into that, but it is transferable, yes.

7 Q Was there any way to determine from the
8 information that you were provided what kind of
9 DNA shedder that a patient may have been?

10 A It would be epithelial cells from the
11 hands, or -- he could have transferred some of
12 his superficial skin to other objects.

13 Q But what I am saying is, is there any way
14 to determine from the information that you had
15 what level of shedder he may have been?

16 I mean, would you be able to determine from
17 your information whether he had a high rate of
18 shedding or a low rate?

19 A. No, no, with shedding, it is a positive or
20 negative. It happens. It happened. It happens
21 on a regular basis.

22 Q All right. And due to that shedding, it
23 would have been possible to get some DNA
24 transfer to another object?

25 A Correct.

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1 MR. FARLEY: Thank you Dr. Shaker.
2 Please answer any question it is State may have.

3 THE COURT: Ms. Campbell.

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: Ladies and gentlemen, just
6 stay seated for a minute. I have an important
7 phone call. Shouldn't take me just a minute.

8 (PROCEEDINGS PAUSED - JURY REMAINED IN BOX)

9 THE COURT: Thank you. Solicitor.

10 CROSS EXAMINATION

11 BY MS. CAMPBELL:

12 Q Dr. Shaker, when were you first contacted
13 on this case.

14 A That was November last year.

15 Q November of last year, so that was
16 approximately three months ago?

17 A Yes.

18 Q And who were you contacted by?

19 A I was contacted by TAMPA, Technical Advisor
20 Group for Persons of America.

21 Q And were they able to find you through the
22 internet, as you advertise as an expert witness?

23 A Yes, I do.

24 Q So anyone can go on the internet, get your
25 name and you will render them services; is that

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1 correct?

2 A No, that's not correct. I evaluate the
3 case and it must have merit.

4 Q Merit?

5 A Yes.

6 Q Is that what you do for a living?

7 A For the last couple of months.

8 Q Last couple of months -- since I believe
9 the first of December or so?

10 A Yes.

11 Q So in order for you to make a living, you
12 have to give opinions and basically charge for
13 it because that's how it works?

14 A I charge for my time.

15 Q For your time, yes, sir, and I don't mean
16 to -- and in this case, how much time have you
17 put insofar in reviewing these records from this
18 medical examiner in South Carolina?

19 A Approximately fifteen hours.

20 Q Approximately fifteen hours?

21 A Yeah, approximately.

22 Q And how much do you charge an hour for
23 that?

24 A Approximately \$200 to \$250.

25 Q Two hundred (\$200) to two fifty (\$250) an

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- 1 hour?
- 2 A Yeah.
- 3 Q That's just the review. You put in fifteen
- 4 hours, correct?
- 5 A Yes.
- 6 Q You mentioned you reviewed police reports?
- 7 A Yes.
- 8 Q Medical records?
- 9 A Yes.
- 10 Q The autopsies pictures?
- 11 A Yes.
- 12 Q Autopsies themselves?
- 13 A Yes.
- 14 Q Anything else I left out?
- 15 A Yes, toxicology.
- 16 Q Toxicology?
- 17 A Yes. DNA.
- 18 Q Everything in this file and you were able
- 19 to review all of that in just fifteen hours and
- 20 come to these conclusions?
- 21 A Yes.
- 22 Q And do you get paid for your time when you
- 23 get here?
- 24 A My air ticket and car rental.
- 25 Q And you get paid for your time?

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- 1 A Yes.
- 2 Q So how much more time are you going to get
- 3 paid for in this case?
- 4 A I have not put my hours yet.
- 5 Q So the fifteen hours is just what you did
- 6 back home?
- 7 A Yes.
- 8 Q And is that's at probably \$250 an hour?
- 9 A Yes.
- 10 Q Then, of course, the entire time it takes
- 11 you to come here from Alabama?
- 12 A No, just my time in the court.
- 13 Q Your time in the court.
- 14 Q So all your time today and any time you
- 15 spent preparing for that; is that fair?
- 16 A No, only or today and the fifteen hours
- 17 including preparation for the case.
- 18 Q And in that fifteen hours you're able to
- 19 come to conclusions but, in fairness, you get
- 20 paid more if you come to court?
- 21 A Not more.
- 22 Q You get paid for your time to come to
- 23 court, don't you?
- 24 A For the time I will spend in the court and
- 25 as a physician, I ---

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1 Q I understand, but you don't get paid if you
2 don't put the time in. Is that fair to say?

3 A Correct.

4 Q Okay. And in reviewing all this, has
5 any -- you were talking about professionalism
6 and medical doctors and what you do?

7 A Yes.

8 Q I didn't get a copy of your report?

9 A I did not compose a report.

10 Q So there is no report reflecting your
11 findings that are pretty crucial in this chase
12 because cause of death is an issue?

13 A It is not an issue. I agreed with my
14 colleague that the cause of death was blunt
15 force trauma, so I did not disagree with him to
16 put something in writing.

17 Q So you didn't find a need because you
18 agreed with everything in his findings?

19 A Yes.

20 Q And that's in reviewing the autopsy and
21 everything else?

22 A Correct.

23 Q And you have testified as an expert in
24 anatomic pathology?

25 A Anatomic and forensic.

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1 Q And forensic -- I was getting to that.

2 A Yes.

3 Q And then you've also testified about
4 toxicology and the effect that has on people; is
5 that correct?

6 A Yes.

7 Q That is within your purview, is that right?

8 A Yes.

9 Q You've also testified about DNA?

10 A Correct.

11 Q That's also within your purview?

12 A Yes.

13 Q And in those different areas, taking them
14 one although a time, you came up and talked to
15 this jury about transferred DNA. Say if someone
16 shakes someone's hand and then go and touch
17 another object, that it could be transferred
18 that way?

19 A That's correct.

20 Q Say if someone were hitting somebody in the
21 face over and over and they went and grabbed
22 that chair, would that DNA be transferred?

23 A Yes.

24 Q In the same way it would in a handshake on
25 touch DNA?

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- 1 A Correct.
- 2 Q And you're aware of the presumptive tests
3 for the presence of the blood?
- 4 A Yes, it was negative in this case.
- 5 Q That's your ---
- 6 A It was negative in this case. I've gone
7 everywhere in your file.
- 8 Q Did you read the presumptive test that was
9 done by the man who collected the swabs?
- 10 A It was negative.
- 11 Q So you don't know anything about any
12 BlueStar treatments that were positive?
- 13 A There were no blood traces or blood
14 elements on that metallic chair.
- 15 Q Anywhere on any of your findings, is your
16 testimony?
- 17 A I have seen that. That was negative.
18 That's why they sent it for DNA.
- 19 Q That's your testimony?
- 20 A Yes, ma'am.
- 21 Q Do you need to review any reports?
- 22 A You can show me any report.
- 23 Q We'll get back to that in a minute.
- 24 You would agree with me, however, -- I
25 mean, when you talk about transferring DNA, it

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1 has to go from one object to another. It
2 doesn't just float through the area.

3 A No.

4 Q We agree with that.

5 A Yes.

6 Q As far as the toxicologist, you were
7 talking about the marijuana in this man's
8 system?

9 A Yes.

10 Q And there are active ingredients for
11 marijuana; is that correct?

12 A Yes.

13 Q If I were to tell you that I have talked
14 with toxicologists and what is present in
15 Tetrahydrocannabinol, THC, one of the inactive
16 metabolites; you would agree with that, too?

17 A That's his opinion.

18 Q It could have been there for within one
19 week to thirty days prior to this event
20 occurring?

21 A One week to ten days.

22 Q No, to thirty days.

23 A Ten days.

24 Q That's your testimony?

25 A Yes.

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1 Q And that is as an inactive ingredient that
2 wouldn't have any affect on him. It would just
3 show that he'd had it at some time in the past.
4 Do you agree with that now?

5 A That's your opinion as a toxicologist?

6 Q No, sir. I don't have opinions. I'm
7 asking if that's your opinion?

8 A No, that's active.

9 Q You want it to be active.

10 A (No verbal response).

11 Q You also talked about the Ativan that was I
12 his system.

13 A Yes.

14 Q You're aware that's well within the normal
15 range for therapeutic effect?

16 A I agree.

17 Q There are people probably in this
18 courthouse right now walking around having that
19 amount or maybe even more of Ativan in their
20 system, functioning well.

21 A Correct.

22 Q And that that amount alone should not make
23 anyone stagger or fall or just suddenly pounce o
24 the ground head-first.

25 A Yes.

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1 Q But your testimony to this jury, that you
2 are being paid for today, your time, is that the
3 combination of these inactive ingredients of
4 marijuana and the Ativan could cause him jut to
5 fall down anyway?

6 A. In combination. Because if anyone in the
7 court is taking Ativan with marijuana, they
8 could fall down as well.

9 Q That would be ---

10 A If it is prescribed and not a street
11 medication, because they can sell Ativan on the
12 street as well.

13 Q Where are we going now -- to the street?

14 A It's street drug. If it was not prescribed
15 for the deceased, then the source for getting it
16 would be a street source.

17 Q Got it. But the amount, whether it be a
18 street source or a prescription, -- for which
19 you have no evidence one way or the other, do
20 you?

21 A There is no evidence and I can see that
22 beyond any reasonable doubt that collection of
23 the blood was not the standard forensics. What
24 we do in the standard forensics, we collect
25 settled blood and different blood to do

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1 comparison. Unfortunately the heart was
2 harvested prior to that, so the operation of
3 blood collection was not an accurate sampling.
4 If they collected from two different areas, it
5 could have shown both high and low; that would
6 have been more precise to show the level ---

7 Q So in addition to this autopsy being done
8 incorrectly, now the blood was collected in
9 correctly by all these medical people in South
10 Carolina?

11 A. I did not say incorrectly. I said it was
12 not in accordance to the standard of procedures
13 adopted by the National Institution of Medical
14 Examiner.

15 Q What standard or procedures allows you to
16 get up there and testify to anything beyond a
17 reasonable doubt. Isn't it beyond a medical
18 certainty. Isn't that the terminology you are
19 supposed to use?

20 A This is law and I leave it between you and
21 other lawyers.

22 Q So you're doing this now as a lawyer?

23 A No, I'm saying you fight together, you and
24 the other lawyers, not with me. I'm saying
25 facts to the honorable jury.

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1 Q Okay. Let me get back to the facts as far
2 as the medical stuff in this case, okay.

3 Your statements to this jury and what you
4 want them to believe is these inactive
5 ingredients from the marijuana that had been
6 there a while combined with a therapeutic level,
7 whether it be street or otherwise, amount of
8 Ativan man would cause this man just to go head
9 first at any moment?

10 A Can you repeat that?

11 Q No. Can you answer it?

12 A Well, ---

13 MR. FARLEY: Objection, Your Honor.

14 WITNESS: Please.

15 CROSS EXAMINATION CONTINUED

16 BY MS. CAMPBELL:

17 Q Is that what your testimony is?

18 A I said ---

19 MR. FARLEY: Objection.

20 THE COURT: What is your objection?

21 MR. FARLEY: She is badgering the
22 witness.

23 THE COURT: He's doing, okay.

24 MR. FARLEY: Okay.

25 WITNESS: --- they may have effect

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1 individually but the combined effects of both,
2 the illegal and the legal, could lead to
3 somebody being dizzy. I did not say he fell
4 down because of those drugs. But it would
5 affect his equilibrium.

6 CROSS EXAMINATION CONTINUED

7 BY MS. CAMPBELL:

8 Q Would you agree with me, though, as was
9 testified to earlier, that these drugs had
10 nothing to do with the cause of death in this
11 case?

12 A No.

13 Q No bearing?

14 A No.

15 Q So there's nothing about that that would
16 have caused death?

17 A I agree with you.

18 Q You also mentioned that you reviewed the
19 police records in this case and then you talked
20 about how at the end of your testimony you can't
21 consider how anyone may have told you that he
22 died. Then why did you review them?

23 A I was given that in the file. I have to
24 read everything I was given in that statement.

25 Q And any medical doctor, be it a pediatric,

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1 internist, or a cardiologist, you don't think
2 it's important to get a history about what
3 happened?

4 A Yes.

5 Q And that was done in this case?

6 A That was not done because he was
7 unconscious. Every medical doctor says we could
8 not get a history because he was unconscious.
9 There was no history.

10 Q Is it not important as a medical examiner
11 to get information what about might or might not
12 have happened so you can say whether or not your
13 findings are consistent or inconsistent with
14 what happened? Isn't that part of your job as a
15 forensic pathologist?

16 A I listened to the police and investigators
17 but I make my own determinations on a nonbiased
18 basis.

19 Q Yes, sir, but that's information that you
20 would want as a forensics pathologist, if you're
21 still one?

22 A Yes.

23 Q And in this case, you also talked about
24 this lucid interval, that it was all through the
25 reports?

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1 A Yes.

2 Q Where in the report is it? Where are the
3 records you got? Maybe I have different one?

4 A I don't know. I have it. Give me a couple
5 of minutes.

6 Q Yes, sir. Specifically the term I'm
7 looking for is "lucid interval"?

8 A Yes, I will show it to you'll in the
9 autopsy report and the other medical records.

10 A There is one here, autopsy report page
11 number two.

12 Q Can I just see -- do you mind if I see?

13 A Here, (indicating).

14 Q Yes, that's exactly it. He got up and was
15 lucid?

16 A Yes.

17 Q Not to say he had a lucid interval having
18 already sustained an injury?

19 A So I'm explaining lucid that he was walking
20 and talking and interacting during that
21 interval.

22 Q Yes, we all agree to that. Not that he was
23 having a lucid interval, already having
24 sustained an injury?

25 A He had a closed blunt force trauma and he

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1 had a lucid interval.

2 Q That's your testimony?

3 A Yes, ma'am.

4 Q Not what's in the autopsy report?

5 A I showed you.

6 Q That he was lucid after the first assault
7 and that he wasn't after the second.

8 A Yes. And usually the first attack -- if
9 you're going to discuss this, if there is a
10 first, second, third, for example, the first one
11 somebody will be lucid. That period is enough
12 time for the blood to accumulated, compressing
13 one the brain, leading to their demise unless
14 there is operative intervention to release the
15 blood from the brain.

16 Q I'm just asking for the term "lucid
17 interval", which you said is all through the
18 reports.

19 A Yes.

20 Q And it is not.

21 A It is here.

22 Q The word "lucid" is there.

23 A Yes.

24 Q Let me get back to the Ativan for one
25 second.

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1 A Okay.

2 Q And you did review all the medical records
3 in this case?

4 A Yes, ma'am.

5 Q I just want to show you the highlighted
6 part about Ativan.

7 A (Upon review), yes.

8 Q Is that something you reviewed?

9 A Yes, I reviewed this.

10 Q Okay. So that means that he didn't get the
11 Ativan until he was seizing when the EMT's got
12 there?

13 A Yes.

14 Q So the amount that was in there would be
15 consistent with what the EMTs gave him that day?

16 A Yeah, it is written he was given it when he
17 started to seize.

18 Q Let me just make sure we understand what
19 was written?

20 A Yes.

21 Q That, (reading): "following intubation the
22 patient had good breathe sounds bilaterally. He
23 was given a dose of Ativan as he did seem to
24 begin to seize just before he was intubated and
25 paralyzed." So that's the Ativan in his system

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1 that you're talking about. It was given by a
2 doctor that was treating him?

3 A According to this, yes.

4 Q So does that affect your testimony in any
5 way?

6 A It states he had Ativan in his system.

7 Q After he was unconscious and had been
8 beaten?

9 A But the blood which was collected was
10 collected in the hospital before giving him that
11 Ativan.

12 Q No, sir.

13 A It was written.

14 Q He was intubated at the scene.

15 A He ---

16 Q The EMTs.

17 A I know, but the blood was collected by the
18 EMTs.

19 Q You're saying the blood was collected by
20 the EMTs?

21 A Yes, here it is. I have proof of what I'm
22 saying. Before they give him that one. The
23 pathologist says that, toxicology, the
24 "admission blood is obtained, it was obtained
25 prior to giving him Ativan."

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1 Q Admission blood means when he was at the
2 hospital?

3 A When he was admitted to the hospital,
4 immediately. They always collect the blood from
5 anybody prior to giving them medication. Think
6 overdose, you'd be giving medication -- so you
7 take blood from anybody before giving him a
8 single injection. They sent it with him to the
9 hospital, and it revealed these drugs prior to
10 them giving him Ativan. This is the evidence.

11 Q Yes, sir. I'm showing you where the
12 doctors gave him Ativan when he started seizing,
13 prior to being intubated. Isn't that what it
14 says?

15 A That's what you showed me, yeah.

16 Q Or the medical personnel, I should say.
17 In this case you said it would be improper for
18 you to give any opinion about what happened; is
19 that correct?

20 A I did not say that.

21 Q What did you say?

22 A I said any object could have led to the
23 blunt force injury to the head.

24 Q And you gave a number of examples?

25 A Yes.

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1 Q Such as a motor vehicle accident?

2 A Yes.

3 Q A fall from a high building?

4 A Yes.

5 Q What were some of the other ones you gave?

6 A Kicking, stomping, hitting his head on
7 pavement or a concrete surface, anything.

8 Q Anything?

9 A Anything, yeah.

10 Q Anything such as that?

11 A Yes.

12 Q But you would agree with me the skull is a
13 pretty thick bone?

14 A Yes.

15 Q And that it takes a very significant amount
16 of force to crack a skull?

17 A I agree.

18 Q So we aren't talking about just whatever.

19 It would have to be some significant force?

20 A Yes.

21 Q Moreso than -- like a high speed motor
22 vehicle accident?

23 A Yes.

24 Q Or a fall from a tall building, up several
25 stories?

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1 A Yes.

2 Q That type of thing is the type of force
3 that we are talking about. Would it be
4 consistent with someone having their feet swept
5 out from under them and them falling down head
6 first?

7 A No, from falling the fracture would not
8 happen.

9 Q But your testimony is it could have
10 happened from a fist but it wouldn't have
11 happened from falling in that matter?

12 A No from stomping, kicking, because he has
13 something consistent with that.

14 Q Stomping and kicking, so kicking would do
15 but cutting someone's feet out from under them
16 and causing them to fall ---

17 A. He was stomped and kicked, according to
18 that police report.

19 Q Are you also familiar with the fact that
20 after getting -- in the first part of the
21 altercation that he got up and was walking
22 around?

23 A Yes.

24 Q And that's the lucid interval that you were
25 referring to?

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1 A Yes.

2 Q By your own testimony, based on your review
3 of the records, he was lucid, able to walk,
4 talk, function, everything?

5 A Correct.

6 Q At that point, are you also aware that as
7 soon as his feet were swept out from under him
8 in the second one that he never moved again. He
9 have never was conscious and that he was
10 actually posturing when the EMTs got there?

11 A Correct.

12 Q And what is posturing?

13 A Posturing meaning extension/flexion/
14 extension. This is a neurological spasm term
15 that means that the blood accumulating on the
16 surface of the brain already resulted in
17 irreversible damage.

18 Q And that would be significant that that
19 occurred right at the same time that he went
20 down and was beaten in that second attack?

21 A No, not second. I'm not saying first or
22 second. Scientifically, I can't say. If you
23 are beaten, was lucid, fell down, started to
24 have blood compressing on the brain.

25 Q So your testimony is you can say that the

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1 second attack didn't cause any injury that would
2 have led to his death.

3 A If there was a second or a third, I cannot
4 say. The object, as suggested by the lawyers, -
5 - whatever it was, it's not consistent with the
6 injuries sustained by being hit with a metal
7 chair.

8 Q Well, what was suggested to you by the
9 lawyers?

10 A I mean, 'could it have been a metallic
11 chair', and I said no.

12 Q It couldn't occur with this metallic chair
13 but it could occur if they were kicking him and
14 stomping him and hitting him and he fell to the
15 ground from an upright position when his feet
16 were pulled out from under him rapidly?

17 A Yes.

18 Q And then the fact that he goes down and he
19 never moves again, he's bleeding from the mouth
20 profusely, he's seizing when the EMTs get there,
21 that has no affect on your opinion?

22 A This is a result, not affect. As a result
23 of the beating, of the attack, he's seizing
24 because of the blood compressing on the brain.

25 Q And you agree with his findings. You just

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1 think that the medical examiner that we have in
2 county does a substandard job?

3 A I did not say that.

4 Q What did you say? I'm sorry.

5 A I say it's not consistent with our manual
6 and protocol for procedure on a national level.

7 Q Then you talked about it would be bad to
8 take the eyes or the brain or -- but none of
9 those organs were harvested in this case. You're
10 aware of that?

11 A No, they were harvested. The heart, the
12 lungs, they were harvested.

13 Q Some organs were harvested. I'm talking
14 specifically about the brain and the eyes.

15 A Heart, liver, kidneys, lungs, everything
16 that was useful. If they had approached me, I
17 would have said 'no.'

18 Q So your testimony is all the donatable
19 organs were taken from him?

20 A I read what is written here: heart, left
21 lung, liver, right and left kidney have been
22 harvested prior to the autopsy.

23 Q Okay. And yet this medical examiner was
24 able to come to a conclusion which you totally
25 agree?

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1 A I agree with him, yes.

2 Q But you just would have done it better?

3 A According to the standard, not better.

4 Q And you weren't there for the autopsy?

5 A No.

6 Q You weren't there to observe any of the
7 injuries firsthand?

8 A No.

9 Q You would agree with me that of course it's
10 always better to be able to observe it first
11 hand or to be privy to it?

12 A Correct.

13 Q Did you review any slides or any of the
14 tissue in this case?

15 A No.

16 Q Did you request any of that?

17 A No, because everything was already
18 explained here and I assumed that my colleague
19 is writing everything meticulously and thorough.

20 Q So it was a meticulous and thorough
21 autopsy?

22 A Yes.

23 Q And he is Board-certified by the same
24 people that certify you, is that correct?

25 A Should be.

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1 Q It's just that he doesn't get paid for his
2 time *per se*, that is his standard job, just like
3 yours used to be?

4 A No, he is paid by the government.

5 Q By the government, just like you used to
6 be?

7 A Yes.

8 Q And now you're out on your own?

9 A Yes.

10 Q And you actually advertise your services
11 through the internet?

12 A I do.

13 Q And do you remember approaching a colleague
14 of mine earlier today?

15 A Yes.

16 Q And you actually gave her your card, here
17 it is?

18 A Yes, I wanted to talk to you because I
19 already missed my flight.

20 Q Oh, I'm sorry. I didn't know. I
21 apologize. On it you've got this -- this is
22 your -- you are an AL State Medical Examiner?

23 A I was working for Alabama. This is on old
24 card.

25 Q You don't work for them anymore?

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1 A Right, but I it has all the information on
2 the front.

3 Q This is your card, though, that you gave
4 her?

5 A Yes.

6 Q Do you remember walking up to her and you
7 were trying to ask her if she was the one trying
8 the case -- because she is about my age?

9 A Not trying to.

10 Q Do you remember approaching Ms. Spears and
11 asking her if she was trying the case?

12 A Yeah, I asked because I want to leave early
13 to catch my light. I don't know that ---

14 Q Then she had a conversation back with you
15 and said no and then she asked if you were
16 working for the state or a witness for the
17 State, -- but she is not involved in this case.

18 A Right.

19 Q And then you said you were working for the
20 defense?

21 A Yes.

22 Q She said, 'good for you.' And your reply
23 was, 'Do you think so? But you know how it is
24 in these hard economic times.'

25 A Yes.

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1 Q Thank you, sir.

2 MS. CAMPBELL: I have nothing
3 further.

4 THE COURT: Redirect?

5 MR. CHAPLIN: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. FARLEY:

8 Q Dr. Shaker, you're not trying to suggest
9 that you are here voluntarily, are you?

10 A No, I'm not.

11 Q And you're not saying that the autopsy
12 report that you received from Richland County
13 is horrible, are you?

14 A No, I did not say that.

15 A Okay.

16 Q But you did say that there are no labels on
17 any of the pictures?

18 A Correct.

19 Q And those pictures will go back and the
20 jury will get to see them?

21 A Correct.

22 Q Now, you're trying to get out of the here
23 so that you can go to another appointment
24 tomorrow?

25 A Correct.

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1 Q And there are hard economic times going on,
2 correct?

3 A Sure.

4 Q All right. So you don't have the ability
5 to sit here overnight and wait to do this
6 tomorrow?

7 A I have a deposition tomorrow. Some people
8 are coming from out of state.

9 Q Okay. And you're self-employed?

10 A Yes.

11 Q Okay. Now, you said you agree with the
12 report. The report says the cause of death is
13 blunt head force trauma.

14 A Correct.

15 Q And you agree with that?

16 A Yes, I do.

17 Q Okay.

18 Q But what -- could you say beyond a
19 reasonable doubt that Kenneth Mack died as a
20 result of a particular attack?

21 A No, there is no way. This would be
22 fiction, nonscientific.

23 Q Okay. You talked about a metal chair,
24 right?

25 A Yes.

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1 Q I think what you said to me was if you
2 picked up a metal chair and just slammed it down
3 on somebody or whatever, you'd see a huge like
4 crack or opening or ---

5 A I would see multiple extensive wounds, I
6 call it lacerations. I would see extensive
7 comminuted cracking over the skull. I would see
8 lacerations of the brain. I'd see that in the
9 autopsy report or possibly in the photographs.
10 So I've excluded beyond a reasonable doubt that
11 there was death resulting from strikes by a
12 metal chair.

13 Q So you have a web page, do you not, on the
14 internet?

15 A Yes.

16 Q Okay. All right. The autopsy report
17 referred to the fact that based on something
18 this doctor thought that he got up from the
19 first attack and was lucid?

20 A Yes, lucid.

21 Q Did you see anything in the report to
22 support that?

23 A Yes.

24 Q Okay. Go ahead?

25 A Number one, the bleeding on the surface of

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1 the brain, which my colleague had seen, is
2 consistent with that lucid internal. It
3 accumulated and it compressed over the surface
4 of the brain, leading to herniation and damage
5 to the brain. Eventually he succumbed to brain
6 damage due to that bleeding.

7 Q Yes.. So you're saying that all of the
8 attacks that he experienced earlier, they didn't
9 just disappear and go away without leaving an
10 impact on the victim?

11 A No. They resulted in the final result.

12 Q As far as DNA being transferred, you never
13 said that DNA could float in the air, did you?

14 A I did not say that. This would be
15 "C.S.I.", which I don't do.

16 Q All right. You did use a word that I
17 didn't understand at first, but you said your
18 word was shedder?

19 A Yes.

20 Q Okay. So basically all you said was that
21 you could touch -- I could shake your hand, and
22 then I could shake the bailiff's hand and your
23 DNA might be on the bailiff's hand.

24 A It could be.

25 Q Okay. It also could be that if you punched

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1 somebody, if I punched the bailiff and then
2 shook your hand, his DNA could be on your hand?

3 A Correct. Then I will be prosecuted.

4 Q But you're just saying -- you're not ruling
5 it out as possibilities. You're saying that's
6 how it moves?

7 A Yes.

8 Q Whether it is a handshake, a punch, a kick
9 or whatever the case might be?

10 A Correct.

11 Q You're just being objective?

12 MS. CAMPBELL: Objection to the amount
13 of leading. It's his witness.

14 REDIRECT EXAMINATION

15 BY MR. CHAPLIN:

16 Q And finally you didn't come here to give
17 anybody the impression that South Carolinians
18 don't know how to do an autopsy, did you?

19 A There is no way.

20 Q You just came to assist the defense to
21 understand and to report to the jury, right?

22 A To give facts.

23 MR. CHAPLIN: Thank you very much.

24 MR. FARLEY: No further cross, Your
25 Honor.

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1 MS. CAMPBELL: Just briefly.

2 RECROSS EXAMINATION

3 BY MS. CAMPBELL:

4 Q You were talking about the testing that
5 wasn't done for the blood. Would you look at
6 those reports.

7 A Yes, (review).

8 Q And those tested positive for blood?

9 A Yes. It is a sensitive test, not a
10 specific. That's why we reverted to the DNA.
11 What I mean by "sensitive" is that it can give
12 false positive results to us. That's why. If
13 he was confident, he would not have sent it for
14 DNA testing. This is a high sensitive test that
15 can give false positives to semen, to blood, to
16 anything. Because of that he sent it for highly
17 specialized DNA testing.

18 Q And his DNA was there.

19 A Yes.

20 Q Okay. And that sheet that I showed you
21 earlier talking about the Ativan, is that the
22 record you reviewed?

23 A Yes.

24 MS. CAMPBELL: Your Honor, at this
25 time we would offer it into evidence.

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1 THE COURT: What is it? For the
2 record?

3 MS. CAMPBELL: One page out of the
4 number of records that he reviewed for today.

5 THE COURT: May I see it?

6 MS. CAMPBELL: Sure, (tenders).

7 MR. FARLEY: I would like to ask a
8 follow-up question on that but no objection.

9 MR. CHAPLIN: No objection.

10 THE COURT: All right. Without
11 objection.

12 (SO ENTERED AS STATE'S EXHIBIT 95)

13 RECROSS EXAMINATION CONTINUED

14 BY MS. CAMPBELL:

15 Q It talks about what happened and then at
16 the end it talks about when the trauma labs
17 would be ordered.

18 A Yes.

19 Q Thank you, sir. Have a good trip.

20 A Thank you.

21 THE COURT: Mr. Chaplin, I'll allow it
22 re-redirect.

23 REDIRECT EXAMINATION RESUMED

24 BY MR. CHAPLIN:

25 Q Dr. Shaker, ---

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1 THE COURT: Confine it to that.

2 MR. CHAPLIN: Yes, sir.

3 REDIRECT EXAMINATION RESUMED

4 BY MR. CHAPLIN:

5 Q Dr. Shaker, as far as the blood, it's your
6 testimony that what they tested, what they
7 presented to the court is not an analysis of
8 blood BUT it's an analysis of what?

9 A What I said the test, they did an
10 ultraviolet test ---

11 MS. CAMPBELL: Objection, Your Honor,
12 beyond the scope. He just ---

13 MR. CHAPLIN: I don't think so. I
14 think --

15 THE COURT: There's a document. I
16 don't know what this document is she just
17 showed. I said you could ask questions about
18 that the document. Look that the document.

19 MR. CHAPLIN: I am looking at the
20 document.

21 THE COURT: You can't just start
22 over.

23 MR. CHAPLIN: I apologize.

24 THE COURT: I thought that had
25 something to do with the Ativan.

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1 MR. CHAPLIN: Your Honor, during
2 her redirect, didn't she ask him about blood, as
3 well?

4 THE COURT: Yeah, but that's -- she
5 can't -- this is the third time.

6 MR. CHAPLIN: All right.

7 THE COURT: You know, this is the
8 third bite at the apple. I said that it is
9 restricted to whatever she brought up in that
10 topic, that you could ask him about it. That's
11 what you asked me to do and I said fine.

12 MR. CHAPLIN: Okay, sir.

13 EXAMINATION CONTINUED

14 BY MR. FARLEY:

15 Q Dr. Shaker, when was the blood sample drawn
16 for the victim?

17 A They usually collect the blood on the way
18 to the hospital before giving anybody any
19 medication, so it will show and reflect true
20 medications whether legal or illegal in the
21 blood system of any victim.

22 Then they start to do resuscitation or do
23 whatever they -- when someone starts to seize,
24 they give them Ativan.

25 But that blood was prior to admission,

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1 prior to arriving at the hospital and colleague
2 relied upon it. My pathologist who did that did
3 not draw blood from the deceased. They would
4 not. So he reviewed or sent the blood collected
5 by the emergency technicians en route to the
6 hospital, prior to giving him Ativan.

7 MR. CHAPLIN: Thank you.

8 THE COURT: All right. Doctor. You
9 might be able to make your plane. Have a
10 pleasant trip back.

11 WITNESS: Thank you, Your Honor.

12 (WITNESS STEPS DOWN)

13 THE COURT: Do you wish to call a
14 witness at this time?

15 MR. FARLEY: Yes, Your Honor.

16 THE COURT: All right. Go ahead get
17 your witness. Ladies and gentlemen of the jury,
18 normally one defendant would present its case
19 and then the other defendant would present its
20 case. Because we've got doctors here, I see the
21 nurse smiling, we're taking them out of order a
22 little bit so that they can get back to wherever
23 they practice. There will be other witnesses
24 for the defense, but I've allowed them to take
25 these witnesses out of order to accommodate

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1 their schedule. Mr. Farrell.

2 MR. FARLEY: Your Honor, I'd call
3 Dr. Sandra Conradi.

4 THE COURT: Come around, Doctor.

5 (WITNESS TAKES STAND)

6 SANDRA CONRADI, being duly sworn to
7 tell the truth, the whole truth and nothing but
8 the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. FARLEY:

11 Q Thank you, Dr. Conrad. Can you please tell
12 the court what it is that you do?

13 A Yes, I'm a forensic pathologist. I retired
14 from the Medical University in 2001. I was a
15 professor of Pathologist there and I have been
16 in Charleston as medical examiner for Charleston
17 County and a forensics pathologist since 1973.

18 Q And can you quickly just tell us the
19 difference between -- is there a difference
20 between forensics pathologist and general
21 pathology?

22 A Yes, sir, general pathologist deals with
23 autopsies on people that die of natural death
24 and forensics pathologist deals with unexpected
25 or unnatural deaths like accidents, suicide,

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1 homicide and anything that is unusual or
2 unnatural falls into our purview.

3 Q And you specialize in that field; is that
4 correct?

5 A Yes, sir.

6 Q And can you tell me a little bit about your
7 education and where you went to medical school?

8 A Yes, sir, I went to the University of
9 Cincinnati, Ohio, graduated there in 1953.
10 I spent three years in Germany working with the
11 pathology department while my husband was a
12 soldier there. I came back -- well, I finished
13 my residency in Pathology in 1968. Then went to
14 Germany for three years, came back and worked in
15 the Pathology Department of the Jewish Hospital
16 in Cincinnati, then we relocated here in 1983,
17 in Charleston.

18 Q Is there any more of your training
19 internship and residencies you would like to
20 include?

21 A I taught the course in forensic pathologist
22 at the Medical University to medical students
23 for many, many years. We have a thirteen-week
24 course for them. I did autopsies on a regular
25 basis. I probably had done, although I haven't

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1 kept count, somewhere between three thousand and
2 five thousand autopsies in my career.

3 Q Is that largely here in South Carolina?

4 A Well, mostly but also in Ohio.

5 Q Okay. And you're currently in -- where do
6 you currently practice?

7 A I retired, as I mentioned, from the Medical
8 University of South Carolina in 2001, so I do
9 private consulting now and volunteer different
10 places and mainly my -- I don't have a job as
11 such. I just consult on cases mostly for
12 defense attorneys these days.

13 Q Are you based here in Columbia?

14 A Charleston.

15 Q You're based in Charleston?

16 A Yes.

17 Q But you live here in South Carolina?

18 A I do.

19 Q Can you tell us some of your professional
20 affiliations?

21 A I was president of the National Association
22 of Medical Examiners from 1998 until 1999. I am
23 a member of the America Academy of Forensic
24 Scientists. We just had our meeting in Atlanta.
25 And I belong to the A.M.A., American Medical

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1 Association.

2 Q Also are you a member of the College of
3 American Pathologists?

4 A Yes, I am. I forgot that one.

5 Q Dr. Conradi, you also mentioned that you
6 were part of the staff of the University of
7 South Carolina Medical University. Did you
8 publish in that position, as most professors
9 often do?

10 A Yes, I had a two publications. Yes.

11 Q So you've been published in your field?

12 A Yes, in my field.

13 Q And do you have any other certifications,
14 Board-certifications that you would like to tell
15 us about?

16 A I'm Board-certified in general pathology
17 and forensics pathology.

18 Q Okay. And I'm sure you can tell the jury
19 what you've done in order to maintain those
20 board certifications throughout the years,
21 continuing education and that sort of thing?

22 A Yeah, we have to have a certain number of
23 hours of training. That's why I go to these
24 national meetings, because they give you C.E.
25 credit. Continuing medical education credits.

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1 You need that to keep up with your certification
2 so I like to do that, and I have done that.

3 Q And I think you said before three to five
4 thousand autopsies, approximately?

5 A Somewhere in that range, yes.

6 Q And have you ever testified in a court of
7 law regarding that?

8 A Yes, I have.

9 Q Do you know how many times?

10 A Hundreds, hundreds of times both in Ohio,
11 Kentucky, Georgia and South Carolina, North
12 Carolina.

13 Q And did you receive information regarding
14 this case?

15 A Yes, sir, I did.

16 Q And did you form any opinions regarding
17 that?

18 A I did.

19 MR. FARLEY: All right. Your Honor, I
20 would like to tender Dr. Sandra Conradi as an
21 expert in the field of Forensic Pathology.

22 THE COURT: Any *voir dire* or
23 objection?

24 MR. CHAPLIN: No *voir dire*.

25 MS. CAMPBELL: No objection.

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. FARLEY:

3 Q As a result of that information that you
4 received regarding this case, again, I was going
5 to ask you if you formed any opinions?

6 A Yes, sir, I have.

7 Q Can you tell me what you reviewed and what
8 exactly the conclusions that you came to?

9 A I had access to the autopsy report, the
10 coroner's report, the investigative reports from
11 the sheriff's office of Richland County, the
12 laboratory report, photographs and I think that
13 was -- that was all that I had, but I reviewed
14 everything that was sent to me, which was
15 virtually everything.

16 Q Did you form any -- after reviewing the
17 photographs and the medical reports and what
18 not, did you come to any opinions regarding the
19 autopsy that were performed?

20 A Yeah, I have to preface my statements with
21 the fact that we don't work in a vacuum. We
22 have to have all the information to make a
23 correct decision on our cases. It's not just
24 sitting in the autopsy room or standing there
25 doing an autopsy. We try to get all the

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1 assorted information that we can regarding the
2 case to form an opinion as to the cause and
3 manner of death.

4 In this case, as I'm sure you've heard,
5 there were two fights. Mr. Ward -- I believe
6 his name is Kenneth Ward.

7 Q Kenneth Mack.

8 A I'm sorry. Mr. Mack was fatally injured in
9 the second fight and in my opinion, he struck
10 his head on a hard surface, fractured his skull,
11 suffered very severe head injuries including
12 bleeding between the scalp and his skull,
13 bleeding under the skull, between the skull and
14 the brain and he had bruising or contusions of
15 his brain along with the other fractures and
16 associated abrasions and contusions of his face
17 and mouth, which were not fatal. The fatal
18 injury was the brain injury. He suffered that
19 from falling and being propelled onto a hard
20 surface on the back of his head.

21 Q I know that was your analysis but is there
22 an official form that you put the cause of death
23 in or a label?

24 A Yes, as I mentioned, accident, homicide,
25 undetermined and suicide, of which I made

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1 mention, and this would fall into the category
2 of homicide.

3 Q I mean, would you consider it then -- just
4 going on your description, would you consider
5 that a blunt force trauma?

6 A Yes. It's a blunt force injury as compared
7 to sharp injury which would be a stab wound or a
8 cut.

9 Q And given the information that you had and
10 the photographs that you looked at, was there
11 any determination you made about any lacerations
12 about the face or anything of that nature?

13 A Yes, he had a number of injuries to his
14 face. He had bruising to the inside of his
15 lips. He had a laceration, which is a cut, I
16 think it was about an inch long to the left side
17 of his eyebrow. He had a bruise on his right
18 forehead. He had a lot of injuries,
19 particularly around his face.

20 Q But you don't think that was the cause of
21 death?

22 A No, the cause of death is the brain injury.

23 Q You felt you would characterize that as a
24 blunt force trauma?

25 A Yes, sir, that's what it is, blunt force

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1 trauma.

2 Q And if you could just once again, tell us
3 how a blunt force trauma could be received?

4 A In the case of the head, if the head
5 impacts a hard enough object or like the floor
6 or concrete or something of that nature, then
7 the head when it's being propelled or falling
8 hits hard and stops, that can cause a fracture
9 of the skull, bleeding under the skull between
10 the brain and the skull -- as I mentioned before
11 -- and can cause swelling of the brain, bruising
12 of the brain and can cause death as it did in
13 this case.

14 Q And one final question, really, it would
15 have to be significant force that was wielded in
16 order to create an injury of that nature?

17 A Yes, in order to fracture the skull it
18 takes a good bit of force. Rather than just
19 falling backwards or falling on your rear end
20 and hitting a hard surface that way, you have to
21 be propelled very hard to fracture the skull as
22 this Mr. Mack did on the right side of his head
23 and causing the degree of brain bruising and
24 bleeding that he had. It's quite a severe
25 force.

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1 Q Thank you, Dr. Conradi. Please answer any
2 questions counsel or the State may have?

3 THE COURT: Mr. Chaplin.

4 MR. CHAPLIN: Thank you.

5 DIRECT EXAMINATION

6 BY MR. CHAPLIN:

7 Q Dr. Conradi, you just stated a minutes ago
8 you said to the jury 'as you are aware, there
9 were two attacks.' What are you basing that on?

10 A The information that was provided to me.

11 Q So your testimony is only as credible or as
12 accurate has the information that you were
13 given?

14 A Exactly.

15 Q Okay. So. You real don't know how many
16 attacks there were?

17 A No, sir, not from my own knowledge.

18 Q Okay. All right. Could there have been
19 three?

20 A There could have been any number. I am
21 just going by what I was provided.

22 Q What you were told?

23 A What I was told was two, yes.

24 Q By the police?

25 A By the material that Mr. Hedley (phonetic)

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1 provided me, and part of it was in the police
2 report. I'm sorry, I called you Hedley several
3 times, Mr. Farley. I'm sorry.

4 Q And you said that the trauma you notice was
5 not in the back of the head but was on the side?

6 A That's correct.

7 Q Okay. I think that's all I have. Thank
8 you very much, Doctor.

9 THE COURT: Cross-examination.

10 MS. CAMPBELL: Thank you.

11 CROSS EXAMINATION

12 BY MS. CAMPBELL:

13 Q Basically for the lastly ten years you've
14 been consulting for the defense?

15 A I have consulted with the defense on most
16 of those cases, yes, ma'am.

17 Q In this case you were hired by Ms. Reese
18 specifically?

19 A I'm not familiar with that name.

20 Q Defendant Reese?

21 A Yes, that's correct.

22 Q Mr. Farley?

23 A Mr. Farley, yes.

24 Q Okay. And in your conclusions and your
25 review of everything, based on what you

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1 reviewed, you would agree that the trauma that
2 was incurred in the second assault that was
3 provided to you, your findings were consistent
4 with the fatal injury having been inoccurred
5 there?

6 A That's correct.

7 MS. CAMPBELL: Thank you, ma'am. I
8 don't have anything.

9 THE COURT: Redirect?

10 MR. FARLEY: I have no other
11 questions, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. CHAPLIN:

14 Q Dr. Conradi, earlier you said that you
15 weren't sure how many attacks that there were.

16 MS. CAMPBELL: Objection, Your
17 Honor.

18 THE COURT: She's -- no further
19 questions. You may come down. Thank you very
20 much.

21 (WITNESS STEPS DOWN)

22 THE COURT: Have a good trip back to
23 Charleston. Approach the bench, Counsel.

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: Mr. Farley, call your

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1 next witness.

2 MR. FARLEY: Your Honor, I'd like to
3 call Melquanna Singletary. I believe that she's
4 in the hall.

5 THE COURT: Go get her.

6 MR. FARLEY: Your Honor, I apologize to
7 the court. She is on her way. It just happens
8 to be at this moment she chose to the go to the
9 restroom.

10 THE COURT: She is in the restroom.

11 MR. FARLEY: She is on her way right
12 now.

13 THE COURT: Do you need a short
14 break?

15 THE JUROR: Yes.

16 THE COURT: Yes. I have at least one
17 yes. Take a short break. Sir, are you okay?

18 JUROR: Not really, but I'm going to
19 get through it.

20 THE COURT: Okay. I don't mean you.

21 JUROR: I've been fighting it all week.

22 THE COURT: Whatever you've got I don't
23 mean you fight, giving it to everybody else.

24 JUROR: I'm better than I was.

25 THE COURT: Well, all right. We're

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1 fine to take a short break.

2 (BRIEF RECESS)

3 (DEFENDANTS PRESENT)

4 THE COURT: All right. Be seated.

5 Let's go. State ready?

6 MS. CAMPBELL: State's ready.

7 THE COURT: Defense ready?

8 MR. FARLEY: We're ready.

9 THE COURT: Bring in the jury,

10 Mr. Dessasure.

11 (JURY IN @ 4:43 p.m.)

12 BAILIFF: The jury is present.

13 THE COURT: Mr. Farrell, you may
14 continue.

15 MR. FARLEY: Your Honor, I'd like to
16 call Melquanna Singletary.

17 THE COURT: Come around.

18 (WITNESS TAKES STAND)

19 MELQUANNA **Melquann** SINGLETARY, being duly
20 sworn to tell the truth, the whole truth and
21 nothing but the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY MR. FARLEY:

24 Q Can you tell us, do you have a nickname.

25 A Yes, sir.

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1 Q And what is that nickname?

2 A Melquan

3 Q People call you Lucy?

4 A (Affirmative nod).

5 Q And is your mother here in the courtroom?

6 A Yes, sir.

7 Q Can you point her out for me?

8 A (Indicating).

9 Q Okay.

10 MR. FARLEY: I would ask that the
11 record reflect that she pointed to my client,
12 Ms. Robin Reese?

13 THE COURT: Yes.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. FARLEY:

16 Q And Ms. Singletary, let me ask you, do you
17 recall the day of February 13th, 2010?

18 A Yes, sir.

19 Q And how ---

20 THE COURT: She is going to have to
21 speak up.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. FARLEY:

24 Q Ms. Singletary, can you speak into the
25 microphone. See the microphone in front of you?

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1 A (Affirmative nod).

2 Q Can you speak loudly and clearly so that
3 everyone can hear you?

4 A (Affirmative nod).

5 Q I know that you haven't done this before so
6 -- that's a court reporter, she is taking down
7 everything you say. So you have to speak in a
8 very clear and concise manner so that she can
9 catch everything that she is typing right now.
10 Okay?

11 A Okay.

12 Q All right. Now, do you recall the day of
13 February 13, 2010?

14 A Yes, sir.

15 Q Okay. And can you tell us what you were
16 doing that afternoon?

17 A Going to get my nails done.

18 THE COURT: Ma'am, you have to speak up
19 all the time, okay. I can't hear you.

20 WITNESS: I was supposed to be going to
21 get my nails done.

22 DIRECT EXAMINATION CONTINUED

23 Q Okay. Thank you. Well, were you at the
24 open it air market?

25 A Yes, sir.

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- 1 Q And were you with your mother?
- 2 A Yes, sir.
- 3 Q And when you say you were supposed to get
4 your nails done, you weren't having them done at
5 the open air market, were you?
- 6 A No, sir.
- 7 Q So where were you going to have your nails
8 done?
- 9 A It's a nail shop right next to the open air
10 market.
- 11 Q It's a nail shop right next door?
- 12 A No, it's a liquor store and then a nail
13 shop and hair salon.
- 14 Q So it's a little ways away?
- 15 A Yes, sir.
- 16 Q How old were you at this time?
- 17 A Thirteen.
- 18 Q You were thirteen years old, so you are
19 fifteen now, is that correct?
- 20 A Yes, sir.
- 21 Q Melquan I wouldn't rest my hands. You want
22 to sit up and speak clearly, okay? It's just
23 for a little while.
- 24 Now, can you tell us what happened when you
25 left the nail shop? Did you leave by yourself

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1 or with somebody else?

2 A I left by myself.

3 Q You were on the way to the nail shop?

4 A I was knocking on the door. A dude walked
5 by. He was like 'you can...' ---

6 Q Hold on a second. Let me stop you. What
7 door?

8 A The nail shop door.

9 Q So you had already walked to the nail shop?

10 A Yes, sir.

11 Q Okay. Did you pass anyone when you walked
12 to the nail shop?

13 A No.

14 Q All right. So. You're knocking on the
15 nail shop door. It wasn't opened?

16 A No, sir, it was locked. It's locked all
17 the time.

18 Q Okay. Continue?

19 A And then a dude walked by and he was like
20 'you can come in my house'.

21 Q Okay. Hold on a second. When you say a
22 dude, who do you mean?

23 A Mr. Mack.

24 Q Did you know him at that time?

25 A No, sir.

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1 Q But you know who he is now?

2 A Yes, sir.

3 Q Okay.

4 A And then that's when the lady came and was
5 like they'll be closed until Tuesday. I went
6 back to ---

7 Q Let me stop you a second. They were closed
8 until when?

9 A Tuesday.

10 Q Okay. So they were closed for the day?

11 A Yes, sir.

12 Q What did you decide to do then?

13 A Go back to the store and tell my mom I
14 couldn't get my nails done and bought some
15 chips.

16 Q Okay. So what happened after that?

17 A I then was walking home and a dude -- I
18 mean, Mr. Mack stopped me and said could he have
19 some of my chips. I told him to leave me alone
20 and that's when he was standing in front --
21 well, we was walking like he was already in
22 front of me where he had already started walking
23 ahead and then he turned around and was like --
24 I don't know. I was like trying to avoid having
25 a conversation with him, but he stopped me in my

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1 tracks and was like, just jerking me around and
2 stuff. What's when he picked up a snowball and
3 threw it at me. I was, like, I was going to get
4 my mom. He grabbed me with his right hand.

5 Q Wait, he grabbed you with his right hand?

6 A Uh-huh, grabbed my jacket.

7 Q Okay.

8 A And then I hit him with my right hand.

9 That's when he picked me up, threw me between
10 two bushes. We was tussling.

11 Q Tussling?

12 A Uh-huh.

13 Q Okay.

14 A That's when is Mr. Marcellius came, got him
15 off of me, hit him a couple of times and then
16 some dudes came and jumped on him.

17 Q So Marcellius, as you say, got him off of
18 you?

19 A Yes, sir.

20 Q Did you do anything after that?

21 A Sir?

22 Q Did you'll do anything after that?

23 A Yes, sir. I got me some licks in, too.

24 Q Can you tell the jury what that means?

25 A I hit him a couple of times.

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- 1 Q Why did you do that, Melquann
- 2 A I was upset..
- 3 Q You were upset?
- 4 A Yes, sir.
- 5 Q And you were upset because -- tell the jury
- 6 why you were upset.
- 7 A I felt I was being harassed.
- 8 Q Okay. And then what happened -- so you
- 9 were angry. What happened after that?
- 10 A Marcellius took me to the store to my mom.
- 11 Q Mr. Marcellius took you to the store?
- 12 A No. Well, we all walked to the store.
- 13 Q Who is we all?
- 14 A Everyone that was there.
- 15 Q So do you remember who it was?
- 16 A Not at this time..
- 17 Q Do you recall who it was now?
- 18 A No.
- 19 Q Okay.
- 20 A It was just people that we knew.
- 21 Q Do you recall Mr. Brooks walking you to the
- 22 store?
- 23 A Who is Mr. Brooks?
- 24 Q Bloom?
- 25 A Oh -- yes, sir.

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1 Q Okay. And what happened then?

2 A We told my mama and then we left.

3 Q Okay. When you say we, I mean, you told
4 your mother?

5 A Me and my mom left.

6 Q You told your mother what happened then?

7 A She took me home.

8 Q Okay. So do you recall when you've been --
9 when you say we told my mother, who is we?

10 A Me and Bloom told my mother.

11 Q Okay. So you told your mother what
12 happened?

13 A Yes, sir.

14 Q And then what happened after that?

15 A She took me home.

16 Q She just took you to the house?

17 A Yes, sir.

18 Q Is there anything else you'd like to add?

19 A No, sir.

20 Q Okay. All right, Melquan I think that's
21 probably all the questions I'm going to have for
22 you, okay but Mr. Chaplin is going to have some
23 questions for you and the State is probably
24 going to have a few more questions so don't get
25 down until they've asked their questions, okay.

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1 Just sit tight for a minute.

2 THE COURT: Mr. Chaplin.

3 MR. FARLEY: I have no questions for
4 Melquanna.

5 THE COURT: All right. Ms. Campbell.

6 CROSS EXAMINATION

7 BY MS. CAMPBELL:

8 Q Ms. Singletary. I don't think we've ever
9 met?

10 A No.

11 Q I just have a couple of questions for you.
12 You pointed out your mama. Is that your uncle
13 also sitting at the table?

14 A Yes, ma'am.

15 Q And you went and you talked to the police
16 right after this happened?

17 A Yes, sir -- I mean, yes, ma'am.

18 Q When you gave a statement to the police you
19 told them that you did know the name of the
20 person was who was harassing you, that his name
21 was Ken; do you remember that?

22 A No, ma'am.

23 Q Would you like to see your statement?

24 Would that help? See in here where he's named
25 Ken?

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1 A I told him that I had heard someone say his
2 name was Ken so they could put it in there.

3 Q So is your testimony here today you did
4 know his name was Ken or you didn't?

5 A No. I told them I heard someone say his
6 name was Ken at the time. I didn't say I knew
7 his name.

8 Q Do you remember giving them a recorded
9 statement there you that day, as well?

10 A No, ma'am.

11 Q That in that one you said that you knew his
12 name was Ken?

13 A No.

14 Q Okay. And you testified earlier that he
15 grabbed you, I believe, by the arm and then you
16 punched him; is that correct.

17 A Um-humm.

18 Q Do you remember giving in your statement
19 that you -- that he grabbed although your jacket
20 and then you punched him?

21 A Yes, ma'am.

22 Q Is that correct or that he grabbed your
23 arm?

24 A No, he grabbed my jacket.

25 Q Your jacket, okay. Do you remember telling

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1 about three or four other guys that came that
2 were around in the area?

3 A Yes, ma'am.

4 Q Do you remember telling the police that you
5 not only punched him but that you kicked him a
6 time or two?

7 A Yes, ma'am.

8 Q And then your testimony was that your mom
9 took you home?

10 A Yes, ma'am.

11 Q Where was your home?

12 A

13 Q It was in Gonzales Gardens?

14 A Yes, ma'am.

15 Q In what building, I'm sorry?

16 A N.

17 Q N. That's where she took you that day?

18 A Yes, ma'am.

19 Q Did you know Bloom?

20 A No.

21 Q Do you remember living next door to him for
22 about two years?

23 A Yes.

24 Q And his girlfriend was next door to you?

25 A Yes.

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1 Q And y'all were all good friends; is that
2 correct?

3 A We spoke.

4 Q Okay. So you did -- you had known him for
5 several years when all this happened?

6 A Huh?

7 Q You had known him for several years when
8 this happened?

9 A I wouldn't use the word "known" but we
10 spoke.

11 Q He's the one who came to your aid that day?

12 A Uh-huh, (affirmative nod).

13 Q So when you got back to your mom, were you
14 upset about what happened to you?

15 A Yes, ma'am.

16 Q Were you crying?

17 A Yes, ma'am.

18 Q Did you explain to her that this man had
19 kinda attacked you?

20 A Yes, ma'am.

21 Q So at that point did y'all call the police?

22 A No, ma'am.

23 Q Okay. Y'all went home; is that correct?

24 A Yes, ma'am.

25 Q And everything was okay. Your mom wasn't

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1 upset about what had happened to you?

2 A Any mother would be upset.

3 Q That's true. And then did y'all stay at
4 home the rest of the day?

5 A I stayed at home. My mom went back to the
6 store.

7 Q What store?

8 A Open air.

9 Q Did she stay there playing poker the rest
10 of the afternoon?

11 A Yes, ma'am.

12 Q So you don't know what she was -- but you
13 stayed at the house?

14 A Yes, ma'am.

15 MS. CAMPBELL: Thank you.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. FARLEY:

19 Q Ms. Singletary, I know you said earlier
20 that your mom took you back home. Did you --
21 are you positive you knew where she was going
22 when she left?

23 A Sir?

24 Q Are you sure you knew where she was going
25 when she left the apartment after she dropped

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1 you back at the house?

2 A Yes, sir.

3 Q Okay. Thank you Ms. Singletary.

4 THE COURT: Mr. Chaplin.

5 MR. CHAPLIN: Nothing for
6 Ms. Singletary.

7 THE COURT: Thank you very much young
8 lady. You may come down. You're free to go,
9 ma'am.

10 (WITNESS STEPS DOWN)

11 THE COURT: Next witness.

12 MR. FARLEY: Your Honor, I'd like to
13 call Robin Reese to the stand.

14 THE COURT: All right.

15 MR. FARLEY: Your Honor, may we have
16 one moment?

17 THE COURT: We just had a break.

18 MR. FARLEY: If I could just beg the
19 Court's indulgence -- (pause).

20 (WITNESS TAKES STAND)

21 ROBIN REESE, being duly sworn to tell
22 the truth, the whole truth and nothing but the
23 truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY MR. FARLEY:

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1 Q Ms. Reese, you're here today under the
2 charges of murder and lynching; is that correct?

3 A Yes, sir.

4 Q Okay. And I'm sure your probably a little
5 nervous?

6 A Yes.

7 Q Okay. And it's -- can you tell us us where
8 you live?

9 A I live at ----
10 Columbia, South Carolina.

11 Q And that's in a place known as Gonzales
12 Gardens?

13 A Correct.

14 Q And can you tell us if you remember or
15 recall the day, February 13th, 2010?

16 A Yes.

17 Q And do you recall that afternoon?

18 A Yes.

19 Q And I don't want you to have to recall the
20 entire day for me, but do you recall being at
21 the open air market?

22 A Yes.

23 Q Can you tell us if you were there by
24 yourself or were you there with someone else?

25 A Well, other people were in the store. I

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1 was in the back playing games. It was a kind of
2 Treasure Chest these little animals they had in
3 the machines. You could play on them and win
4 prizes and stuff, so I like that, so that was
5 where I spent a lot of my time at.

6 Q Was your daughter with you?

7 A At first, but she was actually out on
8 punishment that day.

9 Q What was she being punished for?

10 A Because of her grades.

11 Q Okay.

12 A So I told her she still could be my
13 Valentine. Being my Valentine, she wanted to
14 get her nails done. She asked me could she come
15 to the nail shop. She had to get the money from
16 me anyway. Instead of going to the nail shop,
17 she came straight to me. I gave her the money.
18 She went next door to the nail shop but she came
19 back saying that she didn't ---

20 Q Is the nail shop right next door?

21 A It's separated by a liquor store. It's the
22 open air market, the liquor store and then the
23 nail shop.

24 Q How far down do you think the nail shop is?

25 A From where I'm sitting to probably that

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1 stand right there.

2 Q Okay. Tell us what you you remember after
3 that?

4 A She didn't get -- she said that she went
5 but she couldn't get her nails done because they
6 were closed. So I told her to go back home.
7 She wanted some potato chips, so I bought some
8 potato chips. She left.

9 I continued to stay back there and play the
10 game, maybe like twenty to twenty-five minutes,
11 I know I was there like -- it takes like two a
12 half minutes, three minutes, to get from that
13 store to where I live.

14 So I looked up and her a short guy and a
15 tall guy, they was coming towards me. me, so I
16 was raising Cain. I wanted to know why she had
17 disobeyed me and she'd come back in the store,
18 that was before I knew what happened.

19 So Bloom, which is Marcellius Brooks he was
20 like he had just pulled a man off of my
21 daughter.

22 Q Let me stop you for a moment. You said
23 there was a tall guy and a short guy.

24 A A short guy.

25 Q Did you recognize him?

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1 A I know the short guy, but I've seen the
2 tall guy, but I don't really know him.

3 Q Okay. Who is the short guy?

4 A The short guy was Marcellius.

5 Q Was there anybody else?

6 A It was another guy with a gray sweeter, a
7 hoodie or whatever.

8 Q Do you know who he was?

9 A No, I don't really know him but I have saw
10 him. He was probably about 6'2", or 6'3".

11 Q And you've seen Marcellius Brooks before?

12 A Yeah.

13 Q How had you seen Marcellius Brooks. How
14 were you associated with him?

15 A He used to live next door. I only know him
16 from the neighborhood, not being next door. I
17 had never been in his house. He had never been
18 in mine. You know. We speak. That's what you
19 do in a neighborhood. You'll speak to other
20 people and you mind your own business. So I
21 knowed him from the neighborhood.

22 Q So he was coming towards you with Melquan
23 Then tell us what happened then.

24 A So I was raising Cain with her, you know,
25 asking her why she wasn't home.

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1 Q I'm sorry, what? Raising what?

2 A I had done got upset.

3 Q Okay.

4 A I'm hot on her why she is not in the house,
5 she was supposed to be in that house over twenty
6 minutes ago. So Mr. Brooks said, 'I just pulled
7 this guy up off of your daughter.' I was in
8 disbelief. I looked at my daughter. She was
9 all wet and she was crying, and -- so that
10 wasn't enough detail. I wanted to know what
11 happened and what do you mean "pulled off."

12 Q I don't mean stop you. I just want to
13 remind you. I know this is very emotional but
14 bear in mind that the court reporter has got to
15 take everything down? When you get too fast,
16 it's hard for her to keep up.

17 A Okay.

18 Q Do you know where you left off?

19 A That wasn't enough information.

20 Q What Mr. Brooks had told you?

21 A Yeah, he had just gotten a man off of my
22 daughter.

23 Q And you said that you were upset?

24 A Yes. She is thirteen. Her size might fool
25 a lot of people, but she was thirteen. She's

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1 big.

2 Q At the time of the incident?

3 A Exactly. So I had games on the machines --
4 which they came to me. I just grabbed the
5 ticket out of it.

6 Q Can I stop you for a second, because I am
7 not sure what that means. You said you had
8 games on the machine?

9 A Yeah, the only thing I had to do was hit a
10 button, get the tickets, go to the counter and
11 cash out, and then me and my daughter left.

12 Q Okay. So you were finish with your game on
13 the machine.

14 A Yeah. It didn't matter. I just went and
15 got my money off the machines.

16 Q I understand.

17 A. It didn't matter.

18 Q You went to the counter and what happened
19 next?

20 A I got my money and me and my daughter left.
21 I did make a phone call. I was trying to get in
22 touch with my brother, but I called my dad. I
23 called my house by mistake and -- and it
24 answered because my answering machine picked it
25 up. Then I called my --

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1 Q Can I ask you, was Henry Gray staying
2 there?

3 A No. That's where my dad lived.

4 Q When you called your house, was Henry Gray
5 staying at your house?

6 A No, he never stayed at my house.

7 Q You said you called your dad's house?

8 A Yes.

9 Q Why did you call your dad's house?

10 A I wanted to tell them what I just heard. I
11 just found out that some grown man was on top of
12 my daughter and somebody had to get him off of
13 her, so I couldn't -- I didn't get my brother,
14 he was somewhere eating. He'd went to Lizard's
15 Thicket or somewhere to eat. My daddy was very
16 intoxicated, so I really was getting nowhere
17 with him.

18 I still wasn't satisfied. The only thing I
19 know at this time was a grown man on top of my
20 daughter. So I called Marcellius and asked him
21 what happened. He said that he really didn't
22 know, that he'd just seen that the guy was
23 tugging at her. He knew that was Melqua but he
24 didn't know that grown man.

25 So after he seen it, they told me that it

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1 happened like two or three times that he had
2 pulled on her coat. She'd turned around and hit
3 him. He scooped her up and was on top of her
4 and that's when he came to her.

5 I was never a part of this. This is what
6 came back to me.

7 Q This is what you understood?

8 A Yeah.

9 Q And let me ask. At any time did you try to
10 call Ms. Singletary's father?

11 A No. He's -- I called her stepdad, which
12 was my husband at the time.

13 Q I mean, is he around Gonzales Gardens?

14 A No.

15 Q Does he have any contact with Melquann

16 A No.

17 Q Does he have any contact with you?

18 A No.

19 Q All right.

20 A I'm a single mom.

21 Q I understand. Okay. Please continue. I'm
22 sorry?

23 A So me and her walked. We first took off up
24 Forest Drive. I took her home. I just got
25 between the building, because there was so much

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1 going on where all this had just happened at.
2 I took her in the house and I scolded her about
3 cutting between the buildings. I didn't want it
4 to be misunderstood. She wasn't between any
5 building, this was across the street. She did
6 just what I told her to do.

7 After I talked to her to make sure her
8 hadn't been touched in any way, just the fact
9 that he held her down and he was on top of her.
10 I told her that I was going back to the store.
11 I left out the door, and she already had told me
12 what he had on or whatever, so I want to know
13 what grown man was on top of my daughter. So
14 instead of going -- they said that he had ran
15 down the street. Instead of going back to the
16 store, I went down the street which -- I seen
17 some people out there. Somebody was like --

18 Q Why did you do that?

19 A Because I wanted to know who was on top of
20 my baby. I really want to know, you know. I
21 thought it was make some horseplaying or
22 something but when they said a grown man -- now,
23 I know kids do things but a grown man and a
24 thirteen year old, that don't set good with me.

25 Q I understand. I know. So please continue?

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1 A So I went down towards G building, which
2 that's where my dad lived. Like I told you, I
3 had already tried to talk to him but he was
4 intoxicated. So my brother had already told me
5 that he would be back, they was on they back
6 from Lizard's Thicket.

7 Q Okay.

8 A But by the time I got around there, around
9 the corner, the guy was laying on the ground and
10 he had his hands like this right here covering
11 his face or whatever.

12 Q And can I clarify, where was this?

13 A This was in the front of G building.

14 Q Okay.

15 A So I'm running up. His feet was --

16 Q Does your father live in G building?

17 A Yes, ma'am, he does. He's in a wheelchair.
18 He have lives on the other end.

19 So his feet was facing me as I came around
20 the corner. I never saw his face. I just know
21 from the description: green shirt, blue jean
22 pants and be a blue jean jacket.

23 Q Can I clarify just for one second. You
24 said you came around the corner. Which corner
25 did you come around?

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1 A I came like ---

2 Q Is this the corner next to Forest Drive or
3 is this away from Forest Drive?

4 A This is away from Forest Drive.

5 Q Which end does your father live on?

6 A He lives on Forest Drive side.

7 Q I'm sorry. Please continue?

8 A So I was raising hell, excuse me, excuse
9 me, and I just wanted to know, you know, 'Why
10 was you on top of her? Why would you even be
11 have a conversation or anything with a thirteen
12 year old.' But he was just laying there. When
13 I ran up, I tried to kick him but I slipped and
14 fell because, you know, the ice and stuff.

15 So instead of getting back up, I just
16 reached over and I slapped him across his face
17 and told him 'you stay away from my kid, you
18 need to round grown women, there's grown people
19 out here that you can be around.'

20 And there was this chair -- well, my
21 brother, that's when I seen him and he ---

22 Q When you say "him", who do you mean?

23 A Henry.

24 Q Okay.

25 A I don't know if he came around the corner

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1 or whatever. Probably everybody was out there.
2 I didn't see anybody except this man laying on
3 the ground.

4 Once I tried to get up after I had done
5 slapped him across his face, my brother pulled
6 me, pulled me. He grabbed me by my arm and did
7 like that. I'm standing there raising hell with
8 him and, you know, he already understood but he
9 was like 'let the police handle it.' So there
10 was this chair sitting right in front of [REDACTED]
11 I was upset, so I grabbed the chair and I just
12 slung it. I didn't pick it up. I slung it. It
13 just bounced and rolled. It didn't even come in
14 contact with his body or nothing.

15 Still upset, I walked -- I didn't even look
16 back no more after -- he wasn't even moving. I
17 just walked up to my dad's house and went in
18 there to see about my man, because he was so
19 intoxicated that I could not talk to him. I
20 went out his back door, went back home and
21 talked to my daughter.

22 About four or five minutes later, my
23 brother came to my house and we sat there and
24 talked and he asked her all kinds of questions.
25 He was scolding her. You know, making it seem

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1 like, you know, in her eyes that it was her
2 fault. I didn't want her to think it was her
3 fault, because all the time that I thought that
4 it was my fault for being so bad and it'd
5 happened to me -- (emotional).

6 Q Ms. Reese, -- there's some Kleenex right
7 here Ms. Reese.

8 A It got twisted all around, made it seem
9 like it's these kids. It's not these kids.

10 I was fifteen and I thought somebody was
11 playing with me, held me down and took my
12 virginity from me, so I -- in my eyes, that's
13 what I felt was going on with her. I was
14 appreciative that somebody had pulled him off of
15 her, because he had no business being in her
16 face and on top of her anyway.

17 It's not like I'm a bad person. I was
18 upset. Who wouldn't be upset, it's a grown man
19 on your kid. I'm trying just to protect her.

20 Q Ms. Reese, the chair that you said you
21 grabbed is that here in the courtroom?

22 A Yes, sir.

23 Q Is that it?

24 A That's it right there.

25 Q And you said you flung the chair?

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1 A I flung it. I promise to God, I put my
2 hand on that Bible when I say that chair did not
3 touch that man at all. It just tumbled over,
4 went down on the other side. I kept on
5 trucking, raising hell going up my daddy's ramp.

6 Q Why did you fling the chair Ms. Reese?

7 A I was upset, I was upset. I just flung it.
8 Why was he on top of my daughter?

9 Q I understand.

10 A And I just flung the chair. I didn't mean
11 that. I didn't even think nothing about it. I
12 just flung it. It was right there, sitting
13 right there. When he pulled my arm and he was
14 like 'let the police handle it', I just threw
15 it.

16 Q Because you were angry?

17 A Because I was upset.

18 Q And you said at that point you returned to
19 your apartment?

20 A I went back to my apartment, talked to my
21 daughter. My brother came. We all talked and
22 about probably twenty minutes after that, we
23 were standing in the kitchen, and I see Mr.
24 Brooks -- he was walking up the sidewalk. My
25 brother, you know, he didn't know who it is. I

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1 wanted him to see the guy that pulled the grown
2 man off of my daughter, so my brother came to
3 the door, and I wanted Mr. Brooks to tell him
4 what had happened, you know, just tell him what
5 happened. He said he didn't really know what
6 happened. He'd just seen the guy tugging at my
7 daughter's jacket.

8 She had on a tight little sweater. It
9 wasn't no loose jacket where he could have just
10 grabbed it. He had to grab more than that
11 because of the clothes these teenagers wear
12 today.

13 But, anyway, he'd seen that. It was a
14 grown man. He was aware it was my daughter and
15 when she turned around to hit him, he kept
16 tugging at her -- and when she hit him, he
17 slammed her to the ground. Just like he said,
18 there's bushes right there -- and what if they
19 wouldn't have been there, what would have
20 happened? Would he have thought that she was
21 playing and continued to do something else? So
22 I just wanted him to tell my brother what had
23 happened.

24 Q Marcellius Brooks, you mean?

25 A Yeah, exactly. So, you know, he took him

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1 to it. My brother stood in the door, Marcellius
2 was on the sidewalk, and he told my brother how
3 they -- they never had no words, they got in no
4 beef, but that he appreciated what he did by
5 getting this man off my daughter.

6 Q Ms. Reese, did you, prior to this day,
7 prior to February 13th, 2010, had you ever seen
8 Mr. Kenneth Mack?

9 A I don't know him. I still haven't seen his
10 face yet.

11 Q You didn't know him at all?

12 A No.

13 Q Haven't seen him around?

14 A I don't know him.

15 Q Is there anything else you'd like to add to
16 your testimony today?

17 A No. Just you got to put yourself in my
18 shoes. That's my baby. That's my kid. You
19 know, kids should be with kids and grownups
20 should be with grownups. If you want to play,
21 play with grownups. They make it seem like a
22 snowball ball. Grown man and a kid, (negative
23 gesture), I don't understand that.

24 Q I understand. Ms. Reese, we talked about
25 you taking the stand today?

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1 A Yes, sir.

2 Q Why did you want to take the stand today?

3 A Because I want them to know the truth.

4 They have taken it and twisted it and made it

5 seem like I am not raising my kid appropriately,

6 or that she's got these grown friends or she

7 knows this man from somewhere. None of these are

8 facts. This is stuff that they done came up

9 with to build the cases with. They need to know

10 the truth.

11 Q Yes, ma'am. Let me just ask you one or two

12 other questions, okay. Ms. Reese, did you lynch

13 Kenneth Mack?

14 A No, I didn't lynch him.

15 Q Ms. Reese, did you intentionally murder

16 Kenneth Mack?

17 A No.

18 Q Was it ever your intention?

19 A No, it wasn't. I wanted to know who was on

20 top of my daughter. It was never my intentions

21 to touch him, to lynch him, to murder him or

22 nothing. I just want to know why 'you were on

23 top of my daughter.' Why was she your type?

24 That's it. I didn't get any answers so when I

25 can't get no answers, what I did, I told you I

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1 tried to kick him. I fell. Once I fell, I was
2 already down, and I was already -- I'm cursing
3 at him but he's still got his hands like this
4 right here. I just slammed him across his face.
5 You know, you got to feel my pain too. That's
6 my baby and I'm a grown woman. You want to
7 play, you could have rolled in the hay with me
8 or whatever but you don't take that right from a
9 kid.

10 Q Yes, ma'am.

11 A So in my mind that's what was going on.
12 About the time I hit that corner, I put myself
13 in her shoes. She was thirteen. I was fifteen
14 when it happened to me.

15 Q Yes, ma'am.

16 A And it wasn't playing, he didn't stop until
17 he got what he wanted from me.

18 Q Yes, ma'am.

19 A So all of this was in my head when I seen
20 him.

21 Q Yes, ma'am. But you didn't intend to ---

22 A I didn't intend to do anything but ask him
23 why. That's all I really wanted to know was
24 why, what was it about her that, you know, came
25 to your attention. Was it that she was by

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1 herself? I live in a community that's full of
2 children. They should have the right to walk
3 through their neighborhood without being
4 touched. Our neighborhood is being taken over
5 by all these grownups that's coming in the area.

6 Q One last question, you did not intend to
7 murder Kenneth Mack?

8 A No, I did not intend to murder him.

9 Q Ms. Reese, I know it's been very difficult
10 for you, it's been very emotional. Mr. Chaplin
11 is going to ask you a few questions and the
12 State is going to ask you a few question. Thank
13 you for sharing your story with us today.

14 THE COURT: Mr. Chaplin.

15 MR. CHAPLIN: No questions for Ms.
16 Reese.

17 THE COURT: Solicitor?

18 CROSS EXAMINATION

19 BY MS. CAMPBELL:

20 Q Ms. Reese, you and I have never met, have
21 we?

22 A No, ma'am. I've seen you around here.

23 Q Where is your dad's house?

24 A [REDACTED]

25 Q So that would be in the area we're talking

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1 about where this assault occurred you just
2 referred to.

3 A Yes, ma'am.

4 Q And that day when you got down there, your
5 testimony was your brother was there?

6 A Yeah.

7 Q And your testimony was earlier that you
8 made a phone call to your father at his house,
9 that your father answered but he was
10 intoxicated; is that correct?

11 A Yes.

12 Q So it is your testimony here today that it
13 wasn't your brother you called that day to tell
14 him about what had happened, you perceived, to
15 your daughter?

16 A Yes, I tried to call my dad.

17 Q But your testimony is that it wasn't your
18 brother answered the phone, that you talked to
19 your dad, who was too intoxicated to do it.

20 Is that your testimony?

21 A Yes, ma'am.

22 Q And did you know Bloom?

23 A Not personally.

24 Q Okay. Did you live next door to him for
25 two-and-a-half years?

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1 A I lived next door to him and I knew the
2 other neighbor also, but I can't tell you
3 anything about her either. That's been five
4 years.

5 Q That's his girlfriend?

6 A No. That's the lady that lives on the
7 opposite side of me.

8 Q You got to know him -- as neighbors are,
9 this is a close knit community -- I think
10 somebody described it earlier as kinda almost a
11 family? People know who live down there.

12 A It don't work that way.

13 Q It doesn't work that way?

14 A No, ma'am.

15 Q So you don't get to know your neighbors?

16 A You try to. I am just saying that it -- it
17 isn't that you don't know how your neighbors are
18 going to react.

19 Q But you at least knew what his nickname
20 was.

21 A Bloom. That's the name I knew.

22 Q Bloom. And you knew that name at the time,
23 right?

24 A Yes.

25 Q And that day, you were playing video poker?

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- 1 A No, I was playing Treasure Chest.
- 2 Q I'm sorry. I don't mean to -- I mix it up,
3 one of those games?
- 4 A Yes, ma'am.
- 5 Q Is that correct?
- 6 A Yes, ma'am.
- 7 Q It's a game you've got to go get your
8 tickets cashed out but it's different from video
9 poker -- video poker, I guess, is illegal now?
- 10 A Right, exactly.
- 11 Q It's one of those games where you cash out
12 tickets and things like that.
- 13 A (Affirmative nod).
- 14 Q Do you do that a lot?
- 15 A Yeah, if I have the change, I sure do.
- 16 Q And, in fact, on a daily basis that's kind
17 of your thing to do?
- 18 A Probably then.
- 19 Q But not so much?
- 20 A Yeah, because I don't have a job anymore.
- 21 Q And that day you said you knew who Bloom
22 was, he'd lived next to you a couple of years
23 but you weren't that close to him?
- 24 A Yes.
- 25 Q Did you know who Little Ricky was?

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1 A No, I don't know him.

2 Q Do you remember him coming in the store
3 with Bloom that day?

4 A No, it was a tall guy, brown skin, had on a
5 gray hoodie, about 6'2 or 6"3 who came in the
6 door with Bloom that day.

7 Q Do you remember seeing Little Ricky in the
8 store.

9 A (No verbal response).

10 Q You don't know?

11 A No, I don't.

12 Q But you saw him up here?

13 A Yeah, he wasn't the one that walked in the
14 store that day either.

15 Q That you noticed either?

16 A Exactly.

17 Q And then Kenneth Archie, did you know him?

18 A I have no idea.

19 Q Juve, Juvie, Trigger or something like
20 that?

21 A I have no idea who that was.

22 Q Do you remember whether or not you saw him
23 in the store that day?

24 A If I can't place who he is, how do I know
25 if I saw him?

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1 Q I'm sorry. I'm just asking.

2 A I don't know them by nicknames and all
3 that. Like if I'm playing the machine back
4 there, I don't know who those people is.

5 Q How many guys came in with your daughter
6 that day?

7 A I only remember two, that was Bloom on one
8 side and another guy on the other side which I
9 said was taller than Bloom. He was like 6'2",
10 6'3". He was brown skinned. The guy that got
11 up here on the stand was too dark. That was not
12 him. I don't know him. He could be a friend of
13 my daughter or whatever, but I don't know him.

14 Q You don't know why your daughter would have
15 said they all came in the store?

16 A It was the two standing beside her and that
17 she was in the middle.

18 Q It's fair to say that's the two you
19 noticed?

20 A Yes, ma'am.

21 Q Whoever else was there, you didn't notice?

22 A I didn't pay them any attention.

23 Q And so you didn't know a Thomas Joseph
24 either?

25 A (Negative gesture).

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1 Q I'm sorry. You just have to answer out
2 loud.

3 A No.

4 Q And that day you said your daughter was
5 wearing a tight jacket?

6 A Yeah.

7 Q Howl would you describe it just a jacket
8 like this that fits closely or tailored?

9 A Yes, that's what I mean.

10 Q Do you know why she would have told the
11 police she was wearing her big black jacket with
12 her hood on that day?

13 A Who?

14 Q Your daughter, when she was interviewed.

15 A When my daughter came and I saw her, she
16 had on a gray jacket. I'll never forgot because
17 she has the pants to go with it.

18 Q So you don't know why she would have told
19 the police that?

20 A No, ma'am.

21 Q You were sitting there, minding your own
22 business, playing games that afternoon.

23 A Yeah.

24 Q Your daughter was on punishment but you let
25 her go get her nails done because it was a

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1 special occasion?

2 A Valentines.

3 Q And she was supposed to go straight home
4 because she was on punishment?

5 A Yeah.

6 Q Do you remember her buying potato chips
7 there in the store?

8 A Yeah, I bought them. That's when she came
9 back.

10 Q You're still minding your own business and
11 the next thing you know, she's coming in with
12 two people -- that you can remember, the tall
13 guy and the guy that you knew as Bloom?

14 A Yes.

15 Q Do you know why -- you went down and talked
16 to the police the day after this happened?

17 A The day after it happened, yes, ma'am.

18 Q And you remember doing that?

19 A Yes, ma'am.

20 Q Do you know why you didn't identify Bloom
21 by name? You just described him to the police
22 in your statement?

23 A I thought I said his name was Bloom.

24 Q Okay. The statement that you -- we'll get
25 back to that in a minute. Then you come in and

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1 you find out -- and who tells you -- your
2 daughter tells you or was it Bloom that tells
3 you what happened?

4 A Bloom told me what happened. He just got
5 some man off the top of my daughter.

6 Q And obviously based on your experience, I
7 mean, even without, it's a horrible thing to
8 hear about having happened to your daughter?

9 A Yes, ma'am.

10 Q How did you describe her?

11 A She was wet.

12 Q Was there snow on the ground outside?

13 A Yes, ma'am.

14 Q And she was wet, and she was upset?

15 A Yes.

16 Q And as soon as you found out what happened
17 to her, obviously you were upset?

18 A Yes, ma'am.

19 Q So at that point you found out this man had
20 possibly tried to violate your daughter,
21 perception wise, Marcellius Brooks/Bloom had had
22 to intervene physically?

23 A Yes.

24 Q And that there had been a physical
25 altercation between the two?

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1 A Yes.

2 Q Then she came and told you that.

3 A (Affirmative nod).

4 Q And this upset you, understandable. I mean
5 you described it earlier?

6 A Yes.

7 Q It's very upsetting, very.

8 A Yes.

9 Q So at that point did you jump up and call
10 the police?

11 A No, ma'am.

12 Q Why not?

13 A Because I have wanted to see this guy
14 myself. I wanted to know who this grown man was
15 that was on top of my daughter. It's hearsay.

16 Q It's hearsay?

17 A It could have been a kid, you know what I'm
18 saying. They're saying it's a grown man.

19 Q Even if it's a child, this child, this
20 teenager, this grown man in his thirties or
21 whatever, ---

22 A Exactly.

23 Q --- has attacked your child, you find out
24 about this and your immediate reaction is to do
25 what?

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1 A Go see who he was.

2 Q But you continued to play your machine?

3 A No, ma'am.

4 Q The video?

5 A No, ma'am.

6 Q According to all the witnesses, you
7 finished your game. And according to you, you
8 cashed out your tickets?

9 A I went -- I was halfway up the store, and
10 when they came in the door, I had to go back and
11 get my tickets and go to the counter. I have
12 never said I sat back down to finish the game or
13 nothing. That was irrelevant to me at that
14 time. I left out of the store.

15 Now, your witness can come out here and say
16 whatever they want, but I'm trying to tell you
17 the God's own truth what happened.

18 Q I understand. I'm just asking some
19 questions about what other people perceive. Do
20 you know why Ricky Boyd would tell the police
21 that when Brooks told you about the man messing
22 with your daughter that you jumped up and said
23 "Hell, no."

24 A I don't even remember seeing him, so I
25 don't recall that at all.

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1 Q Then Brooks told you he had already taken
2 care of it?

3 A He didn't tell me that then.

4 Q And then he gave him his licks?

5 A He didn't tell me that either.

6 Q Do you know why Boyd would have told the
7 police that you stayed in the store another four
8 minutes and finished playing your game?

9 A Maybe it's to make them look good, ma'am. I
10 have no idea. I don't know.

11 Q Did Mr. Boyd have a dog in this fight?

12 A Who?

13 Q Ricky Boyd.

14 A He testified the other day that he kicked
15 him in his head and he hit him one time. From
16 my understanding, as time done passed, it wasn't
17 just Bloom that knocked that man off my
18 daughter, it was quite a few of them.

19 Q Depends on who you talk to?

20 A Exactly, so -- you know.

21 Q So do you know why Kenneth Archie would
22 have told the police that when the little girl
23 was explaining what happened, ---

24 MR. FARLEY: Your Honor, I'm going to
25 how about. That calls for speculation.

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1 MS. CAMPBELL: I'm asking.

2 MR. FARLEY: If she knows why Kenneth
3 Archie told anybody anything.

4 WITNESS: I don't even know
5 these people.

6 THE COURT: I'll sustain the
7 objection.

8 CROSS EXAMINATION CONTINUED

9 BY MS. CAMPBELL:

10 Q Do you remember saying there at the scene,
11 that was overheard by other people, "this nigger
12 ain't put his hands on my baby" right before
13 leaving?

14 A No.

15 Q Do you remember coming back after the
16 assault, which you've admitted to, and saying
17 "that's what the motherfucker gets."

18 A No.

19 Q And you don't remember staying there after
20 finding out what happened to your daughter for
21 several minuting continuing to play your game
22 and cashing out?

23 A No, that's not true.

24 Q You testified earlier that you then found
25 out what happened to your daughter. You're

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1 upset so you take her home?

2 A Yes.

3 Q At that point you start to chastise her
4 because you thought she had cut between the
5 buildings?

6 A Yes.

7 Q But she had actually don't what you'd told
8 her to do?

9 A She did.

10 Q At that point you said you decided you were
11 going to go searching for this guy?

12 A No. They said he ran between the buildings
13 down the street so I went down that way looking
14 to see if I saw him.

15 Q Who told you'll that?

16 A Marcellius.

17 Q Bloom?

18 A Yeah, they say he ran out.

19 Q And then they were able to give you a
20 detailed description?

21 A My daughter told me what he had on. She
22 said he had on a blue jean jacket, green shirt
23 and blue jeans.

24 Q Blue jean jacket and blue jeans, is that
25 unusual -- was this on a weekend?

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1 A It was on a Saturday.

2 Q It is unusual for people to wear that in
3 Gonzales Gardens?

4 A I have no idea what's usual and unusual.

5 Q And you lived in building N, I believe?

6 A Yes, ma'am.

7 Q Where is that in relation to building L?

8 A N is right here, O is here, and L is up
9 here.

10 Q Okay. Is it closer or further from this
11 Forest Drive?

12 A Forest Drive would be closer that way by
13 two buildings.

14 Q If I show you a diagram and give you a
15 second, could you point it out for me?

16 A Yes.

17 Q Okay. Showing you State's Exhibit 91, if
18 this is Forest Drive and this is McDuffie, this
19 is Building L, where would your building be?

20 A Right there.

21 Q And this is Forest Drive?

22 A I live right here. This is the middle part
23 right here.

24 Q Yeah, this goes towards the other end.

25 This is down where you ended up, down here?

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1 A So I live right here.

2 Q In one of these two?

3 A Yeah. Near L.

4 Q Right. At this?

5 A Yeah.

6 Q So right there near L?

7 A See, this makes it seem like it's short but
8 it's further up that street.

9 Q But it definitely is within walking
10 distance?

11 A Yeah.

12 Q All the housing in there is pretty close, I
13 would say?

14 A Yeah.

15 Q So you're walking her home and you get
16 upset and you're going to look for this guy?

17 A Yes.

18 Q What is the purpose of you going to look
19 for him?

20 A To tell him to stay the hell away from my
21 daughter.

22 Q At any point during this timeframe, from
23 the time you found out what happened to your
24 daughter, did you ever consider calling the
25 police?

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1 A I wasn't thinking.

2 Q Okay. That wouldn't be the responsible
3 thing to do?

4 A It probably would but in midst of it, if
5 somebody is on top of your daughter, you're
6 trying to find answers. I probably should have
7 called the police or whatever, but the only
8 thing that was on my mind is seeing who this was
9 that was on top of her.

10 Q You weren't bent on revenge at that point?

11 A No, ma'am.

12 Q You didn't make a phone call that your
13 brother answered and told him what happened?

14 A No, ma'am. I told my brother what happened
15 but I didn't make up a phone call saying, 'oh
16 somebody did this, let's go get him.'

17 I did what any family member -- if
18 something happens to your family member, you
19 call somebody else. That's what I did. It
20 wasn't out of the ordinary. I wasn't doing
21 anything to see what was going to happen next.
22 The only thing is I wanted somebody else to know
23 what happened. I would have talked to my dad
24 hadn't he been intoxicated. That would have
25 cured that.

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1 I called quite a few people. I wanted
2 everybody to know what had happened. Especially
3 in that neighborhood everybody needs to watch
4 out for him because at that the point, to me,
5 that's a predator.

6 Q He's a predator?

7 A (Affirmative nod).

8 Q And you were going after him?

9 A I wanted to know who he were.

10 Q At that point, you testified earlier, that
11 you called your father. You didn't talk to your
12 brother until you got down to where you found
13 the man on the ground. Is that wrong?

14 A Say that again.

15 Q When did you talk to your brother?

16 A Probably about two minutes before I got
17 around there.

18 Q So you did make a phone call to your
19 brother and told him what happened?

20 A He was at my dad's house then.

21 Q Okay. So you did make the phone call to
22 your brother and told him what happened to your
23 daughter?

24 A I called my dad.

25 Q I am just confused. I'm sorry.

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1 A Yeah, you're confusing me also.

2 Q I'm sorry. Let me start over. Who all did
3 you call after you've found out that your
4 daughter had been violated or attempted to be
5 violated?

6 A Okay. I called my house on accident.
7 My answering machine picked that up. Then I
8 called because-- because I didn't have no
9 answers. The only thing I know at this point
10 was that some man was on top of the her.

11 I think I called Bloom, to ask him what
12 happened. I don't know if he answered his phone
13 or whatever.

14 I call my dad and he was intoxicated. I
15 could tell from talking to him right then that
16 he couldn't talk to me right then. He was just
17 very intoxicated.

18 I don't know if my brother came in or
19 whatever, I just know that my brother was around
20 there when I got there.

21 Q What phone number did you call your brother
22 at?

23 A His number his -- at the time, ---

24 Q Do you want to look at your phone records?

25 A Sure.

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- 1 Q Do you remember what his number was?
- 2 A He had so many numbers.
- 3 Q Your number was 513-9396?
- 4 A Yes, that's my number and that's my home
5 number under there.
- 6 Q There you go, ma'am.
- 7 A (Upon review), the 212 number, that was my
8 dad's number.
- 9 Q Okay. So whatever before you got down
10 there, your testimony is you called your
11 brother; is that correct?
- 12 A Yeah, I know I called him.
- 13 Q And then you went out?
- 14 A I just don't know what number I called.
15 This is my dad's number.
- 16 Q I'm just asking.
- 17 A Yeah.
- 18 Q So the phone call was made to your brother
19 prior to your getting down there. What all did
20 you tell him?
- 21 A I just said this dude just told me that he
22 just got some grown man off my daughter.
- 23 Q Okay. Did you give him a description?
- 24 A I told him that some man down here, yeah,
25 with a green shirt, a blue jean jacket and blue

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1 jeans on.

2 Q Did you tell him his name is Kenneth?

3 A No. I didn't know that at that time.

4 Q Okay. Your daughter knew his name?

5 A My daughter didn't know his name. That's
6 hearsay. That's what you heard. By then I
7 should have known this man because that's how
8 people talk in that naked. Somebody had to know
9 him, for her to come up with Ken. I doubt very
10 seriously if she knowed him. I really do doubt
11 that.

12 Q I'm sorry, ma'am. I'm just referring to
13 what's in her statement.

14 A Somebody else wrote her statement. She was
15 slow on reading and she couldn't write and
16 somebody else wrote it and she signed it. I was
17 not in the room so I'm not aware of none of it.

18 Q Okay. Did you hear the recording of her
19 talking about it?

20 A No, I never heard none of that.

21 Q Okay. Then you go -- let's get it
22 straight. You've made the call to your
23 procedure. You've told him. You given him a
24 description the person who did it.

25 A. Right.

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1 Q Then you proceed and go into the general
2 area where someone said they last saw him
3 running between the buildings. What buildings
4 did they say that he was running between?

5 A Nobody never told me what building he was
6 running to. He just took off running between
7 the buildings, whenever that he had the
8 altercation -- you mean by the L building.

9 Q How did you know where to go?

10 A I just walked out there. He had to go down
11 the street, he ran down the street.

12 Q Okay. So you ran down the street and, lo
13 and behold, you come upon him and he is already
14 laid out?

15 A No, I didn't run. My feet go like this
16 right here. I didn't run at all.

17 Q Okay. I'm sorry. I don't mean to put
18 words in your mouth. Explain it to me. You
19 went down the street; is that correct?

20 A I went where -- by the time I hit the
21 building, that's where I saw him.

22 Q And it just happens to be you go exactly to
23 where your brother is where you've just called
24 him and your father lives?

25 A I didn't just call him. When I first got

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1 the information from -- when we left out the
2 store, I went to make a phone call right then to
3 let him know. I done went home since then. I
4 have took my daughter in the house, sit down and
5 talked to her. I told her that I was going back
6 to the store, which I have didn't go. I walked
7 down the street. That's quite --

8 Q Did you go down to the area that just
9 happens to be between F and G?

10 A Yes.

11 Q And that's when you see this man who
12 happens to match this description of someone
13 with a green shirt, blue jeans and a blue jean
14 jacket?

15 A Yes.

16 Q And he's laid out?

17 A Yes.

18 Q By you know that's the guy?

19 A Yeah, I was just seeing his feet from the
20 there. I had to come all the way up to where he
21 was.

22 Q How did you know that was the guy?

23 A Because he was all bloodied up.

24 Q Do you know who dumped him on the ground?

25 A No, I wasn't there for none of that.

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1 Q Where was your brother when you first ---

2 A I didn't see my brother until he grabbed my
3 arm.

4 Q So your testimony is that you walk up and
5 the man is just lying there with his hands over
6 his face and no one is around him?

7 A Like this, (illustrating).

8 Q I'm sorry. Like this?

9 A Yeah.

10 Q No one is anywhere near him?

11 A I'm not saying -- there was probably quite
12 a few people out there. I didn't have a vision
13 of none of that.

14 Q And then you recognized him to be the guy
15 that matched the description?

16 A Correct.

17 Q And you were so sure of it that you went
18 over to him and I believe you said you kicked
19 him once?

20 A I tried to.

21 Q You tried to and fell?

22 A (Affirmative nod)

23 Q Then when you felt down, you decided to
24 slap him once across the face?

25 A Yes.

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1 Q Did you slap his hands away?

2 A No, ma'am.

3 Q Was he moving?

4 A I have no idea.

5 Q Did you see the blood pouring out of his
6 mouth?

7 A Yeah, he had blood on his face.

8 Q Did you see the convulsions that he was
9 going through?

10 A No.

11 Q At that point you slammed him or hit him, I
12 can't remember?

13 A I slapped him. It was cold.

14 Q And then your brother, that's the first
15 time you see your brother?

16 A That's the first time that everything is
17 coming clear to me. He pulled me off of him.

18 Q Okay. Just to be clear. Up to that point,
19 the only person that you have seen out in that
20 area is that one man, who is on the ground,
21 bloody.

22 A That's the one I focused only.

23 Q Then your testimony is that you went and
24 you'll pick up this chair?

25 A (Affirmative nod).

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- 1 Q All right. And you threw it at him?
- 2 A I threw it, yeah.
- 3 Q And then your brother grabbed you?
- 4 A I swung. Like I swung it.
- 5 Q Okay. You swung it at him?
- 6 A Yeah.
- 7 Q And it missed?
- 8 A Yeah, I know it didn't touch him.
- 9 Q And then you proceeded to go to your
- 10 father's house?
- 11 A I kept on raising Cain. I went up the
- 12 inside, went in there, my dad was sitting in the
- 13 chair, feeling no pain. I said a few things to
- 14 him. I walk out the back door and went back to
- 15 my house.
- 16 Talked to my daughter.
- 17 My brother came around there about four or
- 18 five minutes later. We stood in the kitchen.
- 19 He was bawling her out about that, you know,
- 20 being in the neighborhood 'these people around
- 21 here', whatever.
- 22 She was sitting there crying. I told her
- 23 to not to go between the building, always take
- 24 the long way around.
- 25 Q Where did you go?

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1 A After that?

2 Q Yeah.

3 A After thirty, forty-five minutes, I went
4 back to the store.

5 Q What did you do?

6 A I went to play the game.

7 Q How late were you there that night?

8 A I can't really say, because I was back and
9 forth. I left the store four or five times.

10 Q Do you remember telling the police you were
11 there until 11:35?

12 A Yeah, that's last time I went but I had
13 done been back and forth quite a few times.

14 Q After all this happened, when did you find
15 out this man had died as a result of his
16 injuries?

17 A The next day when the police came to my
18 house.

19 Q When they came and asked you to talk to
20 them, didn't they?

21 A Yes, ma'am.

22 Q At that point they had no idea about what
23 all had happened; is that correct?

24 A Correct.

25 Q So you went down to be headquarters and you

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1 talked to them?

2 A Yes.

3 Q Investigator Sumpter, I believe, talked to
4 you it?

5 A Yes.

6 Q You testified that he was a nice man.

7 A I can't put a face with him. There was
8 quite few of them in the room that day.

9 Q And you gave them a statement about what
10 you knew?

11 A Yes.

12 Q But you're didn't tell them what you just
13 told the jury here today, did you?

14 A Okay. No, I didn't have a chance to tell
15 them that. The guy that was sitting right there
16 was in there hostile and -- when he was asking
17 me to write a statement, he gave me the pictures
18 of the Marcellius Brooks and he was, like, 'just
19 like I got a call about you threw a chair.' I
20 looked at him. Before I had time to
21 collaborate, he told me, "I don't want to know
22 about the chair. I want to know about this guy
23 right here." So when he said that, that's all I
24 gave him information on.

25 Q Well, you're saying that the police didn't

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1 know about you at all at that point?

2 A No, he told me -- that guy right there told
3 me that he had got an anonymous I had threw a
4 chair at somebody. But he didn't want to know
5 about that. He just wanted to know about the
6 picture that he put before me.

7 Q So you just didn't tell him that part?

8 A I told him what he asked me.

9 Q You wrote this, is this your handwriting?

10 A Yes, ma'am, it is.

11 Q And you wrote about what happened, your
12 daughter and a grown man fighting? He took off
13 running.

14 A That's what was told me, and that's what
15 they wanted to know, what I had heard. I didn't
16 see any of that.

17 Q So now you're at the police station and
18 they know about what's going on, this man has
19 attacked your daughter, so this is your
20 opportunity to report this assault and all you
21 say was "She was okay, just upset and wet. I
22 got off the poker machine, took her home, made
23 sure she was fine and went back to the poker
24 machine until about 11:35." That's what you
25 told the police in your handwriting?

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1 A Yeah, I know what it is.

2 Q And then when they asked you about the guy
3 that brought your daughter to you, you don't --
4 you give them a description?

5 A Exactly.

6 Q And then you talk again about what your
7 daughter told you happened?

8 A Correct.

9 Q Why didn't you tell them about the assault?

10 A Excuse me?

11 Q Why didn't you tell them about what you
12 did, how upset you were. It had to be hard to
13 control those emotions?

14 A When he first said something about me, the
15 chair, me throwing this chair, I was going to
16 elaborate on that. He didn't want to hear about
17 that. I'm at the police station. I'm already
18 nervous from the junk.

19 Mr. Pegram, he didn't want to hear that.
20 He wanted to hear about the picture that he put
21 before me, which was Marcellius Brooks. It was
22 like 'I get calls all the time, right now I
23 don't want to hear that. I want to hear about
24 this.' So I told him what he wanted to hear.

25 If he had asked me anything about this

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1 chair, then that's when it would have came about
2 but he was focusessed on a Blood.

3 Q Okay. You don't remember in the statement
4 that it says you were talking to Clarence
5 Sumpter?

6 A That's who I was talking to. He was
7 sitting right beside him.

8 Q Okay.

9 A I'll never forget that to this day.

10 Q So you didn't think it was important to
11 tell them what you had observed about the person
12 or anything like that?

13 A (No verbal response).

14 Q You're saying they wouldn't listen to you?

15 A No, I'm not saying they wouldn't listen.
16 It's just that I wouldn't really think much of
17 it. And when he told us that he had died or
18 whatever, I already know that that chair didn't
19 touch him when I throwed it and a slap didn't
20 kill him. I wasn't going to put myself out
21 there to make it seem like I had did anything
22 wrong.

23 Q You weren't protecting you or your brother,
24 were you?

25 A No, I wasn't protecting nobody but my

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1 child.

2 Q Because you knew what had happened and what
3 you had done?

4 A No, I hadn't -- no, I didn't.

5 Q Then you found out they had a warrant for
6 your arrest?

7 A Yes, ma'am.

8 Q And you turned yourself in?

9 A Yes, ma'am.

10 Q At that point did you tell them the truth
11 about what happened?

12 A Nobody ever talked to me. I went to jail.
13 I went on bond. I went and looked for an
14 attorney. I have never been questioned by an
15 investigator, nothing. Nobody talked to me
16 anymore.

17 Q This is the first time you've ever told
18 anybody this story?

19 A Yes, ma'am.

20 Q That day Bloom, who you don't really know
21 that well, you made a cell phone to him?

22 A Uh-huh, (affirmative nod).

23 Q So even though you lived next to him
24 two-and-a-half years, but you knew his number to
25 call?

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1 A I got his number from this girl named
2 Dorothy Chapman, an old friend of mine. Her
3 phone didn't come on until nine o'clock. I
4 remember making a call because I got his number
5 from her, but she would use my phone to call
6 him, too, and any other number that I don't
7 know.

8 Q So he was your automatic dial?

9 A Who?

10 Q Bloom?

11 A No.

12 Q But you were able to call him that day
13 because that's on those records?

14 A I had to get his number from somewhere,
15 ma'am. I just told you Dorothy Chapman gave me
16 his number.

17 Q And when your daughter talked to the
18 police, you don't know why she didn't mention
19 when you came back or when her uncle came back
20 or anything like that?

21 A I have no idea.

22 MS. CAMPBELL: Okay.

23 THE COURT: Redirect? Anything?

24 MR. FARLEY: Thank you, Your Honor.

25 Yeah, just briefly.

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1 REDIRECT EXAMINATION

2 BY MR. FARLEY:

3 Q Ms. Reese?

4 A Yes.

5 Q Like I said, you didn't mean to withhold
6 anything from the police, did you?

7 A No, sir, he just kept asking me about a
8 specific person. When he first mentioned
9 something about he got an anonymous call, when I
10 went to collaborate on that, he killed all that
11 by saying he just wanted to know about this
12 person right here, and he had that picture in
13 front of me. So I wasn't withholding that. I
14 have just gave him the information he asked me
15 about.

16 Q Yes, ma'am. Ms. Reese, did you come here
17 today to tell the truth?

18 A The whole truth and nothing but the truth,
19 so help me God.

20 Q You came to share your story?

21 A Yes, sir.

22 Q And what you just shared ---

23 A Is the God's heaven's truth.

24 Q --- is as close as you remember it,
25 correct?

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1 A Yes, sir.

2 Q I just want to ask you one more time, did
3 you intended to hurt Kenneth Mack?

4 A No.

5 Q Did you intend to kill Kenneth Mack?

6 A No.

7 Q To murder Kenneth Mack?

8 A No.

9 Q Lynch Kenneth Mack?

10 A No.

11 Q What did you intend to do when you went
12 that day?

13 A I just wanted him just to stay the hell
14 away from my daughter. Just stay in grown
15 people's place and not in a kid's place. That's
16 it.

17 MR. FARLEY: Thank you Ms. Reese.

18 THE COURT: Anything?

19 MR. FARLEY: No, sir. I'm fine.

20 Thank you very much.

21 THE COURT: Anything further?

22 MS. CAMPBELL: No, sir.

23 THE COURT: All right. You may come
24 down, ma'am. Thank you very much.

25 (WITNESS STEPS DOWN)

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1 THE COURT: All right. Ladies and
2 gentlemen of the jury, that will conclude the
3 testimony for today. How about nine o'clock
4 tomorrow, everybody okay with that?

5 Got another big day ahead of us. All
6 right. You're now dismissed for the evening.
7 Again, don't discuss the case among yourselves
8 when you return to the jury room or with anyone
9 else over the evening hours. Please don't do
10 any research on this case. If you'll hear it
11 live and in person right here. Thank you very
12 much.

13 (JURY OUT)

14 THE COURT: Mr. Farrow (phonetic), can
15 I inquire about the remainder of your case?

16 MR. FARLEY: Your Honor, that concludes
17 my case and if you don't mind my saying it's
18 Farley.

19 THE COURT: Sir?

20 MR. FARLEY: Farley.

21 THE COURT: I'm sorry. Mr. Chaplin,
22 do you anticipate you will finish tomorrow or --
23 I've got to tell how to plan for this jury that
24 is going to come in here Monday.

25 MR. CHAPLIN: Well, I anticipate

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1 on calling two people tomorrow morning.

2 THE COURT: Okay.

3 MR. CHAPLIN: And unless something
4 unforeseen happens -- like we may get a surprise
5 from the State tomorrow morning, I don't know.

6 THE COURT: Well, just anticipate it.
7 So we may finish tomorrow? All right, let me
8 ask you this, Madame -- in the event that we can
9 finish, I'll expect any suggestions for requests
10 for charge in the morning.

11 MS. CAMPBELL: Yes, sir, I'll have
12 those.

13 THE COURT: From all parties.

14 MR. FARLEY: Yes, sir.

15 THE COURT: Deliver them to my law
16 clerk first thing in the morning. We'll have a
17 proposed set of the charges for you after I have
18 read and review what you have requested, okay.

19 MR. FARLEY: Yes, sir.

20 THE COURT: See you at 9:00 o'clock.

21 (COURT IN RECESS)

22 (TRANSCRIPT CONTINUED NEXT PAGE)

23

24

25

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1 MARCH 2, 2012 9:00 a.m.

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3 (DEFENDANTS PRESENT)

4 THE COURT: Is the State ready to
5 proceed?

6 MS. CAMPBELL: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. FARLEY: Ready.

9 MR. CHAPLIN: Ready, Your Honor.

10 THE COURT: Any matters of
11 housekeeping that need to be addressed before we
12 bring the jury?

13 MR. CHAPLIN: The requests to charge.

14 MS. CAMPBELL: I'm sorry. We
15 need to get the requests to charge.

16 THE COURT: Hand them up.

17 MS. CAMPBELL: Do you have copies
18 for us?

19 MR. CHAPLIN: Oh, are we supposed to
20 provide them copies?

21 THE COURT: Yes.

22 MR. CHAPLIN: Okay. I didn't make them
23 copies.

24 THE COURT: Fair is fair.

25 MR. CHAPLIN: Okay. Well, then I need

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1 to make copies.

2 MS. CAMPBELL: We can get somebody to
3 make copies for him. Give it to me. We'll get
4 copies made.

5 MS. CAMPBELL: And ours are coming.

6 THE COURT: Ms. Sampson, how about
7 me?

8 MS. SIMPSON: Oh. I apologize, Your
9 Honor. Oh, this is what you already have.

10 MS. CAMPBELL: I just gave you that.
11 They're bringing in Mathias'.

12 THE COURT: All right. Bring the jury,
13 please.

14 (JURY IN @ 9:16 a.m.)

15 BAILIFF: Your Honor, the jury is
16 present.

17 THE COURT: Thank you very much.
18 Mr. Whittle, you may want to the kind of guard
19 that back door. Do you mind? Good morning
20 ladies and gentlemen.

21 As you probably noticed, there's quite
22 a bit of activity in the adjoining courtroom.
23 I've asked the bailiffs to try to keep it quiet
24 over there. I'm not sure whether it is
25 transfer -- yeah, it is transfer court, isn't

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1 it. That's sort of a lesser crimes court, sort
2 of like a magistrate's court or small claims
3 court. It's all criminal stuff, so there are a
4 lot of people over there who are going through
5 that process. It will dwindle during the day.
6 I'll try to keep it from interfering too much.
7 All right. Counsel, you may proceed.

8 MR. CHAPLIN: Thank you very much, Your
9 Honor. At this time, the defense for Henry Gray
10 calls Tyeshia Kiki Burns.

11 (WITNESS TAKES STAND)

12 KIKI BURNS, being duly sworn to tell
13 the truth, the whole truth and nothing but the
14 truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY MR. CHAPLIN:

17 Q Now, Ms. Burns, did you witness an incident
18 on the 13th of February, 2010?

19 A Yes.

20 Q Okay. And did you subsequently give a
21 statement to the Columbia Police Department?

22 A Yes.

23 Q About that, what you saw?

24 A Yes.

25 Q All right. Now, Ms. Burns, tell me, what

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1 were you doing when you saw this incident?

2 A I was working at the B.P. gas station right
3 across from whatever that complex is.

4 Q Yes.

5 A Working.

6 Q So I'm going to walk up here to a little
7 diagram I have. This is the Blue Ocean Seafood
8 and this is Forest Drive?

9 A Uh-huh.

10 Q Where is your gas station at in relation to
11 this?

12 A It's right across the street from McDuffie.
13 Yeah, right across the street from the complex.

14 Q So right here?

15 A No, it's in front of it. If you're coming
16 across the street it's right in front of it.
17 It's like right beside Bojangles.

18 Q All right. So tell me when I'm getting
19 close to?

20 A No, you're on Forest Drive. You're going
21 to be right this. If this is Forest Drive right
22 here, ---

23 Q Yes.

24 A --- Bojangles is right here and ---

25 Q Yes.

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1 A --- the gas station is there.

2 Q So further. I'm going to ask you to stand
3 up, if you would, please. Can you?

4 A (Complies) -- this (indicating) is
5 McDuffie.

6 Q Yes.

7 A The gas station.

8 Q The -- excuse me?

9 A That the gas station would be like this is
10 Forest Drive, this is McDuffie.

11 Q Yeah?

12 A The gas station would be here.

13 Q Uh-huh.

14 A Bojangles would be like right here.

15 Q And how close are you to the Ocean Seafood?

16 A We're right across the street from it.

17 Q And this is Ocean Seafood?

18 A Yeah.

19 Q If you're right across the street from
20 Ocean Seafood, you're up here?

21 A Yes.

22 Q I'm sorry if the diagram is kinda bad.

23 A Yeah, we're diagonal from it.

24 Q From Ocean Seafood. Got it. Now, while
25 you were at your job that morning or that

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1 afternoon, rather, tell me what you saw?

2 A The only thing I saw was, I was waiting on
3 some customers and I about four or five people
4 running up the street. One guy was in front of
5 them. He run to his left. He must have tripped
6 over a chain or something and he fell. All I
7 saw was black hoods on them. That was it and
8 after he went to get up, he stumbled back down
9 and I went to turn around and look and he was
10 gone.

11 Q Okay?

12 A So.

13 Q So you saw a man running?

14 A (Affirmative nod).

15 Q And you saw some people chasing him?

16 A (Affirmative nod).

17 Q And then you saw the man fall?

18 A Well, he -- yeah, he tripped over
19 something.

20 Q Tripped over something?

21 A Yeah.

22 Q And then you saw the people chasing him,
23 then beat him?

24 A Yeah.

25 Q Okay. And I think he -- in your statement

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1 you said that there was kicking and stomping?

2 A I just seen him all just getting on him.

3 Q Okay.

4 A And when he went to get up, he stumbled
5 back down.

6 Q You also saw a female?

7 A I don't know where she appeared from.

8 Q Okay.

9 A I don't know if she was with the group of
10 people or if she was trying to help him.

11 Q Yeah.

12 A So.

13 Q And where did this group of people -- I
14 think you said in your statement these people,
15 group of people were walking towards the seafood
16 restaurant when they left?

17 A Yeah, when they walked back toward the
18 seafood but I couldn't focus on them when I had
19 a store full of people.

20 Q Okay. So then after they walked away, the
21 man that was on the ground tried to stand up?

22 A He tried to stand up and he stumbled back
23 down. After that, by me working and trying to
24 focus on that, I don't know where he went.

25 Q I see. So if this is the seafood

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1 restaurant here, you saw the group of --

2 A They're walking in front of --

3 (indicating).

4 Q Walking in front of this area?

5 A Uh-huh.

6 Q When they were leaving the attack?

7 A Yeah.

8 Q Okay. Now, do you still work at that B.P.
9 station?

10 A No.

11 Q You just decided to leave?

12 A Uh-huh.

13 Q Any particular reason?

14 A Well, no. I stayed there a couple of
15 months afterwards, but a couple of incidents
16 happened after that and I just left.

17 Q What type of incidents?

18 A One was getting ---

19 MS. SAMPSON: Objection, Your Honor.
20 Relevant.

21 THE COURT: What does that deal with
22 this? I'm going to sustain that.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. CHAPLIN:

25 Q So you no longer work at that location.

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- 1 A No.
- 2 Q Are you under subpoena here today?
- 3 A Yeah.
- 4 Q So you don't really want to be here?
- 5 A No.
- 6 Q Okay. But you're doing your duty as a
7 citizen?
- 8 A Yes.
- 9 Q And testifying?
- 10 A Yeah, but I don't know why because it's
11 like I can't put a face with a name.
- 12 Q Okay.
- 13 A I don't know why.
- 14 Q Okay. But you did see what you just
15 testified to?
- 16 A Yeah.
- 17 Q Okay. Do you have any doubt in your mind
18 about that?
- 19 A No, I don't.
- 20 Q All right. I'd like you to answer any
21 questions that the other attorneys may have of
22 you in this matter?
- 23 THE COURT: Mr. Farrell?
- 24 MR. FARLEY: I have no questions for
25 Ms. Burns. Thank you.

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1 THE COURT: Ms. Sampson.

2 MS. SAMPSON: Thank you.

3 CROSS EXAMINATION

4 BY MS. SAMPSON:

5 Q Good morning, Ms. Burns. Now, I just want
6 to be clear where your store exactly is, because
7 I'm pretty familiar with the area. Your
8 standing at your cash register at the B.P.
9 station when all this occurs. Correct?

10 A Yes.

11 Q When you walk out of your store there's two
12 rows of gas pumps; correct?

13 A No, there's no two rows of pumps.

14 Q There's one row here and one row here,
15 correct, where people can get gas.

16 A Yeah, but it's more than two rows.

17 Q There's more than two?

18 A Uh-huh.

19 Q And then there's more asphalt where people
20 can kind of park?

21 A Uh-huh.

22 Q And there's four lanes of traffic.

23 A (Affirmative nod)

24 Q Then there is the parking lot for the
25 market?

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1 A Yes.

2 Q Then there is the market?

3 A (Affirmative nod).

4 Q And beside the market is McDuffie street?

5 A Yeah.

6 Q So in order to see this fight, you have to
7 look past all of that in order to see the fight,
8 correct?

9 A No, because it's' clear view.

10 Q It is a clear view but there's traffic,
11 there's cars going back and forth on the street.

12 A Yeah.

13 Q And there's four lanes of traffic?

14 A Yes.

15 Q And a turn lane in between those rows of
16 traffic?

17 A I don't know about the turn lane.

18 Q You don't know about the turn lane?

19 A No.

20 Q And people can turn right into -- left onto
21 McDuffie street or right depending on which way
22 they're coming from?

23 A Yeah.

24 Q And they can also turn right beside you,
25 between you and the hospital?

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1 A Yes.

2 Q And the fight is definitely across from you
3 across Forest Drive over there on McDuffie
4 Street?

5 A Well, it's not on McDuffie street. It's
6 like whatever that complex is, the Gardens or
7 whatever, there is like a little open space
8 right there and then some chains that -- from
9 the road to the grass or whatever.

10 Q Correct. That's where it was?

11 A Yeah.

12 Q And you said you saw a female, correct?

13 A Yeah.

14 Q What does she look like?

15 A The only thing I can tell you, she is a
16 black male -- black female.

17 Q Did you tell the police she looked like she
18 was in her late twenties?

19 A No.

20 Q You don't remember telling them that?

21 A No.

22 Q Would seeing your statement help refresh
23 your memory?

24 A Might, but -- (pause).

25 Q Ms. Burns, I'm going to ask you to take a

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1 look at it?

2 A Yeah.

3 Q You can read, right?

4 A (Affirmative nod).

5 Q Is that the statement you gave police back
6 on February 13th of 2010?

7 A (Affirmative nod).

8 Q I need you to say yes or no.

9 A Yes.

10 Q Is that in your handwriting?

11 A Yes.

12 Q And I want to direct you to page -- you
13 gave them that information that's filled out at
14 the top about where you live and all that?

15 A Uh-huh.

16 Q On that second page, that part that's
17 highlighted, what does it say?

18 A Yeah, she was about in her late twenties.

19 Q And how much did you think she weighed?

20 A She was about a hundred fifty, my size.

21 Q Thank you. Didn't you tell them that she
22 was also assaulting the gentleman on the ground?

23 A Well, that's the thing. I don't know if
24 she was actually helping the guy or she was with
25 the group of guys, the group of people, but she

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1 had something in her hand.

2 Q She had something in her hands?

3 A Yes.

4 Q All right.

5 MS. SAMSOM: No further questions,
6 Your Honor.

7 THE COURT: Redirect?

8 DIRECT EXAMINATION

9 BY MR. CHAPLIN:

10 Q When you called 9-1-1, you called them
11 because you saw something? Correct?

12 A That's the only reason.

13 Q The only reason?

14 A Yeah.

15 Q You would have no reason to call 9-1-1 and
16 make up something that you didn't see?

17 A No.

18 Q Correct?

19 A Correct.

20 Q You're here telling the truth today under
21 oath, correct?

22 A Yes.

23 MR. CHAPLIN: Thank you very much.

24 MR. FARLEY: No questions.

25 THE COURT: Anything further?

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1 MS. SAMPSON: Nothing further.

2 THE COURT: All right. You may come
3 down, ma'am. Thank you very much. You're free
4 to go.

5 (WITNESS STEPS DOWN)

6 THE COURT: Without objection?

7 MR. FARLEY: Without objection.

8 MS. SAMPSON: Without objection.

9 THE COURT: You're free to go. Next
10 witness.

11 MR. CHAPLIN: Your Honor, at this time
12 the defense for Henry Gray rests.

13 THE COURT: All right.

14 THE COURT: Any reply or rebuttal?

15 MS. CAMPBELL: Yes, Your Honor.

16 Your Honor, may we approach for just a second.

17 THE COURT: Sure.

18 (OFF RECORD BENCH CONFERENCE)

19 MR. FARLEY: Your Honor, at this
20 time the defense for Ms. Robin Reese would like
21 to rest.

22 THE COURT: All right.

23 MR. FARLEY: We would like to make a
24 motion to renew ---

25 THE COURT: We'll do that in just a

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1 minute. All right. Ladies and gentlemen, that
2 concludes the defense of both defendants in this
3 case. Now, at this point in the trial, the
4 State has the opportunity if they so choose to
5 call a rebuttal witness, any witness where
6 something was presented to you they feel needs
7 rebuttal as far as the record is concerned.
8 They have that opportunity.

9 Counsel has indicated to me that they will
10 call a rebuttal witness or at least one and they
11 were not anticipating we would be this far along
12 at this moment, so they need a few minutes just
13 to get their witnesses in order and so rather
14 than have you just sit here, I'm going to let
15 you retire to the jury room for a few minutes
16 and just relax. When they're ready to continue
17 we will do so. We're going to finish this case
18 today now. Just there's a lot left to come, but
19 we'll get done today. So just relax for a few
20 minutes and we'll call you when we're ready.

21 (JURY OUT @ 9:34 A.M.)

22 THE COURT: Ms. Campbell, do you need a
23 break?

24 MS. CAMPBELL: Just five minutes.

25 THE COURT: This will be a good time

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1 when you're ready to view jury charges.

2 MS. CAMPBELL: We can do that now.

3 MS. SAMPSON: We can do that now.

4 THE COURT: I thought you had to step
5 out.

6 MS. CAMPBELL: I can get them to step
7 out to get out people.

8 THE COURT: All right. Well, let me
9 look over your proposed charges and I'll be
10 ready in just a few minutes.

11 MS. CAMPBELL: Okay, Judge. We'll
12 be back in ten minutes.

13 (BRIEF RECESS)

14 (DEFENDANTS PRESENT)

15 THE COURT: State ready?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: All right. Let's go
18 ahead and do that.

19 MS. CAMPBELL: Okay.

20 THE COURT: Bring the jury, please.

21 (JURY IN @ 10:16 a.m.)

22 BAILIFF: Jury is present, Your
23 Honor.

24 THE COURT: Solicitor.

25 MS. CAMPBELL: May it please the Court.

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1 The State calls Dr. Clay Nichols.

2 (WITNESS TAKES STAND)

3 CLAY NICHOLS, being duly sworn to tell
4 the truth, the whole truth and nothing but the
5 truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Dr. Nichols, where are you employed?

9 A I am the deputy chief medical examiner for
10 the State of North Carolina.

11 Q How long have you been employed in that
12 capacity.

13 A About one year.

14 Q Prior to that where did you work?

15 A I worked here in Richland County where I
16 was the chief medical examiner for Richland
17 County.

18 Q Back in February of 2010, what were your
19 duties?

20 A I was the chief medical examiner.

21 Q For Richland County?

22 A Yes.

23 Q At that point was Dr. Bradley Marcus one
24 of the people employed within your group?

25 A Yes.

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1 Q And he assisted in autopsies and things of
2 that nature?

3 A Yes.

4 Q Can you tell this jury a little about your
5 education and training in the field of forensic
6 pathologist?

7 A I received my B.S. from the University of
8 the Oklahoma in 1981, I received my M.D. degree
9 also from Oklahoma in 1985.

10 After that I entered a residency program in
11 both anatomic and forensic pathology at MUSC,
12 completing that in 1999.

13 For the next ten years, I was on the
14 faculty as assistant professor and associate
15 professor where I taught Pathology to residents,
16 medical student, Fellows, dental students,
17 pharmacy students.

18 After that I entered private practice here
19 in the Columbia area, where I was the chief
20 medical examiner for ten years.

21 Following that I'm the deputy chief medical
22 examiner for the State of North Carolina.

23 I'm board-certified in both anatomic and
24 forensics pathologist and hold unrestricted
25 licenses to practice medicine and surgery in

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1 both North Carolina and South Carolina.

2 Q Have you been qualified before as an expert
3 in the field of forensics pathologist.

4 A Yes.

5 Q Approximately how many times have you been
6 qualified?

7 A Hundreds.

8 MS. CAMPBELL: Your Honor, at this time
9 we'd offer him as an expert in forensics
10 pathologist.

11 THE COURT: Any *voir dire* or
12 objection?

13 MR. FARLEY: No objection, Your Honor.

14 MR. CHAPLIN: No objection, Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY MS. CAMPBELL:

17 Q Doctor, I want to turn your attention back
18 to mid to late February 2010. Were you aware
19 that Dr. Marcus had performed an autopsy on a
20 young man named Kenneth Mack?

21 A Yes, ma'am, I was.

22 Q Were you asked, actually at the time, to
23 review his findings as far as cause of death and
24 things of that nature?

25 A Yes, I was.

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1 Q And specifically and I'll be brief since
2 this is reply testimony. Did you review his
3 work in that case?

4 A Yes, I did.

5 Q Was it done correctly?

6 A Yes.

7 Q As a result of that, was a cause of death
8 determined?

9 A Yes, it was.

10 Q Were you also given a history of what had
11 happened or what may have happened prior to the
12 young man being declared brain dead in the
13 hospital?

14 A Yes, I was.

15 Q Is that important as far as your field is
16 concerned?

17 A Sometimes it's very important. Sometimes
18 it's not. In this particular case it was, due
19 to the nature of two assaults within a short
20 period of time.

21 Q Were you aware that after the second
22 assault he was never conscious again and was
23 posturing by the time EMS got there?

24 A That's correct.

25 Q Based on your review of the autopsy --

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1 which was done correctly in this case; is that
2 right?

3 A Yes.

4 Q And your review of the history, were you
5 able to make any determinations as far as which
6 assault either contributed solely or was a
7 contributing factor to his death?

8 A The timeline and injuries indicate that it
9 would have been a second assault where the
10 deceased fell and hit the concrete, resulting in
11 closed head injury.

12 The first assault, the evidence isn't there
13 for a head injury.

14 The second assault, there is real good
15 evidence for a head injury.

16 Q And you discussed these with, I believe,
17 the coroner's office as well police officers in
18 this case?

19 A Yes.

20 Q And you've also had an opportunity prior to
21 testifying here today to review those findings
22 again?

23 A Yes.

24 Q And those are still your findings?

25 A Yes, they are.

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1 Q But for the second assault, he would not be
2 dead?

3 A That's correct.

4 MS. CAMPBELL: That's all that I have.

5 THE COURT: Cross-examination?

6 CROSS EXAMINATION

7 BY MR. FARLEY:

8 Q Dr. Nichols, again the 00 you're here to
9 testify to the blunt force trauma that was
10 suffered by Mr. Mack?

11 A I'm here to answer questions. The cause of
12 death in Mr. Mack is the blunt head trauma, yes.

13 Q But again, you're not here to propose how
14 that happened necessarily or who may have been
15 involved ---

16 A Not who was involved.

17 Q --- nor have any information in that
18 regard?

19 A Not as far as who was involved, how it
20 happened. Once again, the injury where he fell
21 and kinda struck his head on the concrete. I
22 think would itself have been a fatal injury.

23 MR. FARLEY: Please answer any
24 questions Mr. Chaplin has.

25 CROSS EXAMINATION

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1 BY MR. CHAPLIN:

2 Q So Dr. Nichols, your analysis is based on
3 the fact that he hit his head on the concrete;
4 correct?

5 A Yes.

6 Q Thank you very much. No further questions?

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q That would be concrete or a hard surface
11 commensurate with concrete?

12 A Yes.

13 MS. CAMPBELL: That's all I have.

14 MR. FARLEY: I don't have anything
15 further.

16 THE COURT: Anything further?

17 MR. CHAPLIN: I'm fine. Thank you.

18 THE COURT: All right. Thank you
19 very much, Doctor.

20 MS. CAMPBELL: Thank you. May he be
21 excused?

22 THE COURT: Yes, ma'am. Be excused.

23 MS. CAMPBELL: Thank you. Have a good
24 day.

25 THE COURT: Yes, sir.

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1 WITNESS: Thank you.

2 (WITNESS STEPS DOWN)

3 MS. SIMPSON: The State calls
4 Quintus Young.

5 (WITNESS TAKES STAND)

6 QUINTAS YOUNG, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MS. SIMPSON:

11 Q Mr. Young, where do you work?

12 A I am employed with the State Law
13 Enforcement Division, commonly known as SLED.

14 Q How long have you been with SLED?

15 A Five years, this month.

16 Q What exactly do you do at SLED?

17 A As a toxicologist, we're responsible for
18 the analyses of biological specimens: blood,
19 urine, tissue -- to detect the absence or
20 presence of drugs, alcohol and poisons and to
21 interpret those findings for courts of law,
22 coroners and pathologists.

23 Q So you're a toxicologist?

24 A Yes.

25 Q Can you tell us a little bit about your

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1 educational background training and background?

2 A Yes, I received my bachelors from the
3 University of South Carolina in Chemistry.

4 Once I was hired on at SLED in 2007, I
5 completed the alcohol and drug portions of
6 training.

7 Q All right.

8 MS. SIMPSON: Your Honor, at this
9 time, I would seek to qualify Mr. Young as an
10 expert in toxicology.

11 THE COURT: Any voir dire or objection?

12 MR. FARLEY: No voir dire or objection,
13 Your Honor.

14 MR. CHAPLIN: Voir dire, Your Honor..

15 THE COURT: Yes, sir.

16 VOIR DIRE EXAMINATION

17 BY MR. CHAPLIN:

18 Q. Please -- I'm sorry, state your last name
19 again. Is it Young?

20 A. (Affirmative nod), Young.

21 Q. You said you majored in Chemistry?

22 A. Yes.

23 Q. And where did you go to school?

24 A. University of South Carolina.

25 Q. Did you take organic chemistry?

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1 A. I did.

2 Q. What is organic chemistry?

3 A. It's related to carbon molecules.

4 Q. Did you take inorganic?

5 A. I don't think I did.

6 Q. You have a Bachelor of Arts or a Bachelor
7 of Science in Chemistry?

8 A. Bachelor of Science.

9 Q. Did you take German?

10 A. No.

11 Q. Did you take quantitative analysis

12 A. I did.

13 Q. Now, after college, to prepare for this
14 job, did you take any additional training?

15 A. No, once I began, I had in-house training
16 at SLED.

17 Q. So in-house training?

18 A. Right.

19 Q. After a degree from Carolina?

20 A. Correct.

21 Q. How long have you been ---

22 A. Five years.

23 MR. CHAPLIN: Okay. No objection.

24 Thank you.

25 THE COURT: All right, sir. You may

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1 continue.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. SIMPSON:

4 Q And Mr. Young, have you been qualified as
5 an expert before?

6 A Yes.

7 Q Did you receive some blood samples in this
8 case?

9 A I did.

10 Q And whose blood specimens did you receive?

11 A Kenneth Mack.

12 Q All right. Did it come to you through
13 SLED's evidence?

14 A Intake, (affirmative nod)..

15 Q Okay. Which I guess utilizes the standard
16 procedures and protocols to protect the
17 integrity of the specimen?

18 A Correct.

19 Q What exactly do you test for?

20 A We test for volatiles, which would be
21 ethanols -- drinking alcohol -- and any drugs.

22 Q I see.

23 A Any prescriptions or ---

24 Q Can you describe for the jury kind of the
25 process that you used?

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1 A Okay. Once a sample is admitted, we first
2 test for volatiles. In this case it was
3 negative for alcohol. From there we go to a
4 drug screen which is a panel of your common
5 drugs: cocaine, marijuana, amphetamine,
6 methamphetamine, and from there if it screens
7 for anything positive it would go to a
8 confirmation second test just to make sure that
9 what is there is really there.

10 Q Okay. The second test you said is used to
11 confirm?

12 A Right.

13 Q Did you make any findings, in this case?

14 A I did.

15 Q Can you tell the jury about those?

16 A In this case like I stated, it was a
17 negative blood alcohol. On the drug screen it
18 screened positive for benzodiazepines and
19 tetrahydrocannabinols; which we found later to be
20 Lorazepam and a metabolite of marijuana/THC.

21 Q Okay. And just this probably a fairly
22 simple question, but "positive" means it was
23 present in the system.

24 A Right.

25 Q And I believe you said it was a THC

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1 metabolyte. Can you tell the jury exactly what
2 that is?

3 A THC is the only active component of
4 marijuana. Once it's inquested it begins to --
5 that's the body's natural thing to do is break
6 it down to get rid of it. The carboxyl THC that
7 I found in this case was inactive but it clearly
8 shows a history of use.

9 Q What does it mean exactly to be inactive?

10 A Non-interfering.

11 Q So is there a timeframe that you can put
12 when the marijuana is ---

13 A Not so much. It really depends on
14 frequency of use. One dose could show up a week
15 later in a test.

16 Q And let's move on. You said Lorazepam?

17 A. Yes.

18 Q Can you tell the jury what that is?

19 A That's in the drug class of
20 benzodiazepines, which are commonly used for
21 anxiety but Lorazepam is normally administered
22 in hospitals for head injuries. What it does is
23 it shows the brain activity to prevent brain
24 swelling.

25 Q So -- and what would the effect of Ativan

1 potentially have on your system?

2 A It's a very simple central nervous system
3 depressant similar to that of alcohol.

4 Q Okay. You said potentially it's either
5 usually prescribed by a medical doctor or
6 administered through an EMT?

7 A Right.

8 Q So what would the combined effects of, say,
9 the inactive metabolite and Ativan have
10 together?

11 A Together the THC would not play a role in
12 impairment.

13 Q Why is that again?

14 A It's inactive.

15 Q Does that mean the person wasn't
16 necessarily under the influence?

17 A Right.

18 Q So Mr. Mack was not under the influence of
19 marijuana?

20 A Correct.

21 Q And in your report it's noted certain
22 levels: therapeutic, toxic. Can you tell us
23 about the levels that you found in this case?
24 Can you tell us about the levels that you found
25 in this case?

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1 A It was .12 micrographs per liter.

2 Q Was that with respect to the Ativan?

3 A Yes. Therapeutic level range from .01 to
4 .24, so that would fall in that range.

5 Q So mid range?

6 A Right.

7 Q It didn't rise really to the toxic levels
8 at all.

9 A No

10 Q Would that have contributed in any way to
11 the cause of death?

12 A No, not if administered by the hospital.

13 Q So for example if a person had been -- I
14 guess this was inactive so not under the
15 influence of marijuana.

16 A True.

17 Q And if the Ativan had been administered by
18 an emergency medical technician, there would be
19 no impairment?

20 A Correct.

21 MS. SIMPSON: Thank you.

22 THE COURT: Cross-examination.

23 CROSS EXAMINATION

24 BY MR. FARLEY:

25 Q Mr. Young, I just have a quick question.

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1 How did you term that the THC from the marijuana
2 is inactive?

3 A Say it again?

4 Q You said the THC was inactive.

5 A Correct.

6 Q I believe you said the THC is the active
7 (sic) ingredient in marijuana.

8 A Correct.

9 Q And I believe in this case you said you
10 determined that it was inactive?

11 A Correct. If you see on the report it's
12 Tetrahydrocannabinol, THC, that's the
13 metabolite. The drug screen we do on the front
14 end only shows class. The tests that we do to
15 confirm are more specific and let's you know
16 parent drug, metabolite. It tells the
17 difference.

18 Q So were you able to determine when he
19 ingested this drug?

20 A No, we can't do that. We can only say
21 what's in the blood at the time of draw.

22 Q So you don't know when he ingested the
23 marijuana?

24 A Correct.

25 Q You just know it was in his system?

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- 1 A Correct.
- 2 Q Well, how do you know he wasn't under the
3 influence?
- 4 A Because of the lack of parent THC.
- 5 Q Because of the lack of parent HTC?
- 6 A Yes.
- 7 Q I don't think I follow that exactly.
- 8 A Parent THC ---
- 9 Q You'll have to forgive me, I don't have a
10 degree in Chemistry.
- 11 A That's okay. Parent THC is the only active
12 component of marijuana.
- 13 A That's the objective competent of the
14 marijuana. As I stated before, once ingested in
15 the system the body begins to break it down to
16 get rid of it and this is one of the
17 metabolites.
- 18 Q So if you could determine that it was
19 already breaking it down, then how can you
20 determine ---
- 21 A We can't say when he ingested it.
- 22 Q Could he have ingested it that morning?
- 23 A It's possible. It's possible -- but I
24 can't say because parent THC shows -- parent THC
25 shows a fairly recent use, like within the past

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1 two to four hours or something. Because there
2 is a lack of it, I really can't say when he did
3 it.

4 Q But if you can't tell when he ingested the
5 drug, isn't it hard to say whether or not he's
6 under the influence or not?

7 A No, because it is not present.

8 MR. FARLEY: Please answer any
9 questions Mr. Chaplin has.

10 CROSS-EXAMINATION:

11 BY MR. CHAPLIN:

12 Q Mr. Young, I however did major in
13 chemistry.

14 A All right.

15 Q All right. Let me ask you a couple of
16 questions. I didn't hear you're speak a whole
17 lot about -- and I didn't ask you about this.
18 When you took your chemistry courses, did you
19 take a a lot Biology?

20 A I think I took one biology course.

21 Q Now, did you ever work on a cadaver while
22 you were at Carolina?

23 A No.

24 Q Okay. Did you ever take familial
25 physiology?

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- 1 A No.
- 2 Q Okay. So you never had any intention of
3 going back to med school or whatever?
- 4 A Right.
- 5 Q So you strictly worked in a lab with
6 chemicals, Bunson burners, and did hocus-pocus
7 stuff, like black magic?
- 8 A Not hocus-pocus.
- 9 Q I'm just using slang, but I'm saying you
10 basically worked in a lab?
- 11 A Right.
- 12 Q But you're here today testifying as to the
13 impact of drugs on a human body?
- 14 A Correct.
- 15 Q And what qualifies you to do that?
- 16 A My training.
- 17 Q Okay. I'm sorry. Tell me about that
18 training.
- 19 A At SLED when we're first hired on, you
20 begin volatile analysis training. That consists
21 of the verbal/oral exams, written exams and
22 different courses -- not courses but teachings
23 from people who have been there for years, years
24 and years.
- 25 Q Okay. So then it's your testimony that

1 your training with regards to the impact of
2 drugs on the human system would be on-the-job?

3 A Right.

4 Q Okay. So no really formal training in that
5 area?

6 A Well, I did go to the work assigned school
7 of alcohol. That would be formal. It wasn't be
8 like University of South Carolina.

9 Q Right. So you take like seminars and stuff
10 like that?

11 A Right.

12 Q Of course, but you never took a formal
13 physiology class where you ---

14 A No.

15 Q All right. Let me move on. Now have, you
16 indicated that the victim was a frequent user of
17 marijuana?

18 A No. I said the level -- what's present
19 would be determined by how often he smoked or
20 did not smoke.

21 Q Okay. Can you tell how often he smoked?

22 A No.

23 Q You can't?

24 A (Negative gesture).

25 Q Okay. So he could have been a frequent

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1 user?

2 A Right.

3 Q Okay. All right. Now, do you know when
4 this blood sample was taken?

5 A I cannot find in my notes right now.

6 Q All right. So you're not certain?

7 A I am not.

8 Q All right. I can accept that. Are you
9 aware that at some point the victim was given
10 several other medications?

11 A No.

12 Q Okay. Are you aware that he was given a
13 dose of Lidocaine?

14 A No, I'm not.

15 Q All right. What about a dose of Mecora?

16 A No.

17 Q Okay. Well, it's on the report. Would
18 those medications have any impact on the test
19 that you ran?

20 A No.

21 Q Tell me why.

22 A Well, these drug screens are specific for
23 drug classes. If those drugs don't fall within
24 those clarifications and we don't have a history
25 of it, we don't search for it. Protocol for

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1 homicides, drug screen, anything screens
2 positive, you confirm it and that's in the case.

3 Q Okay. So they didn't show up on the
4 screens that you did because you didn't test for
5 those particular ---

6 A Correct.

7 Q I don't mean to say opiates but those
8 particular drug classes?

9 A Correct.

10 Q But you can't say certain that it didn't
11 have an impact on the things that you did test
12 for?

13 A I can't say that it didn't have an impact?

14 Q Yes.

15 A No, I couldn't.

16 Q Okay.

17 Q So you're saying he couldn't have been a
18 frequent user of marijuana, you're not sure if
19 the other medications could have decreased the
20 level of THC that you found.

21 A Those things, that wouldn't have interfered
22 with any drugs that I found. You're saying
23 other drugs that would have affected this, on
24 the report?

25 Q Yes.

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1 A. No, sir.

2 Q Again, I need you to explain it to me --
3 tell me why?

4 A Each drug has -- breaks down to different,
5 uh, on the different instruments that we use. So
6 pretty much each drug has a fingerprint.

7 Q Right.

8 A So what is here is here. It wouldn't be
9 affected by any other drug.

10 Q Okay. And you're basing that on your
11 on-the-job training?

12 A Correct.

13 Q At SLED?

14 A Correct.

15 Q All right. No further questions.

16 MS. SIMPSON: Nothing further, Your
17 Honor.

18 THE COURT: All right. You may come
19 down.

20 (WITNESS STEPS DOWN)

21 THE COURT: May this witness be
22 excused?

23 MR. FARLEY: No objection, Your Honor.

24 THE COURT: Without objection.

25 MR. CHAPLIN: No objection.

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1 MS. SIMPSON: The State calls Kevin
2 Thomas.

3 (WITNESS TAKES STAND)

4 KEVIN THOMAS, being duly sworn to tell
5 the truth, the whole truth and nothing but the
6 truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY MS. SIMPSON:

9 Q Good morning Mr. Thomas.

10 A Good morning.

11 Q You were actually here with us earlier in
12 the week, correct?

13 A I was, yes.

14 Q Can you remind the jury about what you do
15 and your role in this case?

16 A At the time of this case I was an emergency
17 medical technician based with Richland County
18 EMS, responsible for providing basic life support
19 care in a prehospital setting.

20 Q And you actually responded to a call in
21 this case regarding a Kenneth Mack, correct?

22 A Correct.

23 Q The victim?

24 A (No verbal response).

25 Q And when you responded, I believe you said

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1 you also responded with a partner?

2 A Correct, he was a paramedic.

3 Q What is your primary goal when responding
4 to any scene as a first responder?

5 A Primary goal is to initiate life saving
6 measures, if necessary, and transport them to
7 the hospital.

8 Q Is collection of evidence up there in your
9 goals?

10 A Negative. Correction, no.

11 Q And would you have collected blood in this
12 case?

13 A No, we don't collect blood.

14 Q No EMT collected blood in this case?

15 A No.

16 Q All right. And let me talk to you a little
17 bit about -- the victim in this case was
18 posturing at the time?

19 A Correct.

20 Q Would Ativan have been administered?

21 A If he was exhibiting signs of a seizure,
22 which our standing protocol is when we
23 administer Ativan, if he was seizing.

24 Q In this case he was actually was showing
25 seizure activity. Correct?

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1 A During my time with him he was posturing.
2 Now, between what happened once we got him in
3 the back of the truck, I got in the front of the
4 truck and drove. I don't know what happened
5 between the time we got him in the back and got
6 him to the hospital.

7 Q So your partner would have been the one
8 actually to administer the Ativan?

9 A Correct.

10 MS. SIMPSON: Thank you.

11 THE COURT: Cross-examination.

12 MR. FARLEY: Just a quick question.

13 CROSS EXAMINATION

14 BY MR. FARLEY:

15 Q So do you have any knowledge of whether
16 Ativan was administered?

17 A During the transport, I do not know whether
18 it was given or not. I was not in the back with
19 the patient.

20 Q Do you have any knowledge of whether your
21 partner did so?

22 A I don't know if he did or not.

23 Q Okay.

24 A I mean, I can read the report and whatever
25 the report says, I can verify, but as far as

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1 actually seeing him give it.

2 Q But actually as far as your testimony today
3 you can't really testify to anything regarding
4 Ativan?

5 A I was not present so, no, I can't.

6 MR. FARLEY: Thank you.

7 MR. CHAPLIN: No questions for
8 Mr. Thomas.

9 MS. SIMPSON: Beg the Court's
10 indulgence. No further questions?

11 THE COURT: All right. All right,
12 sir. You may come down. Thank you very much.

13 (WITNESS STEPS DOWN)

14 THE COURT: May this witness be
15 excused?

16 MR. FARLEY: No objection, Your Honor.

17 MR. CHAPLIN: No objection.

18 THE COURT: Yes, ma'am, next witness.

19 MS. CAMPBELL: One more witness.

20 That's all.

21 THE COURT: Go ahead.

22 MS. CAMPBELL: One more.

23 THE COURT: Go ahead.

24 MS. CAMPBELL: State would call
25 Sergeant Peagram.

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1 (WITNESS TAKES STAND)

2 WILLIAM PEGRAM, being duly sworn to
3 tell the truth, the whole truth and nothing but
4 the truth, testified, as follows:

5 DIRECT EXAMINATION

6 BY MS. CAMPBELL:

7 Q You're already under oath, Sergeant Pegram,
8 this is already prepared so we're limited to two
9 different areas we're going to talk about.

10 A Okay.

11 Q In this case did you attend the autopsy of
12 Kenneth Mack?

13 A I did.

14 Q Was clothing collected at the autopsy?

15 Q Which is -- did much of that clothing have
16 blood on it and therefore was a biohazard?

17 A Yes.

18 Q However you actually saw the clothing
19 yourself?

20 A I did.

21 Q Can you describe to the jury what clothing
22 was found on -- was taken from the victim at the
23 autopsy?

24 A He was wearing gray sweat pants.

25 Q Actually accompanied the autopsy. He

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1 wasn't wearing them at that time. I don't want
2 to mislead.

3 A Yes.

4 Q Okay.

5 A He was wearing gray sweat pants, a royal
6 blue shirt, a black jacket and I believe he was
7 wearing tennis shoes.

8 Q I want to show you a list from the autopsy
9 that actually illustrates, he had on a couple of
10 layers of clothing?

11 A He did.

12 Q Which it was actually snowing that day?

13 A It was snowing.

14 Q Is that a list of what was the collected at
15 the autopsy?

16 A It is what was collected and bagged. It
17 was a black jacket, a green shirt, two black
18 shirts, a barber's jacket, two pairs of sweat
19 pants, dark blue and dark gray, socks, black
20 shoes.

21 Q Does it mention any blue jean jacket or
22 blue jean clothing?

23 A No, it does not.

24 Q The only other area I want to ask you about
25 is, you participated in the interview of Robin

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1 Reese, I believe on February 14th.

2 A I did.

3 Q That was when she brought her daughter
4 down, as well?

5 A That's right.

6 Q At the that point, you mentioned earlier,
7 you didn't advise her of her rights?

8 A Right.

9 Q Why?

10 A She wasn't a suspect at that time.

11 Q At that point, what information or any
12 information do you have about anything with the
13 chair?

14 A The only thing as of the 14th was the
15 anonymous tip coming into the telephone resposne
16 unit, TRU. That information only provided the
17 name of Mr. Gray and that he used a chair. At
18 that point we had not located the chair or
19 Mr. Gray.

20 Q At any point in your interaction, I believe
21 you assisted Investigator Sumpter in
22 interviewing her that day?

23 A Correct.

24 Q Did she ever intention to you or tell you
25 about her being involved in an assault on this

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1 victim with a chair?

2 A No, she did not.

3 Q At any point did you tell her you didn't
4 want to talk to her about her assault on the
5 victim?

6 A No, I did not.

7 Q In fact, would that have been crucial to
8 your investigation.

9 A Yes it would have been crucial.

10 Q Had she related that information, what
11 would you have done?

12 A Well, she would have been indicated on that
13 point. We would have stopped and treated her as
14 a suspectg.

15 Q That day was she ever treated as a suspect
16 in this case?

17 A No, she was not.

18 Q Was she free to go home?

19 A Yes.

20 Q And did she?

21 A Yes.

22 Q The victim in this case, approximately how
23 tall husband was he?

24 A He was 5'8", 165 pounds.

25 Q Thank you.

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1 CROSS EXAMINATION

2 BY MR. FARLEY:

3 Q Investigator, you testified yesterday that
4 you're used to interviewing people in Gonzales
5 Gardens; is that correct.

6 A I'm accustomed to interviewing people in
7 general.

8 Q But you've had lot of dealings with
9 Gonzales Gardens?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q At the time Ms. Robin Reese came in for her
14 statement, you wanted to investigate more about
15 Marcellius Brooks?

16 A Yeah, what I wanted to investigated was the
17 truth about the incident to determine what
18 happened.

19 Q But you testified a moment ago that
20 Marcellius Brooks had come up as a person of
21 interest?

22 A Yes.

23 Q And you want to learn more about that
24 occurrence was, and that's what you asked about;
25 correct?

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- 1 A Yes, that was one of the things.
- 2 Q And you didn't ask about anything else?
- 3 A At that point, we had no knowledge about
4 the second assault.
- 5 Q But having no knowledge, you had no reason
6 to ask about anything else; correct?
- 7 A Well, generally we ask to tell us from
8 beginning to end what happened.
- 9 Q All right.
- 10 A And that's where we develop our
11 information.
- 12 Q In regards to Marcellius Brooks?
- 13 A No, in regards to the overall incident.
14 Marcellius Brooks was just one part of the
15 interview.
- 16 Q But wasn't that your main point of
17 interest?
- 18 A He was one point of interest.
- 19 Q That's what you asked Ms. Reese about?
- 20 A I asked Ms. Reese about the incident and
21 Marcellius Brooks.
- 22 Q I understand.
- 23 Q And in your dealings with Gonzales Gardens,
24 are you accustomed to many of the folks from
25 there just providing all kinds of information

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1 unrelated to the questions you're asking?

2 A In this case, we had people come forward.

3 I don't really understand your question.

4 Q Well, I guess what I'm asking you, if
5 you're asking people specific questions and they
6 don't know to go beyond the scope of those
7 questions, is that something you're accustomed
8 to, is having them go far beyond the scope and
9 tell you more information than you require?

10 A Well, that's hard to answer. I mean, it
11 depends on the person and what they tell us.

12 Q Right. And the other way, too. It's hard
13 for those people to know exactly what you
14 require?

15 A Well, I don't think it would be that
16 difficult. I mean, you come in and you're
17 requested to describe an event from beginning to
18 end. They describe the event from beginning to
19 be.

20 Q And as related to ---

21 A And some people are deceptive and they
22 fail to give the second part or all of the
23 information.

24 Q But if you're asking for information
25 related to Marcellius Brooks, Bloom, a person of

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1 interest at the time, ---

2 A That is a specific question.

3 Q Right.

4 A And that was done in this case among other
5 things.

6 Q I'm just reviewing her statement. I'm sure
7 you remember it. That's pretty much what she is
8 speaking about, is his ---

9 A. That is all she is speaking about.

10 Q The incident with Marcellius Brooks?

11 A That's correct.

12 Q Thank you.

13 A Yes, sir.

14 CROSS EXAMINATION

15 BY MR. CHAPLIN:

16 Q Investigator Pegram, you're the lead
17 investigator for this entire case?

18 A Yes.

19 Q How long have you been in law enforcement?

20 A Twenty-nine years.

21 Q So how often have you testified in front of
22 of a jury?

23 A I have no idea.

24 A Sure, I mean, hundreds of times.

25 Q Hundreds of times, okay. So you're pretty

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1 experienced at doing that?

2 A I would say, (affirmative nod).

3 Q Okay. While most of the witnesses were
4 sequestered, you sat here through the entire
5 trial; did you not?

6 A I did.

7 Q Okay. And you testified last, correct?

8 A Yes.

9 Q Okay. No further questions?

10 THE COURT: Anything further?

11 MS. CAMPBELL: No, sir.

12 THE COURT: You may come down, sir.

13 WITNESS: Thank you.

14 (WITNESS STEPS DOWN)

15 THE COURT: Next witness.

16 MS. CAMPBELL: Your Honor, that's all.

17 THE COURT: All right. Ladies and
18 Gentlemen, that will conclude the evidence in
19 this case, the remaining portion of the trial
20 will consist of the final arguments of
21 counsel and my charge to you on the law of the
22 the State of South Carolina, after which the
23 case will be turned over to you for
24 deliberation.

25 I'm going to give the attorneys just a

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1 few minutes to prepare their closing arguments.
2 I'm sure they are already prepared but maybe
3 they need a short bathroom break or something,
4 so we'll take a morning break at this time and
5 we'll -- it's not going to be a long break, so -
6 - we need to keep moving. Please retire to the
7 jury room. Don't discuss the case among
8 yourselves while you're in the jury room.

9 (JURY OUT @ 10:54 a.m.)

10 THE COURT: All right. Counsel, the
11 only thing I think left to discuss is the --
12 whether or not to give an involuntary
13 manslaughter charge.

14 I told you in chambers I will give the
15 voluntary manslaughter charge.

16 So let me -- Mr. Farrell (sic) or Mr.
17 Chapman, tell me what is involuntary about this
18 death/killing when your client says she didn't
19 do anything to kill him. I guess I need to
20 address this to Mr. Farrell, since Mr. Chaplin's
21 client has not testified.

22 MR. FARLEY: Your Honor, with all due
23 respect, it is Farley.

24 THE COURT: What did I say?

25 MR. FARLEY: Farrell.

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1 THE COURT: Will you call Dave
2 Farrell, tell him I'm going to start calling him
3 Mr. Farley.

4 MR. FARLEY: I apologize, Your Honor.
5 Your Honor, I would just say that we believe
6 Ms. Reese does deserve a charge of involuntary
7 manslaughter given the facts that have been put
8 forth by the witnesses in this case. We believe
9 she has done nothing that could have led to the
10 intentional death of the victim in this case.

11 THE COURT: We are not talking about
12 the intentional.

13 MR. FARLEY: Yes, sir.

14 THE COURT: We're talking about -- I
15 hate to use the word "accident", but it's very
16 similar to an accident.

17 MR. FARLEY: Well, again, Your
18 Honor, I think that's exactly the case. As far
19 as the actions of Ms. Reese, ---

20 THE COURT: She doesn't even admit that
21 she did anything to kill him.

22 MR. FARLEY: That's correct. So if
23 death is the end result, I think that has to be
24 considered involuntary manslaughter. She did
25 nothing to facilitate the death given the facts

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1 that she was involved with.

2 THE COURT: But there has to be a
3 killing. For involuntary manslaughter, there
4 has to be a killing, first, and then there has
5 to be an unlawful act, not intending to cause
6 death or great bodily harm.

7 If I assume that the unlawful act that
8 she admits is throwing the chair, she says it
9 didn't hit him. She says it didn't kill him.

10 Now, if she had said on the stand 'I
11 threw a chair, but I didn't mean to hit him but
12 it hit him and killed him', then I've got the
13 link between the killing and her act. But she
14 says none of that happened. She says she got
15 age angry and threw a chair that did not hit
16 him, so there's no killing as a result of
17 actions, involuntary actions. There has to be
18 both. There has to be a killing and it has to
19 be done involuntarily.

20 It's the shooting of an unintended
21 victim a mile away that the bullet comes down
22 and kills somebody.

23 But she doesn't admit the killing. She
24 admits an unlawful act but there's no killing.
25 It's got to be both to warrant an involuntary

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1 manslaughter charge.

2 MR. FARLEY: I understand.

3 THE COURT: If I look at the
4 testimony in the light most favorable to her and
5 if the jury believes everything she said,
6 there's still not an involuntary killing because
7 she doesn't admit to killing.

8 She says she didn't meant to kill him.
9 She says that if something killed him, it was
10 not me. So it's not to be a not guilty or
11 involuntary or voluntary or murder. So ---

12 MR. FARLEY: I understand, Your Honor.

13 THE COURT: That's the way I read the
14 case law.

15 MR. FARLEY: I understand, Your Honor.
16 Thank you.

17 THE COURT: All right. I respectfully
18 deny your request to charge involuntary because
19 there's been no involuntary killing. There's
20 been a -- all right.

21 MR. CHAPLIN: Your Honor.

22 THE COURT: Yes.

23 MR. CHAPLIN: I, too, made some
24 additional charges, requests for charges, if you
25 would please deny those on the record, I would

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1 appreciate it.

2 THE COURT: Well, I don't deny your --
3 I have a stack of papers here. I'm don't deny -
4 - I grant your Motion for voluntary
5 manslaughter.

6 MR. CHAPLIN: Thank you.

7 THE COURT: I deny you Motion for
8 involuntary manslaughter for the same reason.
9 (A), you're client didn't even testify about
10 anything.

11 MR. CHAPLIN: Yes.

12 THE COURT: He can't -- I can't tell
13 the jury that he involuntarily killed somebody
14 when they have no evidence.

15 MR. CHAPLIN: I understand.

16 THE COURT: And secondly, I don't
17 think the defense of others applies in this
18 case. I'd certain give reasonable doubt and
19 proximate cause.

20 MR. CHAPLIN: Thank you very much.

21 THE COURT: From the State?

22 MS. CAMPBELL: Nothing, Your Honor.
23 Could I possibly get a copy of your hand of one
24 is the hand of all charge, just because I want
25 to make sure I don't miss anything. The one I

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1 handed up was erroneous. I didn't mean to hand
2 that one up.

3 THE COURT: It's printing right now.

4 MS. CAMPBELL: Thank you, sir.

5 THE COURT: Just for timing purposes,
6 do you plan to open on the law?

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: I'd like to put some sort
9 of arbitrary time limits on this. How much time
10 do you need, Mr. Farley?

11 MR. FARLEY: I wouldn't take more than
12 twenty, twenty-five minutes.

13 THE COURT: Thirty minutes?

14 MR. FARLEY: Yes, sir.

15 THE COURT: Mr. Chaplin?

16 MR. CHAPLIN: Well, Your Honor, I would
17 say thirty to forty-five minutes.

18 THE COURT: I'm going to tweak you at
19 thirty minutes. I won't sit you down but I'll
20 remind you that you're -- and that would have to
21 apply to your closing, your final argument.

22 MS. CAMPBELL: Final argument, yes,
23 sir.

24 THE COURT: All right.

25 MR. CHAPLIN: So how long will she have

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1 disregard human life. Kicking the feet out from
2 under someone, kicking him while he's down,
3 beating him with a chair and leaving him in the
4 snow alone, unable to speak is disregard for
5 human life and the definition of murder.

6 As a solicitor, the State of South
7 Carolina and Kenneth Mack's family has given me
8 and put in me the faith to get justice, to make
9 justice happen. I now give that to you.

10 You all now have the choice, the choice
11 whether to let them go free for what they did or
12 to convict them for killing Kenneth Mack. I ask
13 that you hold them responsible. That you come
14 back with a verdict that speaks the truth, a
15 verdict that makes justice happen, a verdict of
16 Guilty of murder by Henry Gray and Robin Reese,
17 a verdict of Guilty of lynching in the first
18 degree because Robin Reese and Henry Gray took
19 the life of Kenneth Mack. Find them guilty
20 because they are guilty. Thank you.

21 THE COURT: Madam Forelady, Ladies
22 and Gentlemen of the jury, you've heard all the
23 testimony in this case. You've heard all the
24 arguments of counsel, both for the State and the
25 defendants. You'll take to the jury room all

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1 the evidence in this case these been introduced.

2 Now, from time to time, jurors ask me
3 to send me a copy of what I'm about to tell you
4 or go over with you. Well, generally speaking,
5 I'm not able to do that. In some states it is
6 done. It's not done generally in South Carolina
7 so I ask you to pay close attention to what I
8 now tell you.

9 I'll remind you of a few things that I
10 mentioned in the opening remarks. Under our
11 Constitution and Code of Laws, only the jury can
12 make findings of fact. I'm not permitted to
13 indicate to you how I might feel about the
14 facts. If I have done or said anything in this
15 case which would indicate to you that I have an
16 opinion concerning the facts of this case, then
17 you should disregard that. You must
18 independently weigh the evidence presented in
19 this trial and render a verdict based solely on
20 that evidence.

21 The same Constitution and laws that
22 designate and make you the finders of fact also
23 make me the instructor of the law. If you have
24 some idea as to what the law is or what the law
25 ought to be and it does not agree with what I

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1 now tell you the law is, you're obligated under
2 the oath that you have taken to abandon this
3 preconception of the law and accept it and apply
4 the law precisely as I now state it to you.

5 As you know, the indictments in this
6 case allege several different offenses against
7 the defendants. Both defendants are charged
8 with lynching in the first degree and murder.

9 Each indictment charges a separate and
10 distinct offense. You must decide each
11 indictment for each defendant separately on the
12 evidence and the law applicable to it
13 uninfluenced by your decision as to the other
14 indictment.

15 The defendants may have be separately
16 convicted or acquitted on any or all of the
17 offenses charged.

18 You'll be asked to write a separate
19 verdict of Guilty or Not Guilty for each
20 indictment and for each defendant.

21 Now, I reminded you again the fact that
22 the defendants were arrested, charged and
23 indicted in this case, cannot be considered as
24 evidence of guilt in this case, not does it
25 create any presumption of inference of guilt.

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1 The indictment, again, is only the formal legal
2 document by which the charges are brought into
3 court and made against a defendant.

4 Now, each defendant has pled not guilty
5 to each of these indictments. That plea puts
6 the burden on the State to prove the defendant
7 is guilty. A person charged with committing a
8 criminal offense in South Carolina is never
9 required to prove himself or herself innocent.
10 I charge you this is an important rule of law.
11 The defendants in a criminal case no matter what
12 the seriousness of the charge may be will always
13 be presumed to be innocent of the crime for
14 which this indictment was issued unless guilt
15 has been proven to you beyond a reasonable
16 doubt.

17 This presumption of innocence does not
18 end when you begin your deliberations. In other
19 words, it accompanies the defendant throughout
20 the trial and until you reach a verdict of guilt
21 based on evidence satisfying you of that guilt
22 beyond a reasonable doubt.

23 The presumption of innocence again is
24 not a mere legal theory. It's not just a legal
25 phrase. It is a substantial right to which

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1 every defendant is entitled until and unless you
2 the jury are satisfied from the evidence of the
3 defendant's guilt beyond a reasonable doubt.

4 Well, what is a reasonable doubt in the
5 law? The attorneys have attempted to explain to
6 it you. A reasonable doubt is the kind of doubt
7 which would cause the reasonable person to
8 hesitate. I'll say that again. A reasonable
9 doubt is the kind of doubt that would cause a
10 reasonable person to hesitate to do something,
11 and in this case, to convict.

12 The State has the burden of proving the
13 defendant's guilt beyond a reasonable doubt.
14 Some of you may have served as jurors in civil
15 cases where you were told that it's only
16 necessary to prove a fact is more likely true
17 than not true, such as by the greater weight or
18 the preponderance of the evidence. In criminal
19 cases, however, the State's proof must be more
20 powerful than that. It must be beyond a
21 reasonable doubt.

22 To think that a defendant is probably
23 guilty or the circumstances are suspicious is
24 not enough. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the

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1 defendant's guilt. Now, there are very few
2 things in this world that we know with absolute
3 certainty. In criminal cases the law does not
4 require proof that overcomes every possible
5 doubt.

6 If based on your consideration of the
7 evidence you are firmly convinced the defendant
8 is guilty of the crime(s) -- or either defendant
9 is guilty of the crime -- charged, you must find
10 that defendant Guilty.

11 On the other hand, if you think there
12 is a real possibility that the defendants
13 separately are not guilty, you must give each of
14 those defendants the benefit of the doubt and
15 find him or her Not Guilty.

16 Now, there are two types of evidence
17 which are generally presented during a trial.
18 They are called direct evidence and
19 circumstantial evidence. Direct evidence is
20 merely the testimony of a person who claims to
21 have actual knowledge of a fact, such as an
22 eyewitness. It's evidence which immediately
23 establishes the main fact to be proved.

24 On the other hand, circumstantial
25 evidence is proof of a chain or series of facts

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1 indicating the existence of some fact. It's
2 evidence which immediately establishes
3 collateral facts from which the main fact may be
4 inferred. Circumstantial evidence is based on
5 inference, not on personal knowledge or
6 observation.

7 The law makes absolutely no distinction
8 between the weight or value to be given to
9 either direct or circumstantial evidence, nor is
10 a greater degree of certainty required of
11 circumstantial evidence than of direct evidence.
12 You must weigh all the evidence in the case and
13 after weighing all the evidence, if you're not
14 convinced of the guilt of the defendants beyond
15 a reasonable doubt, you must find the defendants
16 guilty -- not guilty.

17 Now, necessarily you must determine the
18 credibility of witness who is have testified in
19 this case. There were a lot of witnesses in
20 this case. Credibility simply means
21 believability. It becomes your duty as jurors
22 to analyze and evaluate the evidence and
23 determine which evidence convinces you of its
24 truth.

25 In determining the believability of

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1 witnessed who have testified, you may believe
2 one witness over several witnesses or several
3 witnesses over one. You may believe a part of
4 the testimony of a witness and reject the
5 remaining part of the testimony of that same
6 witness. You may believe the testimony of a
7 witness in its entirety or reject the testimony
8 of a witness in its entirety. You may consider
9 whether any witness has exhibited to you any
10 interest, bias, prejudice or other motive in
11 this case. You may also consider the appearance
12 and the manner of the witness while on the
13 witness stand.

14 Now speaking of witnesses, a person who
15 has a criminal record, and there were some in
16 this case, is competent to testify during the
17 trial. Past record does not affect the ability
18 of that witness to testify. Past record of a
19 witness may only be considered by you, if at
20 all, in determining the witness's believability.
21 Remember, you are the sole judges of the facts
22 in this case and of the believability of any and
23 all witnesses.

24 Also, we've had expert witnesses in
25 this case. Now, the Rules of Evidence, those

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1 are the rules that guide our trial principles,
2 do not normally allow for witnesses to offer
3 opinions or conclusions. Normally witnesses
4 testify to facts, but an exception to this rule
5 exist for witnesses that we call an expert, and
6 we had some in this case; a witness, who by
7 education and/or experience has become expert in
8 some art or science or profession may state on
9 opinion to you as to relevant and material
10 matter in which the witness claims to be an
11 expert and may also state the reasons for that
12 opinion.

13 You should consider any expert opinion
14 received in evidence in this case like any other
15 evidence and give it the weight you think it
16 deserves. If you decide that the opinion of an
17 expert witness is not based upon sufficient
18 education and experience or if you conclude that
19 the reasons given in support of the opinion are
20 not sound or that the opinion is out weighed by
21 other evidence, you may disregard that opinion
22 in its entirety.

23 In other words, an expert witness's
24 testimony is to be given no greater weight than
25 that of any other witness simply because the

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1 witness is an expert. Further you're not
2 required to accept an expert's opinion even
3 though it might not be contradicted.

4 Now, in order to establish criminal
5 liability, criminal intent is required.
6 Criminal intent must be proven by the State
7 beyond a reasonable doubt. Criminal intent is
8 always a matter that must be determined by the
9 jury from the circumstances surrounding the
10 situation. There's no way to prove intent to a
11 mathematical certainty. There is no way to
12 prove that medical science can dissect a
13 person's brain and determine actually person had
14 in mind, so the law says that criminal intent
15 may be inferred from the circumstances shown to
16 have existed at the time and place. This is how
17 you make a determination of whether or not the
18 element requiring intent was present. It's not
19 necessary to establish intent by direct or
20 positive evidence but intent may be established
21 by inference, in the same way as any other fact
22 by taking into consideration the acts of the
23 party and all the facts and circumstances of the
24 case.

25 In other words, criminal intent is a

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1 mental state of conscious wrongdoing. It's up
2 the you to determine what the defendants
3 intended to do based on the circumstances shown
4 to have existed.

5 Now, the attorneys have talked to you
6 about the hand of one or the hand of all -- the
7 hand of all. If a crime is committed by two or
8 more people who are acting together in
9 committing a crime, the act of one is the act of
10 all. A person who joins with another to commit
11 an unlawful act is criminally responsible for
12 everything done by the other person which
13 happens as a probable or natural consequence of
14 the acts done in carrying out the common plan
15 and purpose.

16 For example, two people can be guilty
17 of the killing another person when only one of
18 the two had a gun. There's only one bullet,
19 only one shot fired that caused the death.
20 If two or more people are acting together
21 assisting each other in committing the offense'
22 the act of one is the act of all; or sometimes
23 referred to as the hand of one is the hand of
24 all.

25 Prior knowledge that a crime is going

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1 to be committed without more is not sufficient
2 to make a person guilty of that crime. Mere
3 knowledge that another person is going to commit
4 crime, even if the defendant is present when the
5 crime is committed, is also not sufficient to
6 convict a defendant as a principal. Guilt as
7 the principal is shown by actual or constructive
8 presence at the scene as a result of prior
9 arrangement. The State must dispute beyond a
10 reasonable doubt by competent evidence the
11 theory of the hand of one is the hand of all.

12 A principal in a crime is one who
13 either actually commits the crime or who is
14 present aiding, abetting or assisting in
15 committing the crime.

16 When a person does an act in the
17 presence of and with the assistance of another,
18 the act is done by both. Where two or more
19 acting under common plan or intent are present
20 at the commission of a crime, it does not matter
21 who actually commits the crime. All are guilty.
22 Presence at the commission of a crime means to
23 be sufficiently near the crime as aid, abet and
24 assist in the crime. However, mere presence at
25 the scene of the crime obviously is not

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1 sufficient to convict one as a principal on the
2 theory of aiding and abetting.

3 Intent is also a necessary element, for
4 there must have a common design or intent to
5 commit the crime and the crime must have been
6 committed with the person aiding and abetting by
7 some overt act. Intent meaning intending the
8 result which actually occurs. It's not
9 accidentally, involuntarily. The State must prove
10 these elements beyond a reasonable doubt.

11 Well, let me defined murder for you.
12 Each defendant is charged separately with
13 murder. The State must prove beyond a
14 reasonable doubt that the defendant(s) killed
15 another person with malice aforethought.

16 Malice is hatred, ill will or hostility
17 towards another person. It is the intentional
18 doing of a wrongful act without just cause or
19 excuse and with an intent to inflict an injury
20 under circumstances that the law will infer an
21 evil intent.

22 Malice aforethought does not require
23 that malice exist for any particular time before
24 the act is committed but malice must exist in
25 the mind of the defendant(s) just before and at

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1 the time the act is committed. Therefore there
2 must have a combination of the evil intent --
3 the previous evil intent -- and the act.

4 Malice does not necessarily impart ill
5 will towards an individual but signifies,
6 rather, in general a malignant recklessness of
7 the lives and safety of others, or a condition
8 of mind which shows a heart, regardless of
9 social duty, fatally bent on mischief.

10 Malice need not exist for any
11 appreciable time before the commission of the
12 act or killing occurs. Malice may be conceived
13 at the very moment that the fatal blow is
14 stricken.

15 Malice aforethought may be express or
16 inferred. These terms, "express" or "inferred"
17 do not mean different kinds of malice but merely
18 mean the manner in which the malice may be shown
19 to exist. That's either by direct evidence or
20 by inference from the facts and circumstances
21 which are proved.

22 Express malice is shown when a person
23 speaks words or expresses hatred or ill will for
24 another, or when a person prepared beforehand to
25 do an act which was later accomplished; for

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1 example, lying in wait for a person. Or other
2 acts of preparation that go to show that the
3 deed was within the defendant's mind would be
4 express malice. Malice may be inferred by
5 conduct showing a total disregard of human life.

6 Now, just as in some states you may
7 have -- either on television or otherwise read
8 that there are lesser-included offenses of
9 murder. For example, in some states there is
10 murder in the first degree, murder in the second
11 degree, murder in the third degree. You may
12 have heard those terms. In South Carolina we
13 call the lesser-included offense of murder
14 voluntary manslaughter. That's not murder in
15 the second degree, it's not murder in the third
16 degree, it's called voluntary manslaughter. This
17 is included within our law as a lesser-included
18 offense of murder.

19 So if find that the State has failed to
20 prove beyond a reasonable doubt that the
21 defendant(s) has committed murder, you may
22 consider whether the State has proved beyond a
23 reasonable doubt that the defendant(s) committed
24 voluntary manslaughter. To prove voluntary
25 manslaughter, the State must prove beyond a

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1 reasonable doubt that the defendant took the
2 life of another in the sudden heat of passion
3 based upon sufficient legal provocation, both
4 heat of the passion and sufficient legal
5 provocation must be present at the time of the
6 killing to constitute voluntary manslaughter.

7 Sudden heat of passion may for a time
8 affect a person's self-control and temporarily
9 disturb a person's reason. The sudden heat of
10 passion must be the type that would make an
11 ordinary person unable to coolly reflect on his
12 action and would produce an uncontrollable
13 impulse to do violence.

14 Sufficient legal provocation must be
15 the type that could cause a person of ordinary
16 reason and caution to become enraged and to lose
17 control temporarily. The provocation need for
18 voluntary manslaughter must come from some act
19 or related to the victim. However, words alone,
20 however vulgar or insulting, are not enough to
21 be legal provocation. The exercise of a legal
22 right, no matter how offense it is to another,
23 is never sufficient legal provocation for
24 voluntary manslaughter.

25 If the heat of passion had cooled or if

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1 there was enough time between the provocation,
2 if any, and the killing for the passion of a
3 reasonable person to cool, the killing would not
4 be voluntary manslaughter. In deciding whether
5 a reasonable person would have had enough time
6 to cool off, you should consider all the
7 circumstances surrounding the killing. You may
8 consider the nature of the provocation, if any,
9 the defendant's mental and physical state, and
10 the circumstances and relationships between the
11 parties.

12 Now, where a person inflicts a fatal
13 injury on another person and that person dies at
14 a later time, you must be convinced beyond a
15 reasonable doubt that the infliction of the
16 injury was the proximate cause of the victim's
17 death.

18 Proximate cause is the direct cause.
19 It is the immediate cause. It is the efficient
20 cause. It is cause without which the death of
21 the victim would not have resulted. There must
22 be a change of causation from the time of the
23 injury until the time of the victim's death.
24 Proximate cause does not necessarily mean that
25 it occurred immediately prior to the death.

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1 There may be more than one proximate
2 cause. The acts of two of more persons may
3 combine together to be a proximate cause of the
4 death of a person. A defendant's act may be
5 regarded as a proximate cause if it is a
6 contributing cause to the death of a victim.

7 The fact that other causes also
8 contributed to the death of the victim does not
9 relieve the defendants from responsibility. The
10 defendant's act need not be the sole cause
11 of death but it must be the proximate cause
12 creating -- I'm sorry -- contributing to the
13 death of the victim.

14 The second charge is lynching in the
15 first degree. Any act of violence inflicted by
16 a mob upon the body of another person which
17 results in the death of the person shall
18 constitute the crime of lynching.

19 A "mob" is defined as the assemblage of
20 two or more persons, without the authority of
21 law, for the premeditated purpose and with the
22 premeditated intent of committing an act of
23 violence upon the person of another. To
24 constitute a mob under the statute, the
25 assemblage need not have formed with the

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1 premeditated person -- formed with the
2 premeditated purpose and intent of committing an
3 act of violence on the person of another. But
4 the requisite purpose and intent may be formed
5 after the participants are assembled.

6 It is permissible to infer that all
7 persons present when an act of violence is
8 committed aid and abetted the crime and are
9 guilty as principals.

10 Now, Ladies and Gentlemen, I want to
11 emphasize this next point. I instruct you and
12 emphasize the fact that the defendant Henry Gray
13 did not testify I this case is not a factor to
14 be considered by you in any way in your
15 deliberations and your consideration on the
16 question of the guilt or innocence of Henry
17 Gray. It must not be considered by you in any
18 manner whatsoever.

19 A defendant has the Constitutional
20 right to remain silent and the assertion of this
21 right must not be considered by you in your
22 deliberations. I repeat, under your oath, you
23 are to draw no conclusion whatsoever from the
24 fact that the defendant Henry Gray in this case
25 did not testify. The fact that this defendant

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1 did not testify should not even be discussed in
2 the jury room.

3 Burden of proof, as I have stated to
4 you, it is on the State to prove his
5 innocence -- is on -- as stated to you, it is on
6 the State to prove his guilt. The defendant is
7 not required to prove his innocence. The burden
8 of proof remains on the State to prove guilt
9 beyond a reasonable doubt.

10 Now, Ladies and Gentlemen, you've also
11 the heard testimony in this chase concerning the
12 penalty a person can receive or serve for crimes
13 alleged in these indictments. In determining
14 the guilt or innocence of the defendants, you
15 cannot consider any possible penalty for a
16 particular crime. Punishment for the crimes is
17 a matter for me to determine and should never be
18 considered by you in any way whatsoever in
19 arriving at a fair and impartial verdict as to
20 the guilt or innocence of the defendant(s).

21 Now, in just a minute, you will begin
22 your deliberations. I'll remind you that during
23 your deliberations you must not and cannot
24 communicate with anyone outside the jury room.
25 We cannot provide any information to you, other

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1 information to you about the case other than
2 you've already received. You may not use any
3 reference materials, dictionaries, encyclopedias
4 or a Bible or any internet resource. If you
5 learn that any juror has violated this
6 instruction, you're to report that directly to
7 the court immediately.

8 Now, as I said, Ladies and Gentlemen,
9 nothing I may have said during the course of
10 this trial has been in any way intended to
11 express or suggest a view of the cases or an
12 opinion of mine as to the facts in the case.
13 If any of my actions or words have so seemed to
14 indicate, you will disregard and form your own
15 opinion as to these matters. I'm required to
16 declare the law, as I've done in these
17 instruction, to help guide you to a just and
18 lawful verdict. Whether some of these
19 instruction will apply will depend on what you
20 find to be the facts. The fact that I've
21 instructed on various subjects in this case must
22 not when it taken by you has indicating an
23 opinion of this court as to what you should find
24 to be the facts or what your verdict should be.

25 Now, there are two potential verdicts

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1 to each charge which you may find in this case:
2 guilty and not guilty. There is no significance
3 whatsoever in the order in which I state these
4 possible verdicts. It's simply one must be
5 stated first.

6 All twelve of you must agree on the
7 verdict in each case. Your verdict cannot be
8 based on sympathy, passion, prejudice, emotion
9 or any other consideration not in evidence in
10 this case.

11 Madame Forelady, I have prepared two
12 verdict forms, one for each defendant. They
13 are, I hope, fairly straightforward.

14 First as to both defendants on the
15 charge of lynching in the first degree, once you
16 have reached the unanimous verdict, please
17 indicate guilty or not guilty as to each
18 defendant.

19 As to the charge of murder, once the
20 jury has concluded a unanimous verdict, please
21 indicate whether you find the defendant -- each
22 of the defendants -- guilty or not guilty of
23 murder.

24 If you do not find the defendants
25 guilty of murder, you may consider the charge of

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1 voluntary manslaughter, in which case you also
2 would find by unanimous consent the defendants
3 guilty or not guilty of voluntary manslaughter.

4 Once that is concluded, if you will
5 sign and date the verdict form, knock on the
6 jury room door and we will receive your verdict.

7 Now, Ladies and Gentlemen, I'm going to
8 ask you to retire to the jury room. Your
9 lunches are here. It's up to you whether you
10 want to begin deliberations before you eat or
11 after you eat or during -- while you eat.
12 I ask you not to begin your deliberations until
13 you have received the evidence and the verdict
14 forms. Once you have the verdict forms and the
15 evidence, the bailiffs are going to bring them
16 to you, you may begin your deliberations. Good
17 luck to all of you. Thank you very much.

18 (JURY OUT @ 1:43 p.m.)

19 THE COURT: Any exceptions or
20 objections from the State?

21 MS. CAMPBELL: No, sir.

22 THE COURT: From the defense.

23 MR. FARLEY: No.

24 MR. CHAPLIN: No.

25 THE COURT: All right. Counsel, if

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1 you would please review the evidence with the
2 court reporter. We will stand at-ease until we
3 hear from the jury.

4 (REVIEW OF EVIDENCE)

5 (JURY IN DELIBERATION @ 1:54 p.m.)

6 THE COURT: I need to dismiss the
7 alternate. Any objection?

8 MS. CAMPBELL: You know my position --
9 without objection.

10 THE COURT: I can't find defense
11 counsel, but I'm going to go ahead and do it.

12 MS. CAMPBELL: Thank you judge.

13 MS. SIMPSON: Thank you.

14 THE COURT: No, hold on, I want one of
15 you to stay and witness. Is it -- yes, juror --
16 you're Juror Number 53 and Number 207, and I
17 still am not going to call you by your name.

18 Obviously the jury has begun
19 deliberating and you were chosen as alternates
20 to fill in if somebody were unable to continue
21 the trial. I will tell you many times we have a
22 problem with a juror -- I mean, we have a
23 problem with a juror. Jurors have problems,
24 cars break down, jurors get sick, any number of
25 reasons why we need alternates to sit and be

State of South Carolina v. Henry Gray et al
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1 (JURY IN @ 3:30 p.m.)

2 BAILIFF: Your Honor, the jury
3 is present.

4 THE COURT: Thank you very much.
5 Madam Forelady, has the jury reached a verdict?

6 THE FOREMAN: We have, Your Honor.

7 THE COURT: Would you please hand it
8 to the bailiff.

9 THE FOREMAN: (Tenders)

10 THE COURT: (Upon review), all right.
11 Madam clerk, publish the verdicts, please.

12 THE CLERK: Indictment numbers
13 2010-GS-40-39 and 40, indictment numbers
14 2011-GS-40-4915, and 4916, the State of South
15 Carolina versus Henry Gray and Robin Reese,
16 (reading):

17 "We, the jury, by unanimous verdict
18 find, as follows:

19 As to Defendant Henry Gray, as to the
20 charge of lynching in the first degree,
21 Indictment 10-40-0039, we find the Defendant,
22 Henry L. Gray, guilty.

23 As to the charge of murder, Indictment
24 11-40-4915, we find the Defendant, Henry L.
25 Gray, guilty."

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1 This is signed by the foreperson, Juror
2 11, March 2nd, 2012.

3 As to the Defendant Robin Gray Reese,
4 (reading):

5 "We, the jury, by unanimous verdict
6 find, as follows:

7 As to Indictment 10-40-0040, lynching
8 in the first degree, we find the Defendant,
9 Robin Gray Reese, guilty.

10 As to the charge of murder, Indictment
11 11-40-4916, we find the Defendant, Robin Reese,
12 guilty."

13 This is signed by the foreperson, Juror
14 11, March 2nd, 2012.

15 Madam Foreperson, are these your
16 verdicts and the verdict of the entire jury?

17 FOREMAN: Yes, they are.

18 THE COURT: Is there a desire to
19 poll the jury?

20 MR. CHAPLIN: Please poll the jury.

21 MR. FARLEY: Please, Your Honor.

22 THE COURT: Madam clerk, please poll
23 the jury.

24 CLERK: Ladies and gentlemen of the
25 jury, I'm going to ask you two questions

State of South Carolina v. Henry Gray et al
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1 regarding the verdict. If you'll just answer
2 yes or no to both questions.

3 Juror Number 11, were these your
4 verdicts?

5 JUROR: Yes.

6 CLERK: Are these still your
7 verdicts?

8 JUROR: Yes.

9 CLERK: Juror Number 294, were these
10 your verdicts?

11 JUROR: Yes.

12 CLERK: Are these still your
13 verdicts?

14 JUROR: Yes.

15 CLERK: Juror Number 164, were these
16 your verdicts?

17 JUROR: Yes.

18 CLERK: Are these still your
19 verdicts?

20 JUROR: Yes.

21 CLERK: Juror Number 293, were these
22 your verdicts?

23 JUROR: Yes.

24 CLERK: Are these still your
25 verdicts?

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1 JUROR: Yes.

2 CLERK: Juror Number 162, were these
3 your verdicts?

4 JUROR: Yes.

5 CLERK: Are these still your
6 verdicts?

7 JUROR: Yes.

8 CLERK: Juror Number 94, were these
9 your verdicts?

10 JUROR: Yes.

11 CLERK: Are these still your
12 verdicts?

13 JUROR: Yes.

14 CLERK: Juror Number 19, were these
15 your verdicts?

16 JUROR: Yes.

17 CLERK: Are these still your
18 verdicts?

19 JUROR: Yes.

20 CLERK: Juror Number 16, were these
21 your verdicts?

22 JUROR: Yes.

23 CLERK: Are these still your
24 verdicts?

25 JUROR: Yes.

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1 CLERK: Juror Number 114, were these
2 your verdicts?

3 JUROR: Yes.

4 CLERK: Are these still your
5 verdicts?

6 JUROR: Yes.

7 CLERK: Juror Number 309, were these
8 your verdicts?

9 JUROR: Yes.

10 CLERK: Are these still your
11 verdicts?

12 JUROR: Yes.

13 CLERK: Juror Number 6, were these
14 your verdicts?

15 JUROR: Yes.

16 CLERK: Are these still your
17 verdicts?

18 JUROR: Yes.

19 CLERK: Juror 155, were these your
20 verdicts?

21 JUROR: Yes.

22 CLERK: Are these still your
23 verdicts?

24 JUROR: Yes.

25 CLERK: The jurors have been polled,

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1 Your Honor.

2 THE COURT: All right. All right.

3 Ladies and gentlemen of the jury, just because
4 of our sort of backed up trial schedule here in
5 Richland County, it's a very busy county, we
6 don't have the luxury as they do on television
7 in Law & Order for telling you that the
8 defendants will be sentenced later. They're
9 going to be sentenced today. That process will
10 take about another fifteen, twenty, thirty
11 minutes. I need for a few minutes to get the
12 paperwork done before sentencing occurs.
13 Sentencing will be done today.

14 I will tell you that based on your
15 verdict of murder, the minimum mandatory
16 sentence in the state of South Carolina is a
17 thirty year sentence. Of course it runs
18 anywhere from thirty years to life.

19 The sentence range -- you probably
20 heard that during the trial, of the lynching
21 charge is five to forty years.

22 The fact that the murder verdict
23 carries a mandatory minimum of thirty years
24 doesn't allow this court much leeway in terms of
25 sentencing, particularly on the lynching charge.

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1 shall reap." God bless."

2 Anthony Mack, read by Nakia Brown with
3 the Solicitor's office.

4 THE COURT: Anything further?

5 MS. CAMPBELL: No, sir.

6 THE COURT: Mr. Farley, do you have
7 anything you wish to say on behalf of your
8 client?

9 MR. FARLEY: Yes, Your Honor. I know
10 Ms. Reese is very upset at this moment. We
11 would hope that given that you've sat through
12 this trial for the last five days you would --
13 when you go to give your sentence on Ms. Reese,
14 you would try to give the most lenient sentence
15 you possibly can. Thank you, Your Honor.

16 THE COURT: Robin Reese, do you have
17 anything you wish to say?

18 DEFENDANT REESE: To the family, my
19 heart goes out to you all. To sit up here and
20 say that I believe I even played a part in
21 taking his life, I don't feel I did -- but I
22 apologize, and I just ask for your forgiveness.

23 THE COURT: All right. Ms. Reese, the
24 jury having convicted you of murder and lynching
25 in the first degree, the murder carries a

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1 mandatory minimum of thirty (30) years. On both
2 charges you shall be committed to the State
3 Department of Corrections for a period of thirty
4 (30) years. Both sentences to run concurrent,
5 you are given credit for time served if you
6 served any time before today. Good luck to you,
7 ma'am.

8 (DEFENDANT REESE EXITS COURTROOM)

9 THE COURT: All right, Solicitor.

10 MS. CAMPBELL: May it please the
11 court, Your Honor, Mr. Gray's prior record
12 starts back in 1989. He received an armed
13 robbery conviction for which he received a YOA.

14 THE COURT: '89, YOA.

15 MS. CAMPBELL: Yeah, and he has a
16 '94 YOA revocation. I'm just going through the
17 convictions.

18 In 1998 -- actually, the conviction was
19 in 2000 for PWID cocaine. That was his first
20 drug offense.

21 In 2000, he was convicted of two counts
22 of criminal domestic violence.

23 His second drug conviction was in 2005
24 for PWID cocaine. Looks like a third offense.
25 It's missing an offense.

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1 Then, Your Honor, he has pending right
2 now, a trafficking in marijuana and trafficking
3 in cocaine charge that are still pending in our
4 office, that he picked up after this charge.

5 THE COURT: Mr. Chaplin?

6 MR. CHAPLIN: Yes, sir. As far as
7 mitigation is concerned, Your Honor, are you
8 ready for that now?

9 THE COURT: Yes, sir..

10 MR. CHAPLIN: Thank you very much.
11 Your Honor, I have met with Mr. Gray on numerous
12 occasions as we got ready for this trial.
13 Mr. Gray has been an good person to work with.
14 He's a good man and he's got a family out here
15 and I know that he feels badly what about has
16 occurred to the Mack family as well. He's a
17 little choked up right now and can't really
18 express a lot of that, but we're asking that you
19 show some leniency and mercy on him, Your Honor.
20 We would ask that whatever is a pending, all of
21 that be resolved at this time.

22 (TELEPHONE RINGING)

23 THE COURT: Please turn that off.
24 You'll just have to that up with the solicitor's
25 office. That's not a matter for this court.

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Jury Trial of February 27-March 2, 2012
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1 MR. CHAPLIN: That's right.

2 THE COURT: Mr. Gray, do you have
3 anything you want to say?

4 DEFENDANT GRAY: To the Mack family, I
5 ask the Lord for forgiveness for what they say I
6 did, and I ask you for your forgiveness. I'm
7 not a killer. I'm really not. I have kids, so
8 I can understand how you feel. I'm asking
9 you'll have -- and I deeply apologize for your
10 loss, deeply.

11 THE COURT: All right. Mr. Mack, the
12 same sentence as your sister on both charges,
13 that you be committed to the State Department of
14 Corrections for a period of thirty (30) years.
15 Both sentences to run concurrent. I'll give you
16 credit for time served. Any time served prior
17 to now will be credited against your sentence.

18 Do you happen to know how long that is,
19 Mr. Chaplin.

20 MR. CHAPLIN: It's been since ---

21 THE COURT: It will be important to
22 him later.

23 MR. CHAPLIN: Yes, sir. Your
24 Honor, I can't say exactly what the date is
25 right now.

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1 THE COURT: Well, I'm going to leave
2 it up to the Department of Corrections to
3 calculate it. They'll do it for you, but it's a
4 lot easier and it's more helpful to put it on
5 the sentencing sheet.

6 MR. CHAPLIN: If you could give me a
7 few minutes to verify that. I'll be glad to do
8 it -- since July of 2011, Your Honor.

9 MS. CAMPBELL: I'll check it, Your
10 Honor, and get back to you.

11 THE COURT: Well, we turn in these
12 sentencing sheets in.

13 MS. CAMPBELL: Can I bring it to you in
14 five minutes?

15 MR. CHAPLIN: July 15th, Your Honor.

16 THE COURT: All right. I'm going to
17 give that to you.

18 MS. CAMPBELL: 2011.

19 THE COURT: Good luck to you Mr. Gray.

20 (DEFENDANT GRAY IN CUSTODY)

21 THE COURT: That concludes this
22 matter.

23 (TRIAL CONCLUDED)

24

25

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WITNESSES

✓ (S) PEGRAM - CPD

ARREST WARRANT NUMBER

DP11156

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 05 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS4004915

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

42

THE STATE

vs.

Henry L Gray

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST
A TRUE COPY

D. J. [Signature]
SOLICITOR, FIFTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette Williams
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Offices

92012-03-22 11:44

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 5, 2011,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Henry L Gray did in Richland County, on or about February 13, 2010,
willfully, feloniously, and intentionally kill the victim, KENNETH MACK, with
malice aforethought, either express or implied, by means of PHYSICAL
ASSAULT, and the victim did die as a proximate result thereof in Richland
County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as
amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

P 4/7

WITNESSES

(S) Inv. W. Pegram, CPD

ARREST WARRANT NUMBER

K642288

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date

MAR 11 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-0039

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2010

42

**THE STATE
vs.**

HENRY L GRAY

Indictment for

LYNCHING 1ST DEGREE

SC Code: 18-03-0210

CDR Code: 0312

CLASS Felony-Exempt

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

w Offices

922 2012-03-22 11:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT
LYNCHING 1ST DEGREE

At a Court of General Sessions, convened on March 10, 2010, the Grand Jurors of Richland County present upon their oath:

LYNCHING, FIRST DEGREE

CDR: 0313 16-03-0220

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Amended by
ORDER
G. L. L. J.

That HENRY L GRAY did in Richland County on or about February 13, 2010, band together with two or more persons thus constituting a mob for the premeditated purpose and intent of inflicting violence upon the body of Kenneth Mack, such violence resulting in the death of Kenneth Mack. All in violation of Section 16-03-0220, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. B. Giese
WARREN B. GIESE, SOLICITOR

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT FORMPage 1 of 3Date: 02-16-2010 Time: 1046 PM Place: #1 Justice Sq CMA J.C. 29201I am KARA CHASE My birthday is 02-22-1980My address and phone number are: CMA J.C. 29201 (No Phone)I am giving this statement concerning FIGHTto R.C. MISCACKEN who has identified himself as INVESTIGATOR

I saw the victim in between the F & G building of Gonzales Garden having a conversation with another man. The other man grabbed the victim and went to walk him down the sidewalk. The victim snatched back and the other man swept the victim from under his feet causing the victim to hit his head on the pavement. A few seconds later a female runs up the street saying, "that's him". She begins kicking the man repeatedly picking up an old metal chair throwing it on top of the victim. The other man continued to kick & stomp the man in his face once the female stopped. The victim layed on the ground the whole time this was occurring.

Sworn and subscribed to me this
16 day of FEBRUARY 2010NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 03-10-2011ISI Kara Chase

ISI _____

, KARA CHASE received a copy of this statement consisting of 3 pagesfrom R.C. MISCACKEN ISI Kara Chase

2 of 3

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

Q DO YOU KNOW THE 'VICTIM'?

A NO

Q DO YOU KNOW THE MAN THAT WAS FIGHTING THE VICTIM?

A I know him as SIX from Gonzales Garden.

Q DO YOU KNOW THE FEMALE THAT RAN UP AND BEGAN KICKING THE VICTIM AND THREW THE METAL CHAIR ON THE VICTIM?

A SIX IS SISTER

Q DID YOU HEAR ANY CONVERSATION BETWEEN THE VICTIM AND THE PEOPLE ASSAULTING HIM?

A y's. The victim said, "I'm not not going anywhere just do what you're going to do to me here."

Q DO YOU KNOW OF ANY OTHER WITNESS TO THIS FIGHT?

A Sanovia, Diane, & Donetti

Q DESCRIBE THE CHAIR THAT THE FEMALE HIT THE VICTIM WITH.

A A metal rusty old chair (lawn)

Q WHERE DID YOU LAST SEE THE CHAIR?

Sworn and subscribed to me this

16 day of FEBRUARY 20 20

ISI Kara Chase

NOTARY PUBLIC OF SOUTH CAROLINA

ISI

MY COMMISSION EXPIRES: 02-10-2018

KEND CHASE received a copy of this statement consisting of 3 pages

from R.C. McNECKIE, ISI Kara Chase

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

A) In front of the E3 building.

Q) ANYTHING PARTICULAR ABOUT THE CLOTHING OF 'SIX' OR SIX'S
JISTER?

A) We had construction boots on.

Q) DO YOU KNOW 'SIX' OR SIX'S JISTER REAL NAME?

A) NO

Q) DID YOU SEE THE VICTIM FIGHT BACK OR ATTEMPT TO FLEE?

A) NO he didn't have a chance to fight back or flee.

Sworn and subscribed to me this

16 day of FEBRUARY 2010

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 03-10-2014

ISI Kara Chase

ISI

KARA CHASE

received a copy of this statement consisting of 3 pages

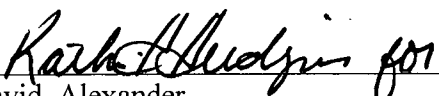
from R.C. MACKEN

ISI Kara Chase

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 1ST, 2013


David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 01 2013
SC Court of Appeals

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY GRAY,

APPELLANT

APPELLATE CASE NO. 2012-209426

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William Edgar Salter, III, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 1st day of October, 2013.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 1st day of October, 2013.

Patricia McKen (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.