

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
R. Keith Kelly, Circuit Court Judge

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S.C. SUPREME COURT

WILLIAM BROCKMEYER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000695

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUG. 3, 2011 AND AUG. 22-25, 2011	1
FINAL BRIEF OF APPELLANT	911
FINAL BRIEF OF RESPONDENT	938
FINAL REPLY BRIEF OF APPELLANT	995
<u>STATE V. BROCKMEYER</u> , OP. NO. 2733 (S.C. Supreme Court filed Nov. 27, 2013)	1015
APPLICATION FOR POST-CONVICTION RELIEF	1039
AMENDED POST-CONVICTION RELIEF APPLICATION	1046
RETURN	1055
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOV. 9, 2016	1063
ORDER OF DISMISSAL	1120
MOTION TO ALTER/AMEND JUDGMENT	1156
RETURN TO APPLICANT'S MOTION TO ALTER/AMEND JUDGMENT	1159
ORDER DENYING APPLICANT'S MOTION TO ALTER/AMEND JUDGMENT	1165

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-vs-

WILLIAM M. BROCKMEYER, JR.,

Defendant.

TRANSCRIPT OF RECORD
11-GS-32-1255 & 1257

August 3, 2011
August 22-25, 2011
Lexington, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Judge; and a jury.

A P P E A R A N C E S:

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Circuit Court Reporter

INDEX

1		
2	Motion Hearing 08/03/11	14
3	Trial 08/22/11	29
4	Jury Impaneled	60
5	Jury Sworn	64
6	Opening Statement by Mr. Hubbard	64
7	Opening Statement by Mr. Madsen	73
8	State Rests	688
9	Directed Verdict by Mr. Mauldin	689
10	Questioning of the Defendant	691
11	Questioning of the Defendant	737
12	Directed Verdict by Mr. Mauldin	823
13	Jury Charge	827
14	Closing Argument by Mr. Mauldin	846
15	Closing Argument by Mr. Graham	858
16	Certificate	888

17

18

19

20

21

22

23

24

25

INDEX OF WITNESSES

WITNESSES:

PAGE

BEVERLY GINA BRAKEFIELD

Direct By Mr. Graham 80

Cross By Mr. Mauldin 110

Redirect By Mr. Graham 126

MARIKO CLACK

Direct By Mr. Graham 128

Cross By Mr. Mauldin 149

AMERA PRINCESS KABAR

Direct By Mr. Hubbard 160

Cross By Mr. Madsen 185

Redirect By Mr. Hubbard 197

JAMIE SPENCER

Direct By Mr. Hubbard 201

Cross By Mr. Mauldin 226

BASSAM ANDREW KABAR

Direct By Mr. Hubbard 232

Cross By Mr. Mauldin 248

JUSTIN WESLEY AINSWORTH

Direct By Mr. Graham 254

Cross By Mr. Madsen 262

Redirect By Mr. Graham 269

MARCUS LESESNE

Direct By Mr. Hubbard 269

1	MARCUS LESESNE	
2	Cross By Mr. Mauldin	.279
3	SHANDON LESESNE	
4	Direct By Mr. Hubbard	.284
5	Cross By Mr. Mauldin	.293
6	LESLIE LAWSON	
7	Direct By Mr. Graham	.295
8	Cross By Mr. Mauldin	.310
9	SHAWN GRANT	
10	Direct By Mr. Hubbard	.318
11	Cross By Mr. Madsen	.331
12	DAVID DAY	
13	Direct By Mr. Graham	.341
14	Cross By Mr. Madsen	.394
15	TROY CRUMP	
16	Direct By Mr. Graham	.415
17	Cross By Mr. Mauldin	.432
18	SCOTTIE FRIER	
19	Direct By Mr. Graham	.437
20	Cross By Mr. Madsen	.440
21	Redirect By Mr. Graham	.442
22	MARSHA RENEE STRICKLAND	
23	Direct By Mr. Graham	.443
24	Cross By Mr. Madsen	.445
25	---	

1	SHELBY DERRICK	
2	Direct By Mr. Graham	.447
3	Cross By Mr. Madsen	.449
4	GLENN ROSS	
5	Direct By Mr. Graham	.450
6	Cross By Mr. Madsen	.452
7	DONALD I. BLACKWELL	
8	Direct By Mr. Graham	.452
9	Cross By Mr. Madsen	.454
10	DUANE JOHNSON	
11	Direct By Mr. Graham	.456
12	Cross By Mr. Madsen	.459
13	EMILY HOMER	
14	Direct By Mr. Graham	.462
15	Cross By Mr. Madsen	.463
16	CHARLES ROBERT LINT, JR.	
17	Direct By Mr. Graham	.465
18	Cross By Mr. Madsen	.466
19	MARGARET ELIZABETH HARMON	
20	Direct By Mr. Graham	.468
21	Cross By Mr. Madsen	.492
22	SHAWN GRANT	
23	Direct By Mr. Hubbard	.500
24	MICHAEL PHIPPS	
25	Direct By Mr. Graham	.501

1	MICHAEL PHIPPS	
2	Cross By Mr. Madsen	.507
3	DAVID DAY	
4	Direct By Mr. Graham	.513
5	Cross By Mr. Madsen	.537
6	AMY STEPHENS	
7	Direct By Mr. Hubbard	.544
8	Cross By Mr. Madsen	.566
9	BRANDON JAMAL LANDRUM	
10	Direct By Mr. Hubbard	.568
11	Cross By Mr. Madsen	.577
12	Redirect By Mr. Hubbard	.580
13	ILA SIMMONS	
14	Direct By Mr. Hubbard	.582
15	Cross By Mr. Madsen	.589
16	BETTY WALKER BUTLER	
17	Direct By Mr. Graham	.593
18	Cross By Mr. Madsen	.604
19	MICHELLE EICHENMILLER	
20	Direct By Mr. Hubbard	.608
21	Cross By Mr. Madsen	.621
22	MELISSA SKIPPER WALLACE	
23	Direct By Mr. Graham	.625
24	Cross By Mr. Madsen	.637
25	---	

1	PAUL FRANKLIN MEEH	
2	Direct By Mr. Graham	.640
3	Cross By Mr. Madsen	.659
4	Redirect By Mr. Graham	.663
5	Recross By Mr. Madsen	.664
6	BRADLEY J. MARCUS	
7	Direct By Mr. Graham	.666
8	Cross By Mr. Madsen	.683
9	SHAWN GRANT	
10	In Camera Examination By Mr. Hubbard	.703
11	In Camera Examination By Mr. Madsen	.710
12	In Camera Examination By Mr. Hubbard	.721
13	In Camera Examination By Mr. Madsen	.724
14	DAVID DAY	
15	In Camera Examination By Mr. Graham	.727
16	In Camera Examination By Mr. Madsen	.730
17	WILLIAM BROCKMEYER	
18	Direct By Mr. Mauldin	.739
19	Cross By Mr. Hubbard	.767
20	DESERAÉ CAMACHO	
21	Direct By Mr. Hubbard	.804
22	Cross By Mr. Madsen	.812
23	GRADY ALLEN HOWELL	
24	Direct By Mr. Graham	.817
25	Cross By Mr. Madsen	.820

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GRADY ALLEN HOWELL

Redirect By Mr. Graham 822

	STATE'S EXHIBITS			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	1	Photograph		84
4	2	Diagram		89
5	3	Photograph		105
6	4	Photograph		105
7	5	Photograph		142
8	6	Map		295
9	7	Photograph		304
10	8	Photograph		309
11	9	Box with clothing		327
12	10	Cell phone		328
13	11	Shoes		328
14	12	Bluetooth earpiece		330
15	13	G.S.R. kit (defendant)		347
16	14	G.S.R. kit (victim)		347
17	15	Photograph		351
18	16	Photograph		351
19	17	Photograph		351
20	18	Photograph		351
21	19	Photograph		351
22	20	Photograph		351
23	21	Photograph		351
24	22	Photograph		351
25	23	Photograph		351

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	24	Photograph		351
4	25	Shirt		353
5	26	Pellet gun		356
6	27	Knife		358
7	28	Shell casing		360
8	29	Photograph		363
9	30	Pistol magazine		364
10	31	Swab from magazine		367
11	32	Photograph		369
12	33	Photograph		369
13	34	Photograph		369
14	35	Photograph		369
15	36	Photograph		369
16	37	Photograph		371
17	38	Photograph		371
18	39	Photograph		371
19	40	Photograph		371
20	41	Swab (from defendant)		374
21	42	Two bullets		376
22	43	Photograph		379
23	44	Photograph		379
24	45	Photograph		379
25	46	Photograph		379

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	47	Photograph		379
4	48	.380 pistol		382
5	49	Bullets		382
6	50	Diagram		384
7	51	Photograph		419
8	52	Photograph		421
9	53	Spent bullet		423
10	54	Photograph		426
11	55	Photograph		426
12	56	Photograph		506
13	57	Photograph		515
14	58	Photograph		515
15	59	Photograph		515
16	60	Photograph		515
17	61	Overlay		515
18	62	Photograph		515
19	63	Photograph		515
20	64	Photograph		515
21	65	Photograph		522
22	65	Photograph		522
23	67	Shoe overlay		533
24	68	Shoe overlay		533
25	69	Lifts from shirt		589

1
2
3
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6
7
8
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10
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STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
70	S.L.E.D. evidence bag		600
71	Cuttings from shirt		600
72	Cuttings from shirt		600
73	Swab from shirt		600
74	Swab from gun		603
76	Swab		631
77	Swab		631
78	Swab		631
79	Swab		631

DEFENDANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Photograph		511

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
(From August 3, 2011 hearing.)			
1	Documents (including subpoena, faxed response, news article with posts, and terms of service and privacy policy)	29	

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
(From August 22, 2011 trial.)			
1	Voir dire (defense)	33	
2	Letter	225	
3	Jury question	394	
4	Letter (8/3/11)	719	

1 (The following proceedings are reported on
2 August 3, 2011.).

3 THE COURT: Counsel, you are the movant in
4 this issue. Let me hear from you.

5 MR. MAULDIN: Thank you, Your Honor. This is
6 in regards to State versus William Brockmeyer. I am
7 David Mauldin, the defense lawyer. I represent
8 Mr. Brockmeyer.

9 In December of last year, we had served a
10 subpoena on WLTX news in December for them to provide us
11 with information regarding somebody who posted a comment
12 on their website. WLTX is a local T.V. news company,
13 but they also run an internet website where they post
14 news articles.

15 A news article was posted regarding this case
16 last July after it happened, and many people posted
17 comments to the news article. It's my understanding
18 they have to register with the WLTX website in order to
19 be able to post these comments.

20 Now, one of these posters under the posting or
21 the internet name, "And the truth" -- and that's all one
22 phrase with no spaces in between -- had posted a comment
23 that said, "Were you there? Did you see what happened?
24 Did you see the tears on his young, confused face when
25 he realized he had just accidentally killed his friend?"

1 Basically the defense, in exploring
2 Mr. Brockmeyer's defense in this case, wanted to have
3 the information about this witness so we could
4 potentially talk to them to see if they could be a
5 mitigating witness or a defense witness in this matter.

6 The subpoena was served. The information was
7 to be provided to us here at the courthouse on
8 January 10th -- there was a scrivener's error on the
9 subpoena -- it says 2010. It really means 2011. I
10 think Mr. Bender understands that -- to provide this
11 information in lieu of appearing in court. We provided
12 them with alternate means to do so.

13 Mr. Bender responded via fax to me on
14 January 20th -- he had initially faxed it to the
15 Richland County Public Defender's Office instead of my
16 office -- indicating to me that he was not going to
17 provide the information, as he believed that it was
18 constitutionally protected information.

19 He did not file a motion to quash or appear in
20 court; therefore, that's why we are here today, Your
21 Honor. We believe that we are entitled to that
22 information.

23 Your Honor, basically Mr. Brockmeyer does have
24 a Sixth and Fourteenth Amendment right under the U.S.
25 Constitution and an Article 1, Section 14 right under

1 the State Constitution to present a defense and to
2 explore defense witnesses. We believe that that right
3 would override any kind of First Amendment right to an
4 honest internet comment.

5 Your Honor, we have two cases from the Fourth
6 Circuit in the magistrate court. One is 3:04-CV-374-H.,
7 U.S. District Court for the Western District of North
8 Carolina. The case name is Alves Coatings versus John
9 Doe's 1 through 10.

10 That's a case where it was ordered that an
11 anonymous posting information be provided in a
12 defamation case. As well, we have a case in the Federal
13 magistrate's court. It's 5:08-CV-389-D. The name of
14 that is Virgin Records America versus John Doe. In that
15 case it was about piracy and copy writes as far as
16 downloading music from the internet.

17 We understand that in our case it's witness
18 information that we are wanting to obtain, and in those
19 cases those people are alleged to do some kind of
20 wrongdoing.

21 However, we believe that Mr. Brockmeyer's
22 rights to present a defense are way more important than
23 somebody's right to obtain money as far as suing
24 somebody over defamation or suing somebody over copy
25 writes.

1 Therefore, we believe that his rights to
2 present a defense would override any kind of First
3 Amendment rights that any kind of anonymous poster would
4 have on the WLTX website.

5 In addition, Your Honor, people who post on
6 the website are notified through WLTX's terms of service
7 and privacy notice that their information can be
8 released to third parties in situations where a Court
9 would order that.

10 I believe that's all I have at this point in
11 time as far as presenting the initial motion, Your
12 Honor. I do have a copy of the subpoena, a copy of the
13 news article, and the posting of the person that we want
14 their information.

15 THE COURT: Let me see the news article.

16 MR. MAULDIN: Yes, sir.

17 (Hands to Court.)

18 THE COURT: Mr. Mauldin, on yesterday with
19 counsel for the State and you and your Chief Public
20 Defender, we had a conference in my office regarding
21 issues in this case. It's to be tried two weeks from
22 now.

23 From that conversation I gathered that there
24 were a plethora of various witnesses whose names you
25 have. It seems to me that with the number of witnesses

1 that are available and known to you, that if this
2 information exists at all, it can be found by further
3 discovery and would not violate any constitutional
4 rights for privacy. How many witnesses are out there?
5 There are plenty of them.

6 MR. MAULDIN: There are roundabout 20 that
7 were at the bar, Your Honor, and I had an investigator
8 that talked to practically all of them. Only one
9 witness indicates that they may have seen the shooting,
10 and they did not indicate that it was any kind of
11 accident at all.

12 That's the only person that even describes
13 seeing the shooting, Your Honor. So this person that
14 posted that it was an accidental shooting, that is
15 obviously different than the witness that we have talked
16 to and that the State has talked to. It's not the same
17 information at all; so we don't believe it's the same
18 witness.

19 THE COURT: That's what makes me wonder
20 whether or not this posting was credible in any sense
21 because you know the number of -- what did you say?
22 Twenty witnesses?

23 MR. MAULDIN: Yes, sir, Your Honor.

24 THE COURT: In all of those witnesses is there
25 any statement that it was accidental?

1 MR. MAULDIN: No, sir, Your Honor. As I said
2 most all of them, except for that one, don't even
3 describe seeing the actual event take place as far as
4 the homicide.

5 THE COURT: I see.

6 MR. MAULDIN: But I believe that we have a
7 right to find this witness' information in order to help
8 Mr. Brockmeyer present his defense.

9 THE COURT: Let me read this. You may be
10 seated. Thank you.

11 MR. MAULDIN: The comment is highlighted.
12 It's a couple of pages down from the actual news
13 article.

14 THE COURT: Let me read this.

15 (Pause.)

16 THE COURT: I note this news report says that
17 the witness told deputies that she saw Brockmeyer use a
18 handgun to shoot 24-year-old Nicholas Rae in the neck
19 while he was seated in a chair outside the bar. All
20 right, sir.

21 Mr. Bender, I would be glad to hear from you.

22 MR. BENDER: May it please the Court, Your
23 Honor. I am Jay Bender here today on behalf of Pacific
24 and Southern Company which operates television station
25 WLTX

1 As counsel has stated, WLTX did post the news
2 report of the shooting that gives rise to this trial.
3 As is the practice of WLTX when it posts information on
4 its website, it allows persons to comment on these
5 matters.

6 There was, in fact, a subpoena served. I have
7 in the memorandum that I provided to the Court objected
8 initially to the service of the subpoena. I withdraw
9 that objection. The subpoena was appropriately served,
10 but there are three other objections to the subpoena on
11 behalf of the station.

12 Number one, this speech is protected,
13 anonymous speech, under the First and Fourteenth
14 Amendments to the United States Constitution. The
15 subpoena itself seeks to expand what is allowed under
16 Rule 13 of the South Carolina Rules of Criminal
17 Procedure in that it's a discovery subpoena, much like
18 the Rule 45 civil subpoena.

19 I think Rule 13 is limited to compel someone
20 to appear as a witness. It can be a subpoena duces
21 tecum in those circumstances, but not in the nature of
22 discovery, as this subpoena here is.

23 The South Carolina shield law for news
24 organizations protects news organizations from being
25 compelled to provide information obtained in the

1 gathering or dissemination of news --

2 THE COURT: Let me interrupt by saying I don't
3 think the shield law is applicable in this case because
4 this is not a source information. This was a voluntary
5 expression by an anonymous person.

6 MR. BENDER: I understand that, Your Honor.
7 The anonymous speech protection goes back to the
8 founding of the republic. In fact, the federalist
9 papers were written anonymously.

10 We have long protected anonymous speech in a
11 variety of circumstances. I cited a number of cases in
12 the memorandum that reach that point. The question is:
13 Is this a comment on a matter of public interest?

14 The South Carolina Supreme Court said in Doe
15 versus Berkeley Publishers that the commission of a
16 violent crime in South Carolina is, as a matter of law,
17 a matter of public interest for which there can be
18 publications and comments.

19 Under these circumstances -- and as you
20 pointed out with 20 witnesses -- if this information
21 exists, it can be found by interviewing those witnesses.
22 The fact that it has not been found calls into question
23 the veracity of what the poster put on the internet.

24 I think that's a terrific problem with the
25 internet because how do you know? If you watch the

1 television shows where deputy sheriffs pretend to be
2 13-years-old girls to communicate with people who
3 arrange meetings, how can you be sure of anybody who is
4 posting anything on the internet is who they say they
5 are?

6 What is being asked here is for a news
7 organization to divulge the identity of somebody who has
8 posted on a matter of public interest when that
9 information may not be credible, may not be helpful, and
10 if it were available from other sources.

11 So for that reason we would ask you to deny
12 the defendant's motion to compel WLTX to respond to this
13 subpoena. Thank you.

14 THE COURT: Counsel, do you care to respond?
15 Thank you, Mr. Bender.

16 MR. MAULDIN: Thank you, Your Honor. Briefly,
17 I do think the subpoena is proper under Rule 13. It
18 provides that you can either subpoena someone to give
19 testimony or to otherwise produce documentary evidence
20 at the time and place specified in the subpoena.

21 It doesn't say it actually has to be for a
22 trial or a hearing or anything of that nature.
23 Secondly, we do believe the subpoena was issued in good
24 faith. We have no other means --

25 THE COURT: I have no problems with the

1 subpoena. I tell you that.

2 MR. MAULDIN: I mean, as far as we have no
3 other means to procure this information, obviously, we
4 have the witnesses that were provided to us by the
5 State.

6 This is at a bar. Not everybody could have
7 hung around and talked to the police. People could have
8 left without talking to the police, and this could have
9 been one of those people. We believe there is no other
10 way we can find this information.

11 THE COURT: Is anybody here from the
12 Solicitor's Office?

13 MR. HUBBARD: Yes, sir, Your Honor. For the
14 record Deputy Solicitor Rick Hubbard and Deputy
15 Solicitor Shawn Graham.

16 THE COURT: Mr. Hubbard, I am concerned here
17 in several ways. First, I would like for them to get
18 this information, though I question the validity of some
19 anonymous person saying that they saw it, and it was an
20 accident.

21 On the other hand, I am concerned about the
22 privacy issue of an individual who is entitled to
23 privacy.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: Yet if that information is out

1 there, I want the defendant to get it. Now the term 20
2 witnesses keeps popping up. How many witnesses have you
3 provided the defense?

4 MR. HUBBARD: Your Honor, every single one
5 that we have. Everybody he has talked to, we provided
6 those names. I don't know anyone he has come up with to
7 my knowledge that we have not provided. We gave them
8 everything.

9 In fact, one of the things we did, Judge, at
10 that bar there was a sign-in list. We gave him that so
11 they could go and talk to every person who signed in in
12 this private bar. It was the custom, all customers of
13 that bar would sign in, as well as their guests.

14 THE COURT: Do you have that sign-in list,
15 counsel?

16 MR. MAULDIN: Yes, sir, Your Honor. We have
17 been provided that but the signatures are mainly
18 illegible for the most part, and they wouldn't have any
19 other information as far as how to find them as far as
20 any kind of address information or phone number
21 information.

22 THE COURT: Can you help him with that?

23 MR. HUBBARD: We can. There is one other
24 thing that we are exploring right now. We are checking
25 to see if there is any kind of electronic database the

1 Sheriff's Department has generated in getting names and
2 addresses. We will be happy to give those to
3 Mr. Mauldin if it, in fact, exists.

4 But, Your Honor, as far as all the names that
5 we have, we have given them to Mr. Mauldin. We have
6 gone very liberally as far as how we have given our
7 discovery.

8 THE COURT: How can the Sheriff generating a
9 list help them?

10 MR. HUBBARD: What we understand is in some
11 instances they will have an actual computer at the scene
12 of some crimes where they will take driver's licenses
13 or get identification of people and go ahead and record
14 who is there so they have can a hard copy, a legible
15 hard copy.

16 We are seeing -- we have put in an inquiry if
17 they have that in this case. We have not gotten a
18 positive response yet, but if we do, we will turn that
19 other immediately.

20 THE COURT: Make further inquiry to the extent
21 possible. I want a legible, hard copy made of everybody
22 who signed in as a client on that night.

23 MR. HUBBARD: Yes, sir.

24 THE COURT: I have two concerns. First is I
25 am concerned about the invasion of privacy, such that

1 I'm not compelled to grant that.

2 My second concern is that the information he
3 requests, if it exists at all, can be determined by
4 interviewing all of the witnesses and other discovery.
5 Consequently, I would conclude that the information he
6 has sought is not necessary in the defense of his case
7 anyway.

8 MR. HUBBARD: Yes, sir.

9 THE COURT: Particularly when you tell me that
10 you have got a sign-in list of everybody who was there.
11 You are saying to me that you can help with the
12 legibility question? Is that what I am hearing you are
13 saying?

14 MR. HUBBARD: We can certainly try. There are
15 some names on there we too had a question about. A lot
16 of these people obviously, Judge, did not want to talk
17 to law enforcement.

18 We have tried to do our best to track them
19 down, and law enforcement did an incredible job of
20 finding people who had already fled the scene. All of
21 those names are now with the defense.

22 THE COURT: I would think the owner or
23 operator of that place of business can help you with
24 these names that you now conclude are illegible. He
25 would know about that.

1 MR. HUBBARD: We have talked with her, and we
2 will get back with her. I will do this, Judge, if it
3 helps expedite things. Immediately following this
4 hearing, we'll go back and get back in touch with law
5 enforcement to see if they have, in fact, been able to
6 pull any data lists. If they have, I will try to have
7 an answer today for both Your Honor and Mr. Mauldin.

8 MR. MAULDIN: Well, Your Honor, just in brief
9 response to that, there is no guarantee that this person
10 may have even signed that list.

11 THE COURT: Well, there is no guarantee that
12 he knows what he's talking about either. If such a
13 person exists, it is clear to me that with exhaustive
14 discovery, knowing all of these people who were there,
15 that individual's name can be forthcoming if it exists
16 at all.

17 I'm not sure that your request is even there
18 because it's clear to me that he says it was an
19 accident. Apparently there's no other witness who says
20 that. So I would think this. I think that this
21 witness, under the various cases cited here, is
22 constitutionally protected.

23 I would further conclude, that given the
24 nature of the case and the number of witnesses, that if
25 that party exists at all, it can be determined by

1 appropriate discovery without violating the
2 constitutional privileges of a station and of the named
3 individual. That would be my conclusion.

4 Mr. Bender, if you will prepare me an
5 appropriate order.

6 MR. BENDER: I will, sir.

7 THE COURT: Share it with counsel for the
8 defense.

9 MR. BENDER: I will.

10 THE COURT: I will execute it on the basis of
11 what I just said.

12 MR. BENDER: I will send it.

13 THE COURT: Obviously, I would be denying the
14 motion to compel.

15 MR. MAULDIN: Yes, sir, Your Honor. I do take
16 exception to your ruling, and I would ask that the
17 materials I provided to you be made a Court's exhibit
18 for purposes of this hearing.

19 THE COURT: The only thing provided to me was
20 this -- let's see.

21 MR. MAULDIN: It would be a copy of the
22 subpoena, a copy of Mr. Bender's faxed response, a copy
23 of the news article with the posts and a copy of the --

24 THE COURT: I have all that.

25 MR. MAULDIN: -- terms of service and privacy.

1 THE COURT: I have these documents. Any
2 objection by Mr. Bender?

3 MR. BENDER: None, Your Honor.

4 THE COURT: These articles are specifically
5 made a part of the record.

6 (Court's Exhibit Number 1 is marked for
7 purposes of the record).

8 THE COURT: Inasmuch as this case is scheduled
9 for trial during the week of August 27th, please prepare
10 that proposed order expeditiously.

11 MR. BENDER: I will try to do it today, Your
12 Honor, and I will e-mail it to Mr. Mauldin and your law
13 clerk.

14 THE COURT: Does counsel for the Solicitor's
15 office have any further comment?

16 MR. HUBBARD: No, sir, Your Honor.

17 THE COURT: Thank you so much. This hearing
18 is now adjourned.

19 (Whereupon the proceedings are concluded for
20 August 3, 2011.

21 (The following proceedings are reported on
22 August 22, 2011.)

23 THE COURT: First, let me express to you,
24 along with Judge Keesley, my deepest appreciation for
25 your willingness to serve in this a general sessions

1 term of court.

2 I recognize that all of you are here at
3 considerable inconvenience to your family, to your daily
4 pursuits, and to your work, recognizing also that this
5 is an extreme problem for you. And to the extent
6 possible, we will conserve your time as best we can,
7 consistent with running this court.

8 Solicitor, call your case, please.

9 MR. GRAHAM: Thank you, Your Honor. The State
10 calls for trial Indictment 2011-GS-32-1255, the State
11 versus William M. Brockmeyer, indicted for murder, and
12 Indictment 2011-GS-32-1257, the State versus William M.
13 Brockmeyer, indicted for possession of a weapon during a
14 violent crime.

15 THE COURT: Is the defendant ready for trial?

16 MR. MAULDIN: Yes, Your Honor.

17 THE COURT: Prior to voir dire for the
18 solicitor, first give me your names for the record so
19 that I can make appropriate inquiry of the jury.

20 MR. GRAHAM: My name is Shawn Graham and this
21 is Rick Hubbard.

22 THE COURT: Gentlemen and ladies of the jury,
23 are any of you connected by blood or marriage with
24 either of these individuals or do any of you have any
25 close personal relationships with any of them? If so,

1 please stand.

2 (There is no response.)

3 THE COURT: They are representing the Public
4 Defender's Office. Do any of you have any employees --
5 any relatives employed in the Public Defender's Office
6 of Lexington County -- I'm sorry -- the Solicitor's
7 Office. They are representing the Solicitor's Office.
8 Do any of you have anybody employed in the Solicitor's
9 Office?

10 (There is no response.)

11 THE COURT: The same for the defense. Would
12 you please stand and give your name for the record so I
13 can make appropriate inquiry.

14 MR. MAULDIN: Thank you. My name is David
15 Mauldin and this is Robert Madsen.

16 THE COURT: These gentlemen represent the
17 defendant and are attorneys in the Public Defender's
18 Office. My first inquiry is are any of you related by
19 blood or connected by marriage with either of these
20 gentlemen or do any of you have any close personal
21 relationships with either one? Please stand.

22 (Juror stands.)

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: Through my business I have
25 a business relationship with the Public Defender's

1 Agency. I provide them --

2 THE COURT: Come forward, please.

3 CLERK: He is juror number 129, Your Honor.

4 THE COURT: May I have your name for the
5 record?

6 PROSPECTIVE JUROR: Yes, sir, Clifton Rogers.

7 THE COURT: What is your response, Mr. Rogers?

8 PROSPECTIVE JUROR: Through my business as a
9 real estate property manager, I provide office space to
10 the Lexington Defender Agency.

11 THE COURT: They are representing the
12 defendant in this case. Would that representation
13 affect your judgment in judging the evidence in this
14 case?

15 PROSPECTIVE JUROR: I hope not. I don't think
16 so, Your Honor.

17 THE COURT: Hope not is not sufficient.

18 PROSPECTIVE JUROR: I understand. No, sir.

19 THE COURT: As I say to you and I say to all
20 the jurors here, the attorneys for the State and the
21 defendant desire from your number a jury with no friends
22 to reward and no enemies to punish, a juror who can say
23 upon his or her oath: My verdict will be based on the
24 law and evidence in this courtroom and from no other
25 source. Can you tell me that under oath?

1 PROSPECTIVE JUROR: I can, Your Honor. Yes,
2 sir.

3 THE COURT: Thank you. You are qualified to
4 serve if selected.

5 Now, do any of you have any relatives employed
6 in any capacity with the Public Defender's Office? I
7 ask that you respectfully stand.

8 (There is no response.)

9 THE COURT: For the State please hand me your
10 proposed witness list and the same for the defendant.

11 (Hands to Court.)

12 THE COURT: Any additional voir dire questions
13 for the State?

14 MR. GRAHAM: No, Your Honor.

15 THE COURT: Let me see your questions.

16 (Hands to Court.)

17 MR. MAULDIN: I would like to mark this as a
18 Court's exhibit.

19 (Court's Exhibit Number 1 is marked for
20 purposes of the record).

21 THE COURT: Have you shared these proposed
22 questions with the State?

23 MR. MAULDIN: Yes, sir, I have given them a
24 copy.

25 MR. HUBBARD: We just got it, Your Honor, and

1 we are looking at it right now.

2 THE COURT: Take a look and then come forward
3 at the bench both of you and tell me.

4 (Pause.)

5 THE COURT: Ladies and gentlemen, while the
6 counsel for the State and defense are examining the
7 proposed questions as to voir dire, permit me, please,
8 to make further comments with regard to that procedure.

9 Ladies and gentlemen of the jury panel, I am
10 about to ask you certain questions concerning the case
11 that we just called, wherein the defendant is charged
12 upon one indictment with murder and the second
13 indictment with possession of a weapon during a violent
14 crime.

15 To these two indictments, this defendant
16 specifically pleads not guilty. Now, I want to say to
17 you and ask of you, these questions, there are no wrong
18 answers for you to give.

19 We are simply trying to determine whether you
20 have knowledge concerning the facts and circumstances of
21 this case or if you have formed or expressed an opinion
22 concerning the facts and circumstances of this case.

23 I tell you frankly at the outset respectfully
24 that there is nothing wrong with you having viewed,
25 listened, or read anything about the case, nor is there

1 anything wrong with you having discussed the case.

2 We are simply trying to determine what each of
3 you has been exposed to and if the results have had an
4 effect on you. If you say to me that having discussed
5 it I want to know about it or if you read anything, my
6 question to you is having that knowledge, can you on
7 your oath base your verdict on the law and evidence
8 heard in this courtroom?

9 So I am going to ask of you certain questions.
10 They are certainly not personal questions in any way.
11 The defendant is William M. Brockmeyer. My question to
12 you is this. Is any one of you related by blood or
13 connected by marriage with the defendant Brockmeyer?

14 Would you have him stand, please.

15 (The defendant stands.)

16 THE COURT: Do any of you have any close
17 relationships with Mr. Brockmeyer, such as a neighbor,
18 co-employee?

19 (There is no response.)

20 THE COURT: Do any of you know Mr. Brockmeyer
21 in any capacity whatsoever? If so, please stand.

22 (There is no response.)

23 THE COURT: Mr. Brockmeyer and your attorney
24 may be seated. I thank you.

25 Now, the alleged victim in this case is

1 Nicholas Alton Rae, and I ask of you the same questions.
2 Are any of you related by blood or connected by marriage
3 with the deceased, Nicholas Alton Rae?

4 (There is no response.)

5 THE COURT: Do any of you know the deceased
6 Nicholas Alton Rae in any capacity whatsoever? I ask
7 that you stand respectfully.

8 (There is no response.)

9 THE COURT: It is alleged -- and I use the
10 word alleged -- until proven beyond a reasonable doubt
11 that these allegations, which are not evidence, these
12 allegations are given to you so that you can respond to
13 the following inquiry.

14 These are the allegations and the allegations
15 only, which are specifically denied by the defendant.
16 The allegations being that William M. Brockmeyer did in
17 Lexington County, on or about July 11, 2010, willfully,
18 feloniously, and with malice aforethought kill one
19 Nicholas Alton Rae by shooting him in the neck with a
20 handgun.

21 I emphasize that the defendant denies these
22 allegations, and I read that to you so you can respond
23 to the following inquiry. Would any of you have read
24 anything about this case? Have any of you had a
25 discussion about the case? Do any of you know anything

1 about this particular case? And I ask if so, please
2 stand.

3 (There is no response.)

4 THE COURT: Now, I ask you this. Is there
5 anyone who is aware of or conscious of any bias or
6 prejudice for or against this defendant? Please stand.

7 (There is no response.)

8 THE COURT: Is there any one among you who
9 could not give both the State of South Carolina and this
10 defendant a fair and impartial trial? If so, please
11 stand, and I will release you.

12 (There is no response.)

13 THE COURT: Let me give you an example of what
14 I mean sometimes with hidden prejudice. This was in
15 another county some years ago that I was preparing to
16 try a young man for D.U.I. felony, it being alleged that
17 he killed a young girl while drunk driving.

18 I asked that same question to the panel. A
19 nice lady got up in the back and said, "Judge, my
20 daughter was killed by a drunk driver six months ago,
21 and under no circumstances can I give him a fair trial."
22 Obviously I excused her and appreciated her candor and
23 her comments.

24 Interestingly enough in that same panel, a
25 gentleman got up and said, "Judge, I can't give the

1 State of South Carolina and this Solicitor a fair
2 trial." I said why? He said, "They tried my son three
3 times for a crime until he finally was found not guilty.
4 He was not guilty at the beginning, but they insisted on
5 it, and I will not give him a fair trial." As a result
6 of that bias, I excused that gentleman.

7 So I ask you again if there is any basis --
8 this is a murder case -- is there any reason why any of
9 you feel, based on past experiences, that you cannot
10 give both the State and the defendant a fair and
11 impartial trial? If so, please stand and I will excuse
12 you. I indicate, again, each side wants jurors with no
13 friends to reward, no enemies to punish.

14 (There is no response.)

15 THE COURT: Would any of you gentleman like to
16 come forward on the voir dire questions?

17 MR. HUBBARD: Yes, sir.

18 (Whereupon there is a bench conference off the
19 record in the presence of the jury panel but out of the
20 hearing of the jury panel.)

21 THE COURT: Ladies and gentlemen, I have some
22 following inquiries. If these pertain to your
23 circumstance, I respectfully ask that you stand and come
24 forward.

25 Have you or any member of your family or a

1 close personal friend ever been the victim of a violent
2 crime? If so, please stand.

3 (Juror stands.)

4 THE COURT: Come forward, please, ma'am.

5 (The juror comes forward.)

6 THE COURT: Good morning. I thank you for
7 coming forward. May I have your name, please?

8 PROSPECTIVE JUROR: Stephanie Hewitt.

9 THE COURT: Do you have your jury number?

10 PROSPECTIVE JUROR: One hundred four.

11 THE COURT: What was your response to my
12 inquiry, please?

13 PROSPECTIVE JUROR: It's my mother. Her house
14 was broken into and she got shot a year ago.

15 THE COURT: A year ago?

16 PROSPECTIVE JUROR: (Nods head.) (Indicating
17 affirmative response.)

18 THE COURT: Would that unfortunate incident
19 hamper your judgment in this case?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Knowing that your mother was a
22 victim of a violent crime, can you tell me upon your
23 oath that your verdict will be based on the law and
24 evidence in this case and for no other reason? What is
25 your response?

1 PROSPECTIVE JUROR: I don't think I can.

2 THE COURT: Ma'am?

3 PROSPECTIVE JUROR: I don't think that I
4 could.

5 THE COURT: You don't think what?

6 PROSPECTIVE JUROR: That I could give a fair
7 verdict.

8 THE COURT: I am going to excuse you from this
9 case. Thank you. Anyone else?

10 (There is no response.)

11 THE COURT: Are you or any member of your
12 family or close personal friend currently a law
13 enforcement officer or ever been a law enforcement?
14 Please stand.

15 (Jurors stand.)

16 THE COURT: I feel safer in these
17 circumstances. Everybody come forward, please. We will
18 inquire.

19 Gentlemen, for the State and the defense --
20 listen to me, please. If you require additional
21 inquiry, come to the bench, and we will talk about it.

22 (The first juror comes forward.)

23 THE COURT: Your name first?

24 PROSPECTIVE JUROR: Thomas Pomeroy, number
25 180.

1 THE COURT: What is your response?

2 PROSPECTIVE JUROR: I was a deputy sheriff in
3 Maine some years ago.

4 THE COURT: Would that affect your ability?

5 PROSPECTIVE JUROR: I don't believe it would.

6 THE COURT: I don't think so either. We would
7 be glad to have you, as long as you can tell me that
8 your verdict will be based on the law and evidence in
9 this case.

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Thank you so much. We are glad to
12 have folks from Maine.

13 (The next juror comes forward.)

14 THE COURT: May I have your name?

15 PROSPECTIVE JUROR: Vickie Logan. My
16 son-in-law -- 138.

17 THE COURT: What is your response?

18 PROSPECTIVE JUROR: My son-in-law is a
19 policeman for the City of Columbia in Richland County.

20 THE COURT: How long has he been employed with
21 the City of Columbia as a policeman?

22 PROSPECTIVE JUROR: A little over a year.

23 THE COURT: Would that affect your ability
24 here?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: To be fair to the State and the
2 defendant?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Can you assure me that your
5 verdict, whatever it is, will be based on the law and
6 evidence in this case and not anything else?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: I thank you. I would be glad to
9 have you if selected. Next, please.

10 (The next juror comes forward.)

11 PROSPECTIVE JUROR: Webster Lyons.

12 THE COURT: Juror number?

13 PROSPECTIVE JUROR: One-forty-four.

14 THE COURT: Your response?

15 PROSPECTIVE JUROR: My wife is a Deputy U.S.
16 Marshall.

17 THE COURT: Where is she assigned?

18 PROSPECTIVE JUROR: Columbia, here.

19 THE COURT: I am going to excuse you from this
20 case. That's in this area of Lexington. I will excuse
21 you.

22 PROSPECTIVE JUROR: Okay.

23 CLERK: One-forty-four.

24 THE COURT: Next, please.

25

1 (The next juror comes forward.)

2 THE COURT: May I have your name and number?

3 PROSPECTIVE JUROR: Clare Luther, 143.

4 CLERK: Your Honor, she has been stood aside
5 from general sessions cases. She is available for
6 civil.

7 THE COURT: She has already been --

8 CLERK: She has been stood aside from this
9 case.

10 THE COURT: Fine. Thank you. She is not on
11 the list assigned to me; is she?

12 CLERK: No, sir.

13 THE COURT: Next, please.

14 (The next juror comes forward.)

15 THE COURT: Good morning.

16 PROSPECTIVE JUROR: Good morning. Patricia
17 Kilcoyne, juror number 128. My son is a master deputy
18 with Richland County in the Columbia area.

19 THE COURT: I am going to excuse you from this
20 case. I do that -- so you will know -- it's in close
21 proximity to Lexington County.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: Carla Cavanagh, juror
24 number 41. My husband was a correctional officer some
25 years ago for approximately five years.

1 THE COURT: I thank you for telling me. That
2 would not affect your ability to be a fair juror in this
3 case?

4 PROSPECTIVE JUROR: No, it would not.

5 THE COURT: If selected we will be glad to
6 have you. Thank you. Next.

7 (The next juror comes forward.)

8 THE COURT: Good morning.

9 PROSPECTIVE JUROR: Good morning. John
10 Spires, juror 215. My brother is an officer at the City
11 of Columbia.

12 THE COURT: That's a close connection. I am
13 going to excuse you from this case. I have got enough
14 jurors without putting you in that position. Thank you.

15 (The next juror comes forward.)

16 PROSPECTIVE JUROR: Nguu Giang, juror
17 number 88. I have a cousin working for S.L.E.D.

18 THE COURT: Working for who?

19 PROSPECTIVE JUROR: State Law Enforcement
20 Division.

21 THE COURT: Would that fact that you have a
22 cousin, be it first or second, influence your decision
23 in this case?

24 PROSPECTIVE JUROR: No.

25 THE COURT: You will base your verdict on the

1 law and evidence in the courtroom?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: I think that you will. Thank you.

4 MR. MAULDIN: Your Honor, may we approach?

5 THE COURT: Yes, you may.

6 (Whereupon there is a bench conference off the
7 record in the presence of the jury panel but out of the
8 hearing of the jury panel.)

9 THE COURT: You are qualified to serve, but
10 let me ask you this now. There may or may not be
11 S.L.E.D. officers testifying in this case. Will that
12 not unduly influence you?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Because of your cousin working
15 there?

16 PROSPECTIVE JUROR: (Nods head.) (Indicating
17 affirmative response.) I'm okay.

18 THE COURT: Sir?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: You will not be influenced by that
21 fact?

22 PROSPECTIVE JUROR: No.

23 THE COURT: That's all I want to know. I want
24 to make sure you can judge their testimony like anybody
25 else's testimony.

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: You can do that?

3 PROSPECTIVE JUROR: I can.

4 THE COURT: All right, sir. That's fine.

5 (The next juror comes forward.)

6 PROSPECTIVE JUROR: Laurie Cicccarelli, juror
7 number 45. I am retired from the South Carolina Law
8 Enforcement Division and also very good friends with the
9 city judge of Lexington.

10 THE COURT: You are a former member of South
11 Carolina Law Enforcement?

12 PROSPECTIVE JUROR: (Nods head.) (Indicating
13 affirmative response.) Almost 30 years.

14 THE COURT: What position did you hold with
15 them?

16 PROSPECTIVE JUROR: I was a fingerprint
17 examiner and A.F.I.S. coordinator. I went to jails and
18 taught the officers.

19 THE COURT: I am going to excuse you in this
20 case.

21 PROSPECTIVE JUROR: Okay.

22 (The next juror comes forward.)

23 THE COURT: Good morning.

24 PROSPECTIVE JUROR: Good morning. Renate
25 Bruce. I'm juror 32 and my daughter is a 9-1-1 operator

1 for Lexington County.

2 THE COURT: Will that affect your ability to
3 be a fair juror in this case?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: I think not either. I would be
6 glad to have you if selected. Thank you.

7 I asked this question of you before, but I
8 will ask again. Has any member of the jury panel been
9 exposed to any kind of news reports or T.V., something
10 of that nature, regarding the allegations in this case?
11 If so, please stand.

12 (There is no response.)

13 THE COURT: Has anybody on this panel heard
14 anything about this case at all?

15 (There is no response.)

16 THE COURT: Is there any member of the panel
17 who has ever contributed money or time to law
18 enforcement organizations that concern victim's or
19 victims' rights? Please stand.

20 (There is no response.)

21 THE COURT: Gentlemen, other than pursuing the
22 witness list, what say the State? Any additional
23 inquiry?

24 MR. GRAHAM: No, Your Honor.

25 THE COURT: What say the defense?

1 MR. MAULDIN: No, Your Honor.

2 THE COURT: All right, sir.

3 Now, ladies and gentlemen, there has been
4 presented to me a list of potential witnesses with so
5 many that it scares me, but I assure you that all of
6 these names that are called will not be participants in
7 the trial of this case.

8 In fairness to the attorneys involved, they
9 give me this long list in the eventuality that some or
10 none may be called. My inquiry is going to be -- I am
11 going to call three names at a time.

12 My inquiry is: Are you related by blood or
13 connected by marriage with these individuals or do you
14 have any close personal relationships with them?

15 Is that the meat of your inquiry for the
16 State?

17 MR. HUBBARD: Yes, sir.

18 THE COURT: And for the defense?

19 MR. MAULDIN: Yes, sir, Your Honor.

20 THE COURT: The first inquiry is Deputy
21 Michael Hickman. Deputy Ken Shearer -- all with
22 Lexington County Sheriff's Department -- Deputy Jacob
23 Hallman. Anybody connected with them?

24 (There is no response.)

25 THE COURT: Any of you employed by the

1 Lexington County Sheriff's Department or have close
2 personal relationships with them? Anybody got any
3 connection with that organization?

4 (There is no response.)

5 THE COURT: Deputy Raymond Barrett. Deputy
6 Billy Womble. Sergeant Robbie Lint. Lieutenant Bill
7 Wright. Deputy Shawn Grant. Does anyone have any
8 personal close connections with any of these
9 individuals? Please let me know.

10 (There is no response.)

11 THE COURT: Deputy Eddie -- how do you
12 pronounce that last name?

13 MR. GRAHAM: Prestigiacomo.

14 THE COURT: Anybody?

15 (There is no response.)

16 THE COURT: Terry Govan. Troy Crump. David
17 Day. Mike Phipps. Glenn Ross. Shelley Derrick.
18 Candy Kyzer. Beth Harmon. Lieutenant Ernestine
19 Favor-McDaniels. Delton Gathers. Delores -- I'm
20 sorry -- Delores Gathers. Judge Scott Whittle. Judge
21 of what?

22 MR. GRAHAM: He is a magistrate, Your Honor.

23 THE COURT: All right, sir. Dr. Bradley
24 Marcus, Newberry Pathology. Any of you clients of
25 Dr. Marcus?

1 (There is no response.)

2 THE COURT: Amy Stephens of S.L.E.D. Doris
3 Yarborough of S.L.E.D. Selena Kinard of S.L.E.D.
4 Kimberly Mears of S.L.E.D. Brandon Williams of S.L.E.D.
5 Patricia Crooks of S.L.E.D.

6 Nikki Perry Hughes of S.L.E.D. Sheree Brown
7 of S.L.E.D. Jennifer Stainbrook of S.L.E.D. Lisa
8 Waananen of S.L.E.D. Betty Butler of S.L.E.D. Tommy
9 Broome of S.L.E.D. Michael -- what is that name? How
10 do you pronounce that?

11 MR. GRAHAM: Michelle Eichenmiller.

12 THE COURT: Okay. Brandon Landrum of S.L.E.D.
13 Laurie Shacker of S.L.E.D. Paul Meeh of S.L.E.D. Megan
14 Fletcher of S.L.E.D. Katie Urka of S.L.E.D. Is that
15 the way you pronounce it, Urka?

16 MR. GRAHAM: Yes, Your Honor.

17 THE COURT: Melissa Wallace of S.L.E.D. Britt
18 Dove of S.L.E.D. Agent Joe West of S.L.E.D. Mark
19 Lesesne. Shandon Lesesne. Nicole Miller. Kim Wallace.
20 Gina Brakefield. Jennifer McFarland.

21 Brittany Berggrun. Mariko Clack. Wes
22 Wilson. Justin Ainsworth. Brandon Carey. Karmen
23 Morgan. Steven Jeffcoat. Amera Kabar. Jordan Allen.
24 Gene Norris Pontoon. Sandy Whitaker. Amanda Dunn.
25 Deserae -- how do you pronounce that?

1 MR. GRAHAM: Camacho.

2 THE COURT: Camacho. Brandi Champion. Megan
3 Bair. Brooke Tomlinson. Keith Kabar. Lesley Lawson.
4 Steve Lawson. Jamie Spencer. Keyonne Jenkins. Grady
5 Howell. Corey Stanton. Tammy Rawl of S.L.E.D. Emily
6 Rhinehart of S.L.E.D. Carlisle McNair.

7 CLERK: Your Honor, we have one hand held up.

8 THE COURT: Stand please.

9 (Juror stands.)

10 PROSPECTIVE JUROR: I don't mean to interrupt
11 you. You mentioned a S.L.E.D. employee.

12 THE COURT: Come forward, please.

13 PROSPECTIVE JUROR: All right.

14 THE COURT: While he is coming up, counsel,
15 did you follow me? I don't think we missed any names.
16 May I have your name, sir?

17 PROSPECTIVE JUROR: Chris Hunter, juror number
18 115.

19 THE COURT: Mr. Hunter, glad to have you.

20 PROSPECTIVE JUROR: You mentioned in that list
21 of S.L.E.D. employees, I believe you said Nikki Perry
22 Hughes. I just wanted to clarify. I went to high
23 school with Nikki Perry. I'm not sure if it's the same
24 one, but I understand she just got married to Michael
25 Hughes.

1 THE COURT: You don't have any close
2 relationship?

3 PROSPECTIVE JUROR: She was one year younger
4 than me in high school, and she kept our score book in
5 baseball.

6 THE COURT: Were you a good baseball player?

7 PROSPECTIVE JUROR: Not good enough to play
8 college, sir. I started in high school though.

9 THE COURT: I hate to say that Coach Tanner
10 didn't want you. That would not disqualify you;
11 however, I thank you for calling it to my attention.

12 PROSPECTIVE JUROR: Yes, sir. I'm not sure if
13 it's the same person. The name caught my attention.

14 THE COURT: If you have any sons, send them to
15 Coach Tanner.

16 MR. GRAHAM: Your Honor, if I may approach?

17 THE COURT: Sure.

18 (Whereupon there is a bench conference off the
19 record in the presence of the jury panel but out of the
20 hearing of the jury panel.)

21 THE COURT: Another is Deputy Sergeant Jeff
22 Palkowski of the Lexington County Sheriff's Department.
23 Anybody have any connection with him?

24 (There is no response.)

25 THE COURT: Ila Simmons of S.L.E.D. Karmen

1 Tucker of S L.E.D.

2 (There is no response.)

3 THE COURT: All right. Any further inquiry
4 for the State?

5 MR. GRAHAM: No, Your Honor.

6 THE COURT: Any further inquiry for the
7 defendant?

8 MR. MAULDIN: No, Your Honor.

9 THE COURT: Gentlemen, in accordance with the
10 usual procedure, we will select 12 jurors, the strikes
11 being five and ten. As you know, we will select one
12 alternate, the strikes being one and two, as you are
13 aware of. You may now proceed.

14 (Pause.)

15 THE COURT: I will take two alternates in this
16 case. The strikes will be two and one as to each
17 alternate.

18 CLERK: May I proceed?

19 THE COURT: Yes, ma'am.

20 CLERK: As I call your name, if you will come
21 forward. Bring your purses and personal belongings with
22 you. Come and stand like I am right now in front of
23 here until I instruct you to either return to your seat
24 or to have a seat in the jury box, please.

25 Number 549, Sandra Corriher.

1 (The juror, a white female, comes forward.)

2 CLERK: What say you for the State?

3 MR. GRAHAM: Please present Ms. Corriher.

4 THE COURT: What say you for the defense?

5 MR. MAULDIN: Please excuse this juror from
6 the trial of this case.

7 CLERK: Return to your seat, please, ma'am.
8 Number 218, William Stidom.

9 (The juror, a white male, comes forward.)

10 CLERK: What say you for the State?

11 MR. GRAHAM: Please present Mr. Stidom.

12 CLERK: What say you for the defense?

13 MR. MAULDIN: Please excuse this juror from
14 the trial of the case.

15 CLERK: Return to your seat, please, sir.
16 Number 115, Christopher Hunter.

17 (The juror, a white male, comes forward.)

18 CLERK: What say you for the State?

19 MR. GRAHAM: Please present Mr. Hunter.

20 CLERK: What say you for the defense?

21 MR. MAULDIN: Please seat Mr. Hunter on the
22 jury.

23 CLERK: Have a seat in the jury box, sir.
24 Number 96, Eric Harless.

25 (The juror, a white male, comes forward.)

1 CLERK: What say you for the State?

2 MR. GRAHAM: Please excuse Mr. Harless.

3 CLERK: Return to your seat, please, sir.

4 One-thirty-six, Viola Leaphart.

5 (The juror, a black female, comes forward.)

6 CLERK: What say you for the State?

7 MR. GRAHAM: Please present Ms. Leaphart.

8 CLERK: What say you for the defense?

9 MR. MAULDIN: Please seat Ms. Leaphart in the
10 trial of this case.

11 CLERK: Have a seat in the jury box, please,
12 ma'am. Number 192, Clifton Rogers.

13 (The juror, a white male, comes forward.)

14 CLERK: What say you for the State?

15 MR. GRAHAM: Please present Mr. Rogers.

16 CLERK: What say you for the defense?

17 MR. MAULDIN: Please seat Mr. Rogers in the
18 trial of this case.

19 CLERK: Have a seat in the jury box, sir.
20 Thirty-two, Renate Bruce.

21 (The juror, a white female, comes forward.)

22 CLERK: What say you for the State?

23 MR. GRAHAM: Please present Ms. Bruce.

24 CLERK: What say you for the defense?

25 MR. MAULDIN: Please excuse this juror from

1 the trial of this case.

2 CLERK: Return to your seat, please, ma'am.

3 Number 119, Jennifer Jeffries.

4 (The juror, a white female, comes forward.)

5 CLERK: What say you for the State?

6 MR. GRAHAM: Please present Ms. Jeffries.

7 CLERK: What say you for the defense?

8 MR. MAULDIN: Please seat Ms. Jeffries.

9 CLERK: Have a seat in the jury box. Number
10 109, Deborah Holton.

11 (The juror, a white female, comes forward.)

12 CLERK: What say you for the State?

13 MR. GRAHAM: Please present Ms. Holton.

14 CLERK: What say you for the defense?

15 MR. MAULDIN: Please seat Ms. Holton.

16 CLERK: Have a seat in the jury box, ma'am.

17 Number 112, Andrew Howell.

18 (The juror, a white male, comes forward.)

19 CLERK: What say you for the State?

20 MR. GRAHAM: Please present Mr. Howell.

21 CLERK: What say you for the defense?

22 MR. MAULDIN: Please seat Mr. Howell.

23 CLERK: Have a seat in the jury box, sir.

24 Number 90, Sarah Gillespie.

25 (The juror, a white female, comes forward.)

1 CLERK: What say you for the State?

2 MR. GRAHAM: Please present Ms. Gillespie.

3 CLERK: What say you for the defense?

4 MR. MAULDIN: Please seat Ms. Gillespie.

5 CLERK: Have a seat in the jury box, ma'am.

6 Number 78, Kerry Everett.

7 (The juror, a white female, comes forward.)

8 CLERK: What say you for the State?

9 MR. GRAHAM: Please present Ms. Everett.

10 CLERK: What say you for the defense?

11 MR. MAULDIN: Please seat Ms. Everett in the

12 trial of this case.

13 CLERK: Have a seat in the jury box, ma'am.

14 Number 92, Carol Goad.

15 (The juror, a white female, comes forward.)

16 CLERK: What say you for the State?

17 MR. GRAHAM: Please present Ms. Goad.

18 CLERK: What say you for the defense?

19 MR. MAULDIN: Please excuse this juror from

20 the trial of this case.

21 CLERK: Return to your seat, please, ma'am,

22 Number 24, Mary Bower.

23 (The juror, a white female, comes forward.)

24 CLERK: What say you for the State?

25 MR. GRAHAM: Please present Ms. Bower.

1 CLERK: What say you for the defense?

2 MR. MAULDIN: Please seat Ms. Bower.

3 CLERK: Have a seat in the jury box, ma'am.

4 Number 41, Carla Cavanagh.

5 (The juror, a white female, comes forward.)

6 CLERK: What say you for the State?

7 MR. GRAHAM: Please excuse Ms. Cavanagh from
8 this case.

9 CLERK: Return to your seat, please, ma'am.

10 Number 16, Vivian Baxter.

11 (The juror, a white female, comes forward.)

12 CLERK: What say you for the State?

13 MR. GRAHAM: Please present Ms. Baxter.

14 CLERK: What say you for the defense?

15 MR. MAULDIN: Please seat Ms. Baxter.

16 CLERK: Have a seat in the jury box, ma'am.

17 Number 134, Michael Law.

18 (The juror, a white male, comes forward.)

19 CLERK: What say you for the State?

20 MR. GRAHAM: Please present Mr. Law.

21 CLERK: What say you for the defense?

22 MR. MAULDIN: Please seat Mr. Law.

23 CLERK: Have a seat in the jury box, sir.

24 Number 73, Cynthia Ermis.

25 (The juror, a white female, comes forward.)

1 CLERK: What say you for the State?

2 MR. GRAHAM: Please present Ms. Ermis.

3 CLERK: What say you for the defense?

4 MR. MAULDIN: Please seat Ms. Ermis in the
5 trial of this case.

6 CLERK: Have a seat in the jury box, ma'am.
7 That's the panel of 12. Proceed with the alternate?

8 THE COURT: Yes. The strikes will be two and
9 one to each one individually.

10 CLERK: Yes, sir. Number 186, Marilyn
11 Reardon.

12 (The juror, a white female, comes forward.)

13 CLERK: What say you for the State?

14 MR. GRAHAM: Please present Ms. Reardon.

15 CLERK: What say you for the defense?

16 MR. MAULDIN: Please excuse Ms. Reardon.

17 CLERK: Return to your seat, please, ma'am.
18 Seventy-five, Lisa Estep.

19 (The juror, a white female, comes forward.)

20 CLERK: What say you for the State?

21 MR. GRAHAM: Please present Ms. Estep.

22 CLERK: What say you for the defense?

23 MR. MAULDIN: Please seat Ms. Estep.

24 CLERK: Have a seat in the jury box, ma'am.
25 Number 196, Daniel Satterfield.

1 (The juror, a white male, comes forward.)

2 CLERK: What say you for the State?

3 MR. GRAHAM: Please excuse Mr. Satterfield.

4 CLERK: Return to your seat, please, sir.

5 One-eighty, Thomas Pomeroy.

6 (The juror, a white male, comes forward.)

7 CLERK: What say you for the State?

8 MR. GRAHAM: Please present Mr. Pomeroy.

9 CLERK: What say you for the defense?

10 MR. MAULDIN: Please excuse Mr. Pomeroy.

11 CLERK: Return to your seat, please, sir.

12 Number 27, Geoffrey Brown.

13 (The juror, a white male, comes forward.)

14 CLERK: What say you for the State?

15 MR. GRAHAM: Please present Mr. Brown.

16 CLERK: What say you for the defense?

17 MR. MAULDIN: Please seat Mr. Brown.

18 CLERK: Have a seat in the jury box, sir.

19 That's the second alternate, Your Honor.

20 (The jury is impaneled at 12:04 p.m.)

21 THE COURT: Have the jury retire to the jury
22 room.

23 (The jury retires to the jury room.)

24 THE COURT: First for the State, any issues
25 regarding the composition of the jury, including Batson?

1 MR. GRAHAM: None from the State, Your Honor.

2 THE COURT: What say the defense?

3 MR. MAULDIN: None, Your Honor.

4 THE COURT: The jury will stand as selected.

5 (The jury panel is excused.)

6 (Whereupon there is a recess.)

7 THE COURT: Are we ready to proceed? What say
8 the State?

9 MR. HUBBARD: Yes, sir.

10 THE COURT: What say the defense?

11 MR. MAULDIN: Yes, Your Honor.

12 THE COURT: Mr. Bailiff, bring the jury in.

13 MR. MAULDIN: Your Honor, we did agree to
14 sequestration of the witnesses.

15 THE COURT: Yes, there is an order of
16 sequestration. I have put the burden on the State and
17 the defendant to see that it is enforced.

18 (The jury returns to the courtroom.)

19 THE COURT: Mr. Law, you will, at all times,
20 occupy that chair. The alternates will occupy these
21 designated chairs.

22 CLERK: Your Honor, we have got some confusion
23 going. I need to have the regular jurors move in this
24 front seat, please.

25 Ms. Estep and Mr. Brown, my two alternates,

1 they are to sit there (indicating) and there
2 (indicating).

3 (Pause.)

4 CLERK: Now, we have got them in place.

5 THE COURT: I am glad to tell you the rest of
6 you can sit as you please.

7 Ladies and gentlemen, recognizing for many of
8 you this may be the first case that you have tried as a
9 juror in a criminal case, let me tell you generally how
10 we will proceed.

11 First, I need to tell you that everybody walks
12 into this courtroom, no matter how serious the charge
13 may be, and is always presumed innocent until the State
14 has proven him guilty beyond a reasonable doubt. That
15 presumption remains with this defendant and all
16 defendants throughout the trial.

17 There is another important feature I need to
18 tell you, and that is that you 12 are the sole and only
19 finders of the facts in this case. I am the judge of
20 the law. I will tell what you the law is.

21 You take the facts as you find them from the
22 testimony and evidence presented, apply those facts to
23 law as I charge it to you, and thereafter reach a
24 verdict.

25 I emphasize to you that there is nobody in

1 this wide world that can tell you 12 what the facts are.
2 That's for you to determine from the testimony and other
3 matters presented.

4 Now, we will proceed in the following manner.
5 The State of South Carolina has the burden of proof, as
6 I have indicated, beyond a reasonable doubt. The
7 solicitor who handles the case for the County of
8 Lexington, State of South Carolina, will make an opening
9 statement to you as to his position. What they say is
10 not evidence. The evidence comes from this witness
11 stand under oath.

12 Following that the distinguished defense
13 counsel will address you as to what their position is.
14 This is a guideline as to the State and the defense to
15 help you follow the introduction of their evidence.

16 Following that various witnesses will be
17 called upon the stand under oath to testify under cross
18 examination for your consideration. Following the
19 testimony of the witnesses, we will have final arguments
20 and a charge on the law.

21 I will charge you on the law, and each side
22 will present their final argument to you. At the
23 conclusion of those proceedings I will ask that you go
24 to the jury room and deliberate to find a verdict,
25 whether it's either not guilty or guilty.

1 I will give an appropriate verdict form to
2 sign, Mr. Foreman. If during the process of this case
3 you have any questions, let me know, and I will keep you
4 fully advised. You may proceed.

5 MR. HUBBARD: Thank you, Your Honor.

6 THE COURT: Excuse me first. Swear the jury,
7 please.

8 (The jury is duly sworn at 12:21 p.m.)

9 THE COURT: All right. You may proceed.

10 **OPENING STATEMENT**

11 MR. HUBBARD: Thank you, Your Honor.

12 Ladies and gentlemen, what kind of man would
13 take a gun to kill another man that is completely
14 incapacitated, defenseless? What kind of man would take
15 a pistol and shoot and kill someone that he says is his
16 friend?

17 What kind of man would take a pistol and put
18 it on a man's neck, press it in -- a man who he says is
19 his brother -- and pull the trigger and walk away?
20 During the trial we are going to introduce you to such a
21 man, the defendant William Brockmeyer.

22 The victim Nicholas Rae was a young man
23 himself. He knew Mr. Brockmeyer. He was from Florida.
24 He came up here for one reason, to see Mr. Brockmeyer,
25 to stay with Mr. Brockmeyer.

1 He lived with Mr. Brockmeyer in a hotel, and
2 there was another young woman that lived with them. You
3 might be thinking, two young men and a woman, maybe we
4 begin to see the picture.

5 You are close but right now before we even get
6 to the question of why, I need to tell you something
7 about the law. Under the law we talk about motive. On
8 T.V. you see it all the time.

9 Why did something happen? You need to know in
10 the real world in a courtroom the State never, ever has
11 to prove motive. It's not a requirement. It makes
12 sense if you think about it.

13 You can't go into somebody's head or into
14 their heart and figure out why they do the horrible,
15 evil things they do. That makes sense. But what we are
16 going to do for you is give a glimpse of why, even
17 though we don't have to. The case is going to focus on
18 who.

19 Now, about the girl, a girl. I mentioned
20 there was a girl involved, but it's not the one they
21 lived with. There is a young lady by the name of Mariko
22 Clack. You will hear from her.

23 Sometime before I believe the victim even came
24 up from Florida, the defendant had met Mariko Clack. He
25 liked her. She is a pretty girl, early 20s, and she

1 liked him, only she didn't know him by William
2 Brockmeyer.

3 Mr. Brockmeyer lied about who he was, said his
4 name is Dea or Danny. He built this facade about who he
5 was and what he did for a living, and she started
6 falling for that until Nicholas Rae came along.
7 Everybody called him Nick.

8 It was inadvertent. One day Mariko Clack
9 calls the hotel looking for Dea and Nick kept saying
10 Will. As things progressed in this relationship, Mariko
11 began to realize, I am being lied to.

12 And being a young lady she gets on Facebook
13 with a friend and finds out that William Brockmeyer is
14 not Dea, and his little world he had built for her was a
15 lie.

16 She was upset about that, miffed, because he
17 lied to her. Nick didn't mean do this, and Mariko had
18 already invited both Will and Nick to a birthday party
19 that was supposed to be on July 11, 2010.

20 The murder occurs in the early morning hours
21 of the 11th. Once all of this broke that it's not
22 really Dea, she said Nick, "You are invited. Don't
23 bring Will." Well, Nick made his second mistake. He
24 asked if Will could come. He said, "he is my ride."
25 Mariko said okay.

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

67

1 At this birthday party on July 10th, Will is
2 having -- Nick is having a great time. Our victim, he
3 likes two things, women and he likes alcohol. He is
4 having fun. All the women that are there, he is
5 enjoying them, and sitting next to Mariko probably is
6 not a good thing.

7 And where is Will? He shows up with this
8 other girl. He stands -- this is outside. He stands in
9 the driveway and pouts the entire time. He is not
10 happy. Nick is having a good time though.

11 Then Mariko and her friends decide, you know
12 what, it's getting real late, probably after midnight.
13 They decide to go to a bar, Jager's bar, on Highway 6 in
14 Red Bank, down in that area.

15 So they all got in their cars, and they go to
16 this bar, a little private bar. Nick says, "Hey, can I
17 come? Are their pretty girls there?" They said yes.
18 He says, "I'm in. Can Will go?" Yet another mistake.
19 Mariko goes, "Sure, sure."

20 Well, Will ditches the girl. He gets in the
21 car with Nick, Mariko, and some other folks. Will
22 starts coming out of his shell a little bit. He's now
23 flirting a little bit with Mariko.

24 She's still interested but he's going to have
25 to earn his way back. She is playing hard to get. We

1 were all young once. She is playing hard to get.

2 "You've got to earn your way back. You lied to me."

3 They get to the bar. Nick instantly is having
4 a good time. He is dancing. He's drinking. He is
5 sitting next to Mariko, still not a good idea. Will, he
6 dances a little bit. It looks like he is having a
7 little fun, but they can tell he is agitated.

8 He's got a bead on Mariko. He keeps trying to
9 come up to hug her, to kiss her. She is giving him this
10 (indicating). "You lied to me," but she will talk with
11 Nick.

12 Finally, Nick decides to give Will a little
13 space. He decides to play pool. Nick sees a pretty
14 girl playing pool. He is attracted like a moth to the
15 flame. And, folks, this pretty girl is a pool shark.

16 You are going to hear from her. She's a nice
17 girl but she is a pro. So this little game of pool that
18 initially starts free ends up into a \$300 loss for Nick,
19 who didn't have money.

20 Will had to foot that bill. Will was paying
21 for all of Nick's drinks. Nick was getting really,
22 really drunk. You are going to hear his blood alcohol
23 rate was a 20 or above.

24 Folks, he was passing out by the time he was
25 killed -- by the time he was murdered, I should say. In

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

69

1 fact, this crowd will tell you what they were watching,
2 how Nick was the nice guy. This guy was a live wire.
3 But Nick, but the time he got so drunk and was passing
4 out at the table, people began to worry: We are going
5 to get kicked out.

6 Will tries to make one final push with Mariko,
7 Mariko. She gives him a hand and says, "Take care of
8 your friend. He's going to get us kicked out." Nick
9 took care of him -- Will took care of Nick.

10 He walks him out. Nick throws up, sits in the
11 chair right by the front door. There's a couple of
12 other chairs with people sitting there, including the
13 pool shark, Amera, and her brother.

14 Nick, they will tell you, he is gone. He has
15 had so much he is just limp. Several witnesses will
16 tell you, the last person they saw close to Nick was
17 William Brockmeyer. They didn't know him by name, but
18 they can describe him.

19 One guy sees him even kneeling down like he is
20 talking to Nick -- on his knees. One witness, ladies
21 and gentlemen, sees more than that. She was not even
22 six feet away. Will, if he was facing me -- if Nick is
23 facing me down like this (indicating), Will bends down
24 on his knee, puts his head right next to Nick's, has a
25 gun.

1 She sees something dark. She hears a pop, a
2 flash, and she describes something gold going in the
3 air. That's a casing. That's the shell from the bullet
4 that just went into Nick's neck.

5 She saw it, horrified her. She rode in the
6 car with these guys. She knew who they were, horrified.
7 Nick just slumps, doesn't even fall out of the chair at
8 that moment.

9 Several witnesses see this man, William
10 Brockmeyer, run behind the bar. Folks, we will have
11 evidence he threw away the murder weapon. I will give
12 you this. No gun that gets thrown away -- or the only
13 gun that gets thrown away is the murder weapon.

14 An accident gun doesn't get thrown away. A
15 suicide gun doesn't get thrown away. A murder weapon,
16 that gets disposed of. He throws it away. We will have
17 evidence of that.

18 He comes back around the corner, and the
19 things he says, folks, just strike me really odd.
20 Mariko is running out of the bar, "What happened?" He
21 asks her what happened. She goes, "Are you kidding me?
22 You were out here. You tell you me."

23 He says, "Well, Nick wanted to do a robbery
24 and he wanted his gun back, and I don't know. I don't
25 know." Nick was passed out. Then when the crowd starts

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

71

1 developing and they are all asking, "What happened?"

2 He goes, "Nick shot himself. Nick shot
3 himself." They are like, "Where is the gun?" The story
4 changes. "Somebody shot Nick. Somebody shot Nick."
5 Yeah, he did.

6 Now, I ought to tell you about guns. There
7 are two guns in this case. Nick, our victim, did have a
8 pistol, a big black one, looked scary. He carried it in
9 the back of his shirt, and everybody could see it at the
10 bar.

11 In fact, it kind of upset some people. They
12 even approached him and said, "I know you are not from
13 around here, but you don't need that in here." He goes,
14 "That's fine. I'm from Florida. Down there we do.
15 That's fine. It's not a problem." You will hear these
16 people on the stand. They say after that they weren't
17 scared of him at all. They said he was nice, having
18 fun, never aggressive.

19 Someone else had a gun that night, William
20 Brockmeyer. His wasn't as big and pretty, a small one.
21 He carried it right here (indicating) in front.
22 Sometimes he'd move to it the back.

23 He flashed it to a few people, and they will
24 tell you how it made them feel, that he wasn't that nice
25 guy not trying to threatened or intimidate anybody. He

1 was intimidating.

2 One big difference about these pistols, our
3 victim's big black pistol was a B.B. gun. Brockmeyer's,
4 a .380. It was the real deal, and that was the gun that
5 killed Nicholas Rae. We will have testimony that the
6 gun that we found killed our victim Nicholas Rae.

7 What man can do this? What kind of man can do
8 this? Folks, you are going to hear a lot of witnesses,
9 and hopefully we will keep it kind of short. We will
10 try to. But this is some of the story about the why and
11 what is going on. The real story is who did it?

12 Murder is the intentional killing of another
13 human being with malice aforethought. Malice under our
14 law, it's an old term. It just means evil, a malignant
15 heart, someone just bent on evil. Aforethought just
16 means it was just there at the time of the killing.
17 That's it. It's very simple.

18 What kind of man would do what I just told
19 you? Ladies and gentlemen, I tell you, lawyers often
20 come in, particularly defense lawyers, and like to talk
21 about a robe of righteousness being draped over their
22 client during the course of the trial. It's a robe of
23 innocence.

24 Throughout the trial that robe stays on him
25 until those of us from the State with our evidence pull

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

73

1 it off by the end of the case. Ladies and gentlemen, my
2 partner Sean Graham and I will meet our duty. We
3 understand what our duty is. We gladly step up to the
4 task.

5 There is something else you need to know about
6 William Brockmeyer. He is not just wearing a robe of
7 righteousness. He is wearing a mask. At the end of the
8 trial, we will not only remove that robe, but we will
9 remove that mask.

10 And y'all will see not only who William
11 Brockmeyer is, but what he is. Ladies and gentlemen,
12 William Brockmeyer is an evil man. William Brockmeyer
13 is a murderer.

14 **OPENING STATEMENT**

15 MR. MADSEN: May it please the Court.

16 A rush to judgment. A rush to judgment. You
17 just heard the solicitor stand up here, walk around, get
18 down on his knee, be animated, use voice inflection,
19 quieter at some point in time, a little bit louder at
20 other points in time.

21 Let's just go ahead -- 'based on that' -- let's
22 just find Will guilty. Just on the opening, let's find
23 Will guilty. Does that make sense? Of course not. And
24 we all know why.

25 The long and short of it is obviously this is

1 a trial and this is the beginning part of the trial, and
2 the law requires that you listen to all the testimony
3 and all the evidence and hear everything before you make
4 a decision, before you rush to judgment.

5 Even though the law says that, realistically
6 isn't it just common sense that you want to hear the
7 questions, that you want to hear the testimony, that you
8 want to think about what the State presents, that you
9 want to think about what the State doesn't present
10 before you make a decision, before you rush to judgment?

11 You are going to hear about a rush to judgment
12 in this case, a rush to judgment by law enforcement.
13 Early on they make a decision as to what they think
14 happened, how they think it happened, and who did it.

15 Then after that they ignore stuff from the
16 witnesses. They ignore evidence because it doesn't fit
17 with what they think happened. They made a rush to
18 judgment.

19 Now, it's my privilege to work with David
20 Mauldin and to represent Will in this case. Will was
21 arrested over a year ago, August 11, 2010. He was
22 charged with murder and possession of a weapon. He was
23 put in jail. And ever since that time every chance he
24 has gotten, he has professed his innocence. This is
25 finally his day in court.

1 Now, the solicitor hit on it a little bit, the
2 presumption of innocence. There are a lot of things
3 within this courthouse that people disagree on on a
4 daily basis, but no one disagrees that every person
5 charged with a crime has a presumption of innocence.

6 As Will sits right there at the table, he is
7 presumed to be not guilty, and it is the State's entire
8 burden of proof to prove him guilty beyond each and
9 every reasonable doubt.

10 If once you get this case, you find any
11 reasonable doubt whatsoever, the law requires that you
12 find Will not guilty. As I said, the State's burden is
13 beyond a reasonable doubt.

14 Now, some of you might have sat on civil cases
15 where the burden of proof is significantly less. The
16 burden of proof in a civil case would be more likely
17 than not.

18 The burden in a civil case might be in legal
19 terms what is called preponderance of the evidence.
20 Beyond a reasonable doubt is absolutely, positively the
21 highest burden of proof in any courts in the United
22 States.

23 Now, as the judge read to you and you heard,
24 Will is charged on two different charges: possession of
25 a weapon during the commission of a violent crime and

1 murder. Possession of a weapon, that's kind of the
2 easier one.

3 Basically murder has been classified by our
4 legislature as a violent crime. If someone is convicted
5 of a violent crime and the jury determines that they
6 have a weapon on them, then they would be guilty of that
7 charge.

8 As the solicitor told you, murder is a little
9 bit different. It's the unlawful killing of another
10 with malice aforethought, not mistake, not accident,
11 malice aforethought.

12 Malice, as the solicitor said, means an
13 evilness, a wickedness. You can tell from the
14 beginning, just in the solicitor's opening statement,
15 that they have got a problem with that.

16 As the judge read, these are copies of the
17 indictments. These indictments mean absolutely nothing.
18 It is simply a charging document to get us into court
19 and has no evidentiary value whatsoever. But you know
20 from the beginning that the solicitor has problems.

21 Will and Nick knew each other down in Florida.
22 Will ends up coming and moving up here, and eventually
23 Nick, his friend, comes up here to visit him and decides
24 to stay, ultimately living with him. They are kind of
25 like two peas in a pod. If you see one of them,

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

77

1 probably the other one is not far behind.

2 You are going to hear about how they went to a
3 party that night at Amanda's Dunn's residence. I think
4 it was a birthday party. Nick is invited. There's some
5 problems with Will and Mariko, but Nick says, "Hey, can
6 Will come?" He comes all the way up from Florida to
7 stay with this guy. That's how tight they are. "Can
8 Will come?"

9 "Sure". Now, you are going to hear from a lot
10 of younger kids. Of course, what goes on at this house
11 party? There is a boatload of drinking done by
12 everyone. At some point in time, they decide to take
13 that party on to a bar called Jager's just down the road
14 on 6.

15 What ends up happening at that bar? Like
16 everywhere else: a bar, young kids, celebration. There
17 is more drinking going on. It gets later and later.
18 You are going to hear there is a ton of people at this
19 bar.

20 There is going to be a lot of confusion as to
21 what goes on because of the drinking, because maybe
22 people's faculties aren't the same. It will be
23 interesting that you are going to hear statements from a
24 lot of witnesses that over time seem to change.

25 You would think if you knew something a year

1 ago, you are more likely to get it correct than as time
2 goes on. That's going to be something you will have to
3 consider. That will have to be something that you don't
4 rush to judgment, that you listen to everything.

5 Now, in this case, as I have told you and the
6 solicitor has told you and at some point in time the
7 judge will tell you, Will has the presumption of
8 innocence.

9 It is the State's sole burden of proof to
10 prove him guilty beyond each and every reasonable doubt.
11 Will doesn't have to prove anything, anything
12 whatsoever. When you listen to the testimony, there is
13 going to be a ton of reasonable doubt as to what went
14 on.

15 If you find after listening to everything any
16 reasonable doubt, then you are required to find Will not
17 guilty. At the end of this case, based on all that
18 reasonable doubt, we are going to stand up back in front
19 of you and ask that you find Will not guilty. Thank
20 you.

21 THE COURT: Thank you, attorney for the State,
22 and thank you, Mr. Madsen, attorney for the defendant.
23 It's nearly 1:00 o'clock. I think it's probably time --
24 do you have a witness that needs to be heard at this
25 time?

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

79

1 MR. GRAHAM: No, Your Honor.

2 THE COURT: Well, let's break at this time for
3 lunch. Have the jury come back -- not to the courtroom
4 but the jury room -- at 2:30. That will give you an
5 hour and a half for lunch.

6 Please remember the following admonition: Do
7 not discuss this case with anybody. Let no one discuss
8 it with you. Please do not discuss it among yourselves
9 until I have given you the case for your deliberations.

10 Some jurors say, "Why wouldn't you let us
11 discuss it during the trial itself?" Well, it may be
12 the last witness or the last two witnesses that change
13 your complexion. Our system has been that a jury best
14 don't start their deliberation until they have heard all
15 the witnesses and been instructed in the law.

16 So, Mr. Foreman, I ask that you not permit any
17 discussion in the jury room regarding this case until I
18 have given it to you. I am going to excuse you now.
19 Have a nice lunch and be back in the jury room at 2:30.
20 Please wear your jury tag at all times. Thank you. You
21 may be excused.

22 (The jury is excused for lunch at 12:50 p.m.)

23 THE COURT: Let's resume at 2:30. Thank you.

24 (Whereupon there is a luncheon recess.)

25 THE COURT: I trust everybody had a nice

1 lunch. Is the State ready to proceed?

2 MR. GRAHAM: The State is ready, Your Honor.

3 THE COURT: Is the defense ready?

4 MR. MAULDIN: Yes, Your Honor.

5 THE COURT: Remember my admonition in
6 reference to my order of sequestration.

7 Tell the bailiff to bring the jury in.

8 (The jury returns to the courtroom at
9 2:38 p.m.)

10 THE COURT: Good afternoon, ladies and
11 gentlemen. I trust that all of you had a nice lunch.

12 The jury and alternates are present. You may
13 proceed, Solicitor.

14 MR. GRAHAM: Thank you, Your Honor. The State
15 calls Gina Brakefield to the stand.

16 BEVERLY GINA BRAKEFIELD,
17 being first duly sworn, testifies as follows:

18 CLERK: State your full name, spelling your
19 last on the record, please.

20 THE WITNESS: Beverly Gina Brakefield,
21 B-R-A-K-E-F-I-E-L-D.

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q You go by Gina; is that correct?

25 A Yes, sir.

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

81

1 Q And how old are you, Gina?

2 A Twenty-four.

3 Q And how long have you lived in Lexington County?

4 A Almost all my life.

5 Q Do you recognize Will Brockmeyer in the courtroom
6 today?

7 A Yes, sir.

8 Q Would you point him out for me, please?

9 A He is right there (indicating).

10 Q Can you tell me what he is wearing?

11 A A suit, last one on the left.

12 MR. GRAHAM: Your Honor, let the record
13 reflect she has identified the defendant Mr. William
14 Brockmeyer.

15 BY MR. GRAHAM:

16 Q You know him as Will Brockmeyer now, but what was
17 the name he introduced himself to you as?

18 A Dea or Damien.

19 Q And do you remember where that was the first time
20 you met him?

21 A At my friend Mariko Clack's house.

22 Q Do you remember when that was?

23 A The beginning of July.

24 Q The beginning of July of what year?

25 A 2010.

1 Q What, if anything, was going on between Damien and
2 Mariko at Mariko's house at the party that night?

3 A Flirting.

4 Q Was that both of them?

5 A Yes, sir.

6 Q On July 10th of that year, a week and half or so
7 later from the first time that you met Damien, was
8 there a party that you were going to?

9 A Yes, sir.

10 Q And whose party was that?

11 A Amanda Dunn's.

12 Q Is Amanda a friend of yours as well?

13 A Yes.

14 Q Prior to going to the party at Amanda's house the
15 night of July 10, 2010, what, if anything, did you
16 learn about Damien?

17 A That his real name was William Brockmeyer, that he
18 had a fiancée and may or may not have a kid.

19 Q And did you talk to Mariko about that?

20 A Yes, she told me.

21 Q How did Mariko react to that news?

22 A She was upset.

23 Q Did you go to Amanda's party?

24 A Yes, sir.

25 Q And did Damien, who you now know his real name is

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

83

1 Will, did he show up?

2 A Yes, sir.

3 Q Who did Will Brockmeyer come to the party with?

4 A Nick and a girl named Karmen.

5 Q When you say Nick, do you know Nick's last name?

6 A Nick Rae.

7 Q I will show you a photograph and ask if you
8 recognize that?

9 A Yes, sir, that's Nick.

10 MR. GRAHAM: Your Honor, the State would offer
11 this photograph into evidence at this time.

12 THE COURT: May I see it, please? Have you
13 shared this with defense counsel?

14 MR. GRAHAM: They've had a copy of this
15 throughout in the discovery.

16 THE COURT: How about letting me have the same
17 opportunity?

18 (Hands to Court.)

19 THE COURT: That's fine. Go ahead.

20 MR. MAULDIN: Your Honor, I would object. I
21 would say it's not relevant.

22 THE COURT: What is the relevancy?

23 MR. GRAHAM: It goes to identity, Your Honor.

24 THE COURT: I will admit it, State's Exhibit
25 Number 1.

1 (State's Exhibit Number 1 is received into
2 evidence.)

3 BY MR. GRAHAM:

4 Q So State's Exhibit Number 1, that's a photo of
5 Nick?

6 A Yes, sir.

7 Q When was the first time that you met Nick?

8 A At Amanda's party on the 10th.

9 Q So Will Brockmeyer and Nick came. Was there
10 anybody else who came with them?

11 A Yes, sir, Karmen.

12 Q Had you ever met her before?

13 A No.

14 Q What was your understanding of who Karmen was with?

15 A Will.

16 Q At the party at Amanda's house, what, if anything,
17 was going on as far as Will and him using the name
18 Damien earlier with Mariko?

19 A A couple of our friends were haggling him, teasing
20 him and asking him like what he would be called
21 tonight. "Will it be Damien or will it be Will or
22 Willie," stuff of that nature.

23 Q Who was the main person who was doing that?

24 A Brittany.

25 Q Do you remember what Brittany was wearing that

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

85

1 night? What color her top was?

2 A Turquoise.

3 Q How was Will Brockmeyer's reaction to that
4 heckling?

5 A He laughed it off, but you could tell it was kind
6 of irritating. It bothered him.

7 Q How was Nick acting that night at Amanda's house?

8 A He was very cheerful, happy-go-lucky, fun loving,
9 just enjoyed it, liked meeting new people.

10 Q What, if anything, did you hear Nick say that you
11 took as an insult to Will Brockmeyer?

12 MR. MAULDIN: Objection, Your Honor. I don't
13 know if it's going to be hearsay.

14 THE COURT: I think she is entitled to say
15 what the deceased said.

16 MR. MAULDIN: I don't believe so.

17 THE COURT: I will permit her to say what the
18 deceased said as a moment of first impression, yes. Go
19 ahead. I don't want a lot of detail about it, you
20 understand?

21 MR. GRAHAM: Yes, Your Honor.

22 A He had mentioned that he had slept with his
23 girlfriend and that she liked him better.

24 Q Nick said that he had slept with whose girlfriend?

25 A Will's.

1 Q How did Will Brockmeyer react to that?

2 A The same with the teasing. He laughed about it,
3 but clearly it's not something you would be happy
4 about.

5 Q At some point was the party moving from Amanda's
6 house to somewhere else?

7 A Yes, sir.

8 Q Where was the party being moved to?

9 A A bar off Number 6 called Jager's.

10 Q That's in Lexington County?

11 A Yes, sir.

12 Q Were there a number of people from Amanda's party
13 that went?

14 A Yes, sir.

15 Q Did Nick go to Jager's?

16 A Yes, sir.

17 Q Was Will Brockmeyer initially invited?

18 A No.

19 Q What, if anything, did you see or observe as far as
20 an exchange between Will Brockmeyer and the girl he
21 came with, Karmen?

22 THE COURT: Wait a minute now. Don't get into
23 hearsay of what some girl said. You will have to put
24 that girl on the witness stand.

25 MR. GRAHAM: No, Your Honor. I understand. I

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

87

1 didn't ask her that, Your Honor.

2 THE COURT: I understand. The way you asked
3 it asked for an explanation. Be careful with that,
4 please.

5 BY MR. GRAHAM:

6 Q Gina, what, if anything, did you observe as far as
7 an interaction between Karmen and Mr. Brockmeyer,
8 not what was said but what you saw?

9 A It seemed that they were having an argument, and
10 afterwards she left.

11 Q Did she end up going to Jager's bar?

12 A No.

13 Q Did Will Brockmeyer end up going to Jager's bar?

14 A Yes.

15 Q Who did you ride with you from Amanda's house to
16 the bar?

17 A Mariko Clack and Jennifer McFarland, Will and Nick.

18 Q On the way to the bar on the drive over, who
19 drove?

20 A Mariko drove.

21 Q Whose car was it?

22 A Mariko's.

23 Q On the way to the bar, what, if anything, did you
24 see regarding a gun?

25 A I saw Nick pull out a gun wrapped in a black shirt

1 tucked from under the seat.

2 Q Was it a large gun or a small gun?

3 A A large gun.

4 Q Do you remember if you were able to see the color
5 of the gun?

6 A It was black.

7 Q Is there anything else on the way over there that
8 you were shown involving a gun?

9 A Yes, he showed me pictures from a phone with a big
10 gun and a small gun.

11 Q Who showed you the pictures?

12 A Nick.

13 Q Do you remember what kind of phone or what the
14 phone looked like or who had the phone?

15 A Nick had the phone at the time. I think it was
16 just a plain old -- like a flip phone. I don't
17 remember.

18 Q Once you got to the bar, tell us how you arrived
19 there and what happened when you initially got
20 there.

21 A When we got there, we all got out and got our
22 table, sat down and got our drinks and just talked
23 amongst ourselves.

24 Q Let me show you a diagram and ask if you recognize
25 this.

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

89

1 THE COURT: Has this diagram be shown to the
2 defense?

3 MR. GRAHAM: It has been provided previously
4 to the defense, Your Honor.

5 A Yes, sir; that's the layout of the bar.

6 Q Does it fairly and accurately represent the layout
7 of the bar?

8 A Yes, sir.

9 Q Would it assist you in explaining where things
10 happened?

11 A Yes, sir.

12 MR. GRAHAM: Your Honor, the State would offer
13 this diagram into evidence at this time.

14 MR. MAULDIN: No objection, Your Honor.

15 THE COURT: Without objection, it's State's
16 Number 2.

17 (State's Exhibit Number 2 is received into
18 evidence.)

19 MR. GRAHAM: Your Honor, I would like to turn
20 the overhead on and publish it to the jury.

21 THE COURT: You may do so.

22 MR. GRAHAM: Thank you, Your Honor.

23 THE COURT: Mr. Foreman, and ladies and
24 gentlemen, from time to time when things are introduced
25 into evidence, he may desire to show you at that time,

1 which means to publish.

2 Be assured though if it's not published at the
3 time of the introduction, you will have it with you in
4 the jury room during your deliberations. So some
5 evidence is published at the time and some is not. You
6 will have it all at the appropriate time.

7 You may proceed.

8 MR. GRAHAM: Thank you, Your Honor.

9 BY MR. GRAHAM:

10 Q Gina, as you arrive into the bar, what happens?

11 A We walk in, sit down at our tables, and we get
12 drinks.

13 Q And how many people are in the group that you are
14 in?

15 A At our table there was maybe five or six. In the
16 whole bar, it was probably like 25 to 30.

17 Q Looking at the overhead, can you see the diagram,
18 State's Exhibit Number 2, up there?

19 A Yes, sir.

20 Q I gave you a laser pointer. Would you show to the
21 jury where the entrance is to Jager's bar?

22 A (Indicating.)

23 Q So you are starting from where the front porch is
24 going to -- that area between the two doors, what
25 would you describe that as?

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

91

- 1 A It's kind of like a hallway, breezeway.
- 2 Q Then the second door, that's the entrance into the
- 3 bar itself?
- 4 A Yeah.
- 5 Q Where approximately were the tables that you and
- 6 your friends were at?
- 7 A (Indicating.)
- 8 Q Do you remember how many tables that you got?
- 9 A Three.
- 10 Q Once you are at the bar, how would you describe
- 11 Nick's behavior?
- 12 A He was the same as he was at the party, happy,
- 13 having a good time, dancing, laughing, talking.
- 14 Q Let's stop for a second and talk. How much did you
- 15 have to drink at Amanda's house?
- 16 A Two cups of P.J.
- 17 Q What is P.J.?
- 18 A It's a liquor drink, like made of fruit punch, and
- 19 it has pieces of fruit in it, grapes and stuff.
- 20 Q The whole night you are at Jager's, how much more
- 21 do you have to drink?
- 22 A One shot and one drink.
- 23 Q What time did the party start at Amanda's house?
- 24 A Roughly about 8:00 or 9:00.
- 25 Q Do you remember approximately what time you ended

1 up moving to Jager's?

2 A About 1:00, 1:30.

3 Q How about do you remember at Amanda's party -- or
4 how would you characterize Nick's alcohol
5 consumption?

6 A He was having P.J. as well, but it wasn't -- I
7 didn't see him drink a whole lot.

8 Q How about Mr. Brockmeyer?

9 A I don't remember.

10 Q How about your friend, Mariko Clack?

11 A She might have had a couple of cups.

12 Q You have another friend named Brittany. Do you
13 know who I am talking about?

14 A Yes, sir.

15 Q How would you describe Brittany's alcohol
16 consumption at Amanda's party?

17 A A lot.

18 Q When you say a lot, what do you mean?

19 A She was near -- she was pretty drunk when we left
20 Amanda's house. She had had plenty of cups, plenty
21 of fruit.

22 Q Back at Jager's bar when you first get there, what
23 does Nick do when you all first arrive?

24 A He goes to the bar with Mariko and buys a drink.

25 Q And do you know where he goes after that?

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

93

- 1 A They came back to the table.
- 2 Q Where is Will during that time?
- 3 A I don't know.
- 4 Q So Nick and Mariko go up and get a drink, and they
- 5 come back to the table where you are at?
- 6 A Yes, sir.
- 7 Q Does Nick stay there with you for awhile?
- 8 A Yes, sir.
- 9 Q Does Mariko stay there a while?
- 10 A Yes, sir.
- 11 Q And during the time that Nick is there at the
- 12 table, do you remember where Will is at and what he
- 13 is doing?
- 14 A Sometimes he stood behind Mariko; other times he
- 15 would walk away and got sit in a corner or pout and
- 16 face the wall.
- 17 Q What's going on -- while Nick is still at the
- 18 table, what, if any interaction, do you see between
- 19 Will Brockmeyer and Mariko?
- 20 A He would be flirting with her. He'd try to kiss
- 21 her. She would shove him away.
- 22 Q And what was his reaction to that?
- 23 A It would make him even more agitated.
- 24 Q At some point did Nick get up and leave the table?
- 25 A Yes.

1 Q Do you know where he went?

2 A He went to play pool.

3 Q While he was gone playing pool, what was Will
4 Brockmeyer doing?

5 A Still trying to kiss on Mariko and flirt with her.

6 Q What was Mariko doing?

7 A She was still giving him the coldshoulder, pushing
8 him off.

9 Q And how was he taking that?

10 A Not well.

11 Q At some point are you dancing?

12 A Yeah.

13 Q And does Will come out on the dance floor as well?

14 A Yes.

15 Q Does somebody make a comment about Will's dancing?

16 A Yes, sir.

17 THE COURT: Wait a minute. I can't permit
18 what somebody, unidentified, said with a comment. You
19 will have to bring somebody in here.

20 MR. GRAHAM: Yes, Your Honor.

21 BY MR. GRAHAM:

22 Q Based on something that somebody else said, what,
23 if anything, did Will Brockmeyer say?

24 A He said it was hard to dance with a pistol in his
25 pants.

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

95

1 Q Once he said it was hard to dance with a pistol in
2 his pants, what, if anything, did you do?

3 A I reached behind him for a gun, and there wasn't
4 one there. So he took my hand and put it to the
5 front of his pants.

6 Q When he took your hand and moved it to the front of
7 his pants, what, if anything, did you feel?

8 A A small gun.

9 Q At some point does Nick return to the table?

10 A Yes, sir.

11 Q And how would you describe his state at that time?

12 A At first he was dancing and laughing and cutting up
13 with us.

14 Q And after that what did you notice about him next?

15 A That he was too drunk and he was passing out at the
16 table.

17 Q When you say passing out at the table, Gina, what
18 do you mean?

19 A Falling asleep.

20 Q As he is passing out on the table, what, if
21 anything, does Will Brockmeyer say to you?

22 A He tells me to take care of him.

23 Q Take care of who?

24 A Take care of Nick. Take him outside. Get him some
25 air, that kind of thing.

1 Q What did you say to Mr. Brockmeyer?

2 A No.

3 Q What happened next?

4 A Nick woke up and he ran outside like he was about
5 to be sick, and my friend, Jennifer McFarland,
6 followed him out.

7 Q You said Nick woke up?

8 A Uh-huh. (Indicating affirmative response.) He was
9 shoved onto me.

10 Q Who shoved him onto you?

11 A Will shoved him onto me to tell me to take care of
12 him, and it woke him up.

13 Q After Nick goes out and Jennifer McFarland goes out
14 with him, who do you see next leave the bar?

15 A Will.

16 Q And who, if anybody, do you see follow Will out of
17 the bar?

18 A Brittany.

19 Q And how long have you and Brittany been friends?

20 A Since we were 12.

21 Q When you see Brittany go out of the bar, where did
22 you go?

23 A I follow behind her.

24 Q When you come out of the bar, where are you
25 standing? Referring to State's Exhibit Number 2

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

97

1 that is on the screen with that pointer, where are
2 you at when you come out?

3 A (Indicating.)

4 Q You are showing on the front porch area right
5 outside the front door?

6 A Yes, sir.

7 Q When you come out the door and you are on the front
8 porch area, what, if anything, do you see?

9 A Jennifer was standing behind Nick while he got
10 sick.

11 Q On the way out, what do you see in the foyer?

12 A Nothing.

13 Q So between the bar and the front porch where you
14 pass through the foyer, you don't see anybody?

15 A No.

16 Q When you get outside, what do you see?

17 A I see Nick getting sick and Jennifer behind him.

18 Q Referring to State's Exhibit Number 2, where do you
19 see Nick getting sick?

20 A (Indicating.)

21 Q It's on the wall connected to the foyer area there?

22 A Yes, sir.

23 Q What happens next?

24 A Jennifer sat Nick in a chair out on the front
25 porch.

1 Q When you say a chair, do you remember roughly where
2 the chair was?

3 A (Indicating.)

4 Q Do you remember how many chairs there were there?

5 A Three.

6 Q Do you remember if anybody else was sitting in the
7 other chairs?

8 A Yes, sir.

9 Q Who was?

10 A Amera Kabar and Keith Kabar.

11 Q What do you do next?

12 A I turned around. Jennifer sat in the chair. I
13 turned around to walk back into the breezeway.

14 Q That's the area between two doors?

15 A Yes, sir, right there (indicating).

16 Q What do you see at that time?

17 A I see Will and Brittany making out.

18 Q Referring to State's Exhibit Number 2, what area of
19 the foyer area do you see them making out?

20 A (Indicating.)

21 Q Which way is Will Brockmeyer facing?

22 A The wall. He is facing towards the wall.

23 Q And your friend Brittany, which way was she facing?

24 A Her back was to the wall. She was facing the
25 doorway.

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

99

- 1 Q What, if anything, do you say when you see Will
2 Brockmeyer and your friend Brittany making out?
- 3 A I called them both whores.
- 4 Q After you make that statement, what, if anything,
5 does Will Brockmeyer do?
- 6 A They both laughed and he walks away.
- 7 Q He walks -- I'm sorry?
- 8 A He walked back outside.
- 9 Q How about your friend Brittany? Where, if
10 anywhere, does she go?
- 11 A She moved to that wall right there (indicating).
- 12 Q Do you remember how long you were in there with
13 Brittany before you left the foyer area?
- 14 A Thirty seconds.
- 15 Q When you left the foyer area, where did you go?
- 16 A Out on the front porch.
- 17 Q When you come out on the front porch, what do you
18 see?
- 19 A I saw Nick in the chair slumped over and Will
20 crouching in front of him.
- 21 Q When you say slouched over, what do you mean?
- 22 A Hands by his side, head in his lap.
- 23 Q Who, if anybody else, do you see around Nick at
24 that time?
- 25 A Amera Kabar and Keith Kabar were still sitting

1 there.

2 Q Who else, if anybody, did you see?

3 A That's it.

4 Q Where is Will Brockmeyer at that time?

5 A He is crouching in front of him.

6 Q When you say crouching, what do you mean?

7 A Squatting down.

8 Q In front of who?

9 A In front of Nick.

10 Q What, if anything, do you see next?

11 A I saw him like whispering in his ear with his hands
12 up in a trigger-like position.

13 Q When you say he was whispering in his ear, who was
14 whispering in whose ear?

15 A Will was whispering in Nick's ear.

16 Q What was Nick doing at that time?

17 A He was asleep.

18 Q Were you able to hear what Will Brockmeyer was
19 saying?

20 A No, sir.

21 Q You said his hand came up in a trigger-like
22 position. What do you mean?

23 A I'm not sure how to describe it other than show
24 you.

25 MR. GRAHAM: Your Honor, could I have the

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

101

1 witness step down from the stand and use a chair and
2 have her reenact this for the jury, please?

3 THE COURT: I will permit it.

4 MR. GRAHAM: Thank you, Your Honor.

5 (Witness leaves the witness stand.)

6 THE COURT: I find it would help the jurors in
7 hearing the testimony.

8 MR. GRAHAM: Thank you, Your Honor.

9 THE COURT: Counsel for the defense, you may
10 come forward, please.

11 BY MR. GRAHAM:

12 Q Gina, if you will stand over here and face the
13 court reporter and keep your voice up so she can
14 hear you.

15 A Yes, sir.

16 Q If this is the chair that Nick was in -- this is
17 Detective Grant, who is a detective on the case --
18 would you put his body in the position that you saw
19 Nick in.

20 A Yes, sir (indicating).

21 Q You have him slumped forward with his head forward
22 and his arms hanging down to his side?

23 A Yes, sir.

24 Q Mr. Hubbard will be Mr. Brockmeyer in this
25 situation. Would you have Mr. Hubbard in the

1 position that you saw Will Brockmeyer.

2 A (Indicating.)

3 Q Crouching down?

4 A Uh-huh. (Indicating affirmative response.) Head
5 forward.

6 Q You have his right hand up by his neck, and that's
7 when you say he was whispering in his ear. Where
8 are you standing at when this happens?

9 A About here (indicating).

10 Q That's about five to six feet away?

11 A Yes, sir.

12 Q You are looking from the right-hand side over
13 Mr. Brockmeyer's shoulder?

14 A Yes, sir.

15 THE COURT: Have the witness resume the stand
16 if you have completed your demonstration.

17 MR. GRAHAM: I think we are at this time, Your
18 Honor. I think that is good.

19 BY MR. GRAHAM:

20 Q Have a seat back there, please, Gina.

21 A (Witness resumes the witness stand.)

22 Q Now that we have established the position and you
23 have the hand up in a trigger finger in the neck
24 area of the left side of Nick, what do you see or
25 hear next?

GINA BRAKEFIELD --- DIRECT -- MR. GRAHAM

103

1 A I heard a loud pop. I saw a flash of yellow and a
2 brass casing fly out.

3 Q Did you know it was a casing?

4 A No.

5 Q So what did you see?

6 A It was just like a flash of yellow and then
7 something gold.

8 Q What did the flash of yellow look like?

9 A Like a fire, like a spark, or a flame.

10 Q What did the noise sound like to you?

11 A It sounded like one of the M-80 firecrackers, the
12 big loud ones.

13 Q And you said you saw the gold. What was the gold
14 doing, the gold color?

15 A Just like flying in the air.

16 Q What do you see happen next?

17 A I saw Will stand up and grab Nick's shoulder like
18 he was shaking him awake and give him a shove.

19 Q And what happened next?

20 A Will turned and walked towards the woods.

21 Q Referring to State's Exhibit Number 2 and using
22 your pointer, would you point to the jury which way
23 you saw Will Brockmeyer go after the shooting?

24 A (Indicating.)

25 Q That would be around -- if you are on the porch,

1 going off the porch to the left side; is that
2 correct?

3 A Yes, sir.

4 Q Let me show you two other photos and ask if you
5 recognize these photos?

6 THE COURT: First, have they been displayed to
7 the defense?

8 MR. GRAHAM: The defendant has received copies
9 of these previously, Your Honor.

10 MR. MAULDIN: I need to see which ones you are
11 going to show.

12 (Pause.)

13 BY MR. GRAHAM:

14 Q Do you recognize these?

15 A Yes, sir.

16 Q In fact, did you take them?

17 A Yes, sir.

18 Q Do they fairly and accurately depict what you took
19 a picture of the early morning hours of July 11,
20 2010, at Jager's bar?

21 A Yes, sir.

22 MR. GRAHAM: Your Honor, the State would offer
23 these two photos into evidence.

24 THE COURT: What says the defense?

25 MR. MAULDIN: No objection, Your Honor.

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

105

1 THE COURT: Without objection.

2 (State's Exhibit Number 3-4 are received into
3 evidence.)

4 MR. GRAHAM: Your Honor, if I could publish
5 these to the jury.

6 THE COURT: As long as in each instance, I
7 want to make sure you have provided him a copy.

8 MR. GRAHAM: Yes, Your Honor.

9 MR. MAULDIN: Yes, sir.

10 BY MR. GRAHAM:

11 Q Referring to State's Exhibit Number 3, who is that
12 a photo of?

13 A Of Will and Mariko.

14 Q Where was that photograph taken at?

15 A At the table in Jager's bar.

16 Q That shirt that you see Mr. Brockmeyer wearing,
17 what, if any, shirt did you observe him wearing at
18 the time of the shooting?

19 A That shirt, sir.

20 Q State's Exhibit Number 4, what is it that is a
21 photograph of?

22 A It was just a retake because he had his eyes closed
23 in the first one.

24 Q After Will Brockmeyer runs off or walks off towards
25 the woods, what, if anything, do you do?

- 1 A I ran back into the bar and I screamed out,
2 "Somebody has been shot. Call 9-1-1."
3 Q After you did that, what happened?
4 A Floods of people came outside. Some left; some
5 stayed.
6 Q At some point do you go back outside?
7 A Yes, sir.
8 Q You go back outside. What is going on outside?
9 A Nick is lying on the ground.
10 Q You went inside and asked or told people to call
11 9-1-1; somebody has been shot. At that time what,
12 if anything, did you say about Will Brockmeyer
13 shooting Nick?
14 A Nothing.
15 Q Why not?
16 A I don't know.
17 Q When you got back outside and see Nick, what is
18 going on out there?
19 A People are trying to help him.
20 Q Describe what is going on.
21 A He was bleeding real bad and somebody had his head
22 in their lap.
23 Q At some point do you see Will Brockmeyer again?
24 A Yeah, he came back.
25 Q Came back where?

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

107

- 1 A Came back to the porch.
- 2 Q What, if anything, do you see him wearing at that
- 3 time?
- 4 A He had on a gray wife-beater.
- 5 Q Like a tank top undershirt?
- 6 A Yes, sir.
- 7 Q How was Will Brockmeyer acting at that time?
- 8 A Hysterically.
- 9 Q What do you mean?
- 10 A He was claiming that he shot himself and that he
- 11 said he was going to do it.
- 12 Q Will Brockmeyer said who shot himself?
- 13 A Nick had shot himself.
- 14 Q And he said what that -- he said what that Nick had
- 15 said earlier?
- 16 A He said Nick had told him he was going to do it,
- 17 meaning he was going to shoot himself.
- 18 Q What, if any, indication throughout the night at
- 19 Amanda's party or at Jager's bar did Nick Rae give
- 20 you about committing suicide?
- 21 A None.
- 22 Q What else did Will Brockmeyer say or do?
- 23 A Somebody had asked him if he had shot himself, then
- 24 where was the gun? And as soon as that comment was
- 25 made, he changed it up and said, "The black guys

1 did it."

2 Q What, if anything, did you ask Will Brockmeyer
3 next? What, if anything else, did Will Brockmeyer
4 say about the black guys shooting Nick?

5 A He said that they had shot him and that they had
6 left.

7 Q What was Will Brockmeyer's emotional state at that
8 time?

9 A He was acting really upset, uncontrollable, like
10 belligerent. He wouldn't calm down. He was
11 shouting, pacing around.

12 Q How did it make you feel to be in Will Brockmeyer's
13 presence?

14 A Extremely uncomfortable, scared, and angry.

15 Q What, if any, indication did Will Brockmeyer give
16 you about being upset?

17 A The shouting, the pacing. He would pretend to cry,
18 but he wouldn't shed a tear. He would act like he
19 was crying, but nothing -- no tears would fall. No
20 runny nose. No nothing.

21 Q At some point did the police arrive?

22 A Yes, sir.

23 Q What, if anything, happened after the police
24 arrived?

25 A Everybody was made to walk behind the crime scene

GINA BRAKEFIELD -- DIRECT -- MR. GRAHAM

109

1 tape, and the police started coming and asking
2 questions and walking up to people asking them if
3 they saw anything.

4 Q What, if anything, did you tell the police when
5 they showed up?

6 A The first policeman that walked up to me, I started
7 crying, and he asked me to come back to his car
8 with him where I proceeded to write my statement
9 and tell him what had happened. He said there was
10 nothing to be afraid of. Whoever had done it had
11 already left, and I said, "No, he is still here."

12 Q And did you tell that officer who shot Nick?

13 A Yes, sir.

14 Q Who did you tell him it was?

15 A Will Brockmeyer.

16 MR. MAULDIN: Objection, Your Honor, hearsay.

17 THE COURT: No, sir, this is her own
18 statement.

19 MR. MAULDIN: It's a prior consistent
20 statement.

21 THE COURT: She is entitled to state her own
22 statement.

23 BY MR. GRAHAM:

24 Q Thank you, Gina. Please answer any questions the
25 defense has.

CROSS EXAMINATION

1

2

BY MR. MAULDIN:

3

Q Now, you have been talking with the police and the prosecutor for some time about this case on several different occasions; is that right?

4

5

6

A Yes, sir, recently.

7

8

9

Q Near the time it happened, I think you said you talked to an officer at the scene, and then you gave him a statement; right?

10

A Yes, sir.

11

12

13

14

Q And then later on that morning, toward the next day as the sun had come up, you went into the Sheriff's Office or the Sheriff's Department and wrote another statement; is that right?

15

A Yes, sir.

16

17

18

Q And in the past several months, I believe you have been talking with the Solicitor's Office? You sent them an e-mail?

19

A Yes, sir.

20

21

Q Regarding what went on, and here you are today; is that right?

22

A Yes, sir.

23

24

Q Is there any other times you talked with them that you can recall?

25

A I have been up here to talk with them.

GINA BRAKEFIELD -- CROSS -- MR. MAULDIN

111

1 Q Two or three times?

2 A Yes.

3 Q Somewhere around that?

4 A Yes.

5 Q And, of course, these were your friends that were
6 with you at the bar that night; is that right?

7 A Yes.

8 Q And obviously you've had time over the past year or
9 so -- you all have talked about what happened in
10 that time frame; right?

11 A Yes, sir.

12 Q Now, this occurred, I guess, on the night of
13 July 10th going into July 11th; right?

14 A Yes, sir.

15 Q You had only seen Will one time before then; is
16 that right?

17 A That's right.

18 Q Now, you are saying it was about like a week
19 before? Two weeks before?

20 A Yes, sir.

21 Q Could it have been a little bit longer? Maybe
22 three weeks? Somewhere in that area?

23 A It could have been two and a half weeks.

24 Q But somewhere in the time frame? It might have
25 been sometime before July starts? Somewhere near

1 the end of June, middle of June, up to July?

2 A Yes.

3 Q And basically you had discovered apparently Will
4 had used this name Dea and Mariko found out about
5 it, and she was upset about it?

6 A Yes, sir.

7 Q And upon discovering that you didn't really think
8 of Will in a favorable light then; did you?

9 A No.

10 Q So you already had some negative feelings toward
11 him at the time; is that right?

12 A Not negative, not his character. It was the fact
13 he lied and thought he was a liar but nothing more
14 than that.

15 Q Right. But that's not a positive thing?

16 A No, but everybody has skeletons.

17 Q Now, Nick and Will and Mariko all arrived at
18 Amanda's Dunn's house; right? Together?

19 A Who?

20 Q Not Mariko. Karmen, Nick, and Will arrived there
21 together in a car; right?

22 A Yes, sir.

23 Q And they had actually followed Megan in; is that
24 correct?

25 A I believe so. Megan Carrie?

GINA BRAKEFIELD -- CROSS -- MR. MAULDIN

113

1 Q Megan Carrie, and Mariko were in the car together?

2 A Yes.

3 Q And met them and led them to the party. Karmen was
4 with Will at that time?

5 A Yes, sir.

6 Q That's your understanding?

7 A (Witness nods.) (Indicating affirmative response.)

8 Q You said during your direct that Nick made a
9 comment about how he had slept with Karmen; is that
10 right?

11 A If it wasn't Karmen, it was one of Will's other
12 girlfriends.

13 Q And Nick appeared to be joking when he said that?

14 A Yes.

15 Q So he was joking with Will about sleeping with
16 somebody Will slept with?

17 A Yes.

18 Q And you said Will laughed it off, but your
19 interpretation was he kind of didn't like it at the
20 same time?

21 A Right.

22 Q Now, you talked about Will flirting with Mariko,
23 but a lot of people were flirting with a lot of
24 people over the course of this evening; isn't that
25 correct?

1 A Yes, but I was in my own circle of friends at the
2 party.

3 Q Well, within your own circle. Didn't Nick flirt
4 with you a little bit in the car on the way to the
5 bar?

6 A Yes.

7 Q He talked about a piercing that he had?

8 A Yes.

9 Q Kind of in a personal area?

10 A Yes, sir.

11 Q And he showed you some pictures of that on his
12 phone?

13 A Yes, sir.

14 Q And at the bar Will was flirting with your friend,
15 Ms. Berggrun; right?

16 A No, sir, there was no flirting before the actual
17 kiss that I saw.

18 Q None that you saw. During the night though people
19 would go from the table and the dance floor and
20 dance?

21 A Yes.

22 Q You mentioned dancing with Will, and people were
23 dancing with each other on the dance floor?

24 A Yes.

25 Q You weren't with both of them the entire time; were

GINA BRAKEFIELD -- CROSS -- MR. MAULDIN

115

1 you?

2 A Not the entire time, but the majority of the time I
3 knew where both of them were.

4 Q Now, you say that Nick got up to leave the bar and
5 Jennifer followed after him; is that right?

6 A Yes, sir.

7 Q And then Will went and then Brittany went?

8 A Yes.

9 Q And then you went?

10 A Yes.

11 Q So y'all were sitting at tables right about here
12 (indicating); right?

13 A Yes, sir.

14 Q In this area (indicating). Obviously to leave the
15 bar, you had to go out this door (indicating) and
16 then out that door (indicating); right?

17 A Yes.

18 Q There is another door between the pool tables over
19 here (indicating), but we are not talking about
20 that?

21 A No, I didn't even recall that door.

22 Q So from your point of view, you walked from here
23 (indicating), out this door (indicating), out this
24 door (indicating), and right about here
25 (indicating), and you saw Nick throwing up right

1 around this area (indicating); is that right?

2 A Yes, sir.

3 Q You didn't see anybody else in the foyer or the
4 little entranceway?

5 A No.

6 Q So if Will and Brittany left before you, where did
7 they go?

8 A I don't remember Will being outside on the porch,
9 but only for a second, and I didn't see where
10 Brittany went.

11 Q So was Will talking to Nick at that time?

12 A No.

13 Q You never said anything before now about Will being
14 out on the porch before you got out there; did you?

15 A No, I didn't.

16 Q Not in any of these prior statements that we talked
17 about?

18 A I'm not sure.

19 Q And you have given a little bit more detail today
20 than you have in the past; isn't that correct?

21 A Yes, sir.

22 Q And as far as saying that Will wanted you to take
23 Nick outside, you never put that down in writing
24 anywhere as far as your e-mail?

25 A Yes, I did.

GINA BRAKEFIELD -- CROSS -- MR. MAULDIN

117

1 Q You did?

2 A I believe so.

3 Q Would looking at a copy of it refresh your
4 recollection?

5 A Yes, sir.

6 (Pause.)

7 THE COURT: Are you ready?

8 THE WITNESS: Yes, sir.

9 THE COURT: You may proceed.

10 BY MR. MAULDIN:

11 Q Did you really put anything in the e-mail about
12 Will telling you to take care of Nick or take him
13 outside?

14 A No, sir, apparently not.

15 Q So it appears that new details are coming up over
16 time that you are able to relate to the jury; is
17 that right?

18 A Yes, sir.

19 Q Now, about the time that Nick is getting sick and
20 going outside, it's getting to be around
21 3:00 o'clockish; isn't that right?

22 A Two-thirtyish.

23 Q Two-thirtyish, 3:00. Was there anything going on
24 as far as like last call and people announcing that
25 maybe the bar was going to close pretty soon?

1 A Not that I was aware of.

2 Q So you go outside. You see Jennifer helping Nick.
3 She helps him to this chair right next to the
4 Kabars. Were there any other people standing
5 outside, like maybe over here in this area
6 (indicating)?

7 A Yes, sir.

8 Q And some people standing maybe in this area over
9 here (indicating)?

10 A Not that I could see or notice.

11 Q Was there anybody talking with the Kabars standing
12 up?

13 A Not that I remember.

14 Q But it's possible?

15 A Yes.

16 Q So you go outside. You see her put Nick -- I guess
17 you were wondering where Brittany is?

18 A Yes.

19 Q So that's why you go back in to check and see where
20 she is at?

21 A Yes.

22 Q You see her and she and the defendant are, I guess,
23 kissing and hugging up on one another?

24 A Yes.

25 Q That kind of thing. You go up and you call them

1 whores; right?

2 A Yes, sir.

3 Q And they are laughing about it?

4 A Yes, sir.

5 Q And you say Will walks back out this way

6 (indicating), and you and Brittany have like a

7 comment or something about, "You are having fun

8 tonight? Or we are going to have fun tonight," or

9 something along those lines?

10 A Yes, sir.

11 Q You say you weren't there but 30 seconds, and you

12 come out again to the porch area; is that right?

13 A Yes, sir.

14 Q From that front door, I guess area, to where Nick

15 was sitting, would you say it was about this

16 distance (indicating)?

17 A From you to her?

18 Q From me to you.

19 A From where I was standing?

20 Q No, from the door.

21 A The entrance?

22 Q Yes.

23 A No, it was closer.

24 Q It was closer than that. Was it about this close

25 (indicating)?

1 A Maybe another foot closer.

2 Q So about this close. So you were standing pretty
3 much at the door when you saw it?

4 A I might have been a foot away from the door. I was
5 getting ready to tap Will on the shoulder. That's
6 what I was walking up to do.

7 Q Because you were going outside, and you didn't
8 think anything was going on?

9 A No.

10 Q You were just there laughing about being whores and
11 that kind of thing. You are going out because you
12 wanted to see what was going on with Nick, I guess,
13 as far as him being sick?

14 A Yes, to see if they were going to come back into
15 the bar or if they were ready to go home.

16 Q So he is crouched -- you say he's crouched down,
17 and you are going to tap him on the shoulder, but
18 you are about five, six feet away at that time; is
19 that right?

20 A Yes.

21 Q And then you -- was his hand up when you first saw
22 him?

23 A Yes. Almost right when I saw him like crouched
24 down, he had his hand up.

25 Q You said he was whispering?

GINA BRAKEFIELD -- CROSS -- MR. MAULDIN

121

1 A Yes, it looked as if he was saying something to
2 him.

3 Q Okay. But you didn't think anything was untoward
4 or anything at that time?

5 A No.

6 Q You say you hear the bang and see the flash of
7 light, and you see something gold fly off. You
8 pretty much, I guess, guess that was the bullet
9 afterwards when you were talking to the police;
10 right?

11 A Once I realized that he was bleeding out, I knew it
12 was a gun.

13 Q Now, didn't you tell the police before that Nick
14 had his hand up and something black in his hand?

15 A No.

16 Q You didn't tell that to Investigator Prestigiacomo
17 later on that morning when you went to the
18 Sheriff's Office?

19 A No.

20 Q Now, didn't you say that basically Will had shoved
21 Nick, and then he fell over?

22 A Yes. Shoved him like he was shoving him awake, not
23 like he pushed him, like he was trying to wake him
24 up.

25 Q But basically you are saying that Will shoved him

1 and he fell over; is that right?

2 A Yes, he did fall over.

3 Q Did you say anything -- did the police say anything
4 to the effect that the defendant had pushed him to
5 the ground?

6 A Not that I can remember.

7 Q But it's possible?

8 A Yes, it's possible.

9 Q But you are not saying that now?

10 A No. He fell over to the ground, but I don't think
11 that he shoved him into the ground.

12 Q All right. And it's your testimony that
13 Mr. Brockmeyer left this area and went this way
14 (indicating)?

15 A Yes, sir.

16 Q And then about -- is it five minutes later he came
17 back?

18 A Three to five.

19 Q Three to five minutes later he comes back?

20 A Yes, but not from that direction.

21 Q Which direction did he come back from? This
22 direction (indicating)?

23 A I saw him come from just straightforward onto the
24 front porch.

25 Q And he has a gray tank top on?

1 A Yes, sir.

2 Q And you say that he's crying and screaming, but
3 your interpretation of that is it was fake crying
4 and screaming?

5 A Yes.

6 Q That he didn't have tears on his face? Is that
7 what you are saying?

8 A No. He wasn't crying. He wasn't splotchy. He
9 wasn't -- it was more like sounds, like one burst
10 but no actual tears.

11 Q How close are you getting to him at this point in
12 time?

13 A Two feet away, a foot away.

14 Q Okay.

15 A At one point, and then four or five feet away.

16 Q So you are saying that you saw this, and yet you
17 are standing two feet away from him after he comes
18 back?

19 A Yes. He was on the porch as I was on the porch.
20 As he started acting more and more hysterical, my
21 friend, Jennifer McFarland, took him to the other
22 side of the porch to calm him down.

23 Q Now, it's kind of your interpretation of things
24 that when Nick went to play pool, he did that in
25 order to give Will a chance to talk to Mariko?

1 A Yes.

2 Q You don't know if that was like a plan that they
3 had done or anything like that? That was kind of
4 your interpretation?

5 A Yes.

6 Q You say that Will is whispering in Nick's ear. At
7 the same time that this happens, he's got his hand
8 up when he is talking to him, and you just see it?

9 A Yes. I didn't hear him saying anything.

10 Q You didn't hear him saying anything. That happened
11 pretty much soon after you turned around from here
12 (indicating) to walk out to here (indicating); is
13 that right?

14 A From where?

15 Q I'm sorry. From here (indicating) to walk out to
16 here (indicating)?

17 A Yes. I was already outside when I saw that.

18 Q And so you are talking about maybe 30 seconds to a
19 minute between the time you saw Will making out
20 with Brittany?

21 A From the time he walked away.

22 Q From the time he walked away.

23 MR. MAULDIN: Beg the Court's indulgence.

24 (Pause.)

25 THE COURT: We will take an afternoon break as

GINA BRAKEFIELD -- CROSS -- MR. MAULDIN

125

1 soon as we conclude with this witness.

2 BY MR. MAULDIN:

3 Q Now, I guess going back to Will's reaction. He was
4 crying, screaming, saying this and that, and
5 shoving people around; is that right?

6 A I didn't see him shove anyone that I can recall,
7 but I know Jennifer was shoving him.

8 Q And at some point in time, he and Mariko were
9 asking which hospital they needed to go to; is that
10 right?

11 A Yes. That was by the time the ambulance had gotten
12 there.

13 Q All right. After they asked about the hospital,
14 you told them that Nick wasn't going to the
15 hospital; is that right?

16 A Right.

17 Q Basically you told them that Nick was dead?

18 A Yes, sir.

19 Q And then he started getting -- acting more freaked
20 out or inconsolable; is that right?

21 A Yes, but still no crying.

22 MR. MAULDIN: No further questions.

23 THE COURT: Do you have any redirect?

24 MR. GRAHAM: Just two quick questions.

25 THE COURT: Make it short. The jury has been

1 out here very patiently since 1:30.

2 REDIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q Gina, how did Will Brockmeyer react when the police
5 showed up?

6 A He went and stood by the car, more like slouching
7 by the car, not trying to seem suspicious, just
8 trying to stay out of the light of the questioning
9 or to be noticed.

10 Q You described him as being more upset after you
11 told him that Nick was dead?

12 A Yes, sir.

13 Q How did that change when the police showed up?

14 A Completely.

15 Q Mr. Madsen asked you about you ever telling anyone
16 that Nick had a gun in his hand. Do you remember
17 him asking you that question?

18 A Yes.

19 Q Did you tell anybody in the police department that
20 near or at the time of the shooting that Nick had a
21 gun in his hand?

22 A No.

23 Q In fact, what were Nick's hands doing at the time
24 he was shot?

25 A They were by his side.

1 Q Thank you.

2 A You're welcome.

3 THE COURT: You may come down. Can this
4 witness be released or do you desire that she stay under
5 subpoena?

6 MR. GRAHAM: She will remain under subpoena,
7 Your Honor.

8 THE COURT: She may remain in the courtroom.

9 Mr. Foreman, let's take a short break. Please
10 let the bailiff know when you are ready to come out. I
11 want to come back as quick as I can, but you just let
12 him know when the jury is ready, and we will come right
13 back out. Thank you.

14 (The jury retires to the jury room.)

15 THE COURT: We are in recess subject to the
16 call of the Court. Thank you.

17 (Whereupon there is a recess.)

18 THE COURT: Do you have your second witness
19 ready?

20 MR. GRAHAM: Yes, Your Honor.

21 THE COURT: In the courtroom?

22 MR. GRAHAM: Yes, sir.

23 THE COURT: Bring the jury, please.

24 (The jury returns to the courtroom.)

25 THE COURT: You may proceed.

1 MR. GRAHAM: Thank you, Your Honor. The State
2 calls Mariko Clack to the stand.

3 MARIKO CLACK, being
4 first duly sworn, testifies as follows:

5 CLERK: State your full name, spelling your
6 last on the record, please.

7 THE WITNESS: Mariko Clack, C-L-A-C-K.

8 DIRECT EXAMINATION

9 BY MR. GRAHAM:

10 Q Mariko, how old are you?

11 A Twenty-four.

12 Q And how long have you lived in Lexington County?

13 A My whole life.

14 Q Do you see Will Brockmeyer in the courtroom today?

15 A Yes.

16 Q Where is he at?

17 A Over there on the last chair to the left.

18 Q The first time you met him, what did he tell you
19 his name was?

20 A Dea, Damien.

21 Q Where was that?

22 A When I met him?

23 Q Yes.

24 A My house.

25 Q What, if anything, did he tell you about being in a

MARIKO CLACK -- DIRECT -- MR. GRAHAM

129

1 relationship with anyone?

2 A He said he had a girlfriend but they weren't doing
3 so well.

4 Q How would you describe the interaction between you
5 and Damien at the party at your house that night?

6 A Good.

7 Q Over the next week or so, what kind of contact did
8 you have with Will Brockmeyer -- with Damien?

9 A I talked to him on the phone a lot, text. We hung
10 out a couple of times.

11 Q At some point did you find out something -- well,
12 the first time you met him, what, if anything, did
13 he tell you about where he worked?

14 A He already told me he was becoming a physical
15 trainer or he was a physical trainer.

16 Q Did he tell you anything about a car?

17 A A car?

18 Q At that time.

19 A No.

20 Q At some point over the next week to two weeks, did
21 you find out that his name wasn't Damien?

22 A Yes.

23 Q How did that happen?

24 A His friend Nick told me.

25 Q Based on your conversation with Nick, what did you

1 do?

2 A Can you restate the question?

3 Q Based on your conversation with Nick when you found
4 out that Will Brockmeyer's name was not Damien,
5 what did you do?

6 A At first I thought maybe Damien could be his middle
7 name or something. Then later on I got mad about
8 it because I found out he had not told me the
9 truth.

10 Q How did you find out he didn't tell you the truth?

11 A Nick told me that his name was Will.

12 Q And what else did you find out about Will
13 Brockmeyer?

14 A That he was engaged. He and his girlfriend lived
15 together.

16 Q Once you found out that, what was your attitude
17 toward Will Brockmeyer?

18 A I was upset. I was pretty mad about it.

19 Q What, if anything, does Will Brockmeyer do to stay
20 in contact with you?

21 A I think he used Nick's. Megan cut his phone off or
22 took it from him or something.

23 Q What was he doing with Nick's phone in the way of
24 trying to stay in contact with you?

25 A He would text me or call me.

MARIKO CLACK -- DIRECT -- MR. GRAHAM

131

1 Q Would you respond to his texts or calls?

2 A When I was mad at him, no.

3 Q And when you wouldn't respond to him, what would he
4 do?

5 A He didn't do anything when I didn't respond to him.

6 Q What, if anything, did you tell Nick about a party
7 at Amanda Dunn's house?

8 A We told him they were having a party, and he wanted
9 to meet some people. We told him he could go.

10 Q What, if anything, did you say regarding Will
11 Brockmeyer coming?

12 A I didn't want Will to go.

13 Q On the night of July 10, 2010, at the time of
14 Amanda Dunn's party, what, if anything, did you say
15 or do regarding Nick coming to the party?

16 A Nick had text me to see if it was okay for him to
17 still come. I said yes but not Will.

18 Q Did that change?

19 A Yes, it changed.

20 Q How did it change?

21 A Nick wanted Will to go and he asked if he could; so
22 eventually I said okay.

23 Q Now, had you seen Nick before? Had you met him.

24 A I met him at a hotel parking lot where they were
25 staying, I guess, before the party.

- 1 Q And did you see Will Brockmeyer the time you went
2 over there and met Nick in the parking lot?
- 3 A No.
- 4 Q Did you talk to Will at that time?
- 5 A At the hotel?
- 6 Q Yes.
- 7 A No, I only talked to Nick.
- 8 Q The night of the party, where is the first place
9 that you saw Nick and Will?
- 10 A The gas station connecting to the Burger King on
11 Airport Boulevard.
- 12 Q And were they by themselves or was there somebody
13 else with them?
- 14 A They were riding with, I guess, Will's girlfriend
15 or a friend of his, Karmen.
- 16 Q And did you all show them the way back to Amanda's
17 house?
- 18 A Yes, they followed us back to the party.
- 19 Q Once you get back to Amanda's house, how is Nick
20 acting?
- 21 A Very social, talking to everybody, interacting.
- 22 Q How would you describe his mood?
- 23 A Good, having fun.
- 24 Q How about Will Brockmeyer? How was he acting?
- 25 A He kind of didn't walk in talking to everybody. He

MARIKO CLACK -- DIRECT -- MR. GRAHAM

133

1 just kind of stayed to the back. He didn't want to
2 talk too much.

3 Q At some point did he begin to be teased about lying
4 to you about his name and his girlfriend?

5 A Yeah, he did.

6 Q And how did he react to that?

7 A He kind of laughed, shrugged it off.

8 Q How much did you have to drink at Amanda's party?

9 A I only drank beer and probably a couple of cups
10 before everyone was ready to go.

11 Q How long have you known Gina?

12 A Since sixth grade.

13 Q Did you see how much Gina had to drink at Amanda's
14 party?

15 A No. But every time I ever hung out with her in a
16 drinking atmosphere, she doesn't really drink or
17 get drunk per se.

18 Q Was she drunk at Amanda's house?

19 A I don't recall her being drunk.

20 Q How about Brittany? Do you remember how much she
21 was drinking at Amanda's house?

22 A Brittany varies. I'm sure she had some drinks, a
23 good many drinks.

24 Q How about Nick or Will? Did you pay attention to
25 how much they drink or how they were acting as far

1 as being intoxicated or not?

2 A I don't really remember if they drank or acted
3 intoxicated.

4 Q At some point did Karmen leave Amanda Dunn's house?

5 A Uh-huh. (Indicating affirmative response.) Yes,
6 she did.

7 Q After Karmen left how, if in any way, did Will's
8 behavior change towards you?

9 A He was talking more, being more social, acting like
10 he was actually having fun.

11 Q At some point did the party move from Amanda Dunn's
12 house to Jager's bar?

13 A Yes, it did.

14 Q What, if anything, was said as far as Nick coming
15 to Jager's?

16 A We told Nick that we were going to that bar, moving
17 the party, and it was at Jager's. He said he
18 wanted to go. We said he could.

19 Q Was Will invited to go to Jager's bar?

20 A Nick asked if he could go. I said yeah. But, no,
21 I didn't in the beginning invite him.

22 Q How do you get from Amanda's party to Jager's bar?

23 A I drive my car.

24 Q And who went with you?

25 A Me, Jennifer McFarland, Will, Nick, and Gina.

MARIKO CLACK -- DIRECT -- MR. GRAHAM

135

- 1 Q Once you get into the bar, what, if anything,
2 happens?
- 3 A Me and Nick walked straight to the bar. He got us
4 two beers.
- 5 Q I'm sorry. He did what?
- 6 A We walked up to the bar and he got two beers.
- 7 Q Who paid for them?
- 8 A Nick did.
- 9 Q I'm sorry?
- 10 A Nick did.
- 11 Q Were you able to see how much money Nick had on him
12 at that time?
- 13 A From what I could see, maybe some 20s, maybe some
14 1s.
- 15 Q How many 20s?
- 16 A Maybe a couple, maybe three.
- 17 Q After Nick buys a beer for himself and you, what,
18 if anything, do you and he do?
- 19 A We go to a table and I think Nick goes to play
20 pool.
- 21 Q While Nick is off playing pool, what, if anything,
22 does Will Brockmeyer do?
- 23 A He's standing around all of us at the table, all
24 the girlfriends.
- 25 Q What, if anything, does he do as far as flirting

1 with you?

2 A He was trying to kiss me and I was calling him,
3 "Liar."

4 Q How many times did he try to kiss you?

5 A A few and I playfully pushed him off.

6 Q And what did you say to him?

7 A "You lied to me."

8 Q And how did he react to that?

9 A He had said that he told me everything and asked
10 what he lied about.

11 Q What did you tell him?

12 A I don't know exactly what I told him.

13 Q How did he react when you called him a liar?

14 A Whenever I'd turn my head when he tried to kiss me,
15 he'd kind of like shrug at me or whatever, walk
16 off, go sit down. Then he'd come back up and try
17 to talk to me again.

18 Q How many times do you think that went on.

19 A Maybe twice.

20 Q At some point did Will say something to you about
21 you not wanting him there?

22 A Yeah. He was like, "You don't even want me here."
23 I told him he wouldn't be there if he wasn't
24 wanted.

25 Q What, if anything, did he say to you about not

- 1 answering his calls or his texts?
- 2 A He said I wasn't answering his calls or texts is
- 3 what he said. He said, "You won't even answer my
- 4 calls or my texts."
- 5 Q What did you say to him?
- 6 A I don't remember. I told him if it wasn't for
- 7 Nick, I wouldn't know what his name was.
- 8 Q What did he say when you said that?
- 9 A I don't think he said anything.
- 10 Q At some point what, if anything, did Will
- 11 Brockmeyer say to you about leaving the bar?
- 12 A He looked at me at one point and said that he was
- 13 ready to leave, and I told him I didn't want to go
- 14 yet, and I didn't have my car keys.
- 15 Q Did he say who he wanted to leave?
- 16 A He just said, "Let's go." I told him I didn't want
- 17 to leave yet. Basically, I guess, it was us
- 18 together leaving, and I told him Nick was getting
- 19 sick. Will said he had to pay his tab twice that
- 20 night.
- 21 Q At some point did Nick come back from playing pool?
- 22 A Yeah, he came back.
- 23 Q He came back to the table where you and Will were
- 24 at?
- 25 A Uh-huh. (Indicating affirmative response.)

1 Q And how was Nick acting as far as alcohol
2 consumption at that time?

3 A At first he was acting like normal, and then he
4 started to kind of put his head down like he was
5 getting sick and passing out at the table.

6 Q Did Will Brockmeyer buy any drinks for you and your
7 friends that night?

8 A I think he bought some shots.

9 Q How many shots did he buy; do you remember?

10 A Maybe four.

11 Q Who did they go to?

12 A I don't remember if he took one, but me, Brittany,
13 and Gina. I know we all three got one.

14 Q Did Nick get one?

15 A No, he was sick.

16 Q What, if anything, did Will Brockmeyer say to you
17 about buying drinks for Nick?

18 A That's when he -- that was when he said he was
19 ready to leave, that he had paid his tab twice. He
20 didn't say that then. That was when he was telling
21 me he wanted to leave.

22 Q After Nick came back to the table, there were other
23 people that came over by the table for a short
24 period of time?

25 A Yes, sir, Jamie Spence.

MARIKO CLACK -- DIRECT -- MR. GRAHAM

139

1 Q Jamie Spencer?

2 A Uh-huh. (Indicating affirmative response.)

3 Spencer.

4 Q Was there anybody else that came over?

5 A I don't recall.

6 Q Do you remember whether his girlfriend came over?

7 A She might have. He was playing pool with her.

8 Q You testified that Nick was falling asleep, I think
9 at the table, and looked like he was going to be
10 sick; is that correct?

11 A Uh-huh. (Indicating affirmative response.)

12 Q What, if anything, did you say when you saw that?

13 A I told Will, "You probably need to take him
14 outside." He was getting sick. And if he got sick
15 on the table, they were going to kick him out.

16 Q What was Will Brockmeyer's response to that?

17 A He didn't help him outside. I don't remember what
18 he said though.

19 Q What, if anything, did Will Brockmeyer do at that
20 point?

21 A He walked off or something because Jennifer took
22 him outside. I know that Will didn't.

23 Q Jennifer took who outside?

24 A Nick.

25 Q So Nick and Jennifer go outside. Who, if anybody,

1 do you see leaving next?

2 A I think Will and Brittany.

3 Q Anybody else?

4 A No. I stayed at the table. I didn't really pay
5 attention after that.

6 Q How long was it if you remember before things
7 changed and something caught your attention?

8 A Not too long. I wouldn't have sat there too long
9 at the table by myself.

10 Q What was it that changed and caught your attention?

11 A A bunch of people like running out the door.

12 Q What did you do?

13 A I got up and started walking towards the door and I
14 saw Gina.

15 Q And how was Gina acting?

16 A Her eyes were big as quarters, and she was like,
17 "Your friend has been shot." I said, "Who?" She
18 goes, "Nick."

19 Q After Gina told you that, what did you do?

20 A I ran outside.

21 Q When you go outside, what do you see?

22 A I see Nick laying on the ground. He was bleeding.

23 Q Do you see Will at that time?

24 A After I looked at Nick, I turned and I saw Will
25 coming from like the parking lot at me.

MARIKO CLACK -- DIRECT -- MR. GRAHAM

141

1 Q Looking at State's Exhibit Number 2 on here, which
2 direction -- when you say he was coming from the
3 parking lot -- where is that from on that screen?
4 I think -- is there a pointer up there?

5 A Oh, yeah. He was coming like from here
6 (indicating).

7 Q That's the parking lot?

8 A Yeah. There was an S.U.V. It was the S.U.V. and
9 then Will.

10 Q Where was your car parked?

11 A Probably to the right, straight ahead, kind of
12 diagonal.

13 Q If you are standing on the front porch and looking
14 out, which way would you describe it?

15 A I would say it was right here (indicating).

16 Q Was it on the first row of cars or farther out in
17 the parking lot?

18 A Farther out in the parking lot. You had to cross
19 over a little driveway area.

20 Q Let me show you a photograph and ask if you
21 recognize this photograph.

22 THE COURT: Has it been shown to defense?

23 MR. GRAHAM: Yes, Your Honor. They have been
24 provided a copy of this.

25 THE COURT: All right.

1 BY MR. GRAHAM:

2 Q Do you recognize the photograph?

3 A Yes.

4 Q Whose car is in there?

5 A That was my car.

6 Q What is the make and model of that car?

7 A '99 Mazda Protege.

8 Q Does that picture fairly and accurately represent
9 your car as it was in the early morning hours of
10 July 10, 2010?

11 A Yes, that is correct.

12 Q July 11, 2010?

13 A (Witness nods.) (Indicating affirmative response.)

14 MR. GRAHAM: Your Honor, the State would move
15 this into evidence at this time.

16 MR. MAULDIN: No objection, Your Honor.

17 (State's Exhibit Number 5 is received into
18 evidence.)

19 BY MR. GRAHAM:

20 Q What was Will's demeanor when he was coming back
21 from the parking lot up on the porch area?

22 A He seemed frantic like he was freaking out.

23 Q What was he doing?

24 A He was like yelling, asking what happened.

25 Q He asked you what happened?

MARIKO CLACK -- DIRECT -- MR. GRAHAM

143

1 A Or what was going on.

2 Q Do you remember what he was wearing?

3 A I think he was in his white Sean John shirt.

4 Q Looking at State's Exhibit Number 4, do you
5 recognize that?

6 A Yes, I do.

7 Q Who is that a picture of?

8 A Me and Will.

9 Q State's Number 3, who is in that picture?

10 A Me and Will.

11 Q When you say a white Sean John shirt, do you
12 recognize the shirt in that picture?

13 A Yes, I do.

14 Q So when Will Brockmeyer comes back from the parking
15 lot and he is asking you what happened, what do you
16 do or say?

17 A I said, "You were out here. I don't know. You
18 tell me," or something along those lines.

19 Q What, if anything, did he say?

20 A He said that Nick asked for the gun back so he
21 could rob somebody or do a lick or something like
22 that. I said, "What do you mean?" Then he was
23 acting like he was really shaky and frantic and
24 freaking out, going, "Oh, no, no." He started like
25 pacing and screaming, "My brother."

1 Q At any time that night, did you see Will cry?

2 A I saw him like weeping.

3 Q Did he ever tell you anything else about what
4 happened, other than Nick asking for the gun to do
5 a lick?

6 A No. He was just everywhere, like he couldn't stay
7 still. I didn't really talk to him that much.

8 Q Did you ask him -- what, if anything, did you ask
9 him about Nick asking for the gun back to do a
10 lick? Did you ask him any follow-up questions?

11 A I don't think I did. I asked, "What do you mean?"

12 Q What did he say?

13 A "I don't know. I don't know."

14 Q That's all he said was, "I don't know. I don't
15 know"?

16 A (Witness nods.) (Indicating affirmative response.)

17 Q At some point does Will Brockmeyer take that shirt
18 off?

19 A Yeah, he does.

20 Q What happens at that point?

21 A He like tosses it at me. He was like pacing when
22 he took his shirt off.

23 Q Do you remember what he had underneath that shirt,
24 if anything?

25 A A wife-beater.

MARIKO CLACK -- DIRECT -- MR. GRAHAM

145

1 Q What, if anything, are you trying to do to help
2 Nick at this time?

3 A When I walked over to Nick, I asked them if they
4 elevated his feet or checked his pulse, and I also
5 asked someone to call an ambulance. No one was
6 answering me and I kept asking. Finally I told
7 Brittany -- I asked for my keys and said I would
8 drive him myself because we were in the middle of
9 nowhere.

10 Q What happened when you asked Brittany for your
11 keys?

12 A She freaked out thinking that I was trying to leave
13 Nick there.

14 Q What did she do?

15 A I was yelling at her because I was trying to
16 explain to her that no one called an ambulance, and
17 I would drive him myself. And because I was
18 screaming at her, she walked away from me. I was
19 walking behind her, and she walked toward like the
20 road, and I was just walking behind her, standing
21 behind her.

22 Q How much did Brittany have to drink at Jager's; do
23 you remember?

24 A She was pretty drunk. I didn't count the drinks
25 she drank, but I know she was drunk. She's my best

1 friend.

2 Q What, if anything, did you see Will Brockmeyer do
3 to help Nick?

4 A He didn't do anything. He was just running around
5 screaming, "My brother. Oh, my God."

6 Q At some point do the police show up?

7 A Yes, they do.

8 Q What, if anything, does Will Brockmeyer say to you
9 when the police arrive?

10 A He said, "Let's go." I said, "And Go where?" He
11 goes, "To the fucking hospital." Excuse my
12 language.

13 Q But was Nick going to the hospital?

14 A No, but I didn't know that until I asked.

15 Q How would you describe Nick's behavior that night?

16 A He was very social and having fun, very happy.

17 Q How would you describe Will Brockmeyer's behavior
18 after Nick was shot but before the police arrived?

19 A I guess he was frantic, like weeping and walking
20 around and holding his head and pacing around,
21 screaming outside like, "My brother, my best
22 friend."

23 Q Did he hit anything or anybody?

24 A No. I guess he got frustrated. He acted like he
25 was going to hit a car, but he didn't hit it.

MARIKO CLACK -- DIRECT -- MR. GRAHAM

147

1 Q How, if in any way, did that change when the police
2 arrived on the scene? Did he continue to act out
3 like when the police were there?

4 A He just wasn't all over the place anymore. He kind
5 of stayed in one place doing the same thing.

6 Q Where was he staying?

7 A He was kind of staying by my car.

8 Q At some point does Will Brockmeyer leave with the
9 police?

10 A Yes.

11 Q What, if anything, is he saying to you as he is
12 leaving?

13 A "Come get me."

14 Q At some point later did you get a phone call from
15 Will Brockmeyer?

16 A Yes, I did.

17 Q How much longer after he left was it when he called
18 you?

19 A Maybe an hour, maybe more, a couple of hours.

20 Q What, if anything, did he tell you on the phone
21 about what happened with Nick?

22 A He called me and told me to come get him, and I
23 told him that he wasn't leaving and that people had
24 seen him shoot Nick.

25 Q People said what?

1 A That they had seen him shoot Nick. There was
2 witnesses that had seen him shoot Nick.

3 Q What did he say?

4 A He said he didn't do it.

5 Q Did he tell you anything else other than he didn't
6 do it?

7 A He said he didn't do it, and then he said he
8 couldn't have done it because he was inside
9 dancing. He asked me what the girl's name was. I
10 said Brittany. I said, "You mean making out with?"
11 Then he told me he was sorry.

12 Q Did he tell you how -- if he didn't do it, did he
13 tell you how it happened? What, if anything, did
14 he say to tell about how it happened, other than,
15 "I didn't do it"?

16 A He just kept saying he didn't do this, and he asked
17 what everyone was saying.

18 Q He was interested in what other people were saying?

19 A He was like, "What's everybody saying?" He was
20 like, "I didn't do this."

21 Q When you were on the phone with him, what, if
22 anything, did he say about Nick?

23 A That was it.

24 Q I'm sorry?

25 A That was it. He said he didn't do it.

MARIKO CLACK -- CROSS -- MR. MAULDIN

149

1 Q Please answer any questions the defense has,
2 Mariko. Thank you.

3 THE COURT: You may proceed with cross
4 examination.

5 MR. MAULDIN: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. MAULDIN:

8 Q When you first met Will, it was at a party at your
9 house; is that right?

10 A Yes, sir.

11 Q And he had come with a guy named Corey Stanton or
12 something like that?

13 A I believe so.

14 Q Could it have been Corey Stanton that introduced
15 him as Dea?

16 A No.

17 Q Are you positive about that?

18 A Yeah. Corey did call him Dea too, but when I asked
19 what his name was, he told me Dea.

20 Q So you had known Will for about two or three weeks
21 or so before this night at Jager's; is that right?

22 A Yes, sir.

23 Q And I guess the problems cropped up about you
24 finding out his name about the week before it
25 happened, during that week?

1 A I believe so.

2 Q So during that other period of time, you and Will
3 had been seeing each other here and there?

4 A Yes, sir.

5 Q Maybe like a handful of times?

6 A Uh-huh. (Indicating affirmative response.)

7 Q Did you have a physical relationship with him?

8 A What do you mean? Can you reask the question?

9 Q Well, did you kiss him?

10 A Yeah.

11 Q Did you fondle each other?

12 A Yes.

13 Q Rub on each other? Did you have sexual
14 intercourse?

15 A No, sir.

16 Q Now, was Will initially invited to this party and
17 then uninvited or did you just tell Nick, "I don't
18 want him coming"?

19 A I just told Nick I didn't want him coming.

20 Q Now, you went to this motel room. Was that to see
21 Will or Nick?

22 A To see Will.

23 Q So you were going there to see Will, what, to
24 confront him about this?

25 A No. We had been out like drinking and hanging out.

MARIKO CLACK -- CROSS -- MR. MAULDIN

151

1 I was on the way home. We stopped by there because
2 we had to use Nick's phone to contact Will.

3 Q But Nick and Will were living together at the
4 hotel?

5 A As far as my knowledge.

6 Q As far as you know. When Will -- you first met
7 Will, you knew he had a girlfriend, but you thought
8 that they were on the way out?

9 A He told me they weren't working not.

10 Q They weren't working out, but he was still with her
11 at the time?

12 A Uh-huh. (Indicating affirmative response.)

13 Q And when Will came to the party, Megan Carrie's
14 birthday at Amanda Dunn's house, he showed up with
15 another girl; is that right?

16 A Yes, sir.

17 Q And you weren't real happy with him when you
18 thought he was lying about his name and that he had
19 some kind of fiancée or something like that?

20 A That's right.

21 Q Now, when they were there at the party, you had a
22 chance to talk to Nick a little bit; didn't you?

23 A Yeah, amongst everybody.

24 Q Didn't he tell you at the party that he had been
25 robbing people to get money?

1 A Yes, he did.

2 Q And somewhere during the time you were at the bar,
3 he had asked you that he needed to put his gun in
4 your car; is that right?

5 A Yeah, right before he got sick.

6 Q And you couldn't let him or something like that or
7 you didn't let him?

8 A I wasn't aware he had it or else I wouldn't have
9 let him in my car.

10 Q So you told him no?

11 A Yes.

12 Q Now, when Will throws his shirt, he throws it at
13 you; is that right?

14 A Yes, sir.

15 Q And then you noticed, I guess, Nick's earpiece
16 lying in some blood; is that right?

17 A Yes, sir.

18 Q And you went and picked up the earpiece out of the
19 blood?

20 A Yes, I did.

21 Q And then you gave Will the shirt and the earpiece?

22 A Yes, sir.

23 Q And he didn't put the shirt back on; did he?

24 A He put it around his neck.

25 Q He put it around his neck. Did you know the shirt

- 1 ended up on your car at any point that night?
- 2 A Yeah, I think other people mentioned that.
- 3 Q Kind of balled up there on the car -- the hood or
- 4 the trunk?
- 5 A I don't recall how it was.
- 6 Q Were you drinking beer or the stuff called P.J. at
- 7 the party at Amanda Dunn's house?
- 8 A Just beer.
- 9 Q And you are not really sure how many other people
- 10 were drinking? Is that what you are saying?
- 11 A Yes, I wasn't really paying attention.
- 12 Q Did you have anything to drink before you went to
- 13 that party?
- 14 A No.
- 15 Q And at the bar you had, what, another beer and a
- 16 couple of shots or something along those lines?
- 17 A The only shot I had was the one Will bought me.
- 18 Q What kind of shot was that?
- 19 A I don't remember, maybe a Kamikaze or something.
- 20 Q Now, you just testified that Nick went to the bar
- 21 to pay for his drinks, and you saw that he had some
- 22 money with him. Was that just the money he pulled
- 23 out of his pocket to pay for the drinks?
- 24 A Yeah.
- 25 Q Did you know how much money he had in his other

1 pockets?

2 A No.

3 Q You never really mentioned anything about money
4 before when you talked to the police or anything.
5 That is something the solicitor has asked you about
6 recently; right?

7 A It was written in my statement.

8 Q Which statement would that be?

9 A My second one.

10 Q Was that the statement you gave when you went back
11 to the police station on the 20th of July?

12 A Yes, sir.

13 Q A couple of weeks later?

14 A I didn't want to talk to the police. I wrote the
15 shortest statement as possible the first time.

16 Q Would looking at the statement refresh your memory
17 about whether or not you talked about how much
18 money Nick had on him?

19 A He had a couple of 20s and some 1s.

20 Q No, I meant at the time you wrote the statement.

21 A What do you mean?

22 Q You said you put that in your statement before?

23 A Yes, sir.

24 Q (Hands to witness.)

25 (Pause.)

MARIKO CLACK -- CROSS -- MR. MAULDIN

155.

1 THE COURT: Have you reviewed the statement?

2 THE WITNESS: I know what it says.

3 THE COURT: You may proceed.

4 BY MR. MAULDIN:

5 Q You didn't write anything about 20s and 1s in that
6 statement; did you?

7 A Let me look.

8 (Pause.)

9 A It says right here, "Nick had a couple of 20s and
10 some 1s."

11 Q But that's just what you saw him pay at the bar?
12 You didn't see what he might have had in his other
13 pockets; is that right?

14 A No, sir.

15 Q You never told anyone before about Jamie Spencer
16 coming up to the table; did you?

17 A No, sir.

18 Q When we are talking about, I guess, when Nick is
19 falling asleep at the table, you say Jennifer took
20 Nick outside?

21 A Yes, sir, she did.

22 Q She helped him out?

23 A Uh-huh. (Indicating affirmative response.)

24 Q Helped carry him out, and you just stayed at the
25 table; is that right?

1 A Yes, sir.

2 Q And as far as you knew, Will and Brittany left
3 next, and Gina left sometime after that?

4 A I don't know the exact order but, yeah.

5 Q And then all of a sudden you are by yourself?

6 A Yeah.

7 Q Now, did you Gina come in and tell you that Nick
8 had been shot?

9 A Yeah.

10 Q And so you ran outside immediately when she came
11 and told you that; is that right?

12 A Yes.

13 Q You ran out and Will is right there coming up at
14 that time?

15 A Yes, sir.

16 Q From the parking lot area?

17 A Uh-huh. (Indicating affirmative response.)

18 Q Where your car was. Your car was a couple -- you
19 say a couple of rows down?

20 A He wasn't coming from my car. It was like if I
21 walk out the door, it was more to the left than to
22 the right. My car seemed to be more to the right.

23 Q So using State's Exhibit 2 here, when you are
24 talking to the right, are you talking this
25 direction (indicating) or that direction

1 (indicating)?

2 A The first one you just did.

3 Q This direction (indicating). So your car is over
4 here (indicating) somewhere?

5 A My car is more to the other side.

6 Q Towards this side (indicating)?

7 A Yeah.

8 Q When Nick was on the ground, there were a lot of
9 people around him; right?

10 A Yeah, a good many, three or four.

11 Q There were people like trying to help him out?

12 A Yes, sir.

13 Q A good four or five people you said?

14 A (Witness nods.) (Indicating affirmative response.)

15 Q Why would you pick up the earpiece out of the
16 blood?

17 A I wasn't aware Nick was dead; so I was just kind of
18 like keeping his stuff together.

19 Q Now, when you talked to Will on the phone -- I
20 guess when he called you on the phone -- he said,
21 "I didn't shoot him;" isn't that right?

22 A Yes, sir.

23 Q That's a little bit more specific than, "I didn't
24 do it." He said, "I didn't shoot him"?

25 A Yes. "I didn't do this."

1 Q "I didn't shoot him"?

2 A Yeah.

3 Q Now, was it Nick telling you what Will's name was
4 or was it a text message that you found out what
5 his real name was?

6 A Nick had texted me and said that Will was in the
7 shower, and he was going to call me back. When I
8 first heard it, I didn't really say that much.
9 Then when I seen Nick at the hotel, he kept
10 referring to Damien as Will.

11 Q Did you ask him, "Isn't his name Damien," or
12 something like that?

13 A Yes.

14 Q Didn't he say it was some kind of nickname that
15 Will had?

16 A No. I asked him why they called him Will, and that
17 was -- I guess he said it was his nickname.

18 Q Did Nick talk about him having a nickname called
19 Pooh Bear around that period of time?

20 A Yes, he did.

21 Q He said Damien was Will's nickname and Pooh Bear
22 was his name?

23 A No. He said Will was his nickname and Pooh Bear
24 was his. He didn't say that Damien was his
25 nickname. He said Will was his nickname.

MARIKO CLACK -- CROSS -- MR. MAULDIN

159

1 Q So Nick lied to you and said that his nickname was
2 Will?

3 A Uh-huh. (Indicating affirmative response.) I
4 guess he was trying to cover up his tracks for
5 Will, like he realized that I didn't know that was
6 his name, and he was just trying to fix it.

7 MR. MAULDIN: Beg the Court's indulgence.

8 (Pause.)

9 BY MR. MAULDIN:

10 Q One final thing. In 2004 you were convicted of
11 shoplifting; is that right?

12 A That's correct.

13 MR. MAULDIN: No further questions.

14 THE COURT: Any redirect?

15 MR. GRAHAM: No, Your Honor.

16 THE COURT: You may come down. May this
17 witness be released from sequestration and remain in the
18 courtroom if she cares to?

19 MR. GRAHAM: Yes, Your Honor. She remains
20 under subpoena though.

21 THE COURT: But you may remain in the
22 courtroom if you care to.

23 MR. GRAHAM: Your Honor, if we can approach
24 for scheduling.

25 THE COURT: Sure.

1 (Whereupon there is a bench conference off the
2 record in the presence of the jury but out of the
3 hearing of the jury.)

4 MR. HUBBARD: The State calls Amera Kabar.

5 AMERA PRINCESS KABAR, being
6 first duly sworn, testifies as follows:

7 CLERK: State your full name, spelling your
8 last on the record, please.

9 THE WITNESS: My name is Amera Princess Kabar.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Amera, did you grow up in Lexington County?

13 A No, sir, I grew up in Columbia, downtown.

14 Q Do you have family in the Lexington area?

15 A Now we moved back up this way.

16 Q Where do you currently live?

17 A I live in Charlotte.

18 Q Do you remember the night of July 10th and the
19 early morning hours of July 11th of last year?

20 A Yes, I do.

21 Q Where were you at?

22 A At Jager's bar on Number 6.

23 Q Is that in the Red Bank area?

24 A Yes, sir.

25 Q Is that Lexington County?

AMERA KABAR -- DIRECT -- MR. HUBBARD

161

- 1 A Yes, sir.
- 2 Q Had you been to -- do you know Amanda Dunn?
- 3 A I do.
- 4 Q Had you gone to her birthday party?
- 5 A No, sir.
- 6 Q So you had been at Jager's bar while that party was
- 7 going on?
- 8 A Prior to the party, yeah.
- 9 Q What you were doing at Jager's bar?
- 10 A We had some friends up there. We were just coming
- 11 to meet out. There was another friend. He asked
- 12 us to come out.
- 13 Q Does Jager's bar have some pool tables?
- 14 A They do.
- 15 Q Do you play pool?
- 16 A I do.
- 17 Q Were you playing pool that night?
- 18 A I was.
- 19 Q Amera, I want to stop a second. You and I have had
- 20 a conversation about some events that went on that
- 21 night; didn't we?
- 22 A Yes.
- 23 Q You confided in us that you had done some gambling
- 24 that night; is that correct?
- 25 A Yes, sir.

1 Q Was that gambling over pool games?

2 A Yes, sir.

3 Q And I represented to you that we will not prosecute
4 you for that?

5 A Yes, sir.

6 Q Is that correct?

7 A (Witness nods.) (Indicating affirmative response.)

8 Q I just want to put that on the record. Were you
9 playing pool before the Amanda Dunn party came in?

10 A Yes, sir.

11 Q Do you remember at some point -- let me ask you
12 this: Who were you playing pool with?

13 A I was playing with my boyfriend Jamie and two other
14 guys, his friends. Then my brother came later, and
15 I was playing with him.

16 Q Jamie, is that Jamie Spencer?

17 A Uh-huh. (Indicating affirmative response.)

18 Q That's your boyfriend?

19 A Yes, sir.

20 Q Is he still your boyfriend?

21 A Yes, sir.

22 Q Your brother, what is his name?

23 A Bassam Kabar. He goes by Keith.

24 Q What do you call him?

25 A Bassam.

AMERA KABAR -- DIRECT -- MR. HUBBARD

163

1 Q Bassam. You might want to spell that for the court
2 reporter.

3 A B-A-S-S-A-M.

4 Q Does everyone else call him Keith?

5 A Yes, sir.

6 Q When all these folks come into the bar from Amanda
7 Dunn's house, do you remember seeing a fellow by
8 the name Nick?

9 A He walked over to my pool table. I didn't know
10 them previous to the night. I didn't know their
11 names but afterwards I did.

12 Q You had never met Nicholas Rae before that night?

13 A Never.

14 Q You had never Will Brockmeyer before that night?

15 A No, sir.

16 Q When he made his way over to the pool tables, were
17 you at the pool tables?

18 A Yes, sir. He put his quarters up.

19 Q What does that mean when you put your quarters up?

20 A Bar rules are if somebody is at a table and you
21 want to play next, you just put your quarters up.
22 You've got the table next or you can try to win the
23 table.

24 Q Prior to Nick getting there, were you playing pool
25 for money?

- 1 A No, sir, I was playing with my boyfriend and his
2 friends.
- 3 Q I want you to look up here on the screen if I can
4 get this thing to work. Do you see a rough diagram
5 of Jager's bar?
- 6 A Yes, sir.
- 7 Q And do you see the pool tables?
- 8 A Yes, sir.
- 9 Q Let me see if I can work this thing right here.
10 How many pool tables do you remember being at
11 Jager's bar?
- 12 A I was thinking there was three, but it could have
13 been a table over there. I only played on the
14 first two.
- 15 Q When Nick came up and put quarters on the table,
16 who was he looking to play pool with?
- 17 A With me.
- 18 Q With you?
- 19 A Uh-huh. (Indicating affirmative response.)
- 20 Q And did your boyfriend have any problem with that?
- 21 A No.
- 22 Q Did he back away?
- 23 A I play pool all the time with different people. It
24 doesn't matter.
- 25 Q The first game of pool, did y'all play for money?

AMERA KABAR -- DIRECT -- MR. HUBBARD

165

- 1 A No.
- 2 Q Who won that first game?
- 3 A I did but not by much.
- 4 Q Barely?
- 5 A Barely.
- 6 Q The next game what, if anything, did you say to
- 7 Nick?
- 8 A I asked him if he wanted to play again for a drink.
- 9 Q Instead of for money?
- 10 A Well, I just asked him for drinks. Then he
- 11 initiated it, if I wanted to play. He said, "How
- 12 about money?"
- 13 Q So he's the one that asked about the money?
- 14 A Yes, sir.
- 15 Q Let me ask you this and you can tell me: Why did
- 16 you ask him to play for drinks instead of money?
- 17 A Because if you're anywhere else if you are gambling
- 18 and you don't know the people you are playing
- 19 against, if you say drinks you kind of -- if they
- 20 are not a cop or undercover or something, they
- 21 won't say for money. That's how you know you can
- 22 kind of pull them in that way. You wouldn't say
- 23 money at first because then he could be undercover.
- 24 Q And then you are gambling?
- 25 A Yes.

1 Q So at this point by asking him about drinks rather
2 than money, you pretty much figured he was not an
3 undercover cop?

4 A Yes.

5 Q But let me ask you this: Did you notice something
6 in the small of his back?

7 A When we were playing the first game, yeah, I
8 noticed he had a gun in his back. We didn't talk
9 much the first game. It was more or less the first
10 game we played for money when we began -- we had
11 talked more.

12 I think at one point they were passing a knife
13 or something and it fell, and one of them stepped
14 on it. I told him, "We are all friends here."
15 They didn't need that. He said he was from out of
16 town, and he just had it for protection. He said
17 besides he wouldn't need that, and he showed me his
18 gun.

19 Q Let me back up. What was Nick wearing?

20 A He was wearing some jeans and a black wife-beater.

21 Q A wife-beater, is that a tank top?

22 A Yes, sir.

23 Q So when he had the gun in the small of his back --

24 A He wasn't concealing it.

25 Q Okay.

AMERA KABAR -- DIRECT -- MR. HUBBARD

167

1 A I noticed it before. I wasn't going to voluntarily
2 ask him, but he told me anyway.

3 Q But his demeanor, did that scare you at all?

4 A Not at all. He was sweet, very sweet.

5 Q By this second game when y'all were talking about
6 playing for money, how much were y'all talking
7 about playing for?

8 A I was figuring like 20, 30 bucks. I thought he was
9 kidding at first. He said a hundred but he came
10 back with \$100.

11 Q Where did he go before he put the hundred dollars
12 up?

13 A To talk to Will.

14 Q To see Will?

15 A I didn't know his name at the time but, yeah.

16 Q Will Brockmeyer?

17 A Yes, sir.

18 Q Do you see him in the courtroom?

19 A Yes, sir.

20 Q Can you tell us where he is seated at that table?

21 A The third seat.

22 Q On the far side?

23 A Yes, sir.

24 Q So you saw William Brockmeyer there as well?

25 A Yes.

1 Q You didn't know him?

2 A No.

3 Q Now, you mentioned something about a knife. Was
4 this the second game?

5 A The second game.

6 Q Do you remember who dropped the knife?

7 A He was handing it -- Will was handing it to -- I
8 think Nick was handing it to Will and it fell, and
9 Nick stepped on it and picked it up.

10 Q When you mentioned something about the knife, what
11 did Nick do?

12 A Later when he came by himself and it was us two
13 again, I told him he didn't need that. We were all
14 friends. There was no trouble at the bar. It was
15 a private bar. He said it was for protection. He
16 was from Florida.

17 Q And you say he actually showed you his knife?

18 A Yeah. He said he wouldn't use that anyway. That's
19 when he turned around and showed me his gun.

20 Q At any time did you feel threatened by Nick?

21 A Not by Nick, no.

22 Q Not by Nick. This second game, how did it go?

23 A The second one or the third?

24 Q Let's talk about the second one. The first one you
25 put money up.

AMERA KABAR -- DIRECT -- MR. HUBBARD

169

- 1 A Okay. Once again, I won but not by much to kind of
2 give him a chance to win his money back.
- 3 Q Let me ask you: Is Nick a pretty good pool player?
- 4 A He was. He said he had played pool before. He was
5 a five and I'm actually -- I played on a league for
6 five years, and I was ranked -- the highest I have
7 been ranked was a four, but I'm really like a six.
- 8 Q Let's talk about that. What do the rankings go,
9 from one to?
- 10 A One to nine. What it is is a handicap for people
11 that can't play as good. So I would have to get,
12 as a three, to twenty-five balls. A six, you would
13 get forty-eight or something like that.
- 14 Q Nick said he was a five?
- 15 A Uh-huh. (Indicating affirmative response.)
- 16 Q Now, in this league you are ranked as what?
- 17 A When I quit I was a four.
- 18 Q Have you ever deliberately under-ranked yourself in
19 the league?
- 20 A Everybody does it.
- 21 Q That just seems --
- 22 A It's not really who ranks you. It's once you send
23 your sheets in every week, they see how many balls
24 you lost by. So sometimes you miss balls on
25 purpose or, you know, you don't want to beat a six

1 too bad, and then they realize you are not a four.

2 Q By doing that you can kind of -- you are better
3 than your competition?

4 A Yeah. But everybody has somebody on their team
5 that is like that. If I am playing somebody that
6 is really a four, I will play like a four. But if
7 they put me up to be mean or whatever and put up a
8 six, then I will play like a six.

9 Q And you are comfortable switching back and forth?

10 A Yeah.

11 Q When you played Nick that second game and you
12 barely lost, were you playing like a six?

13 A No, sir.

14 Q You barely won, correct, that first game?

15 A Well, you just miss balls that you shouldn't have
16 missed.

17 Q And when you won that second match for a hundred
18 bucks, you barely won that one?

19 A Yes, sir. I kept them close to keep him wanting to
20 play me.

21 Q What, if anything, did you say to Nick at the time?

22 A After I won?

23 Q Yes.

24 A Do you want to win your money back?

25 Q So you gave him a chance to win his money back?

AMERA KABAR -- DIRECT -- MR. HUBBARD

171

- 1 A You are supposed to.
- 2 Q That's just kind of the rules?
- 3 A Yeah, it's fair.
- 4 Q So the amount of this third game you are playing,
- 5 the second betting game, was a hundred dollars a
- 6 game?
- 7 A Yeah.
- 8 Q What, if anything, did Nick do? Did he just pull a
- 9 hundred dollars out?
- 10 A No. He went and talked to, I think his friend,
- 11 about it. I just was racking the balls up for him.
- 12 I put the quarters in. He was off doing his thing,
- 13 and I was playing him for his money back.
- 14 Q So before the second money game, playing for
- 15 that --
- 16 A He walked off again.
- 17 Q And went to Will?
- 18 A I'm pretty sure, yeah.
- 19 Q That second money betting game, which I guess is
- 20 your third game that you played that night, who won
- 21 that game?
- 22 A I did.
- 23 Q Did you barely win it or did you really beat him
- 24 good?
- 25 A I didn't beat him good, but I won by a couple of

1 balls. I always keep it close. I mean, if he
2 wants to play again, but at that point I seen they
3 both had guns. I was kind of ready to go. Once he
4 said it, I was shocked when he wanted to play
5 again, but he seemed distraught.

6 Q You mentioned something about they both had guns.
7 Had you noticed Mr. Brockmeyer coming over to the
8 table?

9 A Yeah, he had walked over to the table a couple of
10 times. He was hostile the entire night. He was
11 walking around like trying to show something, like
12 who he was. Everybody knew -- he made it known --
13 that he was the big man in the bar.

14 Q When you mentioned a gun, had you seen it at that
15 point?

16 A Yes, he was walking around. He had a shirt
17 underneath tucked in. He had his shirt -- I guess
18 when he get hot, he picked up his shirt halfway to
19 kind of air his stomach off. That's what he was
20 doing, and his gun was in the front.

21 Q For everybody to see?

22 A Yeah. They weren't discreet about it.

23 Q So Nick had a gun but you didn't feel threatened by
24 him?

25 A Not at all. He was sweet.

AMERA KABAR -- DIRECT -- MR. HUBBARD

173

1 Q Will had a gun. How did you feel about that?

2 A I didn't like him even when I first saw him, just
3 the way he was looking at everybody. He just
4 didn't -- I don't know. He wasn't happy from the
5 time he walked through the door.

6 Q You say there is one last game. You gave Nick a
7 chance to win his money back. He lost it again.
8 And then there is yet another game for money?

9 A I agreed to play him again.

10 Q Whose idea was it?

11 A His.

12 Q Nick's?

13 A Yeah. He just automatically put the quarters in
14 like to play again. It was my table because I won.
15 So I was like all right and played him again.

16 Q What, if anything, happened during the course of
17 playing that game with Will? What did you notice
18 with Will?

19 A He didn't walk up until probably mid-game. I guess
20 he noticed that he was playing again. He was
21 just -- you could see where he was distraught. He
22 was kind of bickering at Nick.

23 I was walking around the table looking at
24 shots. We had broke and made a couple of balls,
25 but there were still a majority of the balls on the

1 table. I was looking to make a shot, and I
2 remember looking over.

3 He just, at that point, picked his shirt up,
4 and he was grabbing at his stomach or whatever,
5 kind of like -- I don't want to say a thug -- but
6 he was yelling, "This is how we do it." It was
7 like trying to show -- I guess scare me out of not
8 winning. At that point I just got mad and ran the
9 table.

10 Q Let me back up. When you say he came over and
11 picked his shirt up, what were you looking at?

12 A His gun. I knew he had a gun there. He had
13 already showed it before that.

14 Q Did he have one or both hands down there?

15 A He had one.

16 Q And what did he say?

17 A He said, "This is how we do it."

18 Q "This is how we do it," while he has got his hand
19 on the gun?

20 A He wasn't looking directly but he was looking my
21 way, kind of just like to our crowd.

22 Q Just letting everybody know?

23 A Yes, trying to boost himself or whatever. I don't
24 know.

25 Q What was your reaction?

1 A I got mad and I just ran the table, like that's
2 fine. At that point I just wanted to finish the
3 game and go.

4 Q So when you say you ran the table, what does that
5 mean?

6 A That means when you run all the balls on the table
7 without giving the next person a shot. We played
8 nine ball, which is one through nine.

9 Q You didn't give Nick a chance at that point?

10 A No.

11 Q You just dropped all pretense of not knowing how to
12 play?

13 A Yes. And that was it. I put my pool stick on the
14 table and walked away.

15 Q So approximately how much money did you win that
16 night?

17 A Three hundred. I didn't really count the last
18 little bit because it was all kind of scrambled
19 together, but I just kind of pocketed it. It was
20 supposed to be 300 is what I won.

21 Q What was Nick's reaction when you ran the table?

22 A He wasn't even mad. He was disappointed but he
23 thanked me, and he told me it was a great game,
24 that I was a good pool player. He was a
25 sweetheart. The entire time he was, "Yes, ma'am.

1 No, ma'am," and I'm his age. He was a real
2 sweetheart.

3 Q Was he drinking in that last game?

4 A He was. He was drinking all throughout all three
5 games, but he was never really drunk, drunk until
6 the last game.

7 Q Now, at some point after all of this, do you see
8 Nick go sit down somewhere?

9 A After we got finished playing pool, we walked over
10 to the round table that was next to us, and Mariko
11 made a comment or a joke. She said --

12 MR. MADSEN: Judge, I will object for hearsay.

13 MR. HUBBARD: That's fine, Judge.

14 THE COURT: Thank you. I sustain it.

15 MR. HUBBARD: That's fine.

16 BY MR. HUBBARD:

17 Q So let's not get into the comments Mariko said, but
18 a comment was made to Nick from Mariko? Don't tell
19 us what it is, but she made a comment to him?

20 A Oh, yeah.

21 Q Was it about you?

22 A It was just a teasing comment about the pool game.

23 Q And how did Nick take that?

24 A He just shrugged it off, kind of just shook his
25 head.

1 Q At any time that night, did you ever notice Nick
2 ever getting angry?

3 A No, not at all.

4 Q A nice guy?

5 A Oh, totally.

6 Q Now, by the time he got to that table with Mariko,
7 how would you say he looked as far as having drunk
8 as much as he had?

9 A He wasn't as drunk as he was when I got outside,
10 but he was definitely more drunk than he was when I
11 first started playing pool with him. He was just
12 kind of collecting himself.

13 Q At some point you go outside. What prompted you to
14 go outside?

15 A I had already told my brother and everybody I was
16 ready to go after first seeing the gun but trying
17 to drag a group of people out of a bar is never
18 easy.

19 Q Kind of like herding cats?

20 A Yeah. I see my brother walking out the door first,
21 and I was immediately thinking he was leaving.
22 Then I seen Will and Nick like go out after him,
23 not really right after him, but they walked out
24 after him.

25 At that point I was like, all right,

1 definitely an uneasy feeling walking outside with
2 two dudes with guns. I walked out after, and my
3 brother was in the parking lot.

4 I met him about halfway. He said he wasn't
5 ready to go yet. He was talking to a friend. We
6 walked back. There was three chairs in front, and
7 we sat down on the chairs.

8 Q Let me ask you this: So you get out there and
9 Keith is not ready to go?

10 A No, he was out there talking to a friend.

11 Q I will try to use the pointer again. Is this
12 (indicating) the front porch? Let me orient you:
13 The pool tables (indicating). What is right here
14 (indicating)? Are those the bathrooms?

15 A Yes, sir.

16 Q What is this (indicating)?

17 A The bar.

18 Q What's over here (indicating)?

19 A A stage.

20 Q A stage for like music?

21 A Yeah.

22 Q What happens out here (indicating)?

23 A The dance floor.

24 Q The tables you were talking about, are they here
25 (indicating)?

AMERA KABAR -- DIRECT -- MR. HUBBARD

179

1 A A little bit more in front of the pool table and a
2 game machine when you walked out.

3 Q Is this (indicating) the way --

4 A That's the first door out, and that's the second
5 door out. The first one is closed and that one
6 stayed open.

7 Q This one (indicating) stays closed?

8 A Yes, sir.

9 Q This one (indicating) stays open?

10 A Yes, sir. Then there's three chairs where the dots
11 are now.

12 Q So all lined up right here (indicating)?

13 A Yes, sir.

14 Q Which chair did you sit in?

15 A The middle chair.

16 Q The middle chair. If you are in the middle, is
17 Keith further away or --

18 A If I am sitting like I was in the chair, he would
19 be to the right of me, closer to the parking lot.

20 Q So he is over here (indicating)?

21 A Uh-huh. (Indicating affirmative response.)

22 Q And this chair (indicating) right now is empty?

23 A My boyfriend walked outside after me, and he sat
24 down for a minute. He was trying to tell me to
25 come back inside. He didn't want me out there. He

1 was like, "Y'all come on inside."

2 Q Now, Nick and Will had gone outside too?

3 A Yeah. Nick, I didn't really see him until I was
4 walking back to sit down. But when I originally
5 walked outside, I seen Will and the heavysset girl
6 in the foyer.

7 Q Let me ask you about Nick first. What, if
8 anything, did you see Nick doing?

9 A He was throwing up.

10 Q So he was sick?

11 A Yeah, he was throwing up.

12 Q And this empty seat, when your boyfriend -- when
13 you told him you weren't leaving, what did he do?

14 A He kept trying to convince me. I told him to leave
15 me alone. I was going to sit outside with my
16 brother. He finally got up and walked inside.

17 Q So your boyfriend goes back inside?

18 A And at that time the girl helps Nick into the chair
19 next to me.

20 Q So some girl helped Nick sit right beside you?

21 A Yes, sir.

22 Q Now, you mentioned Will and a larger girl. Where
23 were they?

24 A When I first came out the door, he had his back
25 against the wall.

AMERA KABAR -- DIRECT -- MR. HUBBARD

181

1 Q Where are we in the bar here? This (indicating) is
2 the foyer and this (indicating) is outside.

3 A He had his back against the wall, right there where
4 your pointer is down.

5 Q On this side (indicating)?

6 A Yeah. He was standing there and the girl was
7 standing in front of him, and they were making out
8 is what I thought.

9 Q At any time did you think that there was some
10 tension there with Will?

11 A Not right there because they were kind of making
12 out, which was weird. But when we did sit down, he
13 was more in the doorway. It looked like there was
14 a heated discussion between the two.

15 Q Now, you didn't hear Nick talking though; did you?

16 A Nick wasn't, no. I asked him if he was all right.
17 He was collecting himself. He was dazed.

18 Q When you were sitting there in the middle, did you
19 turn and give your attention to Nick or where did
20 your attention go to?

21 A I had my hands on my knees, and I was talking to my
22 brother like this (indicating). I was leaning
23 forward in my seat talking to my brother.

24 Q So from the jury's standpoint, if, say, the judge
25 is in Nick's chair, were you looking at that

1 direction --

2 A No.

3 Q -- or were you looking toward your brother?

4 A I was looking like this (indicating). He was
5 talking to a friend of his. So when he would cut
6 me off, I just kind of glanced around and looked
7 around. I noticed them in the door, and I just --
8 it was both ways.

9 Q At some point did you see -- you mentioned seeing
10 Will again. First, he is making out with a larger
11 girl, and then you see him again. Where do you see
12 him?

13 A He was in the doorway facing towards us, but he
14 had -- the girl was standing in front of him. They
15 looked like they were having kind of a heated
16 discussion.

17 Q He and the girl were?

18 A Yes.

19 Q So they are right here (indicating)?

20 A Yes, sir.

21 Q What, if anything, happens after that?

22 A I had my head turned and there was a loud --
23 sounded like a car backfired. It was really close.
24 I just sat up right in my chair, and I seen Will
25 walk away, like into the dark, around the first

1 door, that door (indicating).

2 Q This way (indicating) or this way (indicating)?

3 A That way (indicating).

4 Q This way (indicating)?

5 A Yes, sir. It's really dark; so once he cuts that
6 corner, you can't see.

7 Q Let me ask you about this diagram. If these are
8 the walls here (indicating), what is out here
9 (indicating), right here (indicating)?

10 A A parking lot.

11 Q What is over here (indicating)?

12 A More parking on the side.

13 Q And over here on this side (indicating), do you
14 remember a volleyball court?

15 A No, I didn't go that far. I remember some woods.

16 Q Some woods out here (indicating)?

17 A Yes, sir.

18 Q So you see him walking off to the side. Do you
19 remember him saying anything when he was walking
20 away?

21 A No.

22 Q At some point do you shift your focus to Nick right
23 by you?

24 A I thought he was -- I had a long green dress on,
25 and I thought he was throwing up on my dress. I

1 looked over and I noticed it was blood. I looked
2 at him and his head was like this (indicating), and
3 it was bleeding.

4 At that point I looked over to my friend from
5 high school. He was kind of falling over. He
6 picked his head up and said, "Hey, are you all
7 right?"

8 He and my brother and I said, "Let's go." We
9 just stood up and when we stood up, he fell on his
10 knees and then face first, like staring out towards
11 the parking lot in a praying position.

12 We walked in the front door, out the back
13 door. We were the first people out in the parking
14 lot. The reason we left, I was scared. I knew his
15 friend had a gun, and I was like -- I don't know.

16 Q Did you realize at that point that Nick --

17 A We were in harm's way.

18 Q And Nick had been shot?

19 A Yes.

20 Q So you and who left?

21 A Me and my brother. I hit my brother. I told him
22 he was shot. Nobody reacted right after the pop.
23 It sounded like a car backfiring, a firecracker.

24 Q When y'all left did y'all run out into the parking
25 lot?

1 A No, we went in the front door. I had to get my
2 purse, and we grabbed my stuff. My boyfriend met
3 us, I guess, at the door; and we went out to the --
4 the bartender stopped us at the front. She asked
5 us if we -- we asked where the back door was. They
6 pointed towards the back. They tried to grab us
7 and stop us. We were just out of there.

8 Q So y'all actually went back this way (indicating)?

9 A And we were parked along the side.

10 Q Out here (indicating) somewhere?

11 A Yes, sir.

12 Q And y'all were one of the first to leave?

13 A We were the first to leave out of the parking lot.

14 Q Did you end up talking to law enforcement later?

15 A Yeah. That happened on a Saturday, and I think I
16 went and wrote my statement on Thursday because I
17 work all week.

18 Q Amera, if you will please answer any questions that
19 the defense might have.

20 A Yes, sir.

21 **CROSS EXAMINATION**

22 **BY MR. MADSEN:**

23 Q Amera, how are you doing?

24 A I'm doing good. Thank you.

25 Q Now, you actually went and spoke with Detective

1 Grant right here; didn't you?

2 A Yes, sir.

3 Q And you gave him a written statement; didn't you?

4 A Yes, sir.

5 Q Is that (indicating) the written statement that you
6 gave him?

7 A Yes, sir.

8 Q Two pages?

9 A Yes, sir.

10 Q Show me in that statement or point out to me where
11 you talk about the pool table?

12 A They didn't ask me. They asked me what happened
13 from the time he got shot.

14 Q Show me in that statement where you make reference
15 to Will at all?

16 A He was the guy in the white tank top. I didn't
17 know him well at that time.

18 Q So he was in a white tank top?

19 A He was in a white shirt -- this says white tank --
20 when we left.

21 Q So was he in a white shirt or was he in a white
22 tank?

23 A He was in a white shirt, but he had a white tank
24 underneath when he lifted his shirt up.

25 Q And you --

1 A He had a white tank when he left.

2 Q Show me in there where it says anything about you
3 seeing guns on Nick or Will in your statement?

4 A They didn't ask. They asked me what happened from
5 Nick on, when he sat there next to me.

6 Q So Detective Grant didn't ask you about it, and you
7 didn't feel that that was important for you to
8 bring up?

9 A No, sir, I didn't want to be in it.

10 Q Can you show me -- you said he had just asked you
11 what happened afterwards. Can you show me where
12 you say anything about Will being near Nick after
13 you hear the car backfire? Is that in this
14 statement?

15 A I don't know.

16 Q Do you want to take a look at it?

17 A It was a year ago.

18 (Pause.)

19 A He was the one in the doorway.

20 Q But it doesn't say that he's in front of Nick in
21 that statement; does it?

22 A I was just trying to write it and get out of there.

23 Q So you didn't tell this detective that?

24 A I probably did tell him. I just didn't write it in
25 there.

- 1 Q So if he didn't write that down in his notes, are
2 you saying that he's not being truthful and didn't
3 put it in there --
- 4 A Not at all.
- 5 Q -- or maybe you didn't tell him?
- 6 A Not at all. No, I probably did tell him. I just
7 didn't write it in my thing.
- 8 Q Surprisingly he wouldn't put that in his notes
9 either?
- 10 A I guess.
- 11 Q Now, you are playing pool and you had a long -- was
12 it a white dress?
- 13 A A green dress.
- 14 Q A green dress?
- 15 A Yes, sir.
- 16 Q So you are wearing it all the way down to the
17 ankles?
- 18 A Yeah.
- 19 Q And you are in there playing pool, and you are kind
20 of, I guess, hustling pool to a certain extent?
- 21 A Yes, sir.
- 22 Q What's the most you ever won playing pool?
- 23 A On a league we won -- we had to split up like two
24 or three grand between all of us. That was for a
25 league.

1 Q Were y'all playing like two, three, four --

2 A It's A.P.A. pool league. You play up to five or
3 six people a team. You split that amongst
4 yourselves. That's for actual league. I mean, on
5 a pool table just playing around, I have won up to
6 4- or \$500.

7 Q And ultimately you are playing Nick, and he's a
8 pretty good player?

9 A He was.

10 Q And you are keeping it close, but you are winning?

11 A On purpose to keep him wanting to play.

12 Q If you play him the first time and you run the
13 table and he doesn't get anything on a nine ball,
14 he's probably not going to want to play; is he?

15 A No, sir.

16 Q The first game, I guess, it was --

17 A Really close.

18 Q -- just for the table?

19 A Yeah, it was pretty much for the table.

20 Q The second game ultimately you ask about drinks.
21 He suggests a hundred dollars, but he doesn't have
22 that money. He gets it from Will?

23 A Yes, sir.

24 Q You end up beating him by a little bit?

25 A Yes, sir.

1 Q He wants to play again?

2 A To try to win his money back, yes, sir.

3 Q Ultimately, I guess, he doesn't have the money. He
4 goes and gets it from Will?

5 A Yeah.

6 Q The same thing on the third time; correct?

7 A I didn't see him go to him the third time.

8 Q He didn't have money on the first two times; so he
9 is getting the money from somewhere else; isn't he?

10 A Pretty much. But I know they talked about it the
11 first one. I heard them talking about it.

12 Q You had indicated in your statement that when you
13 walked out -- because, I guess, you were planning
14 on going? Maybe you and your brother were planning
15 on going to another bar?

16 A We were going to Platinum.

17 Q That's Platinum Plus?

18 A That's the only place he would go besides that bar;
19 so I told him I would go. I was ready to get out
20 of there.

21 Q You mean your brother?

22 A Yes.

23 Q But ultimately he had gone outside before you?

24 A Yes, sir.

25 Q And you were kind of fearful that maybe he had left

1 you?

2 A That he was going to, yes.

3 Q So you went outside to go find him?

4 A Yes, sir.

5 Q Y'all had a conversation and realized he wasn't
6 planning on leaving?

7 A Uh-huh. (Indicating affirmative response.)

8 Q Ultimately you end up sitting in a couple of chairs
9 beside one another?

10 A Yes, sir.

11 Q He's sitting here (indicating) -- when I say he, I
12 mean your brother.

13 A Yes, sir.

14 Q You are sitting here (indicating)?

15 A Yes, sir.

16 Q And then who is sitting in the third chair right
17 here (indicating)?

18 A My boyfriend Jamie walks out and sits down for a
19 minute and tries to convince me to come inside. I
20 told him to leave me alone. He was being annoying;
21 so he went back inside, and it wasn't maybe a
22 minute.

23 Q So ultimately that chair ends up being vacant?

24 A And a lady helps him into the chair next to me.

25 Q And when you say he, you mean a lady helps Nick

1 into the chair?

2 A Yes, sir.

3 Q And then ultimately you say you hear something and
4 look right next to you and see Nick --

5 A I sat upright. I was in my lap like this
6 (indicating) talking, and when it scared me, I sat
7 upright. I see somebody walking away.

8 Q And --

9 A There's only two people at the time to the left of
10 me.

11 Q Didn't you tell Detective Grant that you kind of
12 sat up? You looked around? No one is acting like
13 anything is going on; so you focus back in on your
14 conversation?

15 A Yes, sir.

16 Q And then you notice that Nick is slumped over but
17 he has not fallen?

18 A He has not fallen over yet. I thought the blood
19 that was coming down his body -- he still had his
20 head against the wall. Then his head kind of
21 drooped forward, and I guess the blood was running
22 down his body and getting on my dress.

23 I looked over. I hit my brother and we went
24 to stand up, and he fell forward. He was moving
25 his head forward; so he was going to basically fall

1 over in my lap.

2 Q When you stood up and he kind of falls forward, was
3 anyone around him when he falls over?

4 A No, sir.

5 Q So you didn't see anyone shoving or pushing to
6 knock him over?

7 A No, nobody pushed him over.

8 Q No one shakes him?

9 A Nobody shakes him. My friend like helped him from
10 falling over in my lap. He ended up falling
11 forward on the ground.

12 Q In fact, in your written statement that you give to
13 Detective Grant, you say, "At that point in time, I
14 noticed a gun in the back of his pants stuffed and
15 assumed he shot himself"?

16 A He had his gun stuck here (indicating). My first
17 initial thought was that. Then once I seen the
18 girl freaking out, I knew that that wasn't the
19 case.

20 Q But you write, "I noticed a gun in the back of his
21 pants stuffed and assumed he shot himself."

22 A Well, the gun had been stuffed there the entire
23 time throughout the pool games. It never moved.

24 Q That's what you wrote in your statement; correct?

25 A Because that's what happened.

1 Q Don't say anything about a gun at the pool tables?

2 A They didn't ask. They asked what happened from
3 then on.

4 Q And I guess when you see Will making out with what
5 you describe as a heavyset girl, his back is to
6 this wall (indicating); correct?

7 A No, the other one.

8 Q To this wall (indicating)?

9 A Where your finger is at, over, right in front of
10 the door with his back. If you walk out the door,
11 he's facing you.

12 Q Let me see if I can figure this out now. Can you
13 show me -- when you see Will making out with the
14 girl, where is he?

15 A Right there (indicating). When you walk out the
16 door, his back is against that wall. You are
17 looking dead at him when you walk outout.

18 Q So his back is facing up toward this way
19 (indicating), and her back then would be towards
20 you?

21 A Yes, sir. But she is shorter; so they looked like
22 they were making out. It wasn't a hostile
23 situation then. It didn't look like it.

24 Q Okay. You had said something about y'all were
25 talking to a high school friend. Is that Jordan?

AMERA KABAR -- CROSS -- MR. MADSEN

195

1 A Yes, sir.

2 Q Jordan Allen?

3 A Yeah.

4 Q And at some point in time, doesn't Jordan say
5 something to Nick or ask him if he is okay?

6 A That's who initially talked to him. He was asking
7 him if he was all right, and that's when he fell
8 over. That's when he tried to stop his head from
9 falling over on me, and he fell over on the ground.

10 Q And you thought at that point in time, he was just
11 throwing up some more until you realized it was
12 blood?

13 A I thought it was throw-up. I looked down and seen
14 it was blood. I looked over and before he even
15 fell over and slumped forward, I seen the blood
16 coming down his face.

17 Q In fact, you spoke with an investigator of ours
18 back on July 19th -- isn't that correct -- Carlisle
19 McNair?

20 A Yes, sir.

21 Q And did you not tell Carlisle McNair that you did
22 not see Will near or kneeling near Nick before or
23 after the shooting?

24 A I didn't see him kneel. He was standing in the
25 doorway, which was not even feet five from the

1 chair.

2 Q So Will --

3 A I also seen him after.

4 Q You saw him walk away, but you don't see him --

5 A He walked into the dark.

6 Q I've got you.

7 A I didn't catch him kneel down next to him or
8 anything else.

9 Q So you basically -- you see him somewhere around
10 here (indicating)?

11 A Real close to the doorway because it's dark; so you
12 have got to be close to it to be able to see them.

13 Q In that area right here (indicating) on the front
14 porch, are there lights there?

15 A Like one light. There was lights above us. It was
16 lit a little bit where we were, but it wasn't well
17 lit, not at all.

18 Q How about the parking lot? Are there lights out in
19 the parking lot?

20 A No, the parking lot is dark. There is probably
21 like some big spotlights, but it's not well lit.

22 Q Had you been to Jager's before?

23 A First time.

24 Q It's kind of out in the country; isn't it?

25 A Yeah.

AMERA KABAR -- REDIRECT -- MR. HUBBARD

197

1 Q It's all the way down 6, I guess, as you are
2 heading towards Edmond if you are familiar with
3 that area?

4 A Yeah, I guess.

5 MR. MADSEN: Beg the Court's indulgence.

6 (Pause.)

7 MR. MADSEN: That's all the questions I have,
8 Your Honor.

9 THE COURT: Any redirect?

10 MR. HUBBARD: A quick one.

11 REDIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q There's some things we talked about that weren't in
14 your written statement; is that correct?

15 A Yes, sir.

16 Q Why didn't you write all that stuff in your
17 statement?

18 A I didn't want to be a part of it. It took them
19 four days to find me. I just kind of wanted to be
20 -- you never know who people know or what can
21 happen to you after the fact when you are involved
22 in something like this.

23 I just kind of gave them a brief outline of
24 it, and that was it. I didn't wanted to get in
25 trouble for gambling. I know I wasn't supposed to

1 be doing that.

2 Q So you didn't talk about anything inside?

3 A No. They just asked me -- I answered the questions
4 they asked me, from the time we sat down, on.

5 Q Thank you.

6 A You're welcome.

7 THE COURT: You may come down.

8 (Witness leaves the witness stand.)

9 THE COURT: You want her still under subpoena?

10 MR. HUBBARD: She is free to go. We will go
11 ahead and keep her under subpoena just in case, but she
12 is free to go.

13 THE COURT: All right. Gentlemen, it's about
14 5:20. So it's an appropriate time to stop for the
15 evening.

16 Mr. Foreman, and ladies and gentlemen, I
17 appreciate your services. I have noticed that all of
18 you have been very intent in listening to the testimony,
19 and that's just a sign of a good jury, intent on doing
20 their job. All of us involved here appreciate that.

21 So that you will know, we will start at
22 9:30 in the morning. You report to your room, not the
23 courtroom. We will break about 1:00 o'clock for lunch
24 and come back at 2:30 and work until 5 or 5:30, some
25 appropriate quitting time. Unless there are unforeseen

1 difficulties, that would be our schedule.

2 Please remember my admonition given at the
3 lunch hour. Don't talk to anybody about the case. Let
4 no one talk to you. Don't even discuss it in the jury
5 room among yourselves.

6 Was there any further admonition required of
7 the jury? What say the State?

8 MR. GRAHAM: None, Your Honor.

9 THE COURT: What say defense?

10 MR. MAULDIN: Just that they avoid media or
11 going on the internet looking up things, that kind of
12 thing, about the law or the case or anything of that
13 nature.

14 THE COURT: This distinguished jury will
15 understand that. Obviously our reason is -- I don't
16 want you checking on the internet or whatever because
17 your verdict, whatever it is, has got to be based on the
18 law and evidence in this courtroom.

19 Y'all may leave at this time. Have a nice
20 evening and be back by 9:30. We will start promptly at
21 that time. Thank you so much for your services.

22 (The jury is excused for the day at 5:17 p.m.)

23 THE COURT: Anything further before we recess
24 for the evening?

25 MR. HUBBARD: No, sir, Your Honor.

1 THE COURT: I will see you at 9:30 in the
2 morning.

3 (Whereupon the proceedings are concluded for
4 August 22, 2011.)

5 (The following proceedings are reported on
6 August 23, 2011.)

7 THE COURT: Is the State ready to resume the
8 trial?

9 MR. GRAHAM: Yes, Your Honor. The State is
10 ready.

11 THE COURT: Defendant ready?

12 MR. MAULDIN: Yes, Your Honor.

13 THE COURT: Bring the jury in, please.

14 (The jury returns to the courtroom at
15 9:56 a.m.)

16 THE COURT: Good morning, Mr. Foreman, ladies
17 and gentlemen. I apologize for the light being out in
18 one of the rest rooms, but that is being taken care of.

19 Mr. Foreman, during the course of the trial,
20 sometimes exhibits are shown to the jury during the
21 trial. Those exhibits will be handed to you, and then
22 you will pass them around so that your entire jury can
23 have the benefit of viewing.

24 FOREMAN: Yes, sir.

25 THE COURT: Call your next witness.

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

201

1 MR. HUBBARD: Thank you, Your Honor. The
2 State calls Jamie Spencer.

3 JAMIE SPENCER, being
4 first duly sworn, testifies as follows:

5 CLERK: State your full name and spell your
6 last name, please.

7 THE WITNESS: My name is Jamie Spencer,
8 S-P-E-N-C-E-R.

9 DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q Jamie, where do you live?

12 A I live in --

13 THE COURT: You will have to talk a little
14 louder so those gentlemen over there can hear you,
15 please.

16 BY MR. HUBBARD:

17 Q Jamie, don't give an address. Give me the city or
18 town.

19 A West Columbia.

20 Q Did you grow up most of your life in Lexington?

21 A Yes, sir.

22 Q Let me ask you: Do you know Amera Kabar?

23 A Yes, sir, that's my girlfriend.

24 Q Does she have a brother?

25 A Yes, sir, Keith. His real name is Bassam.

1 Q Back last July, July 10th to July 11th, do you
2 remember being at a bar in Lexington County?

3 A Yes, sir.

4 Q What bar was that?

5 A Jager's, something like that.

6 Q The one in Red Bank?

7 A Yes, sir, off of Number 6.

8 Q Before we get into talking about that night, I want
9 to talk a little bit about you and go ahead and
10 address a few things that we have discussed.

11 A Yes, sir.

12 Q You have a couple of prior convictions; is that
13 correct?

14 A Yes, sir, I do.

15 Q Back July 20, 2000, you had a P.W.I.D. ecstasy?

16 A Yes, sir, I did.

17 Q And then February of 2007, a distribution of
18 marijuana?

19 A Yes, sir.

20 Q I wanted to discuss that. Now, the night of the
21 incident at Jager's, were you using any controlled
22 substances?

23 A Yes, I was.

24 Q What were you using?

25 A Cocaine and alcohol.

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

203

1 Q And I have told you I'm not going to prosecute you
2 for that; is that correct?

3 A Yes, sir. I voluntarily just told you. I told you
4 that without you asking. I was just being
5 completely honest with you in case, you know...

6 Q Yes, sir. In fact, Mr. Spencer, isn't it true that
7 we didn't come find you? You came to us?

8 A Yes, sir.

9 Q The night of this incident, you never spoke to law
10 enforcement; is that correct?

11 A No, I did not. I was never contacted.

12 Q Our office is the first people you ever contacted?

13 A Yes, sir.

14 Q You showed up and you spoke to us?

15 A Yes, sir.

16 Q And about the cocaine use, we would have never
17 known but for you telling us that?

18 A Yes, sir.

19 MR. MAULDIN: Objection to leading, Your
20 Honor.

21 THE COURT: It was leading, but I would permit
22 it. That is an introductory statement. Go ahead.

23 BY MR. HUBBARD:

24 Q Let's talk about that night.

25 A Yes, sir.

1 Q Do you know -- on July 10th that night, who did you
2 go to the bar with?

3 A Amera.

4 Q Just you and Amera?

5 A Yes, sir.

6 Q And do you remember what time you got there?

7 A It was around 10:30ish, around there.

8 Q And while you were there, did y'all play pool?

9 A Yes, sir.

10 Q Now, you are a big pool player too; are you?

11 A Yes, sir, we play on a league.

12 Q At some point do you remember a couple of guys
13 coming in that you had never seen before?

14 A Yes, sir.

15 Q And do you remember one of those guys playing pool?

16 A Yes, sir.

17 Q Did you ever learn what his name was that night?

18 A To be completely honest, I really don't remember
19 like getting his name, not exactly who he was.

20 Q Let me ask you this: What was he wearing, this guy
21 that played pool?

22 A He was wearing a pair of jeans and a black
23 wife-beater, like a tight tank top, like an
24 undershirt.

25 Q You were playing pool when he came up?

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

205

1 A Yes, sir. He was playing on the other table, but
2 he was like interested. You could tell he was
3 interested in our table, what we were doing. We
4 was playing partners, and you could tell he wanted
5 to play.

6 Q Who did he end up playing with?

7 A My girlfriend.

8 Q Amera?

9 A Yes, sir.

10 Q During the course of him playing with Amera, did
11 you notice him with anything on him?

12 A Yeah.

13 Q What was that?

14 A A big gun in the back of his pants.

15 Q Can you describe that gun for us?

16 A What it looked like to me?

17 Q Yes.

18 A It looked like a .40, .45 like size wise. It was a
19 bigger gun. You can always tell by the handle.

20 Q Right.

21 A That's what was sticking out. That's why I knew it
22 was a bigger gun.

23 Q What part of his body was he carrying that gun on?

24 A His lower back. How I noticed it is when he went
25 to take a shot, like when you bend over, it was a

1 bulging thing sticking out of his back. It was so
2 obvious what he had.

3 Q Do you remember if you or any of the other guys
4 there confronted him about that?

5 A No. I was one of the first people to see it. I
6 was letting people know around me that he had a
7 gun.

8 Q How was this person acting?

9 A To be completely honest, not a threat. I mean, he
10 just -- to be honest with you -- I wanted to say,
11 "Why have you got the gun? There is no reason for
12 you to have a gun in here. We are all friends.
13 This is not like that kind of a place."

14 Q Did he use it or show it in any kind of threatening
15 manner?

16 A No.

17 Q Now, did you watch he and Amera play pool?

18 A Yes, sir.

19 Q And did you understand what Amera was doing that
20 night?

21 A Pretty much. I didn't set him up for that, but I
22 let -- Amera is a very attractive girl. He was
23 standing there. They kind of started talking, and
24 then I talked to him a few times. He was telling
25 me that he was on a league also.

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

207

1 So as soon as he told me he was on a league, I
2 knew he was a gambler. So I let Amera -- I watched
3 him play. When we were playing, I watched him
4 play. I kind of knew where his skill level was at.
5 That's why I let her play.

6 Q And how many games did they play; do you remember?

7 A A total?

8 Q Yes.

9 A Four. One was like a freebie.

10 Q Was that the first game?

11 A That was the first game, yes, sir.

12 Q At some point during this play, did you see the
13 other guy that was with -- let me ask you this.
14 You have a guy in a black tank top playing pool
15 with Amera?

16 A Yes, sir.

17 Q Did you see other guy come up?

18 A Yes, sir.

19 Q Can you describe how he appeared?

20 A Medium build, five-eight, five-ten, somewhere in
21 there.

22 Q Do you see him in the courtroom today?

23 A Yes, sir.

24 Q Can you point him out for us?

25 A He is right there (indicating).

1 Q Which chair is he in?

2 A The last chair.

3 Q The last chair on the --

4 A Blue tie, white shirt.

5 Q -- defense table. Thank you. What was he wearing
6 that night; do you remember?

7 A A pair of jeans and a white shirt, some kind of
8 something on the front of it.

9 Q How was he acting?

10 A To be completely honest with you?

11 Q Yes.

12 A An ass.

13 Q Let's not use that language but explain that.

14 A He was like the tough guy. He wanted everybody to
15 know he was there, his presence was there. I don't
16 know why, but that's how he was acting, like he had
17 something to prove or he just was like -- the way
18 of his movements and just all kind of -- you could
19 tell he was a hothead.

20 Q Did any of your friends in any way threaten him?

21 A No. Nobody even cared who they were. Who were
22 they? That's kind of like -- this is our kind of
23 little hangout, our little party. You are coming
24 here. We didn't -- nobody said nothing to them.
25 Like I said, the only thing that was said was to

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

209

1 play pool.

2 Q At any time did you notice any type of weapon on
3 him?

4 A Yeah, about probably -- when Amera was playing,
5 yeah.

6 Q Tell us about that.

7 A What I saw, like they was talking or whatnot, and
8 then after like the second loss, like I don't know
9 what happened or what was said, but he started
10 coming around there, bouncing around.

11 I saw -- that's when I saw him have a gun. He
12 pulled it out and cocked it and said, "This is how
13 we do it," bouncing around, whatever, to the music
14 and stuck it back in his pants.

15 I took it as -- the way I took it is he was
16 trying to intimidate Amera. He had already lost;
17 so that was like an intimidation factor in my
18 opinion.

19 Q Now, the guy in the black tank top, did he ever act
20 that way?

21 A No.

22 Q When you say they were talking, who was he talking
23 to before the gun incident? Who was he talking to?

24 A Nick or Will were conversating.

25 Q And you have since learned their names?

- 1 A Yes.
- 2 Q Nick is who?
- 3 A Nick is the victim, the one that is dead.
- 4 Q The one in the black tank top?
- 5 A Yes, sir.
- 6 Q Will is the one in the white shirt?
- 7 A Yes, sir.
- 8 Q Then after they talked is when you saw Will do
- 9 what?
- 10 A He pulls the gun out of his pants and cocked it and
- 11 put it back in his pants.
- 12 Q Did any of your friends have guns that night?
- 13 A No.
- 14 Q After he did that what happens?
- 15 A Basically he kind of stands off to the side back
- 16 away from the table to let them play. But after
- 17 that that's when Amera ran the -- I could tell it
- 18 pissed her off because she started just going --
- 19 she ran all the balls out, and that was the last
- 20 game. We were kind of, "Let's just quit this."
- 21 Q When that game was over, what did y'all do?
- 22 A Sat around the table, the other table, and just
- 23 conversated.
- 24 Q At any time did you go up to Nick or Will and speak
- 25 to them after that?

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

211

1 A Yeah, when they were sitting down at another table.

2 Q Who was sitting at that table?

3 A Mariko and Will -- not Will -- Nick were sitting at
4 the table, and I walked up to them. I went and got
5 a drink. I seen them over there. I was still
6 watching. I was watching them the whole night just
7 to see what they were doing.

8 I walked over to the table to be kind of like
9 a mediator because they have guns. I just don't
10 like them. Anyway, I remember tapping on the
11 table, like "We are all good people here. Y'all
12 don't need those guns," you know, just kind of like
13 trying to ease the tension or whatever, if there
14 was any, and walked over to the table.

15 Q How did Nick react?

16 A Nick wasn't a threat to me.

17 Q Did you notice him drinking at all that night?

18 A Yeah.

19 Q And at the table -- did you notice his appearance
20 at the table?

21 A Going down.

22 Q What do you mean by that?

23 A You could tell, like just liquor or the reality of
24 just losing money and sitting there at the table.

25 You could tell he was going downward. He was not

- 1 going up. He was not bouncing around. The
2 defendant was the one that was bouncing around in
3 the club.
- 4 Q While Nick and Mariko are sitting there, are they
5 sitting side by side?
- 6 A Yes, sir.
- 7 Q Where is Will?
- 8 A Probably five, ten-ish feet. I'm really not -- I
9 never gave him my full attention, but I always was
10 watching him, but I would say five to ten feet
11 behind them. Once he cocked that gun, I was pretty
12 much radar on him.
- 13 Q At some point do you see Nick go outside?
- 14 A Yes, sir.
- 15 Q Do you see anybody go outside after him?
- 16 A Will.
- 17 Q And where was your girlfriend Amera at this time?
- 18 A Standing -- just standing around talking to people.
- 19 Q Did she go out at some point too?
- 20 A Yes, sir. That's the reason why I followed her out
21 there.
- 22 Q When you go outside to find Amera, where was she?
- 23 A Sitting -- when I first saw her?
- 24 Q Yes.
- 25 A She is either standing up near the chairs or

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

213

1 sitting in the chairs, one of the two.

2 Q When you saw her sitting in the chair, which chair
3 was she in?

4 A The middle chair.

5 Q The middle chair. Who was in the far chair,
6 furthest away from the door?

7 A Her brother.

8 Q That's Keith?

9 A Keith.

10 Q The chair closest to the door, was anybody in that
11 chair?

12 A No, sir, that's why I sat down.

13 Q When you sat down, what did you do?

14 A Started looking for them to see where they were at.
15 When I looked to my left, I seen Nick standing like
16 to the side. There's like a little spot, a
17 breezeway on the side of it.

18 I saw him throwing up, like leaning up against
19 the wall throwing up, getting sick. You could tell
20 he was getting sick, and the defendant was in the
21 breezeway with a bigger girl, a bigger-set girl.

22 Q Do you know that girl?

23 A No, sir.

24 Q Never met her before?

25 A No, sir.

1 Q Do you remember what she was wearing? If you
2 don't, don't say.

3 A Yes, sir, I do.

4 Q What was she wearing?

5 A A turquoise shirt, a big old turquoise shirt.

6 Q And he was in that little foyer area?

7 A Yes, sir.

8 Q Do you remember what you were asking Amera?

9 A Well, what drew my attention was because when I
10 looked over there, I could tell that they wasn't
11 like making out or something. It was more or
12 less -- because I could see his head over her
13 shoulders.

14 You could see his facial expressions, and he
15 looked hostile. He looked angry. Of course, I'm
16 alert, looking at him, like, "Damn, what the hell
17 he is about to do? Is he about to tally on us
18 because he thinks we got him for his money," or
19 their money or whatever.

20 I kept looking at Amera and Keith, I said,
21 "Please, will y'all just come inside. Please." I
22 had this gut feeling something bad was going to
23 happen. I don't know. It just didn't feel good.

24 Q Let me tell you this: I don't want you to tell
25 what Amera said or Keith or anybody like that. Did

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

215

1 they go inside with you?

2 A No, they did not.

3 Q Did you go inside?

4 A Yes. I have already had an accident of being shot.

5 I was like, "I am going inside." I finally said,

6 "If y'all are not coming with me, I'm getting up."

7 Q Did you go back into that little foyer area to go
8 inside?

9 A Yes, sir. I never made eye contact with him. I
10 kind of set him up to see what he was doing. What
11 I opened the second door, I could turn like this
12 (indicating) as I was opening the door. That's
13 when I seen him. He was trying to pull his gun
14 out, and the girl, the bigger-set girl, was trying
15 to hold his hands with the gun.

16 MR. HUBBARD: With the Court's permission, may
17 I have him stand up and demonstrate what he is talking
18 about, Your Honor?

19 THE COURT: Yes, that's permissible.

20 Gentlemen for the defense, you are welcome to come
21 around.

22 (Witness leaves the witness stand.)

23 BY MR. HUBBARD:

24 Q Show what he was doing and speak very loud now.

25 A His back was against the wall. There's a door

1 right here (indicating). When I walked through, I
2 could see the side view like this way (indicating).
3 He was trying to pull the gun out.

4 She had both her hands on his hands, like
5 putting her weight so he wouldn't be able to pull
6 the gun out. So when I opened the door, I could
7 see all that, like my side bar. Because, like I
8 said, I never wanted to make eye contact with him.

9 Q Jamie, let me do this. If he's right here
10 (indicating) and the girl you are talking is about
11 here (indicating), you are going in a door?

12 A I am opening the door like this (indicating); so I
13 can see exactly what is going on. He never even
14 looked my way. He's still focusing this way
15 (indicating).

16 Q Outside the door?

17 A Yes, that door.

18 Q The exterior door?

19 A This (indicating) is going inside the bar.

20 Q And the door that you would be facing is going --

21 A Is where Amera and Keith and everybody was, that
22 way (indicating). Yes, sir.

23 Q You can have a seat.

24 A (Witness resumes the witness stand.)

25 Q When you went inside -- if you need some water, go

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

217

1 ahead. When you went inside, what direction did
2 you head?

3 A I walked straight like I was going towards the
4 bathroom. I didn't even get to the first -- either
5 to the table or past the first table -- excuse me.

6 Q That's all right.

7 A I didn't get to the first table. I didn't get
8 either to it or around it. When I heard the pop, I
9 immediately spun around. I went straight to go get
10 Amera and her brother. They was -- as I was coming
11 out the second door, Amera was almost to me, and
12 Keith was stepping over Nick.

13 Q Did y'all actually meet up in the foyer area or
14 inside the bar?

15 A In the foyer, like right there in that little...

16 Q Then what did y'all do?

17 A I was looking straight for the back door. I was
18 not going where that was -- where the gun was at.
19 I was going the opposite way. I wanted to find a
20 back door.

21 Q To go to the back door, where did you have to go?

22 A Go through the boor.

23 Q Back behind the bar?

24 A Yes, sir, through the kitchen area.

25 Q And do you remember anybody being back behind the

1 bar?

2 A Yes, sir, there was a bartender. There was an
3 older lady and older gentleman. I think, from what
4 I understand, they were the owners.

5 Q And y'all went by them?

6 A Yes. The lady grabbed my arm --

7 Q Don't say what she said, but did she try to stop
8 you?

9 A Yes.

10 Q Did y'all go ahead anyway or did you stop?

11 A I snatched it -- I grabbed Amara by her neck. I
12 don't think her feet were even on the ground.
13 That's how scared I was.

14 Q When y'all got out that back door, what did you do?

15 A Straight to the car. I'm almost positive we were
16 the first people to leave.

17 Q Do you remember talking to a friend by phone as
18 y'all were leaving?

19 A Yes, sir.

20 Q Who were you talking to?

21 A Mark Lesesne.

22 Q Don't chew ice on the microphone. I know you are
23 kind of nervous. It's all right. Do you remember
24 telling him who to be looking out for?

25 A Yes, sir.

JAMIE SPENCER -- DIRECT -- MR. HUBBARD

219

1 Q How did you describe that person?

2 A I told him he was wearing a white shirt. People
3 were saying this dude was in a white tank top. I
4 was like, "No, he's in a white shirt." Mark kept
5 saying to me, "This is this guy here --

6 Q I tell you what. Let's not get into what he said.
7 But when you are in that little foyer area --

8 A Yes, sir.

9 Q -- and you see him with the girl that is wearing
10 turquoise?

11 A Yes, sir.

12 Q And he has got his hands like this (indicating),
13 what is he wearing?

14 A A white shirt.

15 Q A white shirt. You mentioned something earlier on
16 his chest?

17 A Some kind of writing, some kind of -- I would say
18 about that big-ish (indicating).

19 Q Let me show you a photo, State's Exhibit Number 3.
20 Is that the shirt you saw him in?

21 A One hundred percent. That's exactly who that is.

22 Q A Sean John shirt?

23 A I didn't know it was Sean John, but I know it was
24 something on it.

25 THE COURT: Do you desire to publish that?

1 MR. HUBBARD: We have published that one, Your
2 Honor.

3 THE COURT: All right.

4 MR. HUBBARD: Beg the Court's indulgence.

5 (Pause.)

6 BY MR. HUBBARD:

7 Q I did forget to ask you something. The gun you saw
8 that you have identified that the defendant had?

9 A Yes, sir.

10 Q Can you describe that gun?

11 A It's a smaller gun. I know about guns. It might
12 have been a .380 size.

13 Q So it was a small pistol?

14 A Smaller gun, like you could put it in your back
15 pocket if you wanted to.

16 Q It wasn't as big as Will's?

17 A No.

18 Q I mean, as Nick's?

19 A No. Like I said, when he choked it, I couldn't
20 even really like see it. His hands were covering
21 it. I know this motion (indicating).

22 Q Right. Jamie, I appreciate you answering my
23 questions. Please answer any questions the defense
24 has.

25 A Yes, sir.

1 THE COURT: You may examine, Gentlemen.

2 MR. MADSEN: Judge, I think we have a matter
3 of law.

4 THE COURT: I will ask the jury to please
5 excuse themselves at this point.

6 (The jury retires to the jury room.)

7 THE COURT: Yes, sir.

8 MR. MADSEN: Judge, we have only been provided
9 a couple of letters from Mr. Spencer from the solicitor
10 indicating what he was going to testify to. Those
11 indicate that, "Jamie Spencer was given immunity to his
12 use of cocaine at Jager's bar at the time of the
13 incident.

14 "Jamie Spencers states that your client was
15 between the pool tables walking towards the side door
16 when your client exposes a gun in his front waistband,
17 puts both hand on the gun and appears to rack it."

18 Jamie Spencer will state that your client
19 said, "This is how we will do it," as he was handling
20 the gun. We made a motion to the State for disclosure
21 of evidence under Rule 5, under Brady, and Kyles versus
22 Whitley.

23 THE COURT: What evidence are you missing with
24 reference to this witness?

25 MR. MADSEN: The stuff that he talked about in

1 the foyer. We had not received anything from the
2 State --

3 THE COURT: You didn't have an opportunity to
4 examine him yourself in your investigation?

5 MR. MAULDIN: There was no written report,
6 no --

7 THE COURT: No, sir, you didn't respond to my
8 inquiry, please. Did you have an opportunity to go over
9 his testimony with him?

10 MR. MADSEN: We never spoke with him, Your
11 Honor. We spoke to quite a few witnesses with our
12 investigator. He did not speak with him because there
13 wasn't anything in there.

14 But saying that, Judge, if he has told them
15 something different, then under Brady and Kyles versus
16 Whitley, that becomes impeachment evidence --

17 THE COURT: Precisely what is your narrow area
18 of concern with his testimony?

19 MR. MAULDIN: What he testified as to in the
20 foyer, and they did not turn that over to us. They
21 turned some stuff over to us, but they didn't turn that
22 portion over, which is certainly if his statement -- or
23 his testimony is different, then they are required to
24 turn that over because it's impeachment evidence.

25 THE COURT: Do you want to reply to that,

1 Solicitor?

2 MR. HUBBARD: Judge, every time we have spoken
3 to Mr. Spencer -- I think it has been a couple of
4 times -- he has been consistent in what he has said. If
5 he had ever said something inconsistent from one meeting
6 to the next, we would have turned that over for
7 impeachment purposes.

8 We turned over -- this is not a law
9 enforcement officer, not statements to a law enforcement
10 officer. He came to us and technically under the rules,
11 we didn't even have to turn over what we turned over,
12 but we did. We did, Judge.

13 THE COURT: You gave him his name for sure?

14 MR. HUBBARD: Yes, sir.

15 THE COURT: I do not consider this a violation
16 of Brady for several reasons. You have the substance of
17 his testimony, and he was available to you if you wanted
18 to investigate him.

19 Plus, he's not a police officer. He is just a
20 mere witness. The fact that he testified as to what
21 occurred in the foyer is not the central part of his
22 testimony anyway; so I respectfully decline your motion.

23 MR. MADSEN: I understand, Judge. I would
24 just like for the record to reflect that we do object as
25 a discovery violation. We object under the Sixth

1 Amendment of the U.S. Constitution and also the State,
2 Article 1, Section 14 of the Constitution. I would like
3 Your Honor to mark this as a Court's exhibit.

4 THE COURT: I will do that. Bring it up. I
5 am curious though. Obviously he was a material witness.
6 He was disclosed to your team. Why in the world didn't
7 y'all interview him?

8 MR. MADSEN: Judge, we interviewed quite a few
9 people.

10 THE COURT: But he is a material witness.

11 MR. MADSEN: Judge, we get this August 20th,
12 which is Saturday, Saturday of this week.

13 THE COURT: I understand.

14 MR. MADSEN: This past week. Before that all
15 we had received on him, I think we had gotten a rap
16 sheet at some point in time, but that was it. No other
17 mention of him anywhere else in the discovery except
18 that he was Amera's boyfriend.

19 THE COURT: Isn't the rule that they have got
20 to give you the name of the witnesses, but it's up to
21 you to go interview them? They are not going to do your
22 work for you, Counsel.

23 MR. MADSEN: I understand, Judge. But at the
24 same time if there is something different, I think they
25 are required to turn it over under Kyles versus Whitley.

1 MR. HUBBARD: Judge, for the record I don't
2 want to belabor it, but just so we are protected. I
3 want to make sure the record is clear that we turned
4 over what is Brady and impeachment evidence. He did not
5 testify or speak differently to us. We did not turn
6 over the substance of everything he said because we are
7 not required to.

8 THE COURT: I understand.

9 MR. HUBBARD: We gave him Brady information.

10 THE COURT: I do not conclude that this is a
11 Brady violation, and I say so most respectfully. Can we
12 now resume?

13 MR. HUBBARD: Yes, sir, the State is ready.

14 COURT REPORTER: Judge, I have marked this
15 letter as Court's 2.

16 THE COURT: Yes, ma'am.

17 (Court's Exhibit Number 2 is marked for
18 purposes of the record.)

19 THE COURT: Bring the jury, please.

20 BAILIFF: We have one in the rest room, Judge.

21 (Pause.)

22 (The jury returns to the courtroom.)

23 THE COURT: Let the record reflect that I give
24 you the opportunity to be in recess for Mr. Madsen to
25 come back if you care to.

1 MR. MAULDIN: We will proceed.

2 THE COURT: You may have your examination,
3 counsel.

4 MR. MAULDIN: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. MAULDIN:

7 Q Now, this happened a little over a year ago; is
8 that right?

9 A Yes, sir.

10 Q And you met with the solicitor just recently in the
11 past couple of weeks or so; is that right?

12 A Yes, sir.

13 Q And you knew Amera was going to meet with them; so
14 you are saying you went to go meet with them too?

15 A No.

16 THE COURT: You are going to have to talk a
17 little louder please, sir.

18 THE WITNESS: Yes, sir. I'm sorry.

19 BY MR. MAULDIN:

20 Q Are you still dating Amera?

21 A Yes, sir.

22 Q And you didn't know she was going to talk to the
23 solicitors about this case?

24 A Yes.

25 Q She went to talk to the police sometime last year;

JAMIE SPENCER -- CROSS -- MR. MAULDIN

227

1 didn't she?

2 A Yes.

3 Q You didn't go with her then; did you?

4 A No.

5 THE COURT: Let me say this to you. See that
6 gentleman on the far left?

7 THE WITNESS: Yes, sir.

8 THE COURT: You need to put your voice so he
9 can hear you; so that juror down there can hear. I can
10 barely hear you and I am right by you.

11 THE WITNESS: Yes, sir. I'm sorry.

12 THE COURT: It's all right.

13 BY MR. MAULDIN:

14 Q Now, what was Amera wearing?

15 A A green dress.

16 Q And you say that you and she went to the bar
17 together; is that right?

18 A Yes, sir.

19 Q And you met up with Keith there?

20 A Yes. They came there; we didn't meet up with them.

21 Q So they came and you met with them there or you
22 went with Amera?

23 A Me and Amera went there, and they came there later
24 on that night after 12:00 o'clock, 12:30, Keith and
25 Sandy Whitaker.

1 Q And you are saying when the people went outside,
2 Nick went outside first? Then Will?

3 A That's what I remember.

4 Q And then Amera went out, and you went out to check
5 on her?

6 A Yes.

7 Q And she was sitting out there with Keith; right?

8 A Yes, sir.

9 Q That's her brother?

10 A Yes, sir.

11 Q And you say that you had a discussion with her
12 about going back into the bar?

13 A Yes, sir.

14 Q And they didn't want to go back in?

15 A No, sir.

16 Q And you decided to go back?

17 A Yes, sir.

18 Q You say that you see Mr. Brockmeyer there with a
19 girl?

20 A Yes, sir.

21 Q And he's looking over in y'all's direction, hostile
22 like?

23 A Yes.

24 Q And he has got a gun out? He looks like he is
25 trying to pull a gun out?

JAMIE SPENCER -- CROSS -- MR. MAULDIN

229

1 A Yes.

2 Q And you are assuming he might have been hostile
3 about the pool game or something like that?

4 A Yes, sir.

5 Q So you walk back into the bar?

6 A Yes, sir.

7 Q So you've got a guy in the hallway getting ready to
8 pull out a gun because he's angry at your
9 girlfriend for winning pool, and you just decide to
10 walk --

11 MR. HUBBARD: Objection, Your Honor. I don't
12 think there has been any talk about him being angry with
13 this girlfriend. I don't think this witness said that.

14 THE COURT: I didn't hear that either. I will
15 let him ask that question.

16 MR. HUBBARD: Yes, sir, Your Honor.

17 THE WITNESS: I will fully answer what he
18 wants me to answer.

19 A No. I know what you are saying, that he's going to
20 be pulling the gun out on my girl. I have been
21 shot before. I almost died before; so I think I
22 have that right.

23 If I ask you to, "Come on, come on." If not,
24 I can't pick her -- yeah, it would have killed me
25 if he would have shot her too. I asked them

1. several times to please get up and come inside.

2. "Let's get away from this situation."

3. I have been shot before; so that's the reason
4. why I just got up and didn't feel comfortable with
5. a guy standing there with a gun that is locked and
6. ready to go.

7. Q But you had a discussion with her beforehand about
8. going into the bar, and you see this gun
9. afterwards; is that right?

10. A Rephrase that again.

11. Q You are outside with her talking about, "Let's go
12. back into the bar."

13. A Uh-huh. (Indicating affirmative response.)

14. Q And then it's after that that you see him trying
15. to pull out a gun?

16. A Yes.

17. Q Did you ever have any interaction with
18. Mr. Brockmeyer after the alleged shooting?

19. A Never saw him again.

20. Q You talked with him upfront about where the gun --
21. you never had any kind of discussion --

22. A I never saw him again. I never saw him again after
23. that breezeway when he was trying to pull that gun
24. out. I never saw him, never again.

25. Q You had been drinking that night?

JAMIE SPENCER -- CROSS -- MR. MAULDIN

231

1 A A couple of drinks, yes, sir.

2 Q And you had been using cocaine?

3 A Yes, sir.

4 Q Where were you using cocaine in the bar?

5 A In the bathroom.

6 MR. MAULDIN: No further questions.

7 THE COURT: Any redirect?

8 MR. HUBBARD: No redirect, Your Honor.

9 THE COURT: You may come down.

10 (Witness leaves the witness stand.)

11 THE COURT: May this witness remain on
12 subpoena?

13 MR. HUBBARD: Yes, sir. He can leave today,
14 but we will keep the subpoena valid.

15 THE COURT: You may leave but your subpoena
16 will still be in effect.

17 THE WITNESS: Yes, sir. Thank you.

18 THE COURT: Call your next witness.

19 MR. HUBBARD: The State calls Keith Kabar.

20 BASSAM ANDREW KABAR, being
21 first duly sworn, testifies as follows:

22 CLERK: State your full name for the record
23 and spell your last name, please, sir.

24 THE WITNESS: My name is Bassam Andrew Kabar,
25 K-A-B-A-R.

1 DIRECT EXAMINATION

2 BY MR. HUBBARD:

3 Q What name do you go by?

4 A Keith Kabar.

5 Q Keith, will you do the court reporter a favor and
6 spell your first name for her as well.

7 A B-A-S-S-A-M.

8 Q Keith, who is Amera Kabar?

9 A Amera is my little sister.

10 Q Your little sister?

11 A Uh-huh. (Indicating affirmative response.)

12 Q How old are you?

13 A I'm 28.

14 Q How old is she?

15 A Twenty-four.

16 Q Keith, do you remember going to Jager's bar back
17 July 10th, July 11th of 2010?

18 A Yes, sir.

19 Q Who did you go with?

20 A I went with Sandy Whitaker.

21 Q Who is Sandy?

22 A Peewee, a good friend of mine.

23 Q Peewee? That's his nickname?

24 A Yes.

25 Q When you got there, was your sister at the bar?

BASSAM KABAR -- DIRECT -- MR. HUBBARD

233

- 1 A Yes, sir.
- 2 Q Who was she with?
- 3 A She was with her boyfriend Jamie.
- 4 Q Keith, before we really get into what happened that
- 5 night, I want to talk about a few things with you.
- 6 Right now you have some pending charges; do you
- 7 not?
- 8 A Yes, sir.
- 9 Q Let me read them, P.W.I.D. marijuana?
- 10 A Yes, sir.
- 11 Q And two controlled substance charges?
- 12 A Yes, sir.
- 13 Q Does my office have those charges?
- 14 A No, sir, the Attorney General has them.
- 15 Q Do you understand that my office has absolutely no
- 16 control over your charges?
- 17 A Yes, sir.
- 18 Q Even if you ask us to put in a good word, do you
- 19 understand my office has absolutely no control over
- 20 what happens to you on those charges?
- 21 A Yes, sir.
- 22 Q Do you have an attorney on those charges?
- 23 A Yes, sir.
- 24 Q Has he made you aware of that as well?
- 25 A Yes, sir.

1 Q On those other things I want to talk to you about.
2 When you spoke with us, did you admit to us that
3 you were doing something illegal that night?

4 A Yes, sir.

5 Q What were you doing?

6 A We were smoking marijuana in the parking lot, sir.

7 Q Did you volunteer that information to us or did we
8 tell you we already knew?

9 A No, sir, I told you. I volunteered.

10 Q And did we tell you we are not going to prosecute
11 you on that?

12 A Yes, sir.

13 Q Do you understand we couldn't even if we wanted to?

14 A I hope so, yes, sir.

15 Q Just so we have that out of the way. Let's talk
16 about that night at the bar. Did you get there
17 after midnight or before midnight?

18 A It was slightly after midnight.

19 Q So July 11th?

20 A Yes, sir.

21 Q And this bar, Jager's bar, is in Red Bank?

22 A Yes, sir.

23 Q Had you ever been there before?

24 A Yes, sir.

25 Q When you got there, what did you do?

BASSAM KABAR -- DIRECT -- MR. HUBBARD

235

1 A As soon as I got there, walked through the door. I
2 got pretty much -- like as soon as I walked through
3 the door, I had people coming to me explaining
4 about these boys had guns or whatever. I blew it
5 off, told them, "It's cool, man. Don't bother
6 them," and walked up to the bar and grabbed me a
7 drink.

8 Q Did you go over to the pool tables or did you go
9 sit down?

10 A As soon as I grabbed a drink, I walked over to the
11 pool tables and talked to Jamie actually.

12 Q Was Amera playing pool?

13 A Yes, sir.

14 Q At any time did you see one of these fellows
15 playing pool with her?

16 A The fellow who was outside, the one that got shot.

17 Q He was the one that was playing pool?

18 A Yes, sir.

19 Q Did you later learn his name was Nick?

20 A Yes, sir.

21 Q How was he dressed? What was he wearing?

22 A Dark colored pants, black wife-beater. He had a
23 pistol hanging out of his back.

24 Q So you noticed the pistol?

25 A Yes, sir.

1 Q At any time while he was playing pool with your
2 sister, did he make any kind of threatening
3 remarks?

4 MR. MAULDIN: Objection, Your Honor, leading.

5 THE COURT: The question is: Ask what he did,
6 if anything.

7 BY MR. HUBBARD:

8 Q What, if any, remarks did you hear that might have
9 been threatening from Nick, the victim?

10 A He actually seemed like he was a pretty cool kid.

11 Q No threats?

12 A No. He was cutting up laughing, shooting pool. He
13 was having a pretty good time.

14 Q Did you feel threatened by him?

15 A No, not at all.

16 Q His partner, did you see him in the bar as well?

17 A Yes, sir.

18 Q Can you describe what he was wearing, at least the
19 top, waist up?

20 A White long T-shirt, had a print on the front of it,
21 shorts. He was a bigger dude.

22 Q Did you notice how he was acting?

23 A Just kind of rowdy. You know what I'm saying?
24 Bouncing around, mean kind of.

25 Q This individual, do you see him in the courtroom

BASSAM KABAR -- DIRECT -- MR. HUBBARD

237

1 today?

2 A Yes, sir.

3 Q Can you point him out for the jury?

4 A That's him over there.

5 Q Can you tell us for the record, so the court
6 reporter can put it down on paper, what seat he is
7 sitting in?

8 A The last seat.

9 Q Furthest from his lawyers?

10 A Yes, sir.

11 MR. HUBBARD: Your Honor, for the record it's
12 William Brockmeyer, the defendant.

13 THE COURT: The record will so reflect.

14 BY MR. HUBBARD:

15 Q Had you ever met Mr. Brockmeyer before that night?

16 A No, sir.

17 Q Have you ever seen him since?

18 A No, sir.

19 Q At any time during the course of that night, did
20 you see Mr. Brockmeyer with any type of weapon?

21 A Yeah. We were standing by the pool tables. He was
22 at the farthest pool table back. He had his shirt
23 pulled up about halfway, I guess being hot. It was
24 hot that night.

25 He had a black firearm in front of his pants.

- 1 He just looked like he was adjusting it or
2 whatever, like it was slipping or falling or
3 something. He kept adjusting it in his pants,
4 pacing back and forth, bouncing around, doing his
5 little dance or whatever. You know what I'm
6 saying?
- 7 Q Did he do it more than once?
- 8 A I only seen it once.
- 9 Q Now, we are talking about two pistols now?
- 10 A Yes, sir.
- 11 Q The one that the victim had, Nick?
- 12 A Uh-huh. (Indicating affirmative response.)
- 13 Q Can you describe that gun?
- 14 A It had to be a large caliber weapon. It was a
15 pretty big gun.
- 16 Q Where was he carrying it?
- 17 A His was in the back, like right where his buttock
18 was, like right in the middle.
- 19 Q The one you saw Mr. Brockmeyer with, was it big?
- 20 Small? Or how would you describe it?
- 21 A It was a small semiautomatic gun, probably a .32 or
22 .38, something like that.
- 23 Q At any time did you feel Mr. Brockmeyer's behavior
24 was threatening?
- 25 A Yes, sir.

BASSAM KABAR -- DIRECT -- MR. HUBBARD

239

1 Q At some point did you go outside of the bar?

2 A Yes, sir.

3 Q What did you do when you were outside?

4 A Me and a friend of mine, Keyonne, he had some weed.

5 So he was like, "If you want to come out and

6 smoke," or whatnot. We walked outside. He had a

7 blunt. Me, him, and actually one of his friends

8 started smoking.

9 Q Let me ask you this: After that was done, do you
10 remember seeing your sister sometime?

11 A Yeah. She met me about halfway. She was coming
12 out, and we was about to walk back in the bar. She
13 met me outside or whatever. We started talking and
14 cutting up. About that time that's whenever we sat
15 down in the chairs. It's like these chairs were
16 right in front of the bar; so we sat down.

17 Q Let me ask you this: Of the chairs out there,
18 which one did Amera sit in?

19 A She was in the middle. I was sitting on the one
20 farthest or closest to the parking lot. She was
21 sitting right beside me.

22 Q There is another chair. Is that the one closest to
23 the door?

24 A Yeah, that's the one closest to the door.

25 Q At some point -- I am going to skip ahead -- do you

1 recall seeing the victim Nick?

2 A Yes, sir.

3 Q Tell us what you saw him do.

4 A While we were sitting there talking and whatnot,
5 just laughing or whatever, the girl, big girl, she
6 sat him down in a chair. He was intoxicated,
7 heavily intoxicated.

8 He was pretty much just sitting there, I
9 guess, trying to compose himself or try to, you
10 know, just -- he looked like he was about to throw
11 up really.

12 Q At that point did he seem threatening at all?

13 A No, he looked like he was about to pass out.

14 Q And at some point did you see William Brockmeyer
15 come?

16 A Yeah. They both -- him and two heavier-set females
17 that were sitting there. He comes walking out of
18 the door. Whenever he walked up, his shirt, he had
19 a wife-beater on at this time. He didn't have the
20 shirt that he had on before.

21 He comes walking out the door and he -- you
22 know what I'm saying -- out of the corner of my
23 eye, he knelt down. He looked like he put his
24 hands on the shoulder and was sitting there talking
25 about something briefly. You know what I'm saying?

BASSAM KABAR -- DIRECT -- MR. HUBBARD

241

1 About that time we heard a loud pop. Then he
2 stands up and walks off and exits around the
3 building, like right after that.

4 Q Keith, if I can ask you to do this.

5 MR. HUBBARD: With the Court's permission, if
6 I bring a chair over, Your Honor, do you mind if he
7 shows this?

8 THE COURT: Yes, I will permit it. I invite
9 defense counsel to come forward if they care to.

10 (Witness leaves the witness stand.)

11 BY MR. HUBBARD:

12 Q I will tell you what. I'm going to put it this
13 way. Let me ask you this: If I'm the victim
14 sitting in the chair, which side are you on?

15 COURT REPORTER: I'm sorry. I cannot hear the
16 witness.

17 MR. MAULDIN: Your Honor, we have a matter of
18 law to take up.

19 THE COURT: I will let you go to the jury room
20 just a moment, and I will be calling you straight back
21 out.

22 (The jury retires to the jury room.)

23 THE COURT: Yes, sir.

24 MR. MAULDIN: Thank you, Your Honor. This
25 motion would be similar to the last motion. We were

1 given discovery in which Mr. Kabar had originally stated
2 that nothing about Mr. Brockmeyer being there -- his
3 name was provided to us as far as witnesses, but the
4 State contacted us and let us know that Mr. Kabar did
5 not wish us to talk to him at all.

6 After that they did provide us with an
7 additional Brady letter about him talking about seeing
8 Mr. Brockmeyer at the pool table with the gun but
9 nothing about him saying that Mr. Brockmeyer was
10 immediately in front of Nick Rae before the shot went
11 off.

12 THE COURT: What is your response?

13 MR. HUBBARD: Your Honor, we have turned over
14 everything that is Brady; everything that is Rule 5.
15 This witness did not want to speak to them. What we
16 turned over though, it complies with Brady and complies
17 with Rule 5.

18 This man never gave a statement to law
19 enforcement. The statement that he gave was oral, and
20 it's in the substance of the report that Detective Shawn
21 Grant took.

22 THE COURT: Did the statement deal with the
23 specific issue that he is referring to?

24 MR. HUBBARD: No, sir, because he did not
25 reveal that at that time. So, Your Honor, what we

BASSAM KABAR -- DIRECT -- MR. HUBBARD

243

1 turned over was what he revealed, specifically about the
2 gun and the threatening behavior.

3 THE COURT: As an officer of the Court, you
4 say you turned over what you had?

5 MR. HUBBARD: Yes, sir.

6 THE COURT: I would respectfully overrule that
7 motion, counsel.

8 MR. MAULDIN: Your Honor, what they provided
9 us in addition was on August 20th. I believe it's in
10 the same letter that is already made a Court's exhibit,
11 that Keith Kabar was given immunity to his use of
12 marijuana, that Keith Kabar said the client was near the
13 pool cue rack when he exposed and put his hands --

14 THE COURT: Well, you can ask him about those
15 things on cross examination.

16 MR. MAULDIN: Yes, sir. But as far as his
17 statements regarding Mr. Brockmeyer being actually in
18 front of Mr. Rae before the shot goes off, that was not
19 provided, and they also told us --

20 THE COURT: They are saying to me that they
21 didn't know either at the time.

22 MR. HUBBARD: Your Honor, just for further
23 clarification for the record for the State, Brady does
24 not mean we have to turn over everything somebody says
25 or does.

1 It's stuff that hurts us or helps his client
2 basically, to put it in basic form. We have complied
3 with Brady and Rule 5. We are not obligated to turn
4 over every substance of every statement.

5 THE COURT: I agree with that and I have ruled
6 on it. Bring the jury in. Thank you. I respectfully
7 overrule your motion.

8 MR. MAULDIN: Your Honor, it is a different
9 statement from what he said before, and I believe we
10 were entitled to it under Kyles versus Whitley.

11 THE COURT: You will have a wide latitude in
12 your cross examination on that issue. Thank you. Bring
13 the jury in, please.

14 (The jury returns to the courtroom.)

15 THE COURT: You may proceed in your
16 examination, counsel for the defense.

17 MR. HUBBARD: Your Honor, I was not quite
18 through.

19 THE COURT: I'm sorry. I thought you had
20 concluded. Go ahead.

21 MR. HUBBARD: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MR. HUBBARD:

24 Q Mr. Kabar, if you would come down, please.

25 A (Witness leaves the witness stand.)

BASSAM KABAR -- DIRECT -- MR. HUBBARD

245

1 Q Please speak up. Remember, the court reporter has
2 got to write down everything you say. So speak as
3 loud as I'm speaking.

4 A Yes, sir.

5 Q Keith, if you would please show -- how was the
6 victim Nick sitting?

7 A At first he was slumped over, kind of slumped over
8 like that (indicating). He had his hands kind of
9 like he was trying to hold his head up --

10 THE COURT: You are going to have to talk a
11 little older. She can't hear you, sir.

12 BY MR. HUBBARD:

13 Q I'll tell you what. I will put my hands up and
14 then you say sometimes down?

15 A Yes, sometimes down. It looked like he was about
16 to throw up. That's pretty much what he was doing.
17 It looked like he was trying to compose himself
18 from not puking.

19 Q What I would like for you to do is show how William
20 Brockmeyer was, what he did.

21 A Okay. He exited the door, walks up. He kneels
22 down. I couldn't see if he had the gun in his
23 hands or not. It looked like he had his hands like
24 this right here (indicating) -- talking to him for
25 about maybe 15 seconds or whatnot. All of a

1 sudden, we heard a loud pop. He stands up and
2 walks off, walks around the building.

3 Q Please have a seat.

4 A (Witness resumes the witness stand.)

5 Q Keith, let me ask you this: Your sister was
6 sitting between you and the victim?

7 A Yes, sir.

8 Q How could you see this?

9 A She was sitting back, like she was sitting straight
10 up. I could see that. Whenever she leaned
11 forward -- you know what I'm saying or whatever --
12 she is a tiny girl. You could see pretty much all
13 this.

14 While we are sitting here looking, I am
15 sitting here talking to her and talking to Keyonne
16 and talking back to her. You could see
17 everything -- you know what I'm saying -- right
18 there.

19 Q At the time of the pop, were you looking that way?

20 A At the time of the pop, yeah. We were sitting
21 there talking.

22 Q To your sister?

23 A We were sitting there talking. We heard the pop
24 and everybody just jumped.

25 Q After this gunshot what did you see -- or let me

BASSAM KABAR -- DIRECT -- MR. HUBBARD

247

1 ask you this: At the time of the pop, did you even
2 know what the pop was?

3 A Right at first, no, we didn't.

4 Q Did you think it might be something else?

5 A I thought -- at first I thought it was a
6 firecracker. That's what I thought it could be.

7 Q Keith, this is July 11th. We are just about a week
8 out from July 4th?

9 A Yes, sir.

10 Q What did you see -- did you see the defendant after
11 that or do you even remember?

12 A After we heard the pop, everybody jumped. He
13 jumped straight up. After he jumped up, he walked
14 around the side of the building. That's all we
15 seen. Nick --

16 Q What did you do -- okay. Tell me about Nick.

17 A Nick, he didn't fall or anything immediately. Like
18 he sat there for a good ten seconds before he
19 started to lean over and fall. So right after he
20 leaned over, at this time there was another fellow
21 that was there too. His name is Jordan Allen.

22 Right when we heard the pop, like he walks up.
23 Right as he walks up, he was asking what the hell
24 it was. He put his hand like he started to fall.
25 He put his hand up to pretty much like stop him for

1 falling. As soon as he did that, he kind of fell
2 face forward and rolled up. His head was rolled
3 up, and you could see the blood leaking out of his
4 mouth, outside of his neck.

5 Q Once Nick fell what did y'all do?

6 A Once we realized he had been shot, I grabbed my
7 little sister, snatched her up. We ran through the
8 door, ran inside. I grabbed Peewee or Sandy
9 Whitaker and I was like, "We've got to go."

10 We run straight out the back door. We jumped
11 in the car and left -- you know what I mean? I
12 didn't know if we was about to got shot or what,
13 but we just disappeared.

14 Q Did y'all leave before law enforcement got there?

15 A Yeah, left shortly after. After everything
16 unfolded we was out of there.

17 Q And at some point you spoke to law enforcement, but
18 you never gave a written statement; did you?

19 | A | No, sir.

20 Q Please answer any questions the defense has.

21 | A Yes, sir.

22 CROSS EXAMINATION

23 BY MR. MAULDIN:

24 Q Now, when you went to speak to law enforcement, you
25 spoke to them a day or two after the incident;

BASSAM KABAR -- CROSS -- MR. MAULDIN

249

1 isn't that right?

2 A I don't think it was a day or two. It was a little
3 ways after that.

4 Q All right. You spoke with Detective Grant; is that
5 right?

6 A Yes, sir.

7 Q At that time you told him you were sitting there
8 talking with your sister Amera?

9 A Yes, sir.

10 Q You heard a pop?

11 A Yes, sir.

12 Q And you thought it was a firework?

13 A Yes, sir.

14 Q And you thought Nick was kind of like a jerk for
15 setting off fireworks at the bar?

16 A Yes, sir.

17 Q And he just sat there for 15 or 20 seconds and then
18 fell out of his chair?

19 A Yes, sir.

20 Q And you said at that time you noticed that he had a
21 gun in his waistband?

22 A Yes, sir.

23 Q And you thought he might have shot himself when he
24 sat down?

25 A Yes, sir.

1 Q And you are telling us now that most all of that
2 isn't true?

3 A Repeat the question.

4 Q Are you now saying that most all of what you told
5 them isn't true?

6 A At the time I didn't even want to be involved in
7 any of this. I didn't want to have to come to
8 court or do anything of this, what we are doing
9 right now.

10 Q You didn't say anything about William Brockmeyer or
11 another guy being right in front of him before the
12 pop? You didn't say that at all?

13 A They didn't ask.

14 Q They didn't ask and you didn't tell them then; did
15 you?

16 A No, sir.

17 Q And in the intervening time between then and now,
18 you are arrested for those charges; right?

19 A Yes, sir.

20 Q And actually those charges were here in Lexington
21 until fairly recently?

22 A Yes, sir.

23 Q They weren't transferred to the Attorney General's
24 Office until very close to this trial?

25 A Yes, sir.

BASSAM KABAR -- CROSS -- MR. MAULDIN

251

1 Q And you have no hope whatsoever that your testimony
2 here today is going to help you out with the
3 charges?

4 A No, sir.

5 THE COURT: Don't shake your head. Say yes or
6 no, please.

7 THE WITNESS: I said no, sir.

8 BY MR. MAULDIN:

9 Q Now, you say Nick was wearing a black wife-beater?

10 A Yes, sir.

11 Q And some dark pants, I think?

12 A Yes, sir.

13 Q And Will was wearing a white shirt and some shorts?

14 A (Witness nods.) (Indicating affirmative response.)

15 Q Is that right?

16 A Yes, sir.

17 Q What was Amera wearing?

18 A She had this long green dress on like. It almost
19 looked like a prom dress, a nice long, green dress.

20 Q When you say Will came outside onto the patio, he
21 was wearing a gray wife-beater?

22 A Yes, sir.

23 Q And Nick was sitting in the chair, and your sister
24 was in the chair in between the two of you?

25 A Yes, sir. My little sister was sitting beside me,

1 and Nick was sitting two chairs from me.

2 Q He would often have his hands up near his head and
3 maybe put them down and have his hands up near his
4 head again?

5 A Pretty much. Like I said, you could tell he was
6 really intoxicated. I mean, he was about literally
7 like he was ready to throw up or pass out.

8 Q And after you hear the pop, you say you see Will
9 get up and walk away?

10 A He just walks off.

11 Q And Nick is just sitting there?

12 A Nick is just sitting there.

13 Q Then he fell out of the chair sometime later?

14 A Anywhere from 10 to 15 seconds later, he falls out
15 of the chair.

16 MR. MAULDIN: No further questions, Your
17 Honor.

18 THE COURT: Any redirect?

19 MR. HUBBARD: No, sir, Your Honor.

20 THE COURT: You may come down.

21 (Witness leaves the witness stand.)

22 THE COURT: Can this witness -- you want him
23 to be held under subpoena?

24 MR. HUBBARD: He can hold the subpoena, Your
25 Honor, until the remainder of the week and the remainder

BASSAM KABAR --- CROSS -- MR. MAULDIN

253

1 of the trial, but he is free to go today.

2 THE COURT: You may leave at this time, but
3 you are still under subpoena if called.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you so much. I think this
6 is probably a good time to take a morning break at this
7 time. We will be back in about 15 minutes. Thank you.

8 (The jury retires to the jury room.)

9 (Whereupon there is a recess.)

10 THE COURT: Is the State ready with the next
11 witness?

12 MR. GRAHAM: Yes, Your Honor.

13 THE COURT: Is the defense ready?

14 MR. MAULDIN: Yes, Your Honor.

15 THE COURT: Bring the jury.

16 (The jury returns to the courtroom.)

17 THE COURT: The jury is present. You may
18 proceed.

19 MR. GRAHAM: The State calls Justin Ainsworth.

20 JUSTIN WESLEY AINSWORTH,
21 being first duly sworn, testifies as follows:

22 CLERK: State your full name, spelling your
23 last name.

24 THE DEFENDANT: Justin Wesley Ainsworth,
25 A-I-N-S-W-O-R-T-H.

1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Justin, how old are you?

4 A Thirty-one.

5 Q And are you married?

6 A Yes.

7 Q Do you have kids?

8 A Yes.

9 Q How old are your kids?

10 A Six and two.

11 Q Where are you employed?

12 A S.T.S.

13 Q What is S.T.S.?

14 A We install bank A.T.M.s and build bank vaults.

15 Q And how long have you lived in Lexington County?

16 A Thirty-one years.

17 Q You were convicted of an assault and battery of a

18 high and aggravated nature in 2001; is that

19 correct?

20 A Yes, sir.

21 Q And also you were convicted of a forgery in 2007?

22 A Yes, sir.

23 Q Are you familiar with Jager's bar?

24 A Yes, sir.

25 Q Do you remember being there on July 10th or

JUSTIN AINSWORTH -- DIRECT -- MR. GRAHAM

255

1 July 11th of 2010?

2 A Yes.

3 Q Do you remember when you got there roughly and how
4 you got there?

5 A How?

6 Q Like what time?

7 A We went to the party. After the party -- it was at
8 Amanda Dunn's house -- we all proceeded to go to
9 Jager's. It was probably 11:30.

10 Q Did you see -- were there some guys at Amanda's
11 party that you didn't know?

12 A We were actually the first to leave Amanda's party.
13 There was a lot of people there I didn't know.

14 Q When you got to Jager's bar, do you remember what
15 time of the night it was?

16 A It was late night.

17 Q Had you been drinking at Amanda's?

18 A Yes.

19 Q How would you describe your drinking or your level
20 of -- I mean, were you intoxicated or not
21 intoxicated?

22 A Not intoxicated.

23 Q When you got to Jager's, did you drink there?

24 A Yes.

25 Q Do you remember when Amanda and the rest of the

1 party came in?

2 A Probably an hour or so after we did.

3 Q Do you remember some guys that were with them? Do
4 you know Mariko?

5 A Yes.

6 Q Do you remember some guys coming in with Mariko?

7 A Yes, I do.

8 Q Were they people that you knew?

9 A No, I had never seen them before.

10 Q What, if anything, stood out in your mind about --
11 how many guys did you see that you didn't know who
12 came in?

13 A Two.

14 Q Did anything stand out in your mind about them?

15 A Yeah, they had pistols in their waistline.

16 Q Do you remember what they were wearing?

17 A One was wearing a black shirt; the other one was
18 wearing a white shirt.

19 Q The guy wearing the black shirt, did you see him
20 with a gun?

21 A Yes.

22 Q Tell me about that.

23 A We were shooting pool at one of the pool tables,
24 and he walked by. He had a black tank top on and a
25 big black gun sticking out of his waistline, not

JUSTIN AINSWORTH -- DIRECT -- MR. GRAHAM

257

1 hidden at all.

2 Q Do you know much about guns?

3 A Not very much.

4 Q Was it a big gun or a little gun?

5 A Big. It looked like an automatic handgun.

6 Q What, if anything -- did you ever talk to the guy
7 with the dark wife-beater who had the gun in the
8 back?

9 A Yeah. We confronted him about it, told him it
10 wasn't cool to have that there. He needed to put
11 it up.

12 Q What was his reaction? Not what he said but what
13 was his reaction?

14 A He seemed fine with that, and I didn't even see him.
15 pretty much the rest of the night.

16 Q You said there was another guy wearing a white
17 shirt?

18 A Yes.

19 Q Do you see him in the courtroom today?

20 A Yes.

21 Q Where is he?

22 A Sitting right over there.

23 Q Which chair is he sitting in?

24 A The third to the left.

25 Q The closest to the deputy?

1 A Yes.

2 Q Did you say you saw him with a gun?

3 A Yes.

4 Q Tell the jury about that.

5 A Well, we were shooting pool at one table, and a
6 group of friends of mine were shooting pool at
7 another table. One of my buddies is the one that
8 pointed out that he also had a pistol.

9 Q What did you see?

10 A Just saw his was covered so I couldn't see it, but
11 you could tell that he had a pistol.

12 Q How would you describe the guy in the black shirt
13 that had the big gun? How would you describe how
14 he was acting that night?

15 A His demeanor, it was laid back. He didn't seem
16 like he was out to cause any trouble, but I didn't
17 know him either. So I don't know.

18 Q How about the defendant, the guy in the white
19 shirt? What was his demeanor?

20 A More high strung, real antsy, seemed like he was
21 moving around a lot, and I was kind of keeping my
22 eye on him because me and my wife were there, kind
23 of felt threatened.

24 Q At some point did you go outside?

25 A Yes.

JUSTIN AINSWORTH -- DIRECT -- MR. GRAHAM

259

- 1 Q What were you doing outside?
- 2 A Smoking a cigarette.
- 3 Q Where were you at?
- 4 A Right in front of the bar.
- 5 Q So if you come out of the bar and you are in that
- 6 the foyer area, and you turn and you are on the
- 7 porch -- we know where the door going out to the
- 8 concrete porch is and the porch -- where were
- 9 you?
- 10 A Standing to the left of the door.
- 11 Q While you were standing smoking outside, at some
- 12 point did you see the guy in the black shirt come
- 13 out?
- 14 A Yes. He walked out and kneeled down right in front
- 15 of us smoking and starting throwing up.
- 16 Q After he threw up, do you know what happened or
- 17 where he went next?
- 18 A We asked him if he was all right. He stood up and
- 19 went to the chair about three feet over from where
- 20 he was throwing up and sat in the chair.
- 21 Q Do you remember how many chairs there were?
- 22 A Maybe three or four.
- 23 Q Do you remember where he was at in relation to the
- 24 door, the chair he was at?
- 25 A He was sitting in the chair closest to the front

1 door.

2 Q Once he sat down in the chair, what was he doing?

3 A He looked drunk like he was about to pass out
4 maybe. He was really intoxicated.

5 Q At some point did you hear a noise that caught your
6 attention?

7 A Yes, it sounded like a firework, a real loud pop.

8 Q When he did that, what did you do? When you heard
9 that noise, what did you do?

10 A Turned and looked towards the front door where the
11 noise came from.

12 Q When you turned and looked toward the front door
13 where the noise came from, what did you see?

14 A Really couldn't tell what I was looking at, but I
15 noticed the defendant walking away real fast. The
16 guy in the black shirt was kind of slouched over,
17 making a gurgling noise, like he was throwing up
18 still is what I thought.

19 Q Do you remember -- where did you see the defendant
20 walk away? Which way was he headed?

21 A Around the front door of the building. If you are
22 staring at the building, towards the right.

23 Q At some point did you ever hear the defendant say
24 anything?

25 A Yeah. I heard him say, "He shot his self. He shot

JUSTIN AINSWORTH -- DIRECT -- MR. GRAHAM

261

1 his self."

2 Q Was that before he walked away or when he came
3 back?

4 A That was before he walked away.

5 Q Who was he talking to when he said it?

6 A I think just the general public, whoever was out
7 there.

8 Q At some point -- well, what did you do next? You
9 heard the noise. You looked. You saw him walking
10 away outside around the building saying that, "He
11 shot himself. He shot himself." What did you do
12 next?

13 A I still didn't know what was going on until --
14 because you really couldn't see any blood at first.
15 Then when he fell out the chair onto the ground,
16 you saw the blood, and I realized that he had been
17 shot.

18 Q What did you do next?

19 A I went and got my wife from inside the bar, and we
20 took off because I didn't know what was going on.

21 Q Before leaving did you ever see the defendant
22 again?

23 A When we were still standing outside, he walked back
24 up in a white tank top and was asking who shot his
25 friend, who shot his friend" -- or he was saying

1 home boy.

2 Q Is that the same shirt that he had on when he left?

3 A No, he was in a white full-sleeve shirt the whole
4 time before that.

5 Q So his first statement to you was?

6 A He shot his self.

7 Q And then right before you are leaving, he said
8 something else?

9 A He said, "Who shot my home boy?"

10 Q How would you describe the defendant's behavior
11 after you saw the noise? How was he acting
12 compared to how he had been acting earlier?

13 A He was pretty high strung and moving around a lot,
14 but he was in a hurry after I heard the shot.
15 Afterwards when he came back, he was -- I mean he
16 wasn't acting like his friend had just got shot.

17 Q Thank you, Justin. Please answer any questions the
18 defense has.

19 **CROSS EXAMINATION**

20 BY MR. MADSEN:

21 Q Justin, you met with Detective Grant; didn't you?

22 A Yes, sir.

23 Q And you spoke with him?

24 A Yes, sir.

25 Q And you gave him a written statement; didn't you?

JUSTIN AINSWORTH -- CROSS -- MR. MADSEN

263

1 A Yes, sir.

2 Q You gave him that written statement on July 11,
3 2010; isn't that correct?

4 A Yes, sir.

5 Q Show me in that statement where what you have
6 testified to, as far as seeing Will near him, show
7 me in that statement where that is at.

8 A (Pause.) I guess it's not in my written statement.

9 Q It's not in there; is it?

10 A No, sir.

11 Q It says, "I thought I heard -- excuse me -- about a
12 minute later I heard what I thought was a firework,
13 but I saw the victim lying on the ground in a pool
14 of blood." So now your statement is that you see
15 him up, and then you see him fall over; correct?

16 A Yes, sir.

17 Q That's not what you wrote back over a year ago; is
18 it?

19 A No, sir.

20 Q Do you see Will or anyone else crouched down in
21 front of him?

22 A At what time?

23 Q Right before he falls over.

24 A No, sir.

25 Q Do you see anyone shake him? Knock him on the

1 ground?

2 A No, sir.

3 Q You say that you hear, immediately after you hear
4 that firework now, you say you hear him -- Will --
5 say, "He shot himself"?

6 A Yes, sir.

7 Q Give me an idea. How far are you from where Nick
8 is, the fellow in the black tank top?

9 A When he was shot?

10 Q Yes.

11 A Maybe from me to you.

12 Q Was there anyone closer to him?

13 A Yes, definitely.

14 Q Amera was closer to him?

15 A Sitting right next to him.

16 Q You know Amera?

17 A Yes.

18 Q Keith is going to be right over beside her?

19 A I think that's where he was sitting.

20 Q How about any large girls? Do you see any large
21 girls closer to him?

22 A Not at that time.

23 Q So you hear him say, "He shot himself," and then he
24 walks off quickly?

25 A Yes.

JUSTIN AINSWORTH -- CROSS -- MR. MADSEN

265

1 Q In your statement you talk about Nick having a gun
2 and some folks confronting him about that; correct?

3 A Yes, sir.

4 Q How about Will? Do you have anywhere in this
5 statement where you talked about seeing a gun on
6 him?

7 A No, sir, but...

8 Q So your testimony is -- I think you told the
9 solicitor -- Nick had a gun, but he is not
10 threatening?

11 A Uh-huh. (Indicating affirmative response.)

12 Q But you see one on Will, but he is more kind of
13 threatening or menacing?

14 A Yes, sir.

15 Q But people talk with Nick about having a gun on
16 him, but the more threatening potential, no one
17 says anything to him?

18 A Yes, sir, I guess.

19 Q And none of that is in this statement; is it --

20 A No, sir.

21 Q -- the statement that you gave over a year ago. In
22 fact, July 25th of this year -- I guess almost a
23 month ago -- an investigator from our office came
24 out, and you told him you didn't know anything
25 else, that what was in your statement was in your

1 statement?

2 A Yes, sir.

3 Q You didn't have anything to add to that?

4 A He called me on the phone and asked me if I wanted
5 to talk with him, and I said no.

6 Q And told him that you could add nothing to your
7 statement. You didn't know the individuals
8 involved and you didn't see the shoot shooting.
9 That's what you told him; right?

10 A Yes, sir.

11 Q But yet what you have testified here today is
12 different; isn't it?

13 A I guess it's how you look at it.

14 Q And you have talked with the solicitor about this;
15 haven't you?

16 A Yes, sir.

17 Q Met with them at their office?

18 A Yes, sir.

19 Q When was that?

20 A A week ago.

21 Q Had you talked with them just the one time then?

22 A No, I talked to them twice.

23 Q So a week ago you meet with them. How about prior
24 to that?

25 A I would say the beginning part of the year.

JUSTIN AINSWORTH -- CROSS -- MR. MADSEN

267

- 1 Q 2011? January-ish or somewhere around there?
- 2 A This year.
- 3 Q And you told them the same thing that you testified
- 4 to then also; didn't you?
- 5 A Repeat that.
- 6 Q Basically what you are saying you testified to
- 7 today, you have told them that a week ago, and then
- 8 you told them that in January of 2011?
- 9 A Yes, sir.
- 10 Q Even though that is different than what you told
- 11 this detective the day later? Is that true?
- 12 A Yes.
- 13 Q When you were out there smoking, where were you at
- 14 when you were smoking?
- 15 A Standing to the left of the front door in front of
- 16 the building.
- 17 Q This is State's Exhibit Number 2.
- 18 A Uh-huh. (Indicating affirmative response.)
- 19 Q Do you recognize that?
- 20 A It's Jager's bar.
- 21 Q That's the layout of Jager's bar?
- 22 A Yes.
- 23 Q Can you point on here and kind of show me, when you
- 24 come out and are smoking -- with this (indicating)
- 25 being the front and kind of the main entrance --

1 where are you at?

2 A Standing right here (indicating) in front of the
3 jut-out.

4 Q So these are two porches. They are kind of an
5 open-area area?

6 A Yes.

7 Q And those chairs are up against that wall there?

8 A Yes, sir.

9 Q And you were out here (indicating) in front of
10 this?

11 A Yes, sir.

12 Q And who is out there with you smoking?

13 A From what I remember, Brandon Carey, a guy named
14 Wesley. I don't know his last name. There was
15 another fellow named Jordy. That's probably it.

16 MR. MADSEN: Judge, that's all the questions I
17 have for him. I would renew the motions that I had made
18 prior in front of the Court under Brady, Kyles vs.
19 Whitley; also, under the Sixth Amendment and Article 1,
20 Section 14 of the South Carolina Constitution. Your
21 Honor has ruled on that in other instances, but I would
22 object on those bases with this.

23 THE COURT: My previous ruling will stand as
24 to this issue. Any redirect?

25 MR. GRAHAM: A few, Your Honor.

JUSTIN AINSWORTH -- REDIRECT -- MR. GRAHAM

269

REDIRECT EXAMINATION

BY MR. GRAHAM:

Q Justin, is what you have testified to today the truth?

A Yes, sir.

Q What, if any, reason do you have to lie about what happened?

A None.

Q Thank you.

THE COURT: You may come down.

(Witness leaves the witness stand.)

THE COURT: You are still under subpoena. You may leave subject to being recalled.

THE WITNESS: Thank you.

MR. HUBBARD: The State calls Marcus Lesesne.

MARCUS LESESNE, being.

first duly sworn, testifies as follows:

CLERK: State your full name and spell your last name.

THE DEFENDANT: Marcus Lesesne, L-E-S-E-S-N-E.

DIRECT EXAMINATION

BY MR. HUBBARD:

Q Marcus, do you also go by Mark?

A I do.

Q Are you married?

- 1 A I am.
- 2 Q What's your wife's name?
- 3 A Shandon.
- 4 Q And was she at the bar with you that night too?
- 5 A Yes, she was.
- 6 Q Kids? How many kids do you have?
- 7 A I have five.
- 8 Q Five kids?
- 9 A Two that live with me and my wife, and I have three
- 10 in Ohio.
- 11 Q Do you live in Lexington County?
- 12 A I do.
- 13 Q How long have you lived in Lexington County?
- 14 A Since I was about seven.
- 15 Q Now, obviously I want to talk to you about the
- 16 night of July 10th and early morning hours of
- 17 July 11th.
- 18 A Okay.
- 19 Q Where were you at that time?
- 20 A At Jager's bar.
- 21 Q Of course, we are talking last year?
- 22 A Yeah, last year at Jager's bar. It's a bar and
- 23 grill. It was the bar.
- 24 Q Okay. More bar than grill?
- 25 A More bar than grill.

MARCUS LESESNE -- DIRECT -- MR. HUBBARD

271

1 Q In the Red Bank area?

2 A Yes, sir, Number 6.

3 Q Did you go to this place with your wife or did you
4 go with someone else?

5 A I went separately with a buddy, but she met me
6 there -- I don't know -- an hour and a half later,
7 two hours later.

8 Q While you were there, what were you doing?

9 A Just drinking, shooting pool, talking to some
10 friends.

11 Q Do you know the Kabars?

12 A I do know them.

13 Q Do you know Jamie Spencer?

14 A I do.

15 Q Were they there?

16 A They were there.

17 Q At some point did you notice two guys come in that
18 you did not know?

19 A I did.

20 Q And at any time did you learn their names?

21 A Not...

22 Q Not at that time?

23 A Not at that time, no, sir, not until way later that
24 evening.

25 Q At some point did you notice one of the guys

1 playing pool?

2 A Yes.

3 Q What was he wearing?

4 A A black wife-beater I want to say.

5 Q A wife-beater being a tank top?

6 A Yeah, a tank top.

7 Q What, if anything else, did you notice about this
8 individual?

9 A He had what looked to be a pistol in the back of
10 his waistband. My friend had pointed it out.

11 Q Can you describe the pistol as you looked, what you
12 could see of it?

13 A Black, looked like maybe an automatic pistol, like
14 a larger size pistol, not like a little tiny one.

15 Q Now, was this individual acting threatening in any
16 way?

17 A No, he wasn't.

18 Q What, if anything, did you do when you found out
19 that this fellow had a pistol?

20 A I approached him and asked him, you know, if it
21 would bother him to put the pistol away because it
22 was making people at the bar uncomfortable.

23 Q Now, I don't want what he said, but did he see okay
24 with that?

25 A He did seem okay.

MARCUS LESESNE -- DIRECT -- MR. HUBBARD

273

1 Q Sometime later did you notice the same individual,
2 notice his -- I guess whether he had been drinking?

3 A Yes, he looked like he had been drinking.

4 Q How would you describe his state the next time you
5 started paying attention to him?

6 A I would say drunk, really drunk.

7 Q The other individual, what was he wearing?

8 A I saw a white T-shirt.

9 Q And how was he acting that night?

10 A To be honest I didn't pay much attention to him. I
11 saw him once but just asked who he was, and then
12 that was it. I didn't really notice his actions or
13 his demeanor or how he was.

14 Q Did you notice any weapons on him?

15 A I did not.

16 Q You were not paying attention?

17 A No, I wasn't.

18 Q I want to ask you: Do you see that individual in
19 the courtroom today?

20 A I do.

21 Q Can you point him out for us?

22 A On the end over there.

23 Q Closest to the deputy?

24 A Closest to the deputy.

25 Q Can you tell us at some point what happens that

1 night that was different from every other night?

2 A I just heard that someone had shot themselves is
3 how it first got portrayed.

4 Q Were you inside the bar or outside?

5 A I was inside the bar at the bar.

6 Q What did you do?

7 A Just kind of looked up for a minute, but I didn't
8 think too much of it. I just thought it was
9 somebody trying to be funny. I tried to order a
10 drink, and then I heard everybody leaving the bar,
11 rushing towards the door. So of course I migrated
12 with the rest of them.

13 Q What did you see when you got out there?

14 A When I went outside, I saw a fellow who was like
15 face down on the ground, but he had his butt up in
16 the air like he fell out of the chair.

17 Q Was that the same guy you saw playing pool or was
18 this the guy --

19 A The same guy playing pool that I had ask to putted
20 the gun up.

21 Q When you first saw him lying down, what did you
22 think?

23 A I thought he maybe was drunk and fell out the chair
24 because when I saw him earlier, he was pretty
25 intoxicated.

MARCUS LESESNE -- DIRECT -- MR. HUBBARD

275

1 Q What, if anything, happened after that?

2 A Well, I kind of waited for a second just to --
3 because I didn't really know what was going on. It
4 looked like he was still trying to move or turn
5 himself over.

6 So I looked back to check for my wife, and
7 when she came out, I pulled him by his waistband
8 and turned him over. That's when I saw the blood
9 and all, his face and, you know, he looked pretty
10 bad.

11 Q Did you see what your wife was doing at that time?

12 A Not necessarily. I was just trying to get her and
13 get out of there. I didn't really pay attention to
14 what she was doing.

15 Q Did y'all stay though?

16 A Yeah, we did stay.

17 Q What, if anything, did you do?

18 A When I turned him over and saw the blood is when I
19 called for my wife. She works at a doctor's
20 office, and I knew she would know something more
21 than I did to do.

22 So she came around and that's when she got
23 behind his head and lifted his head and tried to
24 apply something to where the bleeding was coming
25 from.

1 Q Did you see where the bleeding was coming from?

2 A Yeah, in his neck.

3 Q And your wife, where was -- you say she was holding
4 his head?

5 A Yeah. If he was laying down, I was probably on his
6 right side, and his head was in her lap kind of
7 adjacent to me.

8 Q At some point do you see this individual that you
9 pointed out in the courtroom come around into to
10 the crowd?

11 A I didn't see him approach, but I heard him when he
12 got there. He was hysterical, "Somebody shot my
13 brother. Somebody shot my brother."

14 Q Did you ever hear him say anything about shooting
15 himself?

16 A No, I didn't hear him say that.

17 Q That was what came from outside?

18 A Yeah. That came from everybody, just from what I
19 could hear from the bar when it first happened.

20 Q But when he comes up, you hear him say what?

21 A "Somebody shot my brother. Somebody help my
22 brother. Somebody shot him."

23 Q What was he wearing at the time? When I say he,
24 the defendant William Brockmeyer? What was he
25 wearing at the time?

MARCUS LESESNE -- DIRECT -- MR. HUBBARD

277

1 A I think at that time he had on a tank top, a white
2 tank top.

3 Q Earlier that night had you noticed him in something
4 else?

5 A He had a T-shirt on.

6 Q What color?

7 A White.

8 Q Let me show you, I believe it's State's Exhibit
9 Number 3. Does it look like the T-shirt in that
10 exhibit?

11 A Yeah, that's it.

12 Q But when he comes back up to this crowd after the
13 shooting, you see him in a white tank top?

14 A Tank top.

15 Q At some point during this mix, did you end up
16 talking to him?

17 A Yeah. While my wife was trying to stop the
18 bleeding or whatever they were doing, I tried to
19 calm him down. I was just like, "Try to cool out,
20 man. We've got to try and help your friend first."

21 Q Did he tell you his name at that time?

22 A I asked him his name. He said it was Damien.

23 Q Do you remember seeing any tears?

24 A I don't remember any tears.

25 Q Did his reactions that night strike you as someone

1 who had just lost a friend?

2 A Not really. I would think he would be more upset.
3 He seemed more aggravated or mad. I don't know. I
4 would expect more sadness, I guess, if you just
5 lost your friend like that.

6 Q When your wife was looking -- your wife, you say
7 she was working on the victim's neck?

8 A Uh-huh. (Indicating affirmative response.)

9 Q What was she doing?

10 A She asked for a shirt from whoever was standing
11 around us, and I think some young lady gave her a
12 shirt. We were trying to find an exit wound; so
13 she was really trying to stop the bleeding and
14 locate an exit wound.

15 Q At any time did William Brockmeyer offer his shirt?

16 A Not to my knowledge.

17 Q Did he at any time offer that white tank top that
18 he was wearing?

19 A No, not that I saw.

20 Q At some point when you were looking at
21 Mr. Brockmeyer, did you notice him wearing anything
22 other than that white tank top?

23 A Later on I noticed the tank top was gone as well.
24 He just had no shirt on.

25 Q So he went from a white T-shirt to a white tank top

MARCUS LESESNE -- CROSS -- MR. MAULDIN

279

1 to nothing?

2 A Yes, that's what I noticed.

3 Q And you were trying to calm him down or hold him
4 back?

5 A Calm him down, yeah. I mean, he wasn't being
6 aggressive. He wasn't physically trying to get
7 anywhere. I was just trying to calm him down
8 because he was pretty hysterical.

9 Q When law enforcement got there, how did he act?

10 A I don't know. I didn't really pay attention to be
11 honest. Once they got there, I kind of just fell
12 back and let them do their thing.

13 Q Marcus, if you would please answer any questions
14 the defense has.

15 A Sure.

16 CROSS EXAMINATION

17 BY MR. MAULDIN:

18 Q Now, you say you are in the bar and you heard that
19 somebody had shot themselves? That was going
20 throughout the bar?

21 A (Witness nods.) (Indicating affirmative response.)

22 Q Eventually you go outside and you see Nick on the
23 ground?

24 A Yes, sir.

25 Q You said he was kind of on his knees?

- 1 A Well, face down. I guess his knees and his face.
- 2 Q I guess with his backside in the air?
- 3 A Uh-huh. (Indicating affirmative response.)
- 4 Q And you are the one that turned him over?
- 5 A Yes, sir.
- 6 Q And was there anybody standing around him at that
- 7 time?
- 8 A Not standing around. People were moving around him
- 9 trying to get out but, no, nobody was standing
- 10 around him.
- 11 Q How many people were moving around getting out?
- 12 Quite a few?
- 13 A I couldn't count. Seven, eight, nine people,
- 14 maybe.
- 15 Q When you were talking about people leaving the bar
- 16 to go to the door, how many people was that do you
- 17 think?
- 18 A I'm sure there was 30 people in the bar trying to
- 19 get out of there.
- 20 Q That was just the people trying to get out?
- 21 A As far as I know. I mean, my back was turned when
- 22 I heard the whole thing. When I turned around, I
- 23 just saw people going for the door.
- 24 Q How many people in all do you think -- just a rough
- 25 guess -- was in the bar at that period of time?

MARCUS LESESNE -- CROSS -- MR. MAULDIN

281

1 A I don't know. Ballpark, I would say 30.

2 Q So basically you go out. You see him on the
3 ground. There are people all leaving out and that
4 kind of thing?

5 A Yes, sir.

6 Q And you turned him over, and your wife was there
7 with you?

8 A No, I turned him over first. Then I saw the blood.
9 That's when I called for my wife.

10 Q When you turned him over, you didn't notice any
11 kind of gun at all?

12 A No, I didn't see one, none at all.

13 Q You say you hear the defendant first before you
14 look at him? You said you didn't really see him,
15 but you --

16 A I didn't see him approach. Because once me and my
17 wife were there, that's when a lot of people walked
18 up. I didn't really notice any one person
19 approaching, but he was the most vocal.

20 Q And then you say you actually interacted with him,
21 trying to calm him down, that kind of thing?

22 A Yes, sir.

23 Q At that point Nick was still alive; wasn't he?

24 A I'm not sure.

25 Q You are not sure? Nobody knew if he was dead or

1 not?

2 A Nobody knew if he was dead or not. We were doing
3 what he could.

4 Q Were there other people around there helping your
5 wife?

6 A Yeah.

7 Q Like three or four?

8 A I would say four, maybe five.

9 Q When you were calming Will down, are you keeping
10 him away so everybody could help out Nick?

11 A Yeah, I mean to my best. It was not like I was
12 pushing him away. I was standing between him --

13 Q You were trying to give them room to do what they
14 needed to do?

15 A Yeah.

16 Q And you were just like, "You need to calm down.
17 Stay over there. They are trying to help him out"?

18 A Yes.

19 Q That kind of thing?

20 A That's correct.

21 Q Now, you did talk to the police sometime after
22 this; right? Like a day or so or the same day?

23 A The same day. That night, I guess.

24 Q You never mentioned the person you were talking to
25 called themselves Damien? Is that true?

MARCUS LESESNE -- CROSS -- MR. MAULDIN

283

1 A I don't know if I told the police that or not to be
2 honest.

3 Q Basically when you were calming him down, he is
4 saying things like, "He's my brother. Save my
5 brother"?

6 A Uh-huh. (Indicating affirmative response.)

7 Q That kind of thing. And you are just like, "Calm
8 down"?

9 A Yeah.

10 Q Like prioritize. Did you ever say that?

11 A I might have. I couldn't say for sure.

12 Q Do you go by the name Paul? Is that a nickname of
13 yours or anything like that?

14 A No, sir.

15 MR. MAULDIN: No further questions.

16 MR. HUBBARD: No redirect.

17 THE COURT: You may come down.

18 (Witness leaves the witness stand.)

19 THE COURT: You remain under subpoena. You
20 can be released but be available now if we need you.

21 MR. HUBBARD: The State calls Shandon Lesesne.

22 SHANDON LESESNE, being
23 first duly sworn, testifies as follows:

24 CLERK: State your full name and spell your
25 last name.

1 THE WITNESS: Hello. My name is Shandon
2 Lesesne, L-E-S-E-S-N-E, is my last name.

3 DIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q Shandon, what's your husband's name?

6 A Marcus Lesesne.

7 Q And how many children do you have?

8 A Two. My husband has three children.

9 Q Let me ask you this: Where do you work?

10 A At Peterson and Plante internal medicine.

11 Q Do you have some medical background?

12 A I do. I used to work in the E.R. a couple of years
13 back in the trauma center. I was certified in
14 first aid and C.P.R.

15 Q The night of July 10th and the early morning hours
16 of July 11, 2010, where were you?

17 A July 10th?

18 Q Yes. July 10, 2010, that night and then on into
19 the early morning hours of July 11, 2010?

20 A At Jager's.

21 Q And Jager's is what?

22 A It's a bar on Highway Number 6 in Lexington.

23 Q When you went to Jager's, did you go by yourself or
24 did you go with some other friends?

25 A I was by myself.

SHANDON LESESNE -- DIRECT -- MR. HUBBARD

285

1 Q Your husband Marcus, was he there? Was he at home?

2 A He was there.

3 Q He was already there?

4 A Yes.

5 Q How long had he been there before you got there?

6 A I'm not sure but I'm assuming a couple of hours
7 before. I was at a previous engagement, and I was
8 meeting him there.

9 Q At some point that night, do you remember there
10 being a commotion? At some point either the night
11 of the 10th or the early morning hours of the 11th?

12 A Yes, I do.

13 Q Can you tell the jury what transpired?

14 A I was sitting at a table. Then I remember hearing
15 someone yell out something either about cops coming
16 or basically a stampede running past me. I wasn't
17 sure, but basically what I heard was that the cops
18 were here, and everyone needed to leave.

19 Q When you went outside, what did you see?

20 A I saw someone laying on the floor with their head
21 on the floor and their backside facing up.

22 Q You say the floor. Is this outside you say?

23 A Yes, outside on the concrete in the front entrance.

24 Q The porch area?

25 A Yes.

1 Q Was law enforcement out there yet?

2 A No.

3 Q When you got out there, did you see your husband?

4 A Yes.

5 Q What was he doing?

6 A Screaming at me to hurry up and come and help him.

7 Q When you got out there, did you assist him?

8 A Yes, I did.

9 Q What did you find?

10 A First, we saw that he was on the ground, and I
11 might thought that he fell over. I was trying to
12 help him roll over. When my husband rolled him
13 over onto my lap, we noticed that he was laying in
14 a pool of blood.

15 Then when he turned his head a little bit, I
16 saw that there was a hole around here (indicating)
17 in the bottom of his neck. That's when we kind of
18 put two and two together. That's when the blood
19 started pouring, and we tried to figure out a way
20 to actually stop it.

21 Q When you say put two and two together, what did you
22 conclude by that hole in his neck?

23 A That he was shot.

24 Q Were you in the bar when all this transpired?

25 A I was inside the bar.

SHANDON LESESNE -- DIRECT -- MR. HUBBARD

287

1 Q Did you hear a shot?

2 A No, I did not.

3 Q What did you do to assist this person who was on
4 the ground with the hole in his neck?

5 A First, I put my hand up against the entrance wound
6 to try to hold the pressure in because it was at
7 that time spewing out. I asked for a towel or
8 shirt or anything.

9 A girl that was standing next to me ended up
10 taking one of her shirts off so I could put the
11 pressure on it. I immediately started wiping the
12 blood from his face to try to find an exit wound to
13 maybe put pressure on that side also.

14 Q Did you ever find an exit wound?

15 A I did not.

16 Q And you say one girl gave up her shirt?

17 A Yes.

18 Q Was she wearing a shirt underneath that?

19 A Yes.

20 Q And did anybody supply towels?

21 A No, it was just the girl's shirt.

22 Q Did anyone else try to help? Were you trying to --
23 you have a medical background?

24 A Yes.

25 Q Was anybody else trying to assist?

1 A Everyone tried to do what they thought was help,
2 you know, looking for pulses, calling 9-1-1 and
3 stuff. But there was one girl that said she knew
4 C.P.R. and started pounding on his chest. It was
5 very wrong. You can't do C.P.R. with one first, of
6 course. We made her move.

7 After a certain point, my husband and another
8 friend kind of cleared everyone around because it
9 seemed to be doing more harm than good. There was
10 one person that did come. He was an off-duty
11 E.M.S. He came to assist me at the end.

12 Q At some point did other individual come up and
13 identify himself as having some type of connection
14 to the person you were trying to help?

15 A Yes.

16 Q Do you see that person in the courtroom?

17 A I do.

18 Q Can you point him out for me?

19 A (Indicating.)

20 Q Can you say which chair he is sitting in?

21 A It's from my far left.

22 Q The one closest to the deputy?

23 A Yes.

24 MR. HUBBARD: Your Honor, for the record
25 please let the record reflect that she has pointed to

SHANDON LESESNE -- DIRECT -- MR. HUBBARD

289

1 William Brockmeyer.

2 THE COURT: It will so reflect.

3 BY MR. HUBBARD:

4 Q When you saw Mr. Brockmeyer, you didn't know his
5 name; did you?

6 A No.

7 Q Had you ever seen him before?

8 A No.

9 Q How was he acting?

10 A Frantic. He was screaming at me when I had the
11 boy's head in my lap and putting pressure on him.
12 He was screaming at me to save his brother, that
13 someone shot him, he shot himself, something like
14 that. He was screaming in the back of my ear that
15 I needed to save him.

16 Q Someone shot him or he shot himself?

17 A Yes. At one point someone made the conclusion at
18 the beginning saying that he shot himself. That's
19 when everyone was looking for a gun.

20 Q And you don't remember where that came from?

21 A No. It was just -- you know, when you get there,
22 everyone starts screaming.

23 Q He was saying what?

24 A That someone shot his brother.

25 Q Now, did anything about his demeanor strike you as

1 unusual?

2 A Well, I remember -- at first the only thing I could
3 remember was I needed something to stop the
4 bleeding. It was the girl that gave me the shirt,
5 not the guy that was behind my ear screaming for
6 someone to save his brother.

7 Q Was he crying or he was just loud?

8 A It was just loud at that point. It was -- because
9 it seemed like he was right near my ear.

10 Q And he didn't offer the shirt that he had on?

11 A Honestly, no.

12 Q At some point did you see him in something other
13 than a shirt?

14 A He was at one point in the under T-shirt, like an
15 under tank top. Then at another point in the night
16 he had no shirt on.

17 Q Did you ever get hold of that tank top to use it to
18 apply pressure to Nick's neck?

19 A No.

20 Q So that shirt came off, but it didn't go to you?

21 A It did not.

22 Q Did he ever offer to help?

23 A No. After the screaming my husband moved him away
24 to talk to him so that I could try to do what I was
25 trying to do better; so I wouldn't have someone

SHANDON LESESNE -- DIRECT -- MR. HUBBARD

291

1 constantly screaming in my ear.

2 Q Did he strike you as someone -- or your impression
3 that night, did he strike you as someone whose
4 friend had just been shot?

5 A No. It seemed more mad at the time. Nothing that
6 was concern. He just seemed more -- he was more
7 mad at the situation, not actual concern. Because
8 I didn't know the boy that was on the ground that
9 was shot, but I was doing more than his, you
10 know -- when he kept on saying brother, that's what
11 struck me as odd.

12 Q How long did you stay there?

13 A We stayed to, I think, 6:30 in the morning,
14 6:00 o'clock. We had to stay till all the
15 questions were answered.

16 Q As far as with this individual who was shot, did
17 anybody relieve you of his care at some point?

18 A Well, I had to stay. I couldn't wash my hands or
19 anything until the detectives and everyone talked
20 to me and was able -- I don't know. I couldn't go
21 anywhere until I was actually able to be cleaned up
22 and had all the questions answered.

23 Q Let me ask you this: When you were with this
24 individual cradling his head and applying pressure?

25 A Uh-huh. (Indicating affirmative response.)

1 Q At some point did E.M.S. come?

2 A Oh, yes, they did. I was there until E.M.S. came,
3 me and this other boy that was off duty.

4 Q When they came did you stop or did you continue to
5 stay there and hold pressure?

6 A I stopped until they told me I had to get up and
7 that there was nothing else I could do, and then I
8 left.

9 Q And you gave a statement to law enforcement as
10 well?

11 A I did.

12 Q By the time you got up and turned him over to
13 E.M.S., based on your medical experience, did this
14 individual appear to be alive or was he dead?

15 A To my medical -- the way the entrance wound and
16 there was no exit wound, I kind of had an idea that
17 he was dead already, but you could see his nerves
18 still reacting in his body: The blinking, the
19 shallow breathing, stuff like that.

20 I just honestly -- I wanted to make sure that
21 even if it was his last breath that he didn't see
22 everyone jumping over him, that someone at least
23 tried to help.

24 Q Thank you, Shandon. Please answer any questions of
25 the defense.

SHANDON LESESNE -- CROSS -- MR. MAULDIN

293

1 THE COURT: Counsel?

2 MR. MAULDIN: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. MAULDIN:

5 Q So you are sitting there. You've got his head in
6 your lap. You are trying to concentrate on him;
7 aren't you?

8 A I was facing that way toward the door and had his
9 head in my lap.

10 Q Right. I mean, you were trying to pay attention to
11 him? That was the focus of your attention; right?

12 A Yes.

13 Q All right. You say Mr. Brockmeyer was behind you
14 screaming and yelling?

15 A Yes.

16 Q And that your husband had moved him away. He said
17 stuff like, "My brother has been shot. Save my
18 brother. Help him. Help him," that kind of thing?

19 A Yes.

20 Q But your interpretation of that was it was anger?

21 A It was screaming. There is a difference between
22 screaming and crying, and it was definitely
23 screaming.

24 Q And you didn't notice any kind of gun there around
25 him at all?

1 A No. When we saw that it was a shot wound, we tried
2 to look around to see if there was a gun for the
3 safety of everyone also.

4 Q At some point in time, you did feel a pulse on him?

5 A Yeah, a faint one.

6 Q You didn't notice a gun anywhere around at all?

7 A No.

8 Q Not even on him?

9 A No.

10 Q Thank you.

11 MR. HUBBARD: No redirect, Your Honor.

12 THE COURT: You may come down.

13 (Witness leaves the witness stand.)

14 THE COURT: You will still be under subpoena,
15 but you may leave at this time.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you.

18 MR. GRAHAM: Are we ready for our next
19 witness?

20 THE COURT: Yes, I am.

21 MR. GRAHAM: The State would call Leslie
22 Lawson.

23 LESLIE LAWSON, being
24 first duly sworn, testifies as follows:

25 CLERK: State your full name and spell your

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

295

1 last name.

2 THE WITNESS: My name is Leslie Lawson,
3 L-A-W-S-O-N.

4 DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q Ms. Lawson, where are you employed, ma'am?

7 A I work for Palmetto Citizens Federal Credit Union.

8 Q Are you familiar with Jager's bar?

9 A I am familiar with the bar.

10 Q Where is that bar located?

11 A It's located on Highway 6. It's 2544 South Lake
12 Drive.

13 Q Let me show you a map and ask if you recognize this
14 map.

15 A I do recognize the map, and that's the location of
16 the bar.

17 MR. GRAHAM: Your Honor, we would introduce
18 the map at this time.

19 MR. MAULDIN: No objection, Your Honor.

20 THE COURT: Without objection.

21 (State's Exhibit Number 6 is received into
22 evidence.)

23 BY MR. GRAHAM:

24 Q Lesley, in reference to State's Exhibit Number 6 in
25 general terms, would you describe where that

1 address is and that location?

2 A If you are on the interstate and you are on
3 Highway 6 and you are going towards the Pelion
4 area, it's approximately eight miles up on the
5 left.

6 It sits in an open area of about 18 acres of
7 family-owned land. It's on the right side of the
8 road, just past Bethany Church Road, and just to
9 the left of us is a car dealership.

10 Q When you say family-owned land, whose family?

11 A Well, it's my husband and my family. It's been in
12 the family generations back.

13 Q How long have you lived in Lexington County?

14 A All my life.

15 Q And how long has that bar been then at that
16 location or how long has a bar been at that
17 location?

18 A We built a bar approximately five years ago, and it
19 was leased out.

20 Q At some point did you and your husband begin to run
21 the bar yourself?

22 A We did. We began to run the bar September of 2009.

23 Q And at that time was that when it was called
24 Jager's bar?

25 A It was. We did name it Jager's, Jager's Private

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

297

1 Club, at that time.

2 Q Do you remember the night of July 10th and the
3 early morning hours of July 11th of 2010?

4 A I do.

5 Q Were you working at the bar that night?

6 A I did work the bar on Saturdays simply because it
7 was a bigger time, and it was just our way of kind
8 of nothing what was going on, knowing the people
9 coming in and out. I did go to the bar that day
10 and work that night.

11 Q Just in general what's the difference between a
12 public bar and a private bar?

13 A A private bar is member owned. Of course, our
14 members own the bar. We had a list of everyone
15 coming in. It was the same people day in and day
16 out that came in.

17 Q Did you have a D.J. that night and that morning?

18 A I did have a D.J. that night.

19 Q What was his name?

20 A It's --

21 COURT REPORTER: I'm sorry. I didn't
22 understand that. Can you spell his name for me, please.

23 A Generos. It's G-E-N-E-R-O-S. Generos was actually
24 requested to be there by a girl who wanted to have
25 her birthday party, and it was supposedly a big

1 group of friends.

2 Q What kind of music was being played?

3 A Hip hop music, I call it. I love oldies music. It
4 was the boom, boom, boom. Just hip hop dance
5 music.

6 Q What kind of volume was it played at?

7 A Very loud. As a matter of fact, I asked to please
8 turn it down because I almost couldn't function
9 with it.

10 Q The door coming into the bar, there's two doors;
11 isn't there?

12 A Yes, sir.

13 Q The door that actually opens into the bar, what, if
14 anything, is special about that door?

15 A That door had a beep on it. Any time the door
16 opened, it was our way to look up to make sure we
17 knew who exactly was coming into the bar. It's
18 very important in a private bar, of course, being
19 member owned, that it's members coming in.

20 Anyone who is not with a member -- a guest had
21 to be signed in by the member. It's very important
22 that that door be closed at all times; so they need
23 to enter the door.

24 Q Did you keep the door closed?

25 A The door always stayed close, except when we were

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

299

1 there cleaning and propped it open.

2 Q At some point that night or in the early morning
3 hours of July 11th, was there something about the
4 beeping of the door that caught your attention?

5 A It was on occasions.

6 Q What did you notice?

7 A There was an individual sitting over to my left --

8 Q When you are referring to that, who are you
9 referring to?

10 A The gentleman on the end, far left.

11 Q The one closest to the wall and closest to the
12 deputy?

13 A Yes. He kept opening the door. Of course, it was
14 so busy that my husband and I worked the bar
15 together that night. But the person in front of
16 me -- again, it's member owned; so we kind of know
17 the rules of the bar.

18 I said, "Would you please ask the gentleman to
19 stop opening the door. If he opens the door again,
20 I will have to ask him to leave." He opened the
21 door approximately three times. It was at that
22 point my husband left from behind the bar and went
23 out and said, "You have to have this door closed."

24 Q Was he just opening the door or what, if anything,
25 was he trying to do?

1 A There was a magazine rack there, and he kept trying
2 to hold it open and keep the door open with the
3 magazine rack.

4 Q When you looked out into the foyer from the bar
5 area and you saw the defendant trying to prop the
6 door open, was he with anyone else?

7 A He was. I guess to this day I remember it like it
8 was yesterday because it just didn't go together.
9 He was with a heavier-set woman. She stood right
10 behind him. A couple of times she was like a
11 distance behind him.

12 The third time I saw him prop the door open
13 and move the magazine rack toward door, she was
14 just -- they were right on top of one other. It
15 was just almost not his personal property, not her
16 personal property. That was the last time I saw
17 him prop the door open.

18 Q What struck you as unusual about the two of them?

19 A When I first looked at him, I thought, you know, he
20 was a nicer-looking person. He had on, I remember,
21 plaid shorts, seemed like a very nice shirt.

22 The girl had on a very short shirt, seemed
23 like a lot of body showing, a bigger-set girl. I
24 just really didn't see them going together. I do
25 recall the group of them coming in together, but

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

301

1 they just didn't go together.

2 Q When you say bigger, can you guess -- not a
3 guess -- do you have an idea of how much she
4 weighed? What is your opinion of how much she
5 weighed?

6 A I can't guess. I'm a taller and bigger girl. If I
7 had to guess, I would say she probably weighed
8 about 225, 250, maybe. I don't know.

9 Q At some point did panic set in at the bar?

10 A A panic did not set in until just after the door
11 kept swinging open. It was shortly after that my
12 husband come back around the bar. There was a
13 wave, a crowd, that walked outside the door, and at
14 that moment there was a panic.

15 Q Did somebody come in and scream?

16 A There were voices, you know, "Someone has been
17 killed. Someone actually shot themselves," is what
18 was told to me.

19 Q When you heard that, what did you do?

20 A I immediately called 9-1-1.

21 Q As you are on the phone with 9-1-1, what are you
22 seeing?

23 A People fleeing everywhere. I mean, I wish I could
24 have walked from behind the bar, but I knew
25 immediately if I walked behind the bar that my

1 phone would disconnect.

2 I was trying to, in my own way, pull together
3 ordinance, where people wouldn't leave because I
4 knew the most important thing was that each and
5 every person there be able to testify to what they
6 saw. I was asking them, "Please don't leave."

7 Q Were they listening to you?

8 A No. As a matter of fact, there were several people
9 who entered into the bar and behind the bar behind
10 me.

11 Q Would you describe the people that you saw?

12 A There was a girl who was accompanied by some
13 fellows, and I remember her just simply --

14 Q What do you remember about her?

15 A She had on a long dress, brown hair tucked under.
16 What I remember about her the most, she had her
17 hand over her mouth. The way I would describe her
18 was appalled. She was not herself. I could tell
19 that she was very upset.

20 When I said, "You can't go through that door,"
21 the person with her said, "Someone has shot
22 themselves." I responded, "It's even more
23 important that you stay and give testimony to what
24 you saw." They passed by me, and then there was
25 another person that walked by me.

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

303

1 Q Who was the other person that walked by you?

2 A The gentleman on the left walked by me.

3 Q You are talking about the defendant?

4 A I am, on the far left. He struck me as odd because
5 he did not have on a shirt.

6 Q I'm sorry?

7 A He did not have on a shirt when he walked by me. I
8 told him too, I said, "You can't go through this
9 door." He walked clearly past me in a daze, no
10 response, nothing.

11 Q You said something about worried about your phone
12 disconnecting. What did you mean by that?

13 A It was a cordless telephone, and the cordless phone
14 was behind the bar. Typically even if I stepped
15 out over to the pool table area, my phone would
16 disconnect. I was on the phone with 9-1-1, and I
17 did not want to lose that connection.

18 Q Looking at State's Exhibit Number 2, do you
19 recognize that?

20 A I do. It's a layout of the inside of the bar.

21 Q Referring to that diagram, would you point out to
22 the jury where you were at while you were on the
23 phone?

24 A There is an entranceway to the bar. I was standing
25 right here (indicating) behind the bar. Of course,

1 I never left that area until I was asked to leave.

2 Q When you say the defendant came past you, where did
3 he come from and where did he go?

4 A He walked through these doors (indicating). He
5 walked past me. In the back office area, there is
6 a door that exits to the back. That's the last I
7 had seen him until later in the evening.

8 Q On the way out of the door, is there a sink back
9 there?

10 A There is an industrial-sized sink, yes.

11 Q Let me show you a photograph and ask you if you
12 recognize that?

13 A I do. That's where we keep all of our cleaning
14 supplies. I mean, that's where we do all the big
15 dishes.

16 Q Does that fairly and accurately represent the back
17 area of the bar going to the outside?

18 A It does.

19 MR. GRAHAM: Your Honor, the State would
20 introduce this photograph into evidence at this time.

21 MR. MAULDIN: No objection.

22 THE COURT: Without objection.

23 (State's Exhibit Number 7 is received into
24 evidence.)

25 ---

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

305

1 BY MR. GRAHAM:

2 Q Is that a picture of the sink in State's Exhibit
3 Number 7?

4 A It is.

5 Q Is that the last time you saw the defendant?

6 A No, it's not.

7 Q When's the next time that you saw him?

8 A I stayed in the bar until I was asked to leave. I
9 walked out the front door, of course, over the body
10 that laid there. I immediately was instructed to
11 go to the back of the parking lot.

12 At the back of parking lot, there was a group
13 of people. Of course, a lot of the people I knew.
14 There was a group of individuals that I didn't
15 know, which the defendant was one of them, and
16 actually he is the one that I stood beside.

17 Q Let me back up for just a second, Leslie. When we
18 are inside the bar and we talked about the people
19 coming by you, time frame wise in order, you said a
20 female and male together and the defendant. Do you
21 remember the order? Which came first?

22 A I have to say I really can't remember the order.
23 Her face is the first one I can see simply because,
24 you know, I see her face, and I see his body
25 walking through.

1 Q Do you know time wise how close the defendant was
2 with that other couple?

3 A I don't know that I could answer that question.

4 Q The next time you see Will Brockmeyer is outside in
5 the parking lot?

6 A He is.

7 Q How long did you stay in the bar before you went
8 outside?

9 A However long it took for the ambulance to get
10 there. It was like a part of me just wanted to
11 make sure everything was okay. I didn't want to
12 walk outside and see what was there. I was asked
13 to leave, and I walked through front the door and
14 remained there until the following afternoon about
15 five or six.

16 Q The police made you get out of the building?

17 A Yes.

18 Q When you went out to the parking lot, you said you
19 saw Mr. Brockmeyer?

20 A I did.

21 Q What was he wearing at that time?

22 A He was wearing a pair of plaid shorts, and he did
23 not have on a shirt.

24 Q How was he acting at that time as you were walking
25 up to the area where he was or when you first

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

307

1 noticed him?

2 A I took attention to him. I have a son about his
3 age. There was something about the haircut. It's
4 almost like the parent in me. I looked at him and
5 I knew that it was his friend that had been killed.
6 I said, "Oh, my God. I'm so sorry." I said, "What
7 could have happened? Tell me what happened."

8 Q When you said that to him, how was he acting?

9 A He threw his hands down and he said, "My best
10 friend was just shot and killed." I put my arms
11 around him and I said, "I'm so sorry."

12 Q Did you say anything else to him?

13 A I just asked him who. I didn't ask him -- and I am
14 ashamed to say that I asked him this -- but a part
15 of me was wondering, being part of this, how do we
16 protect the people who come back?

17 I asked him if he was part of a gang. You
18 know, what do we look for? What do we do? Are you
19 in a gang? I am really ashamed I asked him that
20 though.

21 Q His answer was no?

22 A He did say no. He hung his head shortly after I
23 asked him that.

24 Q You asked him who shot him? Or what's the question
25 you asked him?

1 A I just said, "Who? Somebody had to see something.

2 Please tell me who."

3 Q Did he give you an answer?

4 A No, he did not. He didn't have anything to offer
5 me, nothing.

6 Q And as you were talking to him, what was he looking
7 at?

8 A Where I stood I faced the bar the whole time and
9 tried to keep the majority of the people where I
10 could see too, just to observe. He was standing to
11 my right. Of course, there were investigator cars
12 from Lexington County everywhere.

13 As I'm trying to see what is going on, his
14 eyes were focused constantly on the girl in which I
15 remember seeing him with in one of the cars, and he
16 was very focused there. He was very focused on
17 what was going on and where both of the Lexington
18 County cars were parked.

19 Q What, if anything, did you notice odd about his
20 demeanor?

21 A He just was almost like he wasn't there, very
22 shallow, empty. Again, I have a son and I think
23 about my son and think what you would expect when
24 your best friend is killed. Here's a life I had
25 never seen before, and it still affects me to this

LESLIE LAWSON -- DIRECT -- MR. GRAHAM

309

1 day that there was just -- there was nothing there.

2 Q Let me show you a photograph and ask if you
3 recognize the photograph?

4 THE COURT: Has defense counsel seen the
5 photograph?

6 MR. GRAHAM: Yes, Your Honor.

7 A That's exactly how he stood beside me.

8 Q Does that fairly and reasonably show how he was
9 dressed and his demeanor that night?

10 A Yes.

11 Q Or that morning?

12 A (Witness nods.) (Indicating affirmative response.)

13 MR. MAULDIN: Object to relevance, Your Honor.

14 THE COURT: What is the relevance?

15 MR. GRAHAM: The relevance is it shows that he
16 was not wearing a shirt and also how he was acting.

17 THE COURT: I will permit it. Go ahead. The
18 exception is noted.

19 (State's Exhibit Number 8 is received into
20 evidence.)

21 MR. GRAHAM: Permission to publish this to the
22 jury, Your Honor?

23 THE COURT: You may do so.

24 BY MR. GRAHAM:

25 Q What does this photograph show, Leslie?

1 A When I look at that photograph, I feel like there
2 was a man that stood there. There was just nothing
3 inside him. There was nothing that he could say to
4 me. That is the gentleman that sits right over
5 there.

6 Q Thank you, Leslie. Please answer any questions
7 they have for you.

8 CROSS EXAMINATION

9 BY MR. MAULDIN:

10 Q You called 9-1-1; is that right?

11 A I did call 9-1-1.

12 Q You were are on the phone with them for a good
13 period of time? I guess, five minutes? Ten
14 minutes? Something like that?

15 A Yes, I was on the phone with them.

16 Q And obviously you were upset?

17 A Of course, I was upset.

18 Q And you mentioned on the phone that a lot of people
19 were leaving. You were telling people that these
20 people need to stay and write a statement, that
21 kind of thing?

22 A That's right.

23 Q How many people were in the bar that night?

24 A I turned over a list to the officers that came, of
25 everybody that walked through the bar that night.

LESLIE LAWSON -- CROSS -- MR. MAULDIN

311

1 If I had to guess, I would say it was over a
2 hundred in and out but not all at one time.

3 Q Can you make a rough guess over that period of time
4 how many people were still there?

5 A If I had to guess, I would say at that time maybe
6 50 or 60 people.

7 Q And you were worried about people leaving? You
8 wanted the people that may have seen something to
9 stay?

10 A I know any time that there is a crime scene that
11 everyone there needs to give investigation [sic].
12 If there was a way I could have locked my doors, I
13 would have kept everyone inside. The majority of
14 the crowd had already moved outside.

15 Q And you were kind of upset at the time. Basically
16 you were trying to do pretty close to the last
17 call?

18 A I had already made the last call.

19 Q You had made the last call and told everyone they
20 needed to get their drinks and go, their last
21 drinks and go?

22 A It doesn't work like that. When I make last call,
23 you know, if there's people still dancing, I'm not
24 going to push them out the door.

25 Q That's the last opportunity for people to order

1 drinks? You are announcing the bar is getting
2 ready to close down?

3 A It had been announced. We have been known to stay
4 open for an hour or two afterwards.

5 Q Now, you say you see Mr. Brockmeyer, I guess, in
6 the entryway of the bar. From the bar -- you are
7 standing at the actual bar where they serve drinks?

8 A That's the first focal point I can see. It's very
9 obvious and my eyes always looked at that door any
10 time there was a beeping sound.

11 Q He had a tank top on at that time?

12 A I believe he had on a white T-shirt if I had to say
13 exactly what he had on, not a T-shirt undershirt,
14 but a white dress T-shirt if I'm not mistaken.

15 Q And when he came back in the bar, he didn't have a
16 shirt on at all?

17 A He did not.

18 Q You have mentioned the girl coming in with the
19 dress and her hair up? She was with a couple of
20 guys?

21 A Actually her hair was not up. I believe I said her
22 hair was down. I remember her being accompanied by
23 guys. I told you I remember whenever simply
24 because of the look on her face.

25 Q Did you know those people at all?

LESLIE LAWSON -- CROSS -- MR. MAULDIN

313

1 A I did not know them. As a matter of fact, it was
2 her first night into the bar. I did remember that
3 because we knew a majority of the people who came
4 into the bar.

5 Q Had she been playing pool earlier?

6 A I did see her at the pool tables, yes.

7 MR. MAULDIN: Beg the Court's indulgence.

8 (Pause.)

9 BY MR. MAULDIN:

10 Q You testified earlier that when she walked by, she
11 walked by with two other guys. One of them said,
12 "He shot himself," or somebody shot himself; right?

13 A When I said that, "You cannot walk out these
14 doors," the response to me was, "We have to get her
15 out of here. You can see that she is upset.
16 Someone has shot themselves."

17 Q Can you describe the guy that said that?

18 A I cannot describe the guy that said that. It might
19 have been the two of them, with her in the middle,
20 but I know it was said. My eyes were on her the
21 whole time.

22 Q Is she a pretty girl?

23 A I thought she was an attractive girl, yes. She was
24 dressed very nice, long dress. That's what I
25 remember the most about her.

1 Q Do you remember the color of the dress?

2 A I cannot remember the color.

3 Q But it was almost like a prom dress type thing,
4 nice thing?

5 A Not a prom dress whatsoever. I think long dresses
6 are still in style. It was something -- it was
7 just a very nice long dress. It was not a prom
8 dress by any means.

9 MR. MAULDIN: No further questions, Your
10 Honor.

11 THE COURT: Any redirect, Counsel for the
12 State?

13 MR. GRAHAM: No, Your Honor.

14 THE COURT: You may come down. You may leave
15 if you care to, but you will still be under your
16 subpoena.

17 THE WITNESS: Thank you.

18 (Witness leaves the witness stand.)

19 THE COURT: Call your next witness.

20 MR. HUBBARD: Your Honor, may we approach for
21 scheduling?

22 THE COURT: Yes, sir.

23 (Whereupon there is a bench conference off the
24 record in the presence of the jury but out of the
25 hearing of the jury.)

1 THE COURT: Ordinarily we break at
2 1:00 o'clock and come back at 2:30. It's 12:30 at this
3 time. It's a good time to break. So we will break for
4 lunch at this time, 12:30.

5 I respectfully ask you that be back at
6 2:00 o'clock. That will give you an hour and a half for
7 lunch. Have a good lunch. Please be back promptly so
8 we can start.

9 (The jury is excused for lunch at 12:30 p.m.)

10 THE COURT: Counsel, pursuant to your request,
11 we are going to break for lunch but have these matters
12 in the courtroom promptly at 2:00 o'clock so we can
13 proceed today.

14 MR. HUBBARD: Yes, sir. We will start right
15 on the dot.

16 THE COURT: I understand you have got to set
17 up some evidentiary matters?

18 MR. HUBBARD: Yes, sir.

19 THE COURT: We are recessing at this time with
20 the consent of the defendant. Be back promptly at
21 2:00 o'clock ready to go. Thank you.

22 (Whereupon there is a luncheon recess.)

23 THE COURT: I understand that among the
24 evidentiary matters there are some weapons to be
25 introduced; is that right?

1 MR. GRAHAM: Yes, Your Honor. There is one
2 B.B. gun and one real gun.

3 THE COURT: You have complied with the law to
4 make sure they are all unloaded and everything?

5 MR. GRAHAM: Yes, Your Honor. They are
6 unloaded and there is a safety lock on it right now.
7 It's not in the courtroom at this time.

8 THE COURT: So I can advise the jury. First,
9 is the State ready to proceed?

10 MR. HUBBARD: Yes, sir, Your Honor.

11 THE COURT: How about defense?

12 MR. MADSEN: Yes, Your Honor. We had gone
13 over some evidence prior to Your Honor coming in. I
14 don't think -- all except for one piece, we are okay
15 with it. We don't have any objection.

16 There are some shoes that they are going to
17 put in. We have told the State we are going to object
18 because they took those straight out of Will's property.
19 They didn't get a search warrant or anything of that
20 nature.

21 So we would -- we will object at the
22 appropriate time on Fourth Amendment grounds, although
23 quite frankly the law doesn't reside on our side, but we
24 are going to object.

25 THE COURT: I don't think it does either.

1 MR. HUBBARD: It doesn't. And I do believe
2 there is some confusion, and I need to correct
3 Mr. Madsen. They were seized actually that night. They
4 never went to property.

5 MR. MADSEN: But they took them straight from
6 him.

7 MR. HUBBARD: The bluetooth went to property.

8 MR. MADSEN: Right.

9 MR. HUBBARD: We are square, Your Honor.

10 THE COURT: All right. Bring the jury in.

11 (The jury returns to the courtroom at
12 2:13 p.m.)

13 THE COURT: Mr. Foreman, before we begin I am
14 advised that there may be some weapons brought into the
15 courtroom for evidentiary purposes. Be assured they are
16 unloaded and locked, and there is no danger to anybody
17 with reference to these weapons.

18 It's always my policy, when weapons come in
19 the courtroom, we tell them to point them at the
20 lawyers. They have been examined and are totally safe.
21 I just wanted all of you to know that.

22 You may proceed.

23 MR. HUBBARD: Thank you, Your Honor. The
24 State calls Detective Shawn Grant.

25 SHAWN GRANT, being

1 first duly sworn, testifies as follows:

2 CLERK: State your full name, spelling your
3 last on the record.

4 THE WITNESS: Shawn Grant. The last name is
5 G-R-A-N-T.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Detective, where do you work?

9 A Lexington County Sheriff's Department.

10 Q And how long have you been there?

11 A Approximately six years.

12 Q And how long have you been a detective?

13 A Four years.

14 Q Were you working the early morning hours, late
15 night of July 10th and the early morning hours of
16 July 11, 2010?

17 A Yes, I was on call.

18 Q Do you remember getting a dispatch to a shooting?

19 A Yes.

20 Q Would you please tell me about that.

21 A Around 3:30 a.m. I was contacted by dispatch to
22 respond to a shooting incident at a bar located at
23 2544 South Lake Drive in Lexington County, South
24 Carolina.

25 Q What was the name of that bar?

SHAWN GRANT -- DIRECT -- MR. HUBBARD

319

- 1 A At the time it was Jager's.
- 2 Q What was the nature of the call that you were
- 3 responding to at that point?
- 4 A It was in reference to a shooting incident. The
- 5 information that was gathered was initially that
- 6 the individual had allegedly shot himself.
- 7 Q That came through by way of dispatch?
- 8 A Yes.
- 9 Q When you got to Jager's bar, were any other
- 10 officers there?
- 11 A Yes. When I initially responded, patrol deputies
- 12 from the west and south region were already on
- 13 scene.
- 14 Q Those are the uniform deputies?
- 15 A Yes.
- 16 Q Was the scene secured at that time?
- 17 A Yes. The actual crime scene was secured, but the
- 18 grounds around the bar were somewhat chaotic.
- 19 Q Were there patrons of the bar still there?
- 20 A Yes.
- 21 Q All the ones that y'all could keep there?
- 22 A That's correct.
- 23 Q Were there any other units at that scene at that
- 24 time?
- 25 A Our crime scene investigation or C.S.I. units were

1 already there.

2 Q As an investigator -- were any other investigators
3 there?

4 A Not at the time.

5 Q You were the first one?

6 A Yes, sir.

7 Q Is there a protocol in your office about being the
8 first investigator on the scene?

9 A The first investigator on the scene usually is
10 responsible for being the lead investigator on the
11 incident.

12 Q So when you drove up first, you became the lead
13 investigator?

14 A That's correct.

15 Q Did you see the deceased at that time?

16 A I did.

17 Q At that point did you have a name or an identity
18 for that individual?

19 A Not at that time.

20 Q Did anybody give you any information from the scene
21 what his name might have been?

22 A The only possible name given was Nick. No last
23 name. At the time I didn't know if it was a
24 nickname or a formal name, but it was only Nick.

25 Q At some point later, were you able to determine his

SHAWN GRANT -- DIRECT -- MR. HUBBARD

321

1 full name?

2 A Yes.

3 Q How long later?

4 A It was later in the day, several hours later.

5 Q What is his full name?

6 A Nicholas Alton Rae.

7 Q As an investigator what is your job on a crime
8 scene?

9 A My job on a crime scene is basically to determine
10 the facts as best as possible as to what happened.

11 Q So when you drive up, what is the first thing you
12 are trained to do if you have other officers
13 already on the scene?

14 A Basically the first thing we are supposed to do is
15 make sure the crime scene log is preserved and to
16 actually gather information from the actual
17 deputies that responded first.

18 Q And did you talk to these officers?

19 A I did.

20 Q Based on those conversations and getting a report
21 back from them, were you still thinking this might
22 be a suicide?

23 A No, sir.

24 Q What was your thought process at that time?

25 A It was a potential homicide from the information

1 that I was given.

2 Q Also, as an investigator what else did you do
3 following that determination?

4 A I continued to -- once I made contact with the
5 initial responding deputies, I began talking to
6 witnesses that may have seen something or heard
7 something.

8 Q Were you the only one talking to witnesses?

9 A No. Some of the deputies were also talking to
10 witnesses, and at a later time other investigators
11 came to assist me because the scene was somewhat
12 chaotic.

13 Q Do you remember talking to an individual, a female,
14 by the name of Gina Breakfield?

15 A Yes.

16 Q Can you describe her demeanor?

17 A When I was directed to Gina, she was very, very
18 frightened.

19 Q Did she ultimately give you a written statement?

20 A She did.

21 Q Based on your conversation with her, did you on the
22 scene start suspecting or developing a suspect?

23 A I did.

24 Q Who did you develop as a suspect?

25 A William R. Brockmeyer, Jr., the individual sitting

SHAWN GRANT -- DIRECT -- MR. HUBBARD

323

1 on my far left on the very end of the table
2 (indicating).

3 Q Did you talk to a young lady by the name of
4 Brittany?

5 A I did.

6 Q What was her condition when you were talking to
7 her?

8 A Brittany was very intoxicated. I had a very brief
9 conversation with her.

10 Q Did you talk to the Lesesnes?

11 A I did.

12 Q Mariko?

13 A I did.

14 Q At some point did you approach Mr. Brockmeyer?

15 A Yes, sir, I did.

16 Q Let me stop here. At any point when you were there
17 that night at Jager's bar, did you place
18 Mr. Brockmeyer under arrest?

19 A No, sir.

20 Q Even after Gina had told you what she told you, you
21 did not arrest him?

22 A No, sir, not at the scene.

23 Q So you didn't just take what she said and go cuff
24 him?

25 A No, sir.

1 Q At any time that night at Jager's bar, was he
2 handcuffed?

3 A No, sir, not at the bar.

4 Q When you approached Mr. Brockmeyer, can you
5 describe his demeanor?

6 A He was somewhat agitated and had a very defensive
7 appearance.

8 Q Can you show us, if you can, what he appeared to be
9 doing?

10 A He appeared to be standing beside his vehicle --
11 beside a vehicle, a patrol vehicle -- and he was
12 like this (indicating).

13 Q His arms were crossed?

14 A Yes, sir.

15 Q Did he agree to voluntarily come to the Sheriff's
16 Department?

17 A Yes, sir, he did.

18 Q He was not under arrest?

19 A He was not under arrest.

20 Q While you were talking to him, you mentioned other
21 investigators showing up?

22 A Yes, sir.

23 Q Other detectives?

24 A Yes, sir.

25 Q Were they working the witnesses at that time as

SHAWN GRANT -- DIRECT -- MR. HUBBARD

325

1 well?

2 A Yes, sir, they were.

3 Q Talking to witnesses?

4 A They were.

5 Q Were other people from -- other witnesses -- from
6 Jager's also being taken to the Sheriff's
7 Department?

8 A Yes, there were.

9 Q So in that regard Mr. Brockmeyer was not any
10 different than anyone else?

11 A He was not.

12 Q Y'all were still investigating?

13 A Yes, sir.

14 Q As this investigation is continuing and you are at
15 the Sheriff's Department?

16 A Yes, sir.

17 Q Are there still people at Jager's bar?

18 A Yes, sir.

19 Q At any time during the course of that evening or
20 that early morning hours into the next day, did you
21 develop any other suspects?

22 A No, I did not.

23 Q None?

24 A (Witness shakes head.) (Indicating negative
25 response.)

1 Q None?

2 A None.

3 Q Did you ultimately place Mr. Brockmeyer under
4 arrest?

5 A Yes, sir, I did.

6 Q Where did that take place?

7 A That took place at the Sheriff's Department in an
8 interview room.

9 Q What did you charge him with?

10 A Murder.

11 Q How many people did you talk to during this
12 investigation that night?

13 A Approximately 30.

14 Q Were other people being talked to that you didn't
15 talk to?

16 A Yes.

17 Q So there was more than 30 people being interviewed
18 then?

19 A That's right.

20 Q Officer, Detective Grant, did you rush to judgment
21 in this case in making this arrest?

22 A No --

23 MR. MADSEN: Judge, I'm going to object to
24 that.

25 THE COURT: I sustain that.

SHAWN GRANT -- DIRECT -- MR. HUBBARD

327

1 BY MR. HUBBARD:

2 Q After you arrested Mr. Brockmeyer, did you take
3 possession of his belongings?

4 A Yes, sir, I did.

5 MR. MADSEN: Judge, he has been leading quite
6 a bit. I haven't been objecting.

7 THE COURT: Don't lead.

8 BY MR. HUBBARD:

9 Q What, if anything, did you take from Mr. Brockmeyer
10 after his arrest?

11 A His belt, his pants, his socks, his shoes, and also
12 a telephone that he had on his person.

13 Q Let me show you a box that has not been marked yet.
14 Would you pull those items out and see if these are
15 items that you took from Mr. Brockmeyer?

16 A Socks, shorts he was wearing --

17 MR. MADSEN: Judge, if he wants to put that in
18 evidence, I don't have objection to any of that.

19 THE WITNESS: Also, a pair of underwear.

20 MR. HUBBARD: Your Honor, I mark these all as
21 one exhibit.

22 THE COURT: Without objection.

23 (State's Exhibit Number 9 is received into
24 evidence.)

25 ---

1 BY MR. HUBBARD:

2 Q You mentioned a phone?

3 A Yes, sir.

4 Q Please look at this item and see if that's the
5 phone you took from Mr. Brockmeyer that night?

6 A Yes, it is.

7 MR. HUBBARD: Your Honor, I offer this into
8 evidence.

9 MR. MADSEN: No objection.

10 THE COURT: Without objection.

11 (State's Exhibit Number 10 is received into
12 evidence.)

13 BY MR. HUBBARD:

14 Q I am going to show you some shoes and see if you
15 can identify these?

16 A Yes, I do. Those are the shoes he was wearing when
17 he was placed under arrest.

18 MR. HUBBARD: Your Honor, I offer these into
19 evidence.

20 MR. MADSEN: Judge, I would just renew my
21 pretrial objections.

22 THE COURT: I will permit them.

23 (State's Exhibit Number 11 is received into
24 evidence.)

25 THE COURT: Elicit from him when they were

SHAWN GRANT -- DIRECT -- MR. HUBBARD

329

1 seized.

2 MR. HUBBARD: Yes, sir, I will do that right
3 now.

4 BY MR. HUBBARD:

5 Q Detective Grant, when you seized these shoes, was
6 this at the time of the arrest?

7 A Yes, sir, at the time of arrest.

8 Q You didn't take this out of his property?

9 A No, sir, it was never entered into property. It
10 was take directly from him.

11 Q All of these items so far were taken at the same
12 time?

13 A Yes, sir.

14 Q That's was at the Sheriff's Department when you
15 made the arrest?

16 A That was at the detention center once he was --

17 THE COURT: I admit them, along with the other
18 items to which you had no objection. Thank you.

19 MR. HUBBARD: Thank you, Your Honor.

20 BY MR. HUBBARD:

21 Q I am going to show you -- it looks like an
22 earpiece. See if you can identify that.

23 A Yes, sir.

24 Q What is this?

25 A That's an earpiece, bluetooth earpiece.

1 Q Where did you seize this?

2 A From his actual property at a later date and time.

3 Q From Mr. Brockmeyer's property?

4 A Yes, sir, the defendant's property.

5 MR. HUBBARD: I offer this at this time, Your
6 Honor.

7 MR. MADSEN: No objection.

8 THE COURT: Without objection.

9 (State's Exhibit Number 12 is received into
10 evidence.)

11 BY MR. HUBBARD:

12 Q Detective, at the time of Mr. Brockmeyer's arrest,
13 how much money did he have on him?

14 A Approximately \$5.84.

15 Q \$5.84?

16 A Yes.

17 Q After Mr. Brockmeyer's arrest, did you continue to
18 investigate this case?

19 A Yes, sir.

20 Q Were other investigators assisting you in
21 interviewing witnesses?

22 A Yes, sir.

23 Q After his arrest did you develop any other
24 suspects?

25 A No, sir.

SHAWN GRANT -- CROSS -- MR. MADSEN

331

1 Q As you sit here today, have you developed any other
2 suspects?

3 A No, sir.

4 Q At some point was a weapon recovered?

5 A Yes, sir, it was.

6 Q Did you bring a separate charge at that time?

7 A I did.

8 Q What was that charge?

9 A Possession of a deadly weapon during the commission
10 of a violent crime.

11 MR. HUBBARD: Your Honor, that's all I have at
12 this time, but I would like leave to recall this witness
13 at another time if necessary.

14 THE COURT: You may have that permission.

15 MR. HUBBARD: Thank you, Your Honor.

16 THE COURT: You may examine, gentlemen for the
17 defense.

18 **CROSS EXAMINATION**

19 BY MR. MADSEN:

20 Q Detective Grant, how are you doing this afternoon?

21 A Good. And yourself, sir?

22 Q Good. So you are one of the major crimes
23 detectives with the Sheriff's Department; correct?

24 A Yes, sir.

25 Q I think you had testified if there is a call, you

1 might be on duty, some other detectives might be on
2 duty, but that kind of rotates?

3 A Yes, sir. Each team goes on call a certain week.
4 The calls are rotated out.

5 Q So are you actually, say, at the Sheriff's
6 Department working?

7 A No, sir.

8 Q Your shifts run what time?

9 A It depends. Night shift runs -- it's 14:00 until
10 maybe 11:00 o'clock p.m. But usually if you are
11 out doing late calls and you have a call, you stay
12 out until you get done.

13 Q For someone like you that gets the call, you work a
14 day and then you are at home, but if something pops
15 up that night, that could be one of the on-call
16 detectives responsibility?

17 A Yes, sir.

18 Q So you are at home when you get the call?

19 A Yes, sir.

20 Q What time do you get that the call that you need to
21 go out?

22 A Around 3:30 a.m.

23 Q And ultimately you get there first; so it becomes
24 your case?

25 A Yes, sir, I was actually called out to it.

SHAWN GRANT -- CROSS -- MR. MADSEN

333

1 Q Were there other detectives that would be called
2 out at the same time as you or does someone just
3 kind of pick one or multiple ones?

4 A Usually you are on a rotation. If somebody else
5 gets a call before that call would come out, you
6 know, they wouldn't obviously get that call. So I
7 was next up on rotation.

8 Q There might be three and if there is a car
9 break-in, they might call you. If there is
10 something that happens after, then it's the next
11 person on the list? It would just kind of rotate
12 like that?

13 A That's correct.

14 Q So you end up getting the call from your house, and
15 what time was that?

16 A Around 3:30 a.m.

17 Q And then how long did it take you to get all the
18 way out to 6 where Jager's is?

19 A Approximately 30 minutes.

20 Q So you are out there about 4:00 a.m.?

21 A Yes.

22 Q Once you get out there, it's known that you were
23 the in-charge detective?

24 A Yes.

25 Q At some point in time, do you end up conferring

1 with your crime scene or your C.S.I.?

2 A Yes.

3 Q And I think that was Deputy Day?

4 A Yes, sir.

5 Q Do you actually end up walking the crime scene with
6 him?

7 A No.

8 Q At no point in time, do you go up to Nick or to
9 take a look at any of that?

10 A No, I was busy interviewing witnesses. They were
11 in the process of still processing the scene. So
12 to preserve the scene, I stayed away from it.

13 Q So ultimately though when you get there, are there
14 other deputies who are already there?

15 A Yes, other deputies are already there at the scene.

16 Q Have they already put up that yellow tape?

17 A Yes.

18 Q And that yellow tape, when you get out there, it's
19 just basically kind of around the bar area;
20 correct? The physical structure itself?

21 A Usually there is two. There's an inner perimeter
22 and an outer perimeter for maximum separation.

23 Q How was it done at Jager's?

24 A I can't 100 percent recall.

25 Q So when you pull in, where do you park your car?

SHAWN GRANT -- CROSS -- MR. MADSEN

335

1 Do you park it in that Jager's parking lot?

2 A I parked way down at the end of the driveway
3 because there was a lot of cars still in there.

4 Q How about people? Are people out on the road? Are
5 people in the parking lot when you get there?

6 A People are away from the building, kind of
7 sporadically scattered about the grounds.

8 Q So there's people in the parking lot there when you
9 get there?

10 A Yes.

11 Q And when you get there, you end up talking with
12 some of the deputies who have beat you there;
13 correct?

14 A Correct.

15 Q And you are getting information from them, and then
16 you start interviewing people that are there; don't
17 you?

18 A Yes.

19 Q And you get some statements from individuals?
20 Other investigators or other deputies get
21 statements from individuals; correct?

22 A That's correct.

23 Q Ultimately, since you are the detective in charge,
24 all that ends up coming to you at some point in
25 time?

- 1 A At some point in time, yes.
- 2 Q You don't get it all that night though; do you?
- 3 A No, because the investigation is still going on.
- 4 Q And ultimately you end up doing about a 16-page
- 5 report on this case; don't you?
- 6 A Yes.
- 7 Q And when you get there, you said while you are
- 8 there, Will is still there; isn't he?
- 9 A Yes, he's still there.
- 10 Q Not in handcuffs?
- 11 A (Witness shakes head.) (Indicating negative
- 12 response.)
- 13 Q Standing outside, I guess, leaning on a car?
- 14 A (Witness nods.) (Indicating affirmative response.)
- 15 Q You don't place him under arrest then?
- 16 A (Witness shakes head.) (Indicating negative
- 17 response.)
- 18 Q He could have left; could he not?
- 19 A I assume he could.
- 20 Q He could have walked away if he wanted to, but he
- 21 is still there; isn't he?
- 22 A (Witness nods.) (Indicating affirmative response.)
- 23 Q Is that a yes or no?
- 24 A He was still there at the scene.
- 25 Q And when you do your reports or when you interview

SHAWN GRANT -- CROSS -- MR. MADSEN

337

1 people, you can't be as thorough as possible when
2 you are out on scene; can you? Because you have
3 some limited time?

4 A Correct.

5 Q And so ultimately some of these people that you
6 talked to or some of the people that the deputies
7 talked to, you ended up following up with them;
8 didn't you?

9 A Correct.

10 Q But ultimately what you are trying to do on a
11 report is to be as thorough as possible; aren't
12 you?

13 A Correct.

14 Q To get everything?

15 A As best you can.

16 Q And you are trained as a detective to ask the tough
17 questions and to kind of ferret out that
18 information; aren't you?

19 A Yes.

20 Q And you spoke with Amera; didn't you?

21 A Yes.

22 Q And a lot of what she testified to, she didn't tell
23 you that; did she?

24 A That's correct.

25 Q So she didn't tell you that?

1 A No. A lot of what she testified to, no, she
2 didn't.

3 Q And that would be something that you would have
4 wanted to know; wouldn't it?

5 A She explained why she didn't.

6 Q So what you are telling this jury is you only asked
7 her what happened afterwards? You didn't care
8 anything about people inside with a gun or anything
9 beforehand? Is that what you are telling this
10 jury, that that wouldn't have made a difference to
11 you?

12 A I didn't say that.

13 Q So you would have wanted to know that information?

14 A I mean, in an ideal world, but you are dealing with
15 peopling who don't want to really be involved.
16 Sometimes you are going to get what you can get.

17 Q But you followed up and even got a written
18 statement from her; didn't you?

19 A Yes.

20 Q None of that is in there; is it?

21 A No.

22 Q How about the same thing with Keith? You talked
23 with him; didn't you?

24 A I did.

25 Q At lot of what he testified to, he didn't tell you

SHAWN GRANT -- CROSS -- MR. MADSEN

339

1 that; did he?

2 A No.

3 Q Justin Ainsworth, same thing? A lot of what he
4 testified to, he didn't tell you that; did he?

5 A (Witness shakes head.) (Indicating negative
6 response.)

7 Q That's a no?

8 A That's a no.

9 Q And in your job you want to find out all that
10 information; don't you? Because you would have put
11 it in your report?

12 A Yes.

13 Q Sixteen-page report, very thorough. You are
14 trained to interview people and try to get as much
15 information as possible?

16 A Correct.

17 Q Sometimes people don't want to give you
18 information. Part of your job is to get that
19 information out of them; isn't it?

20 A A lot of times people don't want to talk to you.

21 Q What time do you place Will under arrest?

22 A I want to say between 7:00 o'clock p.m. and maybe
23 8:00 o'clock -- I'm sorry -- 7:00 o'clock a.m. and
24 8:00 o'clock a.m.

25 Q That same morning?

1 A That same morning.

2 Q So we are talking from when you get there,
3 somewhere between three and four hours, you have
4 made a decision and gone to seek a warrant?

5 A Yes.

6 Q And placed him under arrest?

7 A He was initially arrested on a hold-for-warrant,
8 sir, after conversation with the judge.

9 Q When was the hold-for-warrant? Was that earlier
10 than the 7:00 o'clock?

11 A That's when he was arrested on the hold-for-warrant
12 so the facts and circumstances could be presented
13 to a judge.

14 Q So you arrest him on the hold-for-warrant at 7:00
15 or 8:00 a.m. that same morning?

16 A Around that time.

17 Q And that's after he has agreed to voluntarily go
18 with you to the Sheriff's Department?

19 A Yes.

20 MR. MADSEN: That's all the questions I have,
21 Your Honor.

22 MR. HUBBARD: No follow up.

23 THE COURT: You may come down. Thank you.

24 (Witness leaves the witness stand.)

25 THE COURT: You will remain in the courtroom,

DAVID DAY -- DIRECT -- MR. GRAHAM

341

1 of course, still under subpoena.

2 THE WITNESS: Yes, sir.

3 MR. GRAHAM: The State calls David Day.

4 DAVID DAY, being
5 first duly sworn, testified as follows:

6 CLERK: State your full name on the record,
7 spelling your last, please.

8 THE WITNESS: My name is David Day, D-A-Y.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q Mr. Day, where are you employed, sir?

12 A Lexington County Sheriff's Department.

13 Q And how long have you been in law enforcement?

14 A Approximately 17 years.

15 Q Can you pull the microphone a little bit closer to
16 you, please. In your 17 years with law
17 enforcement, how much of that has been as a crime
18 scene investigator?

19 A Approximately four years.

20 Q What is a crime scene investigator in general
21 terms? What do you do?

22 A Basically what we do is we document the scene by
23 use of photography, sometimes video, drawings. We
24 generate reports of our findings. We look for and
25 try to identify any items of evidence.

1 Once we do we collect that evidence and turn
2 it into the property room, sometimes we are
3 required to what they call process the scene, which
4 could be anything from fingerprint items, swabbing
5 stuff for D.N.A.

6 Q The early morning hours of July 11, 2010, were you
7 on-call as a crime scene investigator?

8 A Yes, I was.

9 Q And, in fact, did you get a call to Jager's bar off
10 of Highway 6 in Lexington County?

11 A I did.

12 Q Do you remember approximately what time that call
13 came in and when you went out there?

14 A I don't remember the time. I received the call
15 approximately 3:14 in the morning.

16 Q Do you remember when you arrived on scene?

17 A Approximately 4:00 o'clock.

18 Q Once you got on scene, what was your understanding
19 of what was going on?

20 A When I got the phone call, dispatch advised me that
21 they had what they called G.S.W., which is a
22 gunshot wound, with possible fatality. They didn't
23 know anymore than that.

24 Usually unfortunately, dispatch doesn't give
25 us that much information. When I arrived on the

DAVID DAY -- DIRECT -- MR. GRAHAM

343

1 scene, I noticed there were a lot of people
2 standing around, a lot of police officers on the
3 scene.

4 There was barrier tape, crime scene tape,
5 around the bar. When I got out of the vehicle, I
6 was approached by the sergeant on scene who advised
7 me that they had responded to a possible
8 self-inflicted gunshot, basically like a suicide,
9 but he was told by E.M.S. --

10 MR. MADSEN: Judge I will object as to
11 hearsay.

12 THE COURT: I sustain that.

13 BY MR. GRAHAM:

14 Q Without saying what E.M.S. did, once you understood
15 what you were told, what, if anything, did you do?

16 A I had heard when I was on scene -- I heard on the
17 radio -- that Detective Grant was in route as the
18 primary detective. So knowing that he wasn't far
19 behind me, I decided to wait on him so we could
20 get together and kind of go over what we needed to
21 do.

22 Q Did you, in fact, meet with Detective Grant and do
23 that?

24 A I did.

25 Q After speaking with Detective Grant and other

1 officers on the scene, what did you do?

2 A I told Detective Grant that I was going to do an
3 initial walk-through of the scene before I started
4 doing photographs. That gave him time to start
5 interviewing some witnesses to kind of see what we
6 have going on. So I commenced to do a visual
7 walk-through of the scene.

8 Q What's the purpose of the visual walk-through?

9 A To look for any items of evidence.

10 Q Does it also assist you on how you are coming up
11 with a plan to process the scene?

12 A It did.

13 Q What was your plan to process the scene?

14 A Well, what I noticed when I saw the victim on the
15 ground, I noticed there was no weapon nearby. That
16 was very interesting; so I then proceeded to find
17 Detective Grant to tell him that there was no kind
18 of weapon found. Since we knew it was a gunshot
19 wound, there was no weapon.

20 Q So describe what you began to do.

21 A I'm sorry?

22 Q Describe what you began to do to process the scene.

23 A When I told Detective Grant that, Detective Grant
24 advised me that during his --

25 THE COURT: Wait a minute. We don't want any

DAVID DAY -- DIRECT -- MR. GRAHAM

345

1 hearsay.

2 BY MR. GRAHAM:

3 Q Without saying what Detective Grant told you, what
4 did you do?

5 A I was told to take G.S.R., gunshot residue, of the
6 defendant William Brockmeyer.

7 Q How do you go about collecting gunshot residue?

8 A We have a kit from Tri-Tec Forensics. It comes
9 sealed.

10 Q In general terms, Investigator Day, what is gunshot
11 residue? When you say that, what do you mean?

12 A It's just burned and unburned powders. When you
13 fire a gun, you have particles that are expelled
14 out in like a cloud, and it's just basically parts
15 of -- it could be part of the primer, part of the
16 propellant, part of the actual bullet. It comes
17 out in small particles that could collect on a
18 person.

19 Q When you are talking about the kit, it comes sealed
20 to you. Did you, in fact, have a kit in this case?

21 A Yes, I did.

22 Q You brought a sample kit to court. Is that what
23 you have in your hands?

24 A Correct, yes.

25 Q Would you explain to the jury what's inside a kit.

1 A It comes with directions on how to use the kit. It
2 comes with a gunshot residue analysis information
3 form, which is general information that the analyst
4 that's going to test the kit needs to know.

5 It has basic -- my information, the person I
6 am collecting the kit's information, and a couple
7 of questions that the analyst needs to know about
8 what had happened.

9 It comes with a pair of gloves, evidence tape
10 to seal the kit when you are done, swabs, the vials
11 that have removable tops, and it has sticky pads on
12 it.

13 These are what you use first. You go to the
14 tops of the hands, the palms of the hands of both
15 left and right. They are both labeled. You just
16 press down over the hand and seal it back in.

17 The tubes, when you swab it, come with some
18 fluid, nitric acid, that you moisten the swabs
19 with. It's the same thing after you use the sticky
20 pads. You then go and swab the same way, the back
21 of the hands, the palm of the hands, and you put
22 them in corresponding tubes.

23 Q Let me show you an item and ask if you recognize
24 this?

25 A Yes, I do.

DAVID DAY -- DIRECT -- MR. GRAHAM

347

1 Q What is it?

2 A It is a G.S.R., gunshot residue collection kit, for
3 the defendant William Brockmeyer.

4 MR. GRAHAM: Your Honor, the State would
5 introduce that into evidence.

6 MR. MADSEN: Judge, if he would just -- we can
7 probably shorten this. If he will show them to me
8 beforehand, I might not have objections, but I would
9 like to see them before.

10 THE COURT: You may do so.

11 (Pause.)

12 MR. MADSEN: No objections.

13 THE COURT: Without objection. Proceed.

14 COURT REPORTER: Judge, there are two. I will
15 mark them separately.

16 THE COURT: Yes, ma'am.

17 (State's Exhibits Number 13-14 are received
18 into evidence.)

19 BY MR. GRAHAM:

20 Q Investigator Day, looking at State's Exhibit
21 Number 13 in evidence, what is that?

22 A It's the gunshot residue collection kit for William
23 Brockmeyer.

24 Q Would you open that and inspect the contents of it.

25 A (Witness complies.)

1 Q Would you describe how gunshot residue is
2 collected and how specifically you collected it off
3 Mr. Brockmeyer?

4 A The same way that I explained. I always start with
5 the vials with the sticky pads on the top, doing
6 one hand at a time, either left or right, but
7 always using the sticky pads first for both hands
8 and then finishing up using the swabs.

9 Q Did you, in fact, do that on Mr. Brockmeyer?

10 A Yes, sir.

11 Q When you were done, did you put it in the bag and
12 seal it?

13 A Yes.

14 Q I noticed some red tape on the seal. What is the
15 purpose of that?

16 A Like I said, it comes with this red tape. It's to
17 seal the bag and I sign it. It lets whoever gets
18 this to do the test know that it has not been
19 opened.

20 Q Are your initials on there or your signature?

21 A Yes.

22 Q Looking at State's Exhibit Number 14 that is on the
23 corner in front of you. Do you see that,
24 Investigator Day.

25 A Yes, I do.

DAVID DAY -- DIRECT -- MR. GRAHAM

349

1 Q What is that?

2 A It is the gunshot residue collection kit from the
3 victim Mr. Nicholas Rae.

4 Q What is the purpose of taking the kit from the
5 victim?

6 A To see if there is any gunshot residue on the
7 victim.

8 Q Did you, in fact, collect a kit from Nick Rae?

9 A Yes, I did.

10 Q And is that the kit that you collected from him?

11 A Yes, sir, it has my handwriting.

12 Q And inspecting the contents of that, does it appear
13 to be what you collected?

14 A Yes.

15 Q Once you collected that -- do you remember roughly
16 when you collected that from Mr. Rae?

17 A According to my notes, it was approximately
18 05:32 a.m. on July 11th.

19 Q Thank you.

20 MR. GRAHAM: Your Honor, it's my understanding
21 that defense counsel will stipulate as to the chain of
22 custody from the collection of the gunshot residue kits
23 from Investigator Day until they are tested by the
24 examiners at S.L.E.D.

25 THE COURT: Do you agree with that, Counsel?

1 MR. MADSEN: Yes, Your Honor. I think they
2 are already in evidence.

3 THE COURT: All right, sir.

4 BY MR. GRAHAM:

5 Q In addition to taking gunshot residue kits and
6 collecting those from Mr. Brockmeyer and Mr. Rae,
7 what else did you do while you were on scene?

8 A I photographed the scene.

9 Q Let me show you a stack of photographs -- actually
10 let me show them to defense counsel first.

11 (Attorneys confer.)

12 BY MR. GRAHAM:

13 Q If you would take a look at those photos.

14 THE COURT: Defense counsel has seen these
15 photos?

16 MR. GRAHAM: He has, Your Honor. It's my
17 understanding that he has an objection to two of the
18 photos.

19 MR. MADSEN: Until he lays the proper
20 foundation with the other ones, those I have no
21 objection to.

22 THE COURT: All right. These are without
23 objection. May I see them, please?

24 THE WITNESS: Yes, sir.

25 COURT REPORTER: And I haven't marked them yet

DAVID DAY -- DIRECT -- MR. GRAHAM

351

1 either, Judge.

2 (Hands to Court.)

3 THE COURT: Counsel, you propose to introduce
4 these? They are without objection?

5 MR. GRAHAM: I believe except for the last two
6 on there, Your Honor. I will hold those separate, and
7 we will deal with those at the appropriate time then.

8 THE COURT: Make sure now. We have mixed them
9 up. Make sure of the two that are in controversy.

10 MR. GRAHAM: Yes, sir.

11 (State's Exhibits Number 15-24 are received
12 into evidence.)

13 THE COURT: You may proceed with the other
14 two.

15 MR. GRAHAM: Thank you, Your Honor.

16 BY MR. GRAHAM:

17 Q Investigator Day, looking at what has already been
18 in evidence as State's Exhibit Number 5, do you
19 recognize that photograph?

20 A Yes, sir.

21 Q What does that photograph depict?

22 A It is a white shirt on the trunk of a white Mazda
23 Protege.

24 Q Let me show you State's Exhibit Number 15 and ask
25 if you recognize that?

1 A Yes.

2 Q What is that?

3 A It's just a closer view of the same photograph.

4 Q What was the purpose of you collecting that shirt?

5 A I was advised that that was the shirt that the
6 defendant was wearing.

7 MR. MADSEN: Judge, I will object. I think
8 that's hearsay. He's telling what someone --

9 THE COURT: No. I will let him take his
10 further actions based on information received by him. I
11 can do that without going into details.

12 MR. GRAHAM: Thank you, Your Honor.

13 THE COURT: Based on information, what
14 further did you do?

15 THE WITNESS: I collected the shirt.

16 BY MR. GRAHAM:

17 Q There is a 1, a yellow placard with a 1. What's
18 the purpose of that?

19 A The placards are for our benefit. A lot of times
20 on scenes you collect a lot of evidence. It just
21 helps when you are preparing your report as to the
22 location that different items were found. The 1
23 just states that was the first item that I
24 collected as evidence.

25 Q Let me show you a box and ask if you can identify

DAVID DAY -- DIRECT -- MR. GRAHAM

353

1 the contents of that box?

2 A It is the shirt.

3 Q That's the shirt that is photographed in number 1?

4 A Yes, sir.

5 Q That you collected?

6 A Correct.

7 Q When you collect evidence, Investigator Day, how do
8 you do that? What steps do you take to make sure
9 the scene isn't contaminated?

10 A I wear gloves and it is placed in paper because
11 plastic, if there is any blood or if it's wet,
12 could mold. So I wore gloves and it was then
13 placed in a paper bag.

14 Q This is the shirt that you took depicted in the
15 photograph on the scene on State's 15?

16 A Yes.

17 MR. GRAHAM: Your Honor, the State would move
18 this shirt into evidence at this time.

19 MR. MADSEN: Judge, I don't believe they have
20 laid a sufficient chain of custody or foundation.

21 THE COURT: No, sir. I will let the jury make
22 that determination. I will let it in.

23 (State's Exhibit Number 25 is received into
24 evidence.)

25 MR. GRAHAM: Your Honor, could I have

1 Investigator Day show the shirt to the jury?

2 THE COURT: Sure. Counsel for the defense may
3 come around.

4 (Pause.)

5 MR. GRAHAM: Your Honor, Investigator Day
6 doesn't have any gloves at this time. Since the
7 condition of the shirt -- well, I will do it at a
8 different time. Don't worry about it.

9 THE COURT: Can somebody provide him gloves?

10 (Pause.)

11 MR. GRAHAM: We will do it at a later time,
12 Your Honor. Oh, Miss Hope does. Thank you, Madame
13 Clerk.

14 THE COURT: Johnny on the spot. Thank you,
15 Hope.

16 CLERK: You are welcome, sir.

17 THE COURT: It's wonderful to have good help;
18 isn't it?

19 (Witness leaves the witness stand.)

20 BY MR. GRAHAM:

21 Q Step down this way, Investigator Day.

22 THE COURT: Turn it and let me look at it,
23 please.

24 THE WITNESS: Yes, sir. (Witness complies.)

25 A (Showing jury.)

DAVID DAY -- DIRECT -- MR. GRAHAM

355

1 Q Show them the back as well.

2 A (Witness complies.)

3 Q Thank you. You can have a seat.

4 A (Witness resumes the witness stand.)

5 Q Investigator Day, looking at State's Exhibit
6 Number 16, do you recognize that photograph?

7 A I do.

8 Q Tell me what we see on the screen?

9 A That was located when we rolled the victim over to
10 look for any possible injuries. I located a pellet
11 gun that was tucked in the back of his pants.

12 Q Looking at State's Exhibit Number 17 with the
13 placard 2 on it, what is that and what's the
14 purpose of 2?

15 A It's the same gun that was removed from the back of
16 his pants, just giving an overall photograph of it.

17 Q Let me show you an item in the bag and ask if you
18 recognize this and can identify it?

19 A It is the same gun in the photograph.

20 Q Is it materially and substantially in the same
21 condition as when you collected it?

22 A Yes.

23 Q I see you have got blue -- or somebody has blue
24 gloves in the picture. Again, what's the purpose
25 of the gloves?

1 A To keep from contaminating any evidence.

2 MR. GRAHAM: Your Honor, the State would move
3 the pellet gun into evidence at this time.

4 MR. MADSEN: No objection,

5 THE COURT: Without objection.

6 (State's Exhibit Number 26 is received into
7 evidence.)

8 BY MR. GRAHAM:

9 Q Investigator Day, referring back to the shirt for a
10 second, when you collected it, once you collect it,
11 what do you do with it? What did you do with that
12 shirt?

13 A I write the information on it, box it up, and then
14 submit it into evidence for possible further
15 testing.

16 Q So this box, do you recognize that box?

17 A Yes.

18 Q Once you collected it, you put the shirt in that
19 box?

20 A Yes.

21 Q Then after you put it in a box, what do you do to
22 preserve it?

23 A We seal it with evidence tape.

24 Q The evidence tape for the Sheriff's Department, is
25 that the red tape across there?

DAVID DAY -- DIRECT -- MR. GRAHAM

357

1 A The red tape is our tape.

2 Q And your name would have been across there showing
3 that it was properly sealed?

4 A Correct.

5 Q And the purpose of doing that is what?

6 A Is to let anybody who handles this know who sealed
7 it last.

8 Q Referring to State's Exhibit 26, that's the gun in
9 the bag that contained the gun. Do you recognize
10 the red tape across that?

11 A I do.

12 Q Again, in the same manner that you talked about,
13 did you seal it, date it, and initial it?

14 A That is correct.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 as I told you, these items that I have introduced into
17 evidence will be with you in the jury room during your
18 deliberations. Of course, they are at liberty to
19 publish them during the course of the trial if they care
20 to, but they will be with you.

21 BY MR. GRAHAM:

22 Q Investigator Day, looking at State's 18, what does
23 that depict?

24 A It is a knife that was in the pocket of the victim.

25 Q State's 19 with the placard 3?

1 A I had removed the knife to get an overall shot of
2 the knife.

3 Q Let me hand you another bag and ask if you
4 recognize the bag and contents?

5 A Yes. The bag has my handwriting, my name on the
6 red evidence tape. It is the same item.

7 Q Is it materially and substantially in the same
8 condition as when you retrieved it from Mr. Rae's
9 body?

10 A Yes.

11 MR. GRAHAM: Your Honor, the State would move
12 the bag and the knife into evidence at this time.

13 MR. MADSEN: No objection.

14 THE COURT: Without objection.

15 (State's Exhibit Number 27 is received into
16 evidence.)

17 BY MR. GRAHAM:

18 Q Again, referring to the bag containing 27, was that
19 again sealed with the red evidence tape by
20 yourself, dated, and signed?

21 A Correct.

22 Q Referring to State's 27 [sic], Investigator Day,
23 what are we looking at right there?

24 A That is a picture of the front of the bar.

25 Q There are some placards there. I can't tell if you

DAVID DAY -- DIRECT -- MR. GRAHAM

359

1 can see, but those are letters D. and B. What was
2 the purpose of those placards?

3 A Just the position of his feet. When the body is
4 removed, I like to kind of mark hands, feet, head
5 area, just to kind of keep a general location of
6 where the victim was laying at.

7 Q Looking at State's Exhibit Number 22, what is that
8 and what does it show?

9 A Just a close-up view of the last photograph with
10 the number 7 and letters D. and B.

11 Q What is number 7? What does State's 23 show a
12 close-up of?

13 A A spent cartridge case.

14 Q Let me show you an item and ask if you recognize
15 it?

16 A I do.

17 Q Is that the same item depicted in the photograph
18 labeled number 7 there?

19 A Yes.

20 Q Is it materially and substantially in the same
21 condition as when you found it?

22 A Besides the writing that is on it, yes.

23 MR. GRAHAM: Your Honor, the State would move
24 this shell casing into evidence at this time.

25 MR. MADSEN: Judge, I would object until a

1 proper foundation or chain of custody is laid.

2 MR. GRAHAM: Your Honor, he has identified it
3 as the item that he collected.

4 THE COURT: I am going to admit it based on
5 his testimony. I will let the jury make their
6 consideration. Go ahead.

7 (State's Exhibit Number 28 is received into
8 evidence.)

9 BY MR. GRAHAM:

10 Q Investigator Day, looking at State's 28, what are
11 we looking at?

12 A We have got a spent cartridge casing, like a film
13 tube. That is what I used to put the casing in.
14 The cartridge casing is right here (indicating).
15 It has been fired.

16 You've got a film canister is what I put the
17 cartridge casing in and then the brown bag that has
18 my writing on it. It's what I put these two items
19 in inside the brown bag.

20 Q So you collected item 7 in that photograph, which
21 is that shell casing?

22 A Yes, sir.

23 Q You put it into this plastic canister?

24 A Yes.

25 Q And you wrote on the outside of that?

DAVID DAY -- DIRECT -- MR. GRAHAM

361

- 1 A Yes.
- 2 Q You put that inside the brown bag?
- 3 A Yes.
- 4 Q And, again, did you seal that bag with security
- 5 tape, date it, and sign it?
- 6 A I did. You can see the red tape right here
- 7 (indicating), and there (indicating) is my name.
- 8 Q Now, there are numbers on the placards. Later on
- 9 we may be talking about different numbers when they
- 10 go into evidence. Does that necessarily
- 11 correspond?
- 12 A No.
- 13 Q These were just the items as you were collecting
- 14 them?
- 15 A Yes.
- 16 Q Looking at State's Exhibit Number 24, what does
- 17 that depict, Investigator Day?
- 18 A I had located some footwear, and I had labeled it
- 19 using letters showing the path of travel that was
- 20 traveling to -- there was a blue privacy fence.
- 21 It's going to the fence and then proceeding back.
- 22 Q So as the letters go through the alphabet -- E.,
- 23 F., G. -- that's going toward the fence?
- 24 A Yes.
- 25 Q And then other side we see L., M., N. That is

1 footprints coming away?

2 A Yes.

3 Q State's Exhibit Number 20, does that show the same
4 thing from a different angle?

5 A Yes. I had walked to the fence, turned around, and
6 faced back towards the building.

7 Q Later on did you have an opportunity to go -- later
8 on that same morning as you are processing the
9 scene, did you have an opportunity to go on the
10 other side of that privacy fence?

11 A Yes.

12 Q What was your purpose in going over there?

13 A To look for the weapon.

14 Q That morning did you, in fact, find something of
15 interest in this case? Let me show you State's
16 Number 6 -- excuse me -- let me show you a
17 photograph and ask if you recognize the photograph?

18 A Yes, that is a pistol magazine.

19 Q Did you, in fact, find that pistol magazine?

20 A Yes. We found it on the other side of the privacy
21 fence which was on a used car lot.

22 Q Does that picture fairly and accurately depict the
23 location and manner in which you found it of the
24 magazine?

25 A Yes.

DAVID DAY -- DIRECT -- MR. GRAHAM

363

1 MR. GRAHAM: Your Honor, the State would offer
2 that photograph into evidence.

3 MR. MADSEN: No objection.

4 THE COURT: I will permit it.

5 (State's Exhibit Number 29 is received into
6 evidence.)

7 BY MR. GRAHAM:

8 Q Looking at State's Number 29, would you tell the
9 jury what that depicts?

10 A Right in here (indicating), this is a pistol
11 magazine.

12 Q Let me show you a bag and its contents and ask if
13 you recognize it?

14 A Yes.

15 Q Is that the pistol magazine that is depicted in
16 this photograph, State's 29?

17 A It is.

18 Q Is it materially and substantially in the same
19 condition as when you received it?

20 A Yes.

21 MR. GRAHAM: Your Honor, the State would offer
22 the magazine and the bag into evidence at this time.

23 MR. MADSEN: I would object based on chain of
24 custody or foundation.

25 THE COURT: I will admit it based on the

1 testimony.

2 (State's Exhibit Number 30 is received into
3 evidence.)

4 BY MR. GRAHAM:

5 Q State's Exhibit Number 30 is a pistol magazine in
6 the bag. The bag has red security tape on it. Do
7 you recognize your signature and the date of when
8 you obtained it and sealed that bag?

9 A I do.

10 Q And when you sealed it, the bag was sealed shut
11 with the tamperproof tape; correct?

12 A Correct.

13 Q What is a pistol magazine?

14 A It is the part of the gun that holds the cartridge
15 cases.

16 Q When you say cartridge cases, what is that in
17 layman's terms?

18 A It's the bullet -- the cartridge case contains the
19 case and the bullet, primer and propellant. It's
20 the whole live ammunition.

21 Q This is for a revolver or a semiautomatic?

22 A Semiautomatic.

23 Q What, if any, kind of examination did you perform
24 on the magazine?

25 A I did what you call a visual observation using low

DAVID DAY -- DIRECT -- MR. GRAHAM

365

1 light looking for fingerprints. Basically if you
2 darken a room back in the lab, if you darken a
3 room, and you hold low light, white light, almost
4 parallel, you can actually look for fingerprints.

5 Q When you did your visual examination with low
6 light, did you see anything?

7 A No.

8 Q Now, some people talked in the past -- I'm sure you
9 have heard -- dusting for fingerprints?

10 A Right.

11 Q Why didn't you dust the magazine for fingerprints?

12 A Because fingerprint powder basically does nothing
13 but bring the fingerprint to a point where you can
14 visually see it. You can see fingerprints without
15 using powder.

16 Powder helps you lift that print, put it up
17 against like a white backing so then you can see
18 it. The eye can see it much better. Using low
19 lighting technique, you can actually see if there
20 is a fingerprint there.

21 You are not able to, of course, see much
22 detail in it, but you are able to see if there is a
23 print. So once I used low lighting, I could see
24 that there was nothing on the magazine. I was
25 afraid then if I would have powdered it, if there

1 was any D.N.A. on it, then it might be destroyed or
2 might be picked up by the brush.

3 Q So you didn't see any fingerprints?

4 A No, I did not.

5 Q And you didn't dust for fingerprints because of why
6 you just testified to?

7 A That's correct.

8 Q So what did you do after doing a visual examination
9 of that?

10 A I made contact with Detective Grant and advised him
11 of that finding. I recommended, which he agreed,
12 that we should send the magazine to S.L.E.D. to
13 have it tested for touch D.N.A.

14 Q Let me show you another item in a bag and ask if
15 you recognize this?

16 A I do.

17 Q Is it substantially and materially in the same
18 condition as when you created it?

19 A Yes.

20 MR. GRAHAM: Your Honor, the State would offer
21 that into evidence at this time.

22 MR. MADSEN: I have no idea what it is.

23 THE COURT: You are welcome to come look.

24 (Pause.)

25 MR. MADSEN: Judge, I renew my objection to

DAVID DAY -- DIRECT -- MR. GRAHAM

367

1 chain of custody and foundation.

2 THE COURT: What says the State?

3 MR. GRAHAM: Your Honor, he states it is
4 materially and substantially in the same condition as
5 when he collected it.

6 THE COURT: I am going to admit it.

7 (State's Exhibit Number 31 is received into
8 evidence.)

9 BY MR. GRAHAM:

10 Q Inside the bag which is marked as State's Exhibit
11 Number 31, what is that?

12 A It's a swab from a magazine.

13 Q And do you recognize the handwriting?

14 A Yes, it is my handwriting.

15 Q The black sharpie is your handwriting?

16 A Correct.

17 Q There is also red security tape around it. What is
18 the purpose of that?

19 A So whoever analyzes the swab knows it has not been
20 opened.

21 Q So what is a swab from magazine? What does that
22 mean?

23 A Basically I use sterile swabs, along with saline,
24 and moisten the tip, and just swab the entire
25 magazine.

1 Q Once you did that and created the swab, you put it
2 inside the box, sealed it with security tape, and
3 labeled it?

4 A Yes. I allowed the swab to dry first and then put
5 it into the special container. It has holes in it
6 to also allow for air for continued drying, and
7 then it was sealed.

8 Q Once you do that, you put it inside this bag?

9 A Yes.

10 Q And you sealed it?

11 A Correct.

12 Q Again, with the red security tape with your date
13 and name?

14 A Correct.

15 Q In addition to taking photographs of what you
16 collected, did you also take some general
17 photographs at Jager's itself?

18 A I did.

19 Q Let me show you these photographs and ask if you
20 recognize them?

21 A I do.

22 MR. GRAHAM: It is my understanding these
23 photographs are without objection.

24 MR. MADSEN: That is correct, Your Honor.

25 THE COURT: Without objection.

DAVID DAY -- DIRECT -- MR. GRAHAM

369

1 (State's Exhibits Number 32-36 are received
2 into evidence.)

3 BY MR. GRAHAM:

4 Q Looking at State's Exhibit Number 32, do you
5 recognize that?

6 A I do.

7 Q What does that show?

8 A As you enter into the bar, there is like a little
9 small room before you actually enter into the main
10 part of the bar. That's that little small room.

11 Q What is the orientation of this picture, as far as
12 the outside door to the inside of the bar?

13 A From the outside you are looking into that little
14 small room.

15 Q Looking at State's Number 2, which is a diagram of
16 the bar previously in evidence, can you show what
17 the orientation was of that photograph?

18 A It's this little room right here (indicating).
19 This (indicating) is the front concrete porch. You
20 come into the inside from right here (indicating).
21 That's that little room.

22 Q Looking at State's 32 closer, what, if anything, do
23 you see in the middle of the picture resting on the
24 concrete floor at the back of the foyer?

25 A I'm sorry?

1 Q Do you recognize what that object is there?

2 A Like some kind of newsstand, some kind of metal
3 stand.

4 Q State's Exhibit Number 33?

5 MR. GRAHAM: Your Honor, could I have the
6 lights lowered a little bit, please.

7 THE COURT: Please.

8 BY MR. GRAHAM:

9 Q Investigator Day, what does that picture show?

10 A The inside of the bar.

11 Q Specifically what are we looking at in that
12 photograph? Do you need me to hand it to you?

13 A Yes, I can't tell.

14 Q What does that picture show?

15 A It's of this area right here (indicating) showing
16 the pool tables. This little, like a wooden bar,
17 is for holding and sitting stuff on it. I see a
18 cigarette ashtray there.

19 Q Referring to State's 34, what does that photograph
20 show?

21 A It's a straight-on photograph here. You can see
22 this little bar area here (indicating). It has got
23 tables and chairs, and you are looking at, I guess,
24 the bar where you would go and order your drinks.

25 Q State's 35, what does that show?

DAVID DAY -- DIRECT -- MR. GRAHAM

371

1 A It's going to be an outside shot of the front of
2 the building, as I would say, the front of the
3 building in this area right here (indicating).

4 Q In addition to those photographs, Investigator Day,
5 let me show you some other photographs and ask if
6 you can recognize those?

7 A I do.

8 Q Are those photographs that you went back at my
9 request and took this summer to show some physical
10 characteristics of the bar?

11 A Yes.

12 MR. GRAHAM: Your Honor, it's my understanding
13 that these photographs are without objection as well.

14 MR. MADSEN: That's correct, Your Honor.

15 THE COURT: Thank you. Without objection.

16 (State's Exhibits Number 37-40 are received
17 into evidence.)

18 BY MR. GRAHAM:

19 Q State's 37, what does that show, Investigator Day?

20 A That is a shot looking into -- that is the door as
21 you are coming into the bar. You open that door
22 and you go in that little small room. Then you
23 turn left to go into another door which leads you
24 inside the bar.

25 Q State's 38, what does that depict. Do you need to

1 see it?

2 A Yes, if you don't mind. That is the door, once you
3 walk into this door (indicating) and go into that
4 little small room and turn left, that is the door
5 that would enter into the bar.

6 Q Looking up at the door and the door seal, what, if
7 anything, do you see up there? What does that
8 appear to be?

9 A It's like one of those magnetic sensors that when
10 it opens up, there is a break, and I guess would
11 make an alarm.

12 Q State's Number 39, what does that depict?

13 A If you are looking at the front -- I consider this
14 looking at the front of the building here -- it
15 would be the left side.

16 Q So State's 39, if you were looking in the front of
17 the building, was on the left side of the building?

18 A That is correct.

19 Q Look at State's 40, what does that depict?

20 A The same thing. It would be on the right side this
21 time.

22 Q Over on this side (indicating) of the outside?

23 A Correct.

24 Q Jumping back a second when you were doing the
25 G.S.R. collection from Mr. Brockmeyer, did you also

DAVID DAY -- DIRECT -- MR. GRAHAM

373

1 collect something else?

2 A I did.

3 Q What did you think that you saw?

4 A It looked like I saw a very small amount of blood
5 on his hand.

6 Q Let me show you an item and ask if you recognize
7 it?

8 A I do.

9 Q How would you have collected that piece of evidence
10 or this piece of evidence?

11 A The same way that I swabbed the magazine. I would
12 take a sterile swab, a sealed swab. Once you open
13 it up, I moistened it with sterile water and then
14 swabbed wearing gloves. I would have swabbed that
15 area.

16 Q Looking inside the contents of the bag, do you
17 recognize that as being the swab that you took?

18 A Yes, from the right palm.

19 Q From Mr. Brockmeyer's right palm?

20 A Correct.

21 Q Again, you would have dried it, put it in security
22 tape, sealed it, and written on it?

23 A Correct.

24 Q Put it inside this bag and sealed it with security
25 tape, dated it, and signed it?

1 A Correct.

2 MR. GRAHAM: Your Honor, the State would move
3 this into evidence at this time.

4 MR. MADSEN: No objection.

5 (State's Exhibit Number 41 is received into
6 evidence.)

7 BY MR. GRAHAM:

8 Q Did you have an opportunity -- that's all the
9 photographs and evidence that you collected the
10 morning of July 11, 2010; correct?

11 A Correct.

12 Q Did you have an opportunity to go back out there on
13 July 13th early in the morning?

14 A Yes.

15 Q What was your purpose for going back out there?

16 A We had searched pretty much all day long for the
17 actual pistol. We could not find it. There is
18 very dense woods all around, almost three sides of
19 the building. Then you have got that wooden fence
20 and a car lot with a lot of old cars, like a
21 junkyard in the back almost.

22 We called off the search probably late that
23 afternoon, and the intentions were to go back the
24 very next day, but we had almost like a monsoon
25 type rain. It rained all day and all night, it

DAVID DAY -- DIRECT -- MR. GRAHAM

375

1 seemed like.

2 So we got back together. Also, while we are
3 searching that first day, you could tell that they
4 had a bulldozer or something a long time ago that
5 had cleared, I guess, a spot where the bar is at
6 because there were several very tall, pushed-up
7 like piles of trees.

8 It had been there a long time because you had
9 saplings growing through the pile. We were
10 concerned that since we had -- I don't remember how
11 many officers that we had coming in shifts looking
12 for the gun.

13 Our next thought was to try to secure a
14 backhoe and bring a backhoe out there and start
15 pulling back the big piles of trees. That's the
16 only areas that we could not physically search by
17 hand.

18 Q Let me jump back for a second. I forgot something
19 and I apologize. When you found the pistol
20 magazine that we looked at earlier that is State's
21 Exhibit Number 30, when you found that magazine
22 shown in the photograph, what, if anything, was
23 inside the magazine?

24 A Live ammunition.

25 Q Do you remember how many rounds?

1 A Two..

2 Q Let me show you an item and ask if you recognize
3 it?

4 A I do.

5 Q Are those, in fact, the two live rounds that you
6 collected from the magazine?

7 A Yes.

8 MR. GRAHAM: Your Honor, the State would offer
9 these into evidence at this time.

10 MR. MADSEN: Subject to previous objections on
11 chain of custody or foundation.

12 THE COURT: I will admit it.

13 (State's Exhibit Number 42 is received into
14 evidence.)

15 BY MR. GRAHAM:

16 Q Looking at State's 42, it's a plastic bag and
17 inside the plastic bag is a paper bag and some
18 other contents. Would you describe to the jury
19 what they are looking at on the screen?

20 A You've got the two live, unfired ammunition, the
21 little canister. Like I said, it was like a film
22 canister and then the paper bag.

23 Q Do you remember what brand and caliber?

24 A It was Aguila .380.

25 Q And a .380 what does that mean? What does .380

DAVID DAY -- DIRECT -- MR. GRAHAM

377

1 mean?

2 A That's just the caliber of the ammunition.

3 Q Looking at the -- there are different types of
4 rounds; is that correct?

5 A That is correct.

6 Q What are some type of rounds that would be
7 available for a .380 handgun, not a brand but the
8 type?

9 A As in like a 9-millimeter?

10 Q I'm sorry, Investigator Day. Take a look at the
11 two live rounds that are in there. What, if
12 anything, do you notice about how you would
13 describe the rounds, besides the brand and the
14 caliber?

15 A I'm sorry. I don't understand.

16 Q Have you ever heard the term hollow point?

17 A Yes.

18 Q Where is a hollow point?

19 A I could not explain what hollow point is.

20 Q Do you recognize those as being hollow points?

21 A Yes.

22 Q Looking again at the overhead on State's 42, we
23 have the two live rounds. There is also a film
24 canister with different colored writing. There's
25 blue and there's black. Which handwriting is

1 yours?

2 A The black.

3 Q In addition, there is a brown paper bag and there
4 is black handwriting on there. Whose is that?

5 A Mine.

6 Q On the other side there is evidence tape again. Do
7 you recognize that?

8 A That is my signature.

9 Q Your date and signature in the black?

10 A Correct.

11 Q So when you collected this and sealed it before it
12 left your possession, you secured it again like all
13 the other items with security tamperproof tape?

14 A Correct.

15 Q Jumping ahead to after the monsoon storm back on
16 the 13th, you were talking about getting a track
17 hoe; is that correct?

18 A A backhoe.

19 Q A backhoe. I believe that you have looked at these
20 photographs already. Let me show them to you again
21 and make sure.

22 A (Pause.)

23 Q On the morning of the 13th when you got a backhoe,
24 what, if anything, did you find on the other side
25 of the privacy fence over in the salvage yard?

DAVID DAY -- DIRECT -- MR. GRAHAM

379

1 A A pistol.

2 Q Do these photographs depict your finding of the
3 pistol?

4 A Yes.

5 Q Do they fairly and accurately depict what you found
6 and how you found it?

7 A Yes.

8 MR. GRAHAM: Your Honor, the State would offer
9 all these photographs into evidence at this time.

10 MR. MADSEN: No objection.

11 (State's Exhibits Number 43-47 are received
12 into evidence.)

13 BY MR. GRAHAM:

14 Q Backing up to State's 36, what is the jury looking
15 at?

16 A It's going to be the right side of the building
17 looking towards the wooden privacy fence.

18 Q Looking in the background of 36, what, if anything,
19 can you see and identify on the other side of the
20 privacy fence?

21 A It's going to be the top of the backhoe.

22 Q State's 43?

23 A It's just a closer view showing the backhoe. The
24 weapon was found right about in here (indicating).

25 Q Looking at State's 44, what does that show?

- 1 A The location of where the weapon was at. You can
2 see here (indicating). This is just some of the
3 tree debris that had to be pushed back from where
4 the weapon was at.
- 5 Q State's 45?
- 6 A That is the pistol that was located.
- 7 Q In general terms can you explain the difference
8 between a revolver and semiautomatic?
- 9 A A revolver, of course, as I said, it has a
10 revolving chamber. It can hold up to five, six
11 rounds. As you fire it rotates and does not eject
12 out.
- 13 A semiautomatic feeds from the magazine. As
14 it fires, the slide comes back and the spent
15 cartridge casing is ejected out the side, and it
16 feeds a new one in.
- 17 Q The live round comes from where? The next live
18 round would come from where?
- 19 A The magazine.
- 20 Q The top part up here (indicating) on the gun where
21 my finger is right now, what is that?
- 22 A That is the barrel.
- 23 Q What is this top part called?
- 24 A The slide.
- 25 Q Looking on the other side, State's 46, what does

DAVID DAY -- DIRECT -- MR. GRAHAM

381

1 that show us?

2 A That shows the side of the ejection port. It's the
3 ejection port side right here (indicating) where
4 the spent cartridge casing will be expelled out
5 after fired.

6 Q Now, is this the condition that you found the gun
7 in?

8 A That is exactly how it was found.

9 Q Did you modify it or change it in any way?

10 A I did not.

11 Q Both the slide and the cartridge were in that
12 condition?

13 A That's correct.

14 Q State's 47, what does that show?

15 A That is after I had rendered it safe, and this was
16 the live ammunition that I saw that was shown when
17 the slide was pulled back.

18 Q Let me show you two items, Investigator Day, and
19 ask if you recognize them?

20 A I do.

21 Q Are they materially and accurately in the same
22 condition as when you collected them?

23 A Yes.

24 Q Are they, in fact, the items that are depicted in
25 the photograph on State's 47?

1 A Yes.

2 MR. GRAHAM: Your Honor, the State would move
3 the handgun and the cartridge case into evidence at this
4 time.

5 MR. MADSEN: Judge, I would object to
6 foundation and chain of custody.

7 THE COURT: No, sir, I would overrule that
8 objection. I think it's appropriate.

9 (State's Exhibit Number 48-49 are received
10 into evidence.)

11 BY MR. GRAHAM:

12 Q Investigator Day, looking at State's 48 up on the
13 overhead, what are we looking at -- excuse me --
14 State's 49. What are we looking at?

15 A The live ammunition, the film case, and the brown
16 bag.

17 Q And do you remember the brand type of that
18 ammunition?

19 A Yes, sir.

20 Q What is it?

21 A The Aguila .380.

22 Q The brand? I'm sorry.

23 A The Aguila .380.

24 Q And that's the same as the other ones that you
25 found inside the magazine?

DAVID DAY -- DIRECT -- MR. GRAHAM

383

- 1 A That is correct.
- 2 Q The black handwriting on the plastic case, that
3 again is yours?
- 4 A That is.
- 5 Q And, again, the black writing on the bag itself,
6 the paper bag, is yours as well?
- 7 A Correct.
- 8 Q With the security tape we have discussed
9 previously?
- 10 A Yes, sir.
- 11 Q So you would have taken the bullet, put it inside
12 the cartridge, the camera case, put it inside the
13 paper bag, sealed it, dated it, and signed it with
14 the security tape?
- 15 A Correct.
- 16 Q State's 48 is the gun; is that correct?
- 17 A That is correct.
- 18 Q And you have inspected it and it is unloaded and
19 secured with a lock?
- 20 A Correct.
- 21 Q What can you tell me about this gun?
- 22 A Just basically it is a .380 semiauto, and it is
23 a -- I believe the pronunciation is Ceska,
24 C-E-S-K-A.
- 25 Q When you found this gun, did it have a magazine

1 with it?

2 A No, it did not.

3 Q But it did have one live round?

4 A That is correct.

5 Q Let me show you a diagram -- I will show it to
6 defense counsel first -- and ask if you recognize
7 this and, in fact, if you created it?

8 A Yes, I did.

9 Q Does it fairly and accurately depict the layout of
10 the bar in the previous diagram, as well as the
11 approximate location for orientation of the
12 footprints that we recorded in photography, as well
13 as the rough location of both the magazine and the
14 gun itself?

15 A Yes.

16 MR. GRAHAM: Your Honor, the State would move
17 this into evidence. I believe it's without objection.

18 MR. MADSEN: Without objection.

19 (State's Exhibit Number 50 is received into
20 evidence.)

21 BY MR. GRAHAM:

22 Q For orientation purposes, Investigator Day, looking
23 at State's Exhibit Number 50, would you describe
24 roughly the orientation of the bar, how we are
25 looking at it?

DAVID DAY -- DIRECT -- MR. GRAHAM

385

1 A Again, this is, as I call it, the front part of the
2 bar. This is where you walk in that little room
3 and come inside. This is the right-hand side, and
4 this (indicating) is the privacy fence right here
5 (indicating).

6 Q There appears to be on the bar side of the privacy
7 fence what appears to be footprints on your
8 diagram. What were those meant to depict?

9 A The footwear that I had labeled with the letters
10 and had photographed.

11 Q Those were the ones we looked at in previous
12 photographs?

13 A That is correct.

14 Q There's also two words on the other side of the
15 fence, "magazine and pistol." What is the purpose
16 of those?

17 A Just the approximate area that both were found.
18 The magazine was found here (indicating), and the
19 pistol was found here (indicating).

20 Q Once you collected all this evidence, photographed
21 it, and had gone through this, and we put it in
22 bags and sealed it, each of the items that we have
23 identified, they have been sealed with security
24 tape. I guess we didn't do that on the box itself.
25 State's Number 48 is the firearm, the Ceska .380

1 firearm. When you collected it, what did you do to
2 process it? Did you do anything yourself?

3 A No. You could look at the weapon. The weapon was
4 still wet and already had started rusting. I did
5 not attempt to look at any fingerprints off the
6 gun.

7 Q Why was that?

8 A Because anything would have been washed away.

9 Q Once you collected it, I see it's inside a white
10 box?

11 A Yes.

12 Q Where did that box come from?

13 A We carry these in our vehicles.

14 Q What's the purpose of them?

15 A For carrying pistols.

16 Q Once you put the pistol in here, what do you do to
17 protect the integrity of the item that you
18 collected?

19 A Seal it with the evidence tape.

20 Q So the red evidence tape that surrounds here, you
21 put the gun in the box, closed the box, wrapped it
22 in the red tape. Again, the black writing on the
23 red tape, who does that belong to?

24 A Me.

25 Q So all these items we have talked about -- the

DAVID DAY -- DIRECT -- MR. GRAHAM

387

1 short-sleeve shirt that you showed the jury, the
2 pellet pistol, the folding knife, the auto casing
3 that you collected on the front concrete porch, the
4 spent projectile or the spent casing, the magazine
5 that you found on the far side of the fence, the
6 two bullets that were in the magazine, the swab
7 from Mr. Brockmeyer's palm, the G.S.R. kit from
8 Mr. Brockmeyer, the G.S.R. kit from Mr. Rae, the
9 swab from the black pistol magazine -- what did you
10 do with all those items?

11 A They were all packaged and they were submitted into
12 evidence into the property room.

13 Q Let me show you a document and ask if you recognize
14 the document, just the first page right now?

15 A I do.

16 Q And what does that document show?

17 A It is a copy of my evidence report.

18 Q And did that include the items that we just
19 discussed?

20 A Yes.

21 Q What did you do with all those items?

22 A I turned it into the property room.

23 Q Did you turn it into the room or did you actually
24 give it to somebody?

25 A It was handed over to the custodian.

1 Q Do you remember who or can you tell from the
2 paperwork who you handed them to?

3 A Margaret Harmon.

4 Q Is that Ms. Harmon sitting over there who has been
5 handing you the evidence during this testimony?

6 A It is.

7 Q Do you remember the date and time that you
8 relinquished custody of all these items?

9 A July 12, 2010, at 14:33 or 2:33 in the afternoon.

10 Q When you turned all those items over to Ms. Harmon,
11 they were all properly sealed in containers with
12 security tape, initiated, dated, and signed?

13 A That is correct.

14 Q Looking at the next form, do you recognize that?

15 A I do.

16 Q And does that form refer to the handgun itself, as
17 well as the live round that was found in the
18 handgun?

19 A Yes.

20 Q What does that form tell you as far as what you did
21 with that property?

22 A That it was also handed over to Margaret Harmon on
23 July 13, 2010, at 14:30 hours or 2:30 in the
24 afternoon.

25 Q Again, the handgun and the round that was found

DAVID DAY -- DIRECT -- MR. GRAHAM

389

1 inside, they were secured in containers, wrapped
2 with tape, signed, and dated?

3 A Correct.

4 Q Please answer any questions defense counsel has,
5 Investigator Day. Thank you.

6 THE COURT: Does that conclude your direct
7 examination?

8 MR. GRAHAM: Your Honor, it does. He is
9 subject to being recalled on other matters though.

10 THE COURT: All right. It's a good time to
11 take the afternoon break. I will let you go to the jury
12 room for about 15 minutes. I will be calling you back.

13 You may have your examination as soon as we
14 return.

15 (The jury retires to the jury room.)

16 THE COURT: Before we recess a moment, let me
17 elaborate on the motions made by Mr. Madsen. I didn't
18 want to make too many remarks in the presence of the
19 jury. Let the record reflect that the jury is not
20 present.

21 I have overruled the defense objections to the
22 chain of custody based on the State providing sufficient
23 evidence to demonstrate a reasonable assurance that the
24 items were the same as when collected. I do that based
25 on State versus Hatchell.

1 Mr. Madsen, in these various matters that you
2 objected to, he testified that he himself collected it
3 and testified that they were in the same condition when
4 he put them in the sealed containers. So I have some
5 concerns about what is the basis for your objection.

6 MR. MADSEN: Judge, he has absolutely no idea
7 what has happened with any of these items. Our position
8 would be that they are fungible items. In other words,
9 there is not a big difference --

10 THE COURT: My ruling is only as to this
11 stage, you understand. We will deal with it as we go
12 along as to what, if anything, occurred.

13 MR. MADSEN: Yes, sir. Quite honestly, I
14 think at this point if they are in, that maybe chain of
15 custody arguments in the future are inapplicable.
16 That's why I objected to them at this point in time. I
17 think they would have to have gone through the chain of
18 custody before they ultimately introduced those.

19 THE COURT: I respectfully disagree. I will
20 not tell the solicitor how to try his case. Obviously,
21 he has got to finish his chain of custody. The only
22 thing I am telling you at this time it was appropriate
23 that these items be introduced based on his testimony.

24 He said he found them. He did it with the
25 same thing. Now, I assume they will offer testimony as

1 to what occurred in the interim. We will see. Let's
2 take a 15-minute break. That remark is made outside the
3 presence of the jury.

4 (Whereupon there is a recess.)

5 THE COURT: During the recess I received the
6 following communication that I shared with all counsel
7 from juror 24, who says that she worked for Ms. Harmon
8 some ten years ago. Ms. Harmon, as I understand, what
9 is her position, the custodian of the evidence?

10 MR. MADSEN: She is.

11 THE COURT: And she said she hasn't had any
12 contact with her. This would in no way affect her
13 judgment. I conclude that is proper to keep her on the
14 jury.

15 Several jurors in that conversation with all
16 counsel talked to the bailiff and asked them to clarify
17 the definition of chain of custody. That juror assured
18 us, other than asking for a definition, there was no
19 conversation of any kind involving any issue in this
20 case.

21 Can counsel agree that that occurred? What
22 say the State?

23 MR. HUBBARD: Yes, Your Honor.

24 THE COURT: What say the defense?

25 MR. MADSEN: Yes, sir. I believe she said

1 that quite a few of the jurors were talking about what
2 is chain of custody and what is foundation.

3 THE COURT: But nothing else?

4 MR. MADSEN: That is what she said, Your
5 Honor.

6 THE COURT: I conclude they have complied with
7 my rules and admonitions not to discuss the case.
8 Frankly, I think that's a proper question for the jury
9 for clarification.

10 MR. MADSEN: Obviously, Judge, I think we
11 would have to object and move for a mistrial. Your
12 Honor at the beginning told them not to discuss the
13 case. Obviously if they are talking among themselves
14 about what the definition of certain things are, there
15 is an objection --

16 THE COURT: They said certain things. Don't
17 enlarge on it. She specifically --

18 MR. MADSEN: Just the foundation and chain of
19 custody they had spoken about, just those. We do
20 believe that that is improper and would more for a
21 mistrial.

22 THE COURT: I want the record to reflect that
23 I specifically asked her: Did you and your jury at any
24 time discuss any issue in this case, remembering my
25 admonitions? And she said no. Can you agree with that?

1 MR. MADSEN: Yes, sir. Except for the
2 foundation and chain of custody, we would agree.

3 THE COURT: I didn't hear about foundation
4 they just wanted the definition of chain of custody.

5 MR. MADSEN: It was on the note.

6 THE COURT: I see that. I do not conclude
7 that is detrimental to the defendant. It may be
8 helpful. Do you want to be heard?

9 MR. HUBBARD: Just one question, Your Honor.
10 If the defense would like for Your Honor to ask the jury
11 as a whole if they have discussed this case at any
12 time --

13 THE COURT: No, I am comfortable with her.
14 She was a good juror. She sent us a note. She said --
15 my specific question, she said they had not discussed
16 any issue. I am comfortable with her remark. I don't
17 want to make the entire jury uneasy.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: I think it's an appropriate
20 inquiry from the jury quite frankly.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: I hope during the course of this
23 trial, somebody is going to explain it to the jury.

24 MR. HUBBARD: Yes, sir, that will be
25 forthcoming.

1 THE COURT: Their question and colloquy is
2 specifically made a part of the record.

3 (Court's Exhibit Number 3 is marked for
4 purposes of the record.)

5 THE COURT: Bring the jury in. Thank you,
6 gentlemen. Mr. Madsen, you are on the record.

7 MR. MADSEN: Thank you, Your Honor.

8 THE COURT: Of course, I have overruled your
9 motion for a mistrial.

10 MR. MADSEN: Yes, Your Honor.

11 (The jury returns to the courtroom.)

12 THE COURT: You may have your examination.

13 MR. MADSEN: Thank you, Your Honor.

14 **CROSS EXAMINATION**

15 BY MR. MADSEN:

16 Q Would you be Officer Day, Detective Day, Deputy
17 Day? How would you like me to refer to you?

18 A It doesn't matter.

19 Q Deputy Day, you received a call at 3:14 a.m.;
20 correct?

21 A Approximately.

22 Q And then, I guess, you are on call; so you are just
23 at your home?

24 A Correct.

25 Q And is it kind of like the detectives where y'all

DAVID DAY -- CROSS -- MR. MADSEN

395

1 do that rotation?

2 A Yes.

3 Q And you ultimately get out to the scene at
4 approximately 4:00 a.m.?

5 A Approximately.

6 Q You end up conferring with Detective Grant?

7 A (Witness nods.) (Indicating affirmative response.)

8 Q And I think you said you initially do a
9 walk-through?

10 A Correct.

11 Q When you get out there, is the yellow scene tape
12 already up?

13 A Yes, it was.

14 Q And as far as the scene tape, is it just around the
15 exterior of the bar?

16 A I believe it was.

17 Q So when you come in, do you have like a special van
18 or truck or something like that that you drive in?

19 A I drive a truck that has compartments on the back.

20 Q So when you come in, are you coming in off of 6, I
21 guess?

22 A Yes.

23 Q And you pull into the parking lot?

24 A Correct.

25 Q Are there quite a few people there?

1 A Yes.

2 Q And are there quite a few cars in that parking lot?

3 A Yes.

4 Q Are there people congregating around those cars in
5 the parking lot?

6 A No, sir. There were also a bunch of officers on
7 scene, and they were pretty much contained, I
8 guess, in small groups. There was a lot of people
9 there, but there were like small groups of people.

10 Q At different areas?

11 A Yes.

12 Q And once you get out there, you photographed the
13 scene?

14 A Correct.

15 Q You do a walk-through?

16 A Correct.

17 Q Did you do a diagram at that point in time?

18 A The diagram came later.

19 Q And, in fact, I think some of the diagrams that you
20 have done, you did August of this year?

21 A Yes.

22 Q So a little bit over a year later?

23 A At the request of the Solicitor's Office, yes.

24 That was not my initial diagram.

25 Q Normally when you go to a crime scene, do you not

- 1 make a diagram or take measurements?
- 2 A Not all the time, no.
- 3 Q And you didn't do it on this time?
- 4 A I did take some measurements, yes.
- 5 Q How about a video?
- 6 A No video.
- 7 Q That is something you can do?
- 8 A Correct.
- 9 Q But you did not do it on this time?
- 10 A No.
- 11 Q At some point in time with Detective Grant being
- 12 the in-charge detective, do you take him and walk
- 13 him through the scene?
- 14 A Yes.
- 15 Q And what y'all end up doing is keeping a scene log;
- 16 do you not?
- 17 A I do not keep the scene log, no. There was a scene
- 18 log that was already started, I believe, when I got
- 19 there. I don't remember.
- 20 Q And what a scene log is is it is basically a sheet
- 21 of paper that someone is in charge of?
- 22 A Correct.
- 23 Q And anyone who comes into the scene, they have to
- 24 put their name down on that as to when they get in
- 25 and when they get out?

1 A Correct.

2 Q And, in fact, you even have to sign in on that?

3 A Correct.

4 Q Would it surprise you to know that Detective
5 Grant's name is not on that scene log?

6 A No, it would not surprise me.

7 Q If someone is keeping a scene log to control who is
8 coming in and who is coming out, if someone's name
9 does not show up on there, how can you tell who is
10 coming in or who is coming out?

11 A Because the barrier tape on this one was so close
12 to where the body was at, our conversation was
13 there at the barrier tape. So he technically did
14 not go -- the barrier tape, I guess, is that
15 imaginary line that you cross when you sign saying
16 you are coming in. We basically had our
17 conversations there. It was close to where you
18 could see the victim.

19 Q So despite you telling me that you walked him
20 through the scene, you did not do that?

21 A Physically? No. Verbally I told him. You could
22 pretty much look around, and I could point to him
23 and tell him. But, no, I did not physically walk
24 him through that scene. No, I did not.

25 Q When you get up to where Nick is at, he is lying on

DAVID DAY -- CROSS -- MR. MADSEN

399

1 the ground; correct?

2 A Correct.

3 Q You can tell that there had been some C.P.R. or
4 some type of life-saving measures on him?

5 A I do not recall.

6 Q How about anything that you could tell to see that
7 E.M.S. had been there?

8 A Not that I can remember.

9 Q There is obviously some blood on the scene?

10 A Yes.

11 Q In fact, I think that there's some blood on his
12 hands?

13 A I don't remember -- yes, there is. I do. Yes,
14 there is.

15 Q And you see the gunshot wound to his neck?

16 A Correct.

17 Q You find a knife in his pocket that you photograph?

18 A Correct.

19 Q You find that gun in the back of his pants?

20 A Correct.

21 Q As far as the blood, I believe there is blood on
22 his left and right hand; is there not?

23 A Not without looking. I know that is a question
24 that is asked during the gunshot residue. It just
25 says, "Is there blood on the subject's hands?" I

1 put yes. I don't remember if it was on both
2 without looking at the photographs.

3 Q And let me show you State's Exhibit Number 15. Is
4 that a photograph you took?

5 A Yes, sir.

6 Q And that is the white T-shirt that is in evidence?

7 A Correct.

8 Q No idea how that white shirt got on the back of
9 that car?

10 A No, I do not.

11 Q It's all crumpled up; isn't it?

12 A Correct.

13 Q When you took that T-shirt and you place it in the
14 bag, do you fold it up or how do you put it in the
15 bag or do you kind of throw it in there?

16 A I just pretty much like it is put it in the bag.

17 Q So you pick it up and put it in there, and it's in
18 kind of a crumpled state?

19 A Yes. But on this occasion I did open it up to look
20 at it.

21 Q And then when you put it back in, you kind of
22 just --

23 A I don't fold it like you would fold laundry, but
24 yes, it was folded.

25 Q And ultimately the pistol that you find in the back

DAVID DAY -- CROSS -- MR. MADSEN

401

- 1 of Nick, do you ever fingerprint that --
- 2 A Yes.
- 3 Q -- or run any D.N.A. swabs?
- 4 A I did fingerprint it. There was nothing on it.
- 5 Q Did you do a black powder fingerprint on that?
- 6 A It was like a silver powder. The gun being black,
- 7 I used like a light silver.
- 8 Q You have the ability to also do -- I will never be
- 9 able to pronounce this -- but I will call it the
- 10 superglue method?
- 11 A Yes.
- 12 Q You can do that?
- 13 A Cyanoacrylate, yes.
- 14 Q As far as some of the things that you collected,
- 15 such as a cartridge casing, you would agree with me
- 16 that generally one kind of .380, a spent cartridge
- 17 shell, as compared to another one, there is not a
- 18 lot of difference from them; correct?
- 19 A Say again.
- 20 Q One spent casing doesn't look a lot different from
- 21 another spent casing?
- 22 A Correct.
- 23 Q Some of these types of bullets or guns, they
- 24 produce hundreds of them; don't they? Thousands of
- 25 them?

1 A I'm not an expert at ammunition; so I'm not sure
2 how many there would be.

3 Q Ultimately though you take something, and the
4 reason that you put these tapes in that kind of
5 stuff is you were starting what is called a chain
6 of custody; aren't you?

7 A Yes. I put the tape there to let the next person
8 know that it has not been opened and it was sealed
9 by me.

10 Q And the next person would do the same thing, and it
11 would kind of go all the way down the line. That
12 is what is called a chain of custody; isn't it?

13 A Correct.

14 Q And a lot of times that's kind of the foundation to
15 put evidence into court is the chain of custody to
16 make sure it's that same item; correct?

17 A Again, my understanding from the tape is so you
18 know that it has not been tampered with.

19 Q On State's Exhibit 24, that's a photograph that you
20 have taken?

21 A Correct.

22 Q And that showed some shoe prints?

23 A Correct.

24 Q And you photographed those shoe prints?

25 A I did.

1 Q It does not appear in State's 24 that those shoe
2 prints go all the way back to the fence line; do
3 they?

4 A It does not.

5 Q And then you created on August 19th of 2011,
6 State's Exhibit 50, which is a not-to-scale sketch
7 of Jager's bar and then that wood fence line;
8 correct?

9 A That is correct.

10 Q But on this the shoe prints kind of look like they
11 do go all the way up to the fence line?

12 A Again, it is not to scale. It is just for an
13 overview look.

14 Q How about did you photograph any other shoe prints
15 anywhere else around the bar?

16 A I did not.

17 Q Nowhere around the front side?

18 A No.

19 Q Nowhere on the side?

20 A The front side had gravel and was really hard dirt;
21 so there wasn't a lot of footprints.

22 Q You wouldn't be able to get them there?

23 A Correct.

24 Q How about the back?

25 A The ones in the photograph are the only ones I took

1 pictures of.

2 Q You end up swabbing Nick's hands for gunshot
3 residue; is that correct?

4 A That is correct.

5 Q And gunshot residue can be wiped off?

6 A Correct.

7 Q It can be rubbed off?

8 A Correct.

9 Q If people are administering C.P.R. or some type of
10 things and moving people around, that can transfer
11 it off?

12 A That would be more directed to the analyst. I'm
13 not sure.

14 Q Blood could remove it?

15 A I'm not sure.

16 Q You ultimately see a little red spot on Will's
17 hands; don't you?

18 A Yes, sir.

19 Q You think it might be blood?

20 A Yes, sir.

21 Q So you swabbed it?

22 A I did.

23 Q He let you swab it or even asked you to swab it;
24 doesn't he?

25 A He did, yes, sir.

DAVID DAY -- CROSS -- MR. MADSEN

405

1 Q And that comes back and it ends up not being blood?

2 A From my understanding. I have not seen the report.
3 I was told it was negative.

4 Q Negative meaning that it wasn't blood?

5 A Correct.

6 Q The solicitor had asked you about finding the
7 magazine. You don't find the magazine; do you?
8 Someone else does?

9 A That is correct.

10 Q I think it was Detective Lint?

11 A Yes.

12 Q You just end up photographing it? You don't find
13 it yourself?

14 A I'm sorry. He was a sergeant. He was a patrol
15 sergeant at the time.

16 Q He has been a detective in the past?

17 A Correct, yes.

18 Q He is a road sergeant now?

19 A No, now he is again a detective sergeant.

20 Q So he was a detective and then a sergeant. Now,
21 he's a detective sergeant?

22 A Yes, sir.

23 Q But he is the one who ends up finding the magazine?

24 A Correct.

25 Q The same thing with the gun. You don't find the

1 gun? Someone else finds that?

2 A No, sir. I was there right next to the person. As
3 the backhoe was moving the debris back, I heard
4 someone say, "There it is." As I looked I also saw
5 the weapon.

6 Q And ultimately you end up collecting the weapon;
7 don't you?

8 A Correct.

9 Q And you collect the magazine?

10 A Correct.

11 Q And you had talked about worrying with the magazine
12 as far as you had tried to take a look at -- take a
13 look at it to see if you could see any fingerprint
14 on it?

15 A Correct.

16 Q You don't do that with the gun; do you?

17 A No, sir.

18 Q Because it has been out in the rain?

19 A Yes. It was still saturated with the water and
20 rust.

21 Q And ultimately on the magazine, you talked about
22 was it black powder that you had thought about
23 doing with it and decided not to?

24 A Correct.

25 Q And ultimately what that technique is is on a

1 window or something if there is a fingerprint that
2 is pressed down on it, you can take some type of
3 black powder? What is the stuff made of you? Do
4 you know?

5 A I do not know.

6 Q You basically -- I guess there is kind of an art to
7 it. You put a brush into that little powder, and
8 you kind of dust on that; don't you?

9 A Correct.

10 Q Something about the oils or the amino acids in our
11 fingerprints helps kind of raise that fingerprint;
12 doesn't it?

13 A Yes.

14 Q Then you can take a piece of tape. You can put it
15 over that fingerprint, and you can pull it off;
16 can't you?

17 A Correct.

18 Q That's not the only way though that you can try to
19 get fingerprints; is it?

20 A No.

21 Q You can do what we call the cryo--- help me with
22 the word.

23 A Cyanoacrylate.

24 Q Which is basically the superglue fuming method;
25 correct?

1 A Yes.

2 Q And in that method what you end up doing is you
3 have a closed container; don't you?

4 A Yes.

5 Q You take some superglue and you put it on some type
6 of heat source?

7 A Correct.

8 Q Ultimately that heat source causes the superglue to
9 kind of evaporate?

10 A Yes.

11 Q And for some reason that superglue, if it's within
12 that container, can go in there and that will
13 adhere to fingerprints; will it not?

14 A Yes.

15 Q And ultimately when it adheres to those
16 fingerprints, then you can pull them off?

17 A Yes.

18 Q And we can all see that I have touched right there;
19 correct?

20 A I cannot see it from here.

21 Q But I just touched right there. The superglue
22 method generally you can't use that with something
23 really large; can you? Unless you have some kind
24 of really big tank?

25 A Correct.

DAVID DAY -- CROSS -- MR. MADSEN

409

1 Q A lot of times it's smaller items that are used in
2 the superglue tank?

3 A We have a medium-sized one.

4 Q How big is your medium-sized one?

5 A You could do a full shotgun.

6 Q You can't do a car?

7 A No.

8 Q You could certainly have done that with a gun?

9 A Correct.

10 Q You could certainly have done that with the
11 cartridge -- my mind is escaping me -- not the
12 cartridge casing. It goes in the grip of the
13 pistol.

14 A The magazine.

15 Q The magazine. You could have certainly done that?

16 A Yes.

17 Q Not all fingerprints you can see with an eye. They
18 can sometimes be tricky; can't they?

19 A Yes.

20 Q There is kind of an art to collecting those?

21 A Correct.

22 Q That's why if you go to a burglary, you have got to
23 use generally that black powder, and there is an
24 art to figure out, hey, where might someone have
25 touched; correct?

1 A You can use black powder, but also like I said, you
2 can use lighting techniques also.

3 Q But on a smaller item, once you put it in that
4 little thing and light the superglue and those
5 fumes come up, it kind of goes itself to where
6 those fingerprints are; doesn't it?

7 A Yes.

8 Q We didn't do that on either the magazine or the gun
9 in this case; did we?

10 A There was no need to.

11 Q No idea what is going to be on there because you
12 make the decision instead to just swab it for
13 D.N.A.?

14 A No, sir. I told you that I used low lighting
15 techniques. The cyanoacrylate is just a tool that
16 basically -- the superglue adheres to the
17 fingerprints. It basically allows you to do
18 multiple lifts.

19 If you use black powder or powder and powder
20 print and you lift it and you make a mistake, it's
21 usually a one-shot deal. The superglue does not
22 make it any better than the powder.

23 A latent print is just that. It is a print
24 that's hard to see with the eye. The powder is to
25 help bring it out. You can do the same technique

DAVID DAY -- CROSS -- MR. MADSEN

411

1 with low lighting to see if there are prints there.
2 If you see stuff there, then you would go use the
3 powder so you can actually be able to lift the
4 prints off.

5 Q You don't even attempt to do anything with the gun
6 though; do you? Just because it has been wet?

7 A Absolutely.

8 Q Do you attempt to fingerprint the casing that you
9 find?

10 A I used the same techniques, the low lighting, and
11 there was nothing on the casing and the cartridges.

12 Q With the cartridge or the magazine, do you generate
13 any kind of report that you have done these tests
14 on it?

15 A If I would have found something, I would have
16 generated a report.

17 Q So since you didn't find anything, you don't
18 generate any type of report?

19 A I did not, no.

20 Q What other types of tests did you do that you
21 didn't find anything that you didn't generate any
22 type of report?

23 A That was it.

24 Q Do you swab the casing for D.N.A.?

25 A No, I did not.

- 1 Q Now, ultimately with these footprints, you end up
2 just taking a photograph of those; correct?
- 3 A Correct.
- 4 Q There are ways that you can actually take kind of
5 like a plaster cast of those?
- 6 A Correct.
- 7 Q Basically you get out there with those, and it's
8 almost like hair spray that you kind of spray on
9 it --
- 10 A No.
- 11 Q What is it that you spray on it that kind of
12 hardens the ground?
- 13 A Nothing that I know of. You are speak of casting?
- 14 Q Yes, sir.
- 15 A No, there is nothing to spray.
- 16 Q So you just pour basically some type of molding
17 material on that?
- 18 A It's a dental stone, yes.
- 19 Q It eventually hardens?
- 20 A Correct.
- 21 Q And it gives you a better look of what that cast
22 is?
- 23 A I will not say it gives you a better look, no.
- 24 Q It gives you one that can be transported away from
25 there and looked at later?

- 1 A Right. It gives you a 3-D., three dimensional.
- 2 Q And you didn't do that in this case; did you?
- 3 A At the time we did not have any.
- 4 Q You did not have any what?
- 5 A Any casting material.
- 6 Q They keep you pretty well stocked up on your crime
- 7 scene supplies; right?
- 8 A We have a budget just like everybody else.
- 9 Q Don't run out of black powder?
- 10 A No, sir.
- 11 Q Don't run out of superglue?
- 12 A We usually don't use casting material a lot
- 13 because, of course, it is expensive. But everybody
- 14 uses the black powder, even the road deputies. So
- 15 that is usually stocked more so than the dental
- 16 stone.
- 17 Q Ultimately you collect a lot of these different
- 18 things that have been put into evidence, and you
- 19 collect a majority of them, except for the pistol
- 20 you collect on the 11th; isn't that right?
- 21 A Say again.
- 22 Q The magazine, the cartridge casing, you end up
- 23 collecting those when you are out there on
- 24 July 11th?
- 25 A Correct.

1 Q And do you take those and deliver those right to
2 the Sheriff's Office to their secured evidence
3 locker?

4 A No. We have a secure facility. We have a lab that
5 is secure.

6 Q And, in fact, you take that stuff back with you to
7 your lab. Then eventually it takes you a day to
8 deliver it to the evidence locker; correct?

9 A Yes.

10 Q The same thing with the gun?

11 A No. The gun was found on the 13th and also
12 submitted on the 13th.

13 Q That ended up being submitted the same day, but it
14 was the magazine and the casing that was submitted
15 a day later?

16 A Yes.

17 Q You had that for a day within your office?

18 A Not in my office, no. It was in a secure lab.

19 Q And how many people have access to that lab?

20 A Me and I believe the crime scene unit does.

21 Q How many people is that?

22 A There is a total of six of us.

23 MR. MADSEN: That's all the questions I have,
24 Your Honor.

25 THE COURT: Is there any redirect on behalf of

TROY CRUMP -- DIRECT -- MR. GRAHAM

415

1 the State?

2 MR. GRAHAM: No, Your Honor. The State would
3 ask that he be available for recall on other matters.

4 THE COURT: You may leave subject to recall.
5 (Witness leaves the witness stand.)

6 THE COURT: Call your next witness.

7 MR. GRAHAM: The State calls Troy Crump.

8 THE COURT: Mr. Foreman, ladies and gentlemen,
9 this will be our last witness for the day.

10 TROY CRUMP, being
11 first duly sworn, testifies as follows:

12 CLERK: State your full name, spelling your
13 last, please.

14 THE WITNESS: Troy Crump, C-R-U-M-P.

15 **DIRECT EXAMINATION**

16 BY MR. GRAHAM:

17 Q Investigator Crump, where are you employed, sir?

18 A Lexington County Sheriff's Department.

19 Q And how long have you been with Sheriff Metts?

20 A Thirteen years.

21 Q And you are a crime scene investigator as well; is
22 that correct?

23 A Correct.

24 Q And how long have you been in crime scene?

25 A A little over six years.

1 Q Do you all have a secure laboratory at the
2 Sheriff's Department?

3 A We do.

4 Q Are you familiar with this case?

5 A Yes.

6 Q There were several items -- let me ask you a
7 question. In between you all collecting items and
8 taking them to the sheriff's custodians and turning
9 it over to them, do you sometimes store items in
10 the laboratory?

11 A Yes.

12 Q And how are those items stored?

13 A They are placed in the lab. The lab is secured.

14 Q Who has access to the lab?

15 A Only the crime scene investigator.

16 Q Have you ever in your life gone in and opened up
17 somebody else's evidence that they collected?

18 A No.

19 Q Have you ever tampered with anybody else's
20 evidence?

21 A No.

22 Q Did you do that in this case or any case?

23 A No.

24 Q You wouldn't do that; would you?

25 A No.

TROY CRUMP -- DIRECT -- MR. GRAHAM

417

1 Q Would any of your people in the crime scene unit do
2 that?

3 A No.

4 Q In fact, if they did and it was found out, they
5 would be fired; wouldn't they?

6 A Correct.

7 Q Did you have an opportunity to go to the autopsy of
8 Nicholas Rae in this case?

9 A I did.

10 Q Do you remember the date, time, and location?

11 A The location was Newberry. The date was July 11th.

12 Q Do you remember the approximate time? You can
13 refer to your report if you need to.

14 A About 11. I think the autopsy was either at 10 or
15 11.

16 Q Let me show you a document and ask if you recognize
17 it?

18 A It was 10:00 o'clock.

19 Q Is that the report that you generated in going to
20 the autopsy?

21 A Yes, it is.

22 Q What time did it say the autopsy occurred?

23 A The autopsy started a 10:00 o'clock.

24 Q Who was the pathologist conducting the autopsy?

25 A Dr. Marcus.

1 Q Do you know his full name?

2 A Dr. Bradley Marcus.

3 Q As part of the autopsy process, do you collect and
4 inventory the belongings of the deceased in this
5 case, Nick Rae?

6 A Correct.

7 Q Let me show you a photograph and ask if it fairly
8 and accurately depicts the items that you collected
9 from Mr. Rae?

10 A Yes.

11 MR. GRAHAM: Your Honor, the State would move
12 this photograph into evidence at this time.

13 MR. MADSEN: Your Honor, if we might approach.

14 THE COURT: Yes, sir.

15 (Whereupon there was a bench conference off
16 the record in the presence of the jury but out of the
17 hearing of the jury.)

18 MR. MADSEN: Judge, I would just object under
19 403.

20 THE COURT: I would respectfully overrule your
21 objection. This is a photograph taken. It depicts what
22 it is, and I will let the jury will make a determination
23 on that.

24 MR. GRAHAM: Thank you, Your Honor..

25 THE COURT: Mark it in evidence, please.

TROY CRUMP -- DIRECT -- MR. GRAHAM

419

1 (State's Exhibit Number 51 is received into
2 evidence.)

3 BY MR. GRAHAM:

4 Q Looking at State's Exhibit 51, Investigator Crump,
5 would you describe what items you collected off of
6 Mr. Rae's body?

7 A There is a watch, some cash, some change, some kind
8 of earring, and the little small blue towel, and
9 necklace. Yeah, a necklace.

10 Q How much money did Mr. Rae have on him at the time
11 of autopsy?

12 A It was \$26.51.

13 Q As part of the autopsy, does the pathologist
14 collect samples of Mr. Rae's blood and other fluids
15 and other bodily materials?

16 A Yes.

17 Q Are those items collected for the purpose of
18 possible analysis later by another agency?

19 A Correct.

20 Q In this case were there several items of both blood
21 that was collected of Mr. Rae, as well as ocular
22 fluid or fluid from the eye?

23 A Yes.

24 Q Did you take those from the presence of the
25 pathologist as they were being collected?

1 A I did.

2 Q And did you take those, seal those, and do the
3 proper things to turn them into evidence?

4 A The pathologist's office seals that for us, and
5 then I carried it to the Sheriff's Department and
6 placed it in.

7 MR. GRAHAM: Your Honor, it's my understanding
8 from conversations with the defense counsel that we do
9 not have to prove any further chain of custody on this
10 matter.

11 They will stipulate that the blood that was
12 drawn from Mr. Rae for a blood standard that makes its
13 way to S.L.E.D. for D.N.A. analysis is, in fact, the
14 standard -- that what is reported out is what was drawn,
15 and we don't have to prove any further chain on that.

16 MR. MADSEN: I think we stipulate to that and
17 also toxicology.

18 MR. GRAHAM: Yes, Your Honor. The other one
19 would be that the items -- there were items of blood and
20 fluid from the eye that were taken that were sent to
21 toxicology that Investigator Crump was passed to. It's
22 my understanding that defense counsel just stated we
23 don't need to prove any other further chain on that, and
24 we can go straight to the toxicologist.

25 THE COURT: The record will reflect the

TROY CRUMP -- DIRECT -- MR. GRAHAM

421

1 stipulations. Thank you. It will save a great deal of
2 time.

3 BY MR. GRAHAM:

4 Q In addition to collecting actual samples and items
5 that were on Mr. Rae, did you also -- were you also
6 involved in collecting other physical evidence?

7 A Yes.

8 Q Let me show you a photograph and ask if you
9 recognize this photograph?

10 A I do.

11 Q Does that fairly and accurately depict the item or
12 items you collected and took from the autopsy of
13 Mr. Rae?

14 A Yes.

15 MR. GRAHAM: Your Honor, at this time the
16 State would offer this photograph into evidence.

17 MR. MADSEN: No objection.

18 (State's Exhibit Number 52 is received into
19 evidence.)

20 BY MR. GRAHAM:

21 Q What does State's 52 show, Investigator Crump?

22 A It's a fired projectile and a jacket or the jacket
23 that comes off the projectile.

24 Q Where were those items recovered?

25 A From the morgue.

1 Q Were they found during the autopsy?

2 A Yes.

3 Q In fact, these items were actually inside Mr. Rae;
4 is that correct?

5 A Yes, correct.

6 Q Let me show you an item and ask if you can identify
7 this item or items?

8 A The items in the picture, that's the projectile and
9 the jacket.

10 Q Those are the projectile and the jacket that were
11 recovered by the pathologist and given to you from
12 the autopsy of Nick Rae?

13 A Correct.

14 Q Are their materially and substantially in the same
15 condition as when you received them, Investigator
16 Crump?

17 A Yes.

18 MR. GRAHAM: Your Honor, the State would move
19 the projectile, jacket, and bags into evidence at this
20 time.

21 MR. MADSEN: Judge, I would just object to
22 insufficient foundation because of the chain of
23 custody.

24 THE COURT: I would respectfully overrule that
25 based on his testimony.

TROY CRUMP -- DIRECT -- MR. GRAHAM

423

- 1 (State's Exhibit Number 53 is received into
2 evidence.)
- 3 BY MR. MADSEN:
- 4 Q Investigator Crump, inside the bag there appears to
5 be another bag with black writing on it. Do you
6 see what I'm referring to?
- 7 A Yes.
- 8 Q On the interior bag. What is that bag, the larger
9 bag inside?
- 10 A That's the bag that the pathologist would have put
11 the projectile and jacket in.
- 12 Q And are you able to determine the date on the
13 initials that are on the black writing?
- 14 A 7/11/10.
- 15 Q That's the date of the autopsy?
- 16 A Correct.
- 17 Q And the initials, can you tell the initials that
18 are in black writing there?
- 19 A B.M. I can't tell the middle.
- 20 Q And the pathologist's name again?
- 21 A Marcus Bradley.
- 22 Q Was that bag sealed in any way?
- 23 A Yes.
- 24 Q How was it sealed?
- 25 A I believe it would have been heat sealed.

1 Q What does heat seal mean?

2 A They have -- it's almost like a iron for plastic
3 and scissors. You stick the plastic in there, and
4 it burns the two plastic sides together.

5 Q Inside the exterior bag, there is a small bag that
6 the actual projectile and jacket are in. Do you
7 see that?

8 A Yes.

9 Q Do you recognize any of the handwriting on that
10 little bag?

11 A No.

12 Q There is also a bottle, like a small pill bottle
13 with a cap. Do you see that?

14 A Yes.

15 Q Do you recognize that?

16 A Yes. That would have been the bottle that the
17 morgue placed the projectile and bullet in.

18 Q So the projectile and jacket were placed inside
19 that bottle?

20 A Correct.

21 Q And then the top screwed on?

22 A Correct.

23 Q The label that was put on the outside is a printed
24 label. Do you recognize that label?

25 A Yes.

TROY CRUMP -- DIRECT -- MR. GRAHAM

425

1 Q What is that label?

2 A That's the label that the pathologist would have
3 put on there to mark it for identification, for
4 their records and for the lab's records.

5 Q And that would be the same with the sticker that on
6 the bag that we were talking about being heat
7 sealed?

8 A Correct.

9 Q In addition to collecting physical evidence, do you
10 also take photographic evidence?

11 A Yes.

12 Q Let me show you two photographs and ask if you
13 recognize those?

14 A Those are pictures of the wound.

15 Q Do they fairly and accurately depict the wound as
16 it was observed by you and the pathologist at the
17 date of the autopsy at approximately 10:00 o'clock
18 on the morning of July 11, 2010?

19 A Yes.

20 MR. GRAHAM: Your Honor, the State would move
21 those two photographs into evidence at this time.

22 MR. MADSEN: Judge, we would just object under
23 Rule 403.

24 THE COURT: I overrule it. I think it would
25 be properly admitted into evidence for the jury's

1 consideration.

2 (State's Exhibit Number 54-55 are received
3 into evidence.)

4 THE COURT: Solicitor, the jury made an
5 inquiry as to the definition of chain of custody. Can
6 you develop that for the jury? They have asked for
7 that.

8 MR. GRAHAM: I can, Your Honor.

9 THE COURT: Please do.

10 BY MR. GRAHAM:

11 Q Investigator Crump, when I use the term chain of
12 custody, what does that mean?

13 A The possession of the item or the evidence from
14 where it started to today's hearing.

15 Q The possession of the item, who actually has
16 physical custody of the item?

17 A Correct.

18 Q And that would be whether the item is sealed in a
19 bag or loose by itself?

20 A Correct.

21 Q So it identifies each and every person who touched
22 it?

23 A Correct.

24 Q That is what is known as the chain of custody?

25 A Yes.

TROY CRUMP -- DIRECT -- MR. GRAHAM

427

1 Q Referring to State's Exhibit -- back on 53 which
2 was the fired projectile and jacket that you
3 collected -- it's your testimony that the
4 projectile and jacket were placed inside the
5 bottle. The bottle was then placed inside a
6 heat-sealed bag --

7 COURT REPORTER: Solicitor, too fast.

8 MR. GRAHAM: Sorry, Coconut.

9 BY MR. GRAHAM:

10 Q After you collected these items -- and I am
11 referring to the fired projectile -- the fired
12 projectile was inside of what? The projectile was
13 placed by the pathologist into?

14 A In the bottle.

15 Q The bottle was placed into?

16 A The plastic bag.

17 Q The bag was heat sealed?

18 A Yes.

19 Q And then signed by the pathologist?

20 A Correct.

21 Q You took custody of it?

22 A Correct.

23 Q What did you do with it?

24 A Took it to the Sheriff's Department.

25 Q Did you do anything to tamper with it or mess with

1 it?

2 A No.

3 Q Let me show you a document and ask if you recognize
4 the document?

5 A Yes.

6 Q What did you do with the plastic bag that contained
7 the bottle that contained the projectile and
8 jacket?

9 A It was placed in the lab Sunday after the autopsy,
10 and then first thing Monday morning it was turned
11 over to the property room.

12 Q Did you do anything to mess with the contents --

13 A No.

14 Q -- of the bag?

15 A No.

16 Q -- that had been heat sealed. Did you do anything
17 to mess with the contents of what was inside the
18 bottle?

19 A No.

20 Q Did you touch the projectile or the jacket?

21 A No.

22 Q Later on you went back and retrieved these items
23 from the lab; is that correct?

24 A Correct.

25 Q When you retrieved it from the lab, the plastic bag

TROY CRUMP -- DIRECT -- MR. GRAHAM

429

- 1 that you said was heat sealed, was there any
2 evidence that it had been tampered with?
- 3 A No.
- 4 Q Would you have known if it had been?
- 5 A Yes.
- 6 Q How would you have known?
- 7 A It would have been moved. The bag would have been
8 cut open.
- 9 Q Looking at the bag now on the inside, can you tell
10 that it has been cut open?
- 11 A Yes, it has been opened.
- 12 Q But when you took possession of it, left it in
13 there, and came back, was that cut there?
- 14 A No.
- 15 Q Once you collected this item, it was in the same
16 condition as when you got it from the pathologist?
- 17 A Correct.
- 18 Q What did you do with it after you left it in the
19 lab and came back to the lab and got it?
- 20 A It was turned over to the property room.
- 21 Q And who did you turn it over to?
- 22 A To Beth Harmon.
- 23 Q That's the lady sitting back there who has been
24 handing me the evidence?
- 25 A Correct.

1 Q What date and time did you turn it over to her?

2 A July 12th right around 10:00 o'clock in the
3 morning.

4 Q And it was in the same condition when you gave it
5 to her as when you collected it from the
6 pathologist?

7 A Correct.

8 Q In addition, did you have an opportunity to collect
9 what is known as a buccal swab from Mr. Brockmeyer?

10 A Yes.

11 Q What is a buccal swab?

12 A A buccal swab is a kit that is used to obtain
13 D.N.A. or the skin cells from inside the mouth.

14 Q The kit when you get it, is the kit sealed?

15 A Yes.

16 Q What's the purpose of the kit being sealed?

17 A To make sure there is no cross contamination.

18 Q Would you have used the kit if it had came to you
19 unsealed?

20 A No.

21 Q Was the kit used on Mr. Brockmeyer sealed?

22 A Yes.

23 Q Once you are prepared to collect that sample and
24 you break the seal, what do you find inside?

25 A There is an envelope, the instructions, and then --

TROY CRUMP -- DIRECT -- MR. GRAHAM

431

1 I can't remember -- two or four swabs that are
2 inside.

3 Q Did you, in fact, collect a buccal swab from
4 Mr. Brockmeyer?

5 A I did.

6 Q Let me show you an item and ask if you recognize
7 it?

8 A I do.

9 Q Just briefly would you describe the techniques of
10 collecting a swab and preventing cross
11 contamination?

12 A Well, of course, we wear gloves. Whoever we are
13 obtaining the sample from, you take the swabs and
14 swab the inside of the mouth. Once you are
15 finished with that, you place it in a plastic bag.
16 Then you continue. You get a sample from each side
17 of the mouth. Then they are placed into a sealed
18 envelope to avoid any type of contamination.

19 Q You seal it with security tape and initial it?

20 A Correct.

21 MR. GRAHAM: Your Honor, it's my understanding
22 that defense counsel will stipulate to the chain of
23 custody from the collection by Investigator Crump of the
24 sample from Mr. Brockmeyer to the D.N.A. analyst without
25 any further proof of chain of custody.

1 MR. MADSEN: That's correct, Your Honor.

2 THE COURT: Thank you. The record will so
3 indicate.

4 BY MR. GRAHAM:

5 Q I believe that's all, Investigator Crump. Please
6 answer any questions defense counsel has.

7 A Yes, sir.

8 MR. MAULDIN: Deputy Crump, let me take a look
9 at something, and I might not have any questions for
10 you.

11 (Pause.)

12 CROSS EXAMINATION

13 BY MR. MAULDIN:

14 Q Quickly, when you get this from the pathologist, he
15 actually heat seals -- he has a heat-seal machine
16 there?

17 A Yes.

18 Q And you take that and you delivered it back to your
19 lab?

20 A Correct.

21 Q And then the next day you end up delivering it to
22 evidence?

23 A Correct.

24 Q No idea what happens to it after that?

25 A It sits in the lab.

TROY CRUMP -- CROSS -- MR. MAULDIN

433

1 Q I mean, after you deliver it to evidence, it's
2 someone else's responsibility, not yours?

3 A Correct. Sorry.

4 MR. MADSEN: That's all the questions I have.

5 THE COURT: Any redirect, gentlemen?

6 MR. GRAHAM: Just one second, Your Honor.

7 (Pause.)

8 MR. GRAHAM: No questions, Your Honor.

9 THE COURT: Thank you. It's 5:00 o'clock.

10 It's a good time to break for the evening. The jury has
11 been sitting here very patiently since 9:30 this
12 morning, and I appreciate it.

13 Please remember my admonition. Do not discuss
14 this case with anyone. Let no one discuss it with you.
15 If there be some newspaper or anything on T.V., please
16 don't read it.

17 You must not even discuss it among yourselves
18 until I have given you the case for your deliberations.
19 You are excused now to report back at 9:30 in the
20 morning. Thank you so much. Have a good evening.

21 (The jury is excused for the day at 5:03 p.m.)

22 THE COURT: Gentlemen, anything else before we
23 recess for the evening?

24 MR. GRAHAM: Not from the State, Your Honor.

25 MR. MADSEN: No, Your Honor.

1 THE COURT: See you at 9:30 in the morning.

2 Thank you.

3 (Whereupon the proceedings are concluded for
4 August 23, 2011.)

5 (The following proceedings are reported on
6 August 24, 2011.)

7 THE COURT: What is this additional witness
8 list?

9 MR. GRAHAM: The ones with the red dots, Your
10 Honor, or the ones with the dots are the ones that were
11 not on the State's original witness list.

12 THE COURT: And why are you calling them at
13 this time?

14 MR. GRAHAM: Those are the people who had
15 access to that crime scene laboratory.

16 THE COURT: This is based on the conversation
17 we just had?

18 MR. GRAHAM: Yes, Your Honor.

19 THE COURT: Thank you. I don't see the
20 necessity of voir diring the jury with reference to
21 these witnesses who say they don't know anything about
22 it.

23 MR. MADSEN: Obviously with the addition of
24 the witness list, we would object to it just as a matter
25 of course.

1 But ultimately, Judge, there is no way to know
2 if any of these jurors know them, if their husband,
3 wife, relation, cousin, someone they have talked about
4 the case with. There is just no way we know unless we
5 do that.

6 We had that conversation back there. I don't
7 quite understand the State's line of thinking, but they
8 are going to try their case how they think is
9 appropriate.

10 THE COURT: So you want me to voir dire on
11 each particular question?

12 MR. MADSEN: I think that Your Honor would
13 have to.

14 THE COURT: All right. We will do that.
15 Bring the jury in. You are just calling these with the
16 red dots?

17 MR. GRAHAM: No, Your Honor. All the names on
18 the list are people that will be called. They will all
19 be very brief.

20 THE COURT: They have not been furnished
21 before?

22 MR. GRAHAM: The red dots were not on the
23 original list that the jury was questioned about.

24 THE COURT: So the red dots are the only ones
25 I need to call?

1 MR. GRAHAM: Those are the only ones you need
2 to voir dire, Your Honor.

3 THE COURT: That's what I was trying to get
4 at.

5 (The jury returns to the courtroom at
6 9:45 a.m.)

7 THE COURT: Good morning, Mr. Foreman, ladies
8 and gentlemen. Y'all were here promptly at 9:30 at my
9 request. I note we are starting at quarter to 10.

10 I do want the jury to know that I understand
11 your time is valuable too, and I want to know we were
12 not back there smoking and telling jokes. We were
13 dealing with issues in this case. If I ask the jury to
14 be here at 9:30, then they -- and my law clerk -- will
15 be here at 9:30 too.

16 We discussed the fact that some additional
17 witnesses are being called which were not on the list
18 when I voir dired you the jury on Monday morning. I am
19 going to call the names of these particular witnesses.

20 My inquiry is: Are you related by blood or
21 marriage or do you have any special relationship with
22 these folks, such as a coworker, neighbor or even if you
23 know them. If do you please raise your hand, and I will
24 have some further questions for you.

25 That's Dianne Johnson; is that correct?

SCOTTIE FRIER -- DIRECT -- MR. GRAHAM

437

1 MR. GRAHAM: Duane Johnson, Your Honor.

2 THE COURT: Duane Johnson. Emily Homer. D.I.
3 Blackwell. Renee Strickland. Scottie Frier. Robbie
4 Lint. Is that L-I-N-T?

5 MR. GRAHAM: Yes, Your Honor.

6 THE COURT: If anybody knows or has any close
7 connection with any of these individuals, please let me
8 know at this moment.

9 (There is no response.)

10 THE COURT: You have indicated you do not. I
11 thank you for your response.

12 You may call your next witness.

13 MR. GRAHAM: The State calls Scottie Frier.

14 SCOTTIE FRIER, being
15 first duly sworn, testifies as follows:

16 CLERK: State your full name, spelling your
17 last on the record, please.

18 THE WITNESS: My name is Scotty Frier. The
19 last name is spelled F-R-I-E-R.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q Lieutenant Frier; is that correct?

23 A Yes, sir.

24 Q How long have you worked at the Sheriff's
25 Department?

- 1 A I started at the Sheriff's Office in 1987.
- 2 Q Currently as a lieutenant what are your job
- 3 functions for the Sheriff?
- 4 A I'm the commander of the violent crimes unit and
- 5 also the commander of the C.S.I. unit.
- 6 Q As part of the commander of the C.S.I. unit, do you
- 7 have access to the crime scene laboratory?
- 8 A Yes, sir, I do.
- 9 Q Is that a secure location?
- 10 A Yes, sir, it is.
- 11 Q How is access to that location?
- 12 A It's accessed by a prox card.
- 13 Q How many people -- can you identify the people
- 14 starting back in July until now -- that had access
- 15 to that by prox card?
- 16 A Yes, sir. I believe there are only nine people
- 17 that have access to it. It's myself; Emily Homer,
- 18 who is our forensic chemist; the six C.S.I.s, sworn
- 19 C.S.I. persons, which are David Day, Troy Crump,
- 20 Renee Strickland, Glenn Ross, Michael Phipps, and
- 21 Shelby Derrick. Also, there is D.I. Blackwell and
- 22 Duane Johnson, who handle fingerprint
- 23 identification with us.
- 24 Q All those people are under your command?
- 25 A Yes, they are.

SCOTTIE FRIER -- DIRECT -- MR. GRAHAM

439

- 1 Q And all of those people and yourself have access to
2 the crime scene laboratory?
- 3 A Yes. They do by prox card, which, also, any time
4 your prox card accesses into the lab, there is a
5 record of the fact that you went into the lab by
6 using your prox card.
- 7 Q You understand we are here on the trial of William
8 Brockmeyer on a charge of murder? Do you
9 understand that?
- 10 A Yes, sir.
- 11 Q Are you somewhat familiar with the case?
- 12 A Yes, sir, I am.
- 13 Q Did you have any involvement in the case?
- 14 A As the supervisor of the unit, yes, sir. I was
15 overseeing the detectives that work the case.
- 16 Q Did you ever touch or handle any of the evidence?
- 17 A No, sir, I did not.
- 18 Q Would you do that?
- 19 A No, sir.
- 20 Q Would any of your people do it unless they were
21 brought in by the main crime scene investigator?
22 Would they mess with anybody's?
- 23 A Unless they were part of the chain of custody or
24 specifically involved in the examination of
25 evidence, no, sir.

1 Q So the evidence that is out on this table, you have
2 never touched or manipulated or changed?

3 A No, sir.

4 Q Please answer any questions the defense has.

5 **CROSS EXAMINATION**

6 BY MR. MADSEN:

7 Q Lieutenant Frier, how are you doing?

8 A Good. How are you, sir?

9 Q Good. So you are the lieutenant over the
10 detectives, major crime detectives, and also
11 C.S.I.?

12 A Yes, sir.

13 Q And you have been over those departments how long
14 now?

15 A I have been the lieutenant over that unit for four
16 years. I have been in that unit since 1989 as a
17 detective and supervisor.

18 Q That's when I first met you?

19 A Yes, sir, it was.

20 Q Ultimately you are in charge of that unit, and
21 there is a crime scene laboratory within the
22 Sheriff's Department?

23 A That's correct.

24 Q And nine people have basically key card access to
25 that area?

SCOTTIE FRIER -- CROSS -- MR. MADSEN

441

- 1 A That's correct.
- 2 Q And ultimately a lot of areas in the Sheriff's
3 Department are key card access, from the back gate
4 to the back door, to maybe some individual offices
5 within that Sheriff's Department; correct?
- 6 A That's correct.
- 7 Q And as far as those nine people who have key card
8 access, at other points in time are other deputies
9 or detectives brought back in to share findings on
10 things that they might be working on?
- 11 A Yes, sir. We will on occasion escort people back
12 in there, just depending on -- other officers,
13 officers from other agencies that we are explaining
14 evidence, but no one is back there unescorted.
- 15 Q And that area within the crime scene lab itself has
16 some lockers to put evidence in; correct?
- 17 A That's correct.
- 18 Q And generally when someone is done working with
19 something, they should put their stuff up, I guess,
20 in their locker?
- 21 A If the locker has enough room for it. The lockers
22 aren't that big. Some items of evidence will not
23 fit in those lockers. But by our accreditation
24 standards, the security of that prox card into that
25 lab makes that a secure area for evidence.

1 Q When you say lockers, are they like high school
2 lockers or larger than that?

3 A No, sir, they are wooden frame built lockers. They
4 are -- I think our trustees made them or we ordered
5 them. I'm not sure. They are not that big. You
6 couldn't put a long gun in one.

7 Q I got you. You couldn't put an automobile --

8 A Certainly.

9 Q -- or anything like that but smaller items you
10 could?

11 A Yes, sir.

12 MR. MADSEN: That's all the questions I have.

13 MR. GRAHAM: Very quickly, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. GRAHAM:

16 Q Lieutenant, any time back in the crime scene lab
17 when any of this evidence was here, was any other
18 deputy, besides the people that have prox cards --
19 in your presence did you see any other any deputies
20 mess with this evidence?

21 A No, sir.

22 Q Did you see anybody mess with this evidence?

23 A No, sir.

24 THE COURT: Thank you. Come down.

25 THE WITNESS: Thank you, Your Honor.

RENEE STRICKLAND -- DIRECT -- MR. GRAHAM

443

1 (Witness leaves the witness stand.)

2 MR. GRAHAM: Renee Strickland.

3 MARSHA RENEE STRICKLAND,
4 being first duly sworn, testifies as follows:

5 CLERK: Please state your full name, spelling
6 your last. Also, how do you spell Renee?

7 THE WITNESS: R-E-N-E-E. My name is Marsha
8 Renee Strickland, S-T-R-I-C-K-L-A-N-D.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q Ms. Strickland, where are you employed, ma'am?

12 A At the Lexington County Sheriff's Department.

13 Q What do you do there?

14 A I'm a crime scene investigator.

15 Q And how long have you been in law enforcement?

16 A I've been in law enforcement approximately eight
17 years.

18 Q And how long have you been in crime scene with
19 Lexington County?

20 A Crime scene with Lexington County approximately two
21 years.

22 Q The crime scene laboratory that you all have at the
23 Sheriff's Department, you know what I'm talking
24 about?

25 A Yes, sir.

1 Q Isn't it true that sometimes between collecting
2 evidence from the crime scene and actually turning
3 it into the evidence custodian, sometimes it's
4 stored there?

5 MR. MADSEN: Judge, I will object to leading.

6 THE COURT: I will permit that particular
7 question. I think it's helpful to the jury and to the
8 witness. Go ahead.

9 BY MR. GRAHAM:

10 Q Is that correct, Ms. Strickland?

11 A Yes, sir. Oftentimes when we collect evidence, it
12 is stored in the laboratory prior to submission.

13 Q Are there lockers there?

14 A There are lockers, yes, sir.

15 Q Are those locked?

16 A They are.

17 Q Sometimes are so many cases going on, you have more
18 evidence that's in the lab that can be held in the
19 lockers?

20 A Yes, sir, there is. And sometimes the lockers are
21 not large enough to accommodate large items; so
22 they have to be secured in the lab.

23 Q Are you familiar with the case we are here on
24 today, the State versus William Brockmeyer?

25 A Yes, sir.

RENEE STRICKLAND -- CROSS -- MR. MADSEN

445

1 Q At any time on any case, have you gone in and
2 handled, manipulated, or changed evidence from
3 another crime scene investigator's case?

4 A No, sir.

5 Q Would you do that?

6 A No.

7 Q Did you do it in in this case?

8 A I did not.

9 Q Please answer any questions the defense has.

10 CROSS EXAMINATION

11 BY MR. MADSEN:

12 Q Ms. Strickland, you have been one of the C.S.I.
13 officers for about two years?

14 A Almost two years, yes, sir.

15 Q So you would actually go out to scenes and process
16 or document those scenes?

17 A Yes, sir.

18 Q Do measurements?

19 A Yes, sir.

20 Q Diagrams, photographs, things of that nature?

21 A (Witness nods.) (Indicating affirmative response.)

22 Q And ultimately you can bring stuff back, and I
23 guess the lockers inside your department are only a
24 certain size?

25 A That's correct, but they are multiple sizes.

1 Q Certain things -- I guess like a long gun or
2 that -- are not necessarily going to fit some of
3 the larger objects? They won't fit in there?

4 A Yes, sir. At times the tall locker is already
5 being used by -- being utilized by somebody else to
6 store something else.

7 Q And this area that you have is actually in the
8 Sheriff's Office main building?

9 A It is in the headquarters building. There is a
10 door. There is not access from inside the
11 building. There is access outside.

12 Q And ultimately then, I guess, there is kind of a
13 secure parking area, and then behind that is the
14 evidence room or the evidence lockers?

15 A The evidence lockers are actually inside the
16 laboratory.

17 Q I'm talking about the regular sheriff's evidence
18 lockers, the ones where Ms. Harmon works, Candy
19 Kyzer?

20 A They are across the parking lot.

21 Q Right. They are there if you just cross that
22 parking lot?

23 A Yes, sir.

24 Q So if you have items within your possession there,
25 you can always take them and give them to the

SHELBY DERRICK -- DIRECT -- MR. GRAHAM

447

1 evidence custodians then? And if you need them
2 again, you can always check them out and bring them
3 back; correct?

4 A You can do that.

5 MR. MADSEN: That's all the questions I have.

6 MR. GRAHAM: Nothing else, Your Honor.

7 THE COURT: You may come down. Thank you.

8 (Witness leaves the witness stand.)

9 MR. GRAHAM: The State calls Shelby Derrick.

10 SHELBY DERRICK, being
11 first duly sworn, testifies as follows:

12 CLERK: Please state your full name, spelling
13 your last.

14 THE WITNESS: Shelby Derrick, D-E-R-R-I-C-K.

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q Ms. Derrick, where are you employed, ma'am?

18 A Lexington County Sheriff's Department.

19 Q And how long have you been in law enforcement?

20 A Five years.

21 Q And how long have you been with crime scene?

22 A Three years.

23 Q In fact, you know that we are here on the case of
24 State versus William Brockmeyer?

25 A Yes.

1 Q And, in fact, what, if anything, did you do to
2 assist in the finding of the gun, the .380 Ceska
3 gun, that was found in this case?

4 A I participated in the search, and when trees were
5 moved out of the way, I saw the weapon and told
6 David.

7 Q Did you touch it?

8 A No.

9 Q So you saw it, spotted it, and called C.S.I.
10 Investigator Day to come collect it?

11 A Yes, sir.

12 Q As a crime scene investigator, do you have access
13 to the crime scene laboratory?

14 A I do.

15 Q Other than spotting the gun in this case, while
16 back in the laboratory, did you touch any of the
17 evidence that Investigator Day or anyone else
18 collected involved in this case?

19 A No, I did not.

20 Q Did you manipulate it or change it in any way?

21 A No.

22 Q Would you do that?

23 A No.

24 Q Please answer any questions -- let me ask you one
25 more. Sometimes do you go back there and take

SHELBY DERRICK -- CROSS -- MR. MADSEN

449

1 other deputies with you? Does anybody ever
2 accompany you back there? Have you ever had
3 anybody go back there with you?

4 A Not unless it's to get fingerprint powder or
5 something like that. Other than that, no.

6 Q But when anybody else is back there with you, they
7 wouldn't have had access --

8 A No.

9 Q -- or you wouldn't have let have them access?

10 A No, they are always accompanied with us.

11 Q Thank you.

12 THE COURT: Any questions from the defense?

13 CROSS EXAMINATION

14 BY MR. MADSEN:

15 Q Ms. Derrick, a lot of your job working with the
16 crime scene investigation unit ends up being kind
17 of field work; doesn't it?

18 A Yes, sir.

19 Q So you can be out of your lab quite a bit?

20 A Uh-huh. (Indicating affirmative response.)

21 Q Have no idea who else is in there when you're not
22 there?

23 A When I am not there, no.

24 Q And ultimately back within that lab, y'all can do
25 latent fingerprints?

1 A Uh-huh. (Indicating affirmative response.)

2 Q You have a glue tank to attempt to get fingerprints
3 off of things?

4 A Yes, sir.

5 Q I think you already said black powder.

6 A Uh-huh. (Indicating affirmative response.)

7 Q You can do things with your crime scene, such as
8 getting molds or like using dental stuff to get
9 prints and things along those lines? Those are
10 some of the things you do as a crime scene
11 technician; correct?

12 A Yes, sir.

13 MR. MADSEN: That's all the questions I have.

14 THE COURT: You may come down.

15 (Witness leaves the witness stand.)

16 THE COURT: Next witness?

17 MR. GRAHAM: The State calls Glenn Ross.

18 GLENN ROSS, being

19 first duly sworn, testifies as follows:

20 CLERK: State your full name, spelling your
21 last, please.

22 THE WITNESS: Glenn Ross, R-O-S-S.

23 DIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q Where are you employed, sir?

GLENN ROSS -- DIRECT -- MR. GRAHAM

451

1 A Lexington County Sheriff's Department.

2 Q And how long have you been in law enforcement?

3 A This is my 22nd year.

4 Q And how long have you been in crime scene?

5 A Since 2003 with the City of Columbia.

6 Q And what time did you join Sheriff Metts in crime
7 scene?

8 A 2007.

9 Q Are you familiar with the case that we are here on
10 today, the State versus William Brockmeyer?

11 A Yes, sir.

12 Q As a crime scene investigator, you have access to
13 the crime scene lab?

14 A Yes, sir, I do.

15 Q Once any of the evidence in this case was collected
16 by any crime scene investigator or by Shawn Grant
17 or whoever, at any time did you touch or manipulate
18 or change or alter any of the evidence in this
19 case?

20 A No, I did not.

21 Q At times have you gone back to the crime scene lab
22 and escorted people who don't have clearance to it?

23 A Yes, I have.

24 Q And during those times have you made sure that
25 those people don't alter or tamper with any

1 evidence?

2 A Yes, I have.

3 Q Thank you. Please answer any questions the defense
4 has.

5 **CROSS EXAMINATION**

6 BY MR. MADSEN:

7 Q Besides the individuals in crime scene, if y'all
8 accompany someone else back there, do you keep any
9 type of log?

10 A I'm not aware of a log, no, sir.

11 MR. MADSEN: That's all the questions I have.

12 THE COURT: You may come down. Thank you.

13 (Witness leaves the witness stand.)

14 MR. GRAHAM: The State calls Duane Johnson.

15 He is downstairs, Your Honor. The State would call D.I.
16 Blackwell at this time.

17 DONALD I. BLACKWELL, being
18 first duly sworn, testifies as follows:

19 CLERK: State your full name, spelling your
20 last on the record, please.

21 THE WITNESS: My name is Donald I. Blackwell,
22 B-L-A-C-K-W-E-L-L.

23 **DIRECT EXAMINATION**

24 BY MR. GRAHAM:

25 Q You go by D.I; is that correct?

DONALD BLACKWELL -- DIRECT -- MR. GRAHAM

453

- 1 A That's correct.
- 2 Q D.I., how long have you been in law enforcement?
- 3 A Fifty-two years.
- 4 Q And how long have you been with Sheriff Metts?
- 5 A Seven years.
- 6 Q And is that in the capacity of a crime scene
7 investigator?
- 8 A I do the marijuana analysis and help with the
9 latent fingerprints.
- 10 Q In your job analyzing marijuana and looking at
11 latent fingerprints, do you have access to the
12 crime scene lab at the Sheriff's Department?
- 13 A Yes, sir, I do.
- 14 Q Are you aware that we are here today on the case of
15 the State versus William Brockmeyer?
- 16 A I did not know this case.
- 17 Q Are you familiar with this case at all?
- 18 A No.
- 19 Q At any time, other than your job as analyzing
20 marijuana and looking at latent prints, have you
21 touched, changed, altered, or manipulated any
22 evidence in any other case?
- 23 A Never.
- 24 Q In the time that you have gone back into the crime
25 scene lab, have you ever taken any deputies or

1 anybody else with you back there?

2 A No.

3 Q Please answer any questions the defense has. Thank
4 you, D.I.

5 **CROSS EXAMINATION**

6 BY MR. MADSEN:

7 Q D.I., how are you doing?

8 A Fine, sir.

9 Q You have been at the Sheriff's Office seven years,
10 and I believe before that you were with Cayce for
11 quite a long period of time; weren't you?

12 A Yes, sir, I was.

13 Q Since you have been at the Sheriff's Office, your
14 job is -- I think you said to basically be a drug
15 chemist or analyst for marijuana that comes in?

16 A Yes, sir.

17 Q And ultimately a substance that is submitted to
18 you, you end up testing it. You have your own
19 locker there; correct?

20 A I have access to a locker, yes.

21 Q Once you are done doing your work, you put your
22 stuff in your locker or what do you do with it?

23 A I take it -- if evidence is open, I take it
24 directly back to evidence.

25 Q So, in other words, when you are done with whatever

DONALD BLACKWELL -- CROSS -- MR. MADSEN

455

1 you are working on, you kind of go across that
2 parking lot and deliver it to the ladies at the
3 evidence locker; correct?

4 A Yes.

5 Q And that's what protocol requires that when you are
6 done working on something you should do?

7 A Yes.

8 Q And you had mentioned that you also do latent
9 fingerprints. Is that reviewing them like Duane
10 Johnson or trying to develop them?

11 A Both. I can do both.

12 Q And that's something that you learned over your 52
13 years in law enforcement?

14 A Yes, sir.

15 Q And ultimately when we get items that you are
16 attempting to get fingerprints off of, you can use
17 black powder?

18 A There's numerous processes.

19 Q You can also -- I can't say the word -- but I guess
20 the superglue fuming for smaller items?

21 A Yes, sir.

22 Q Such as guns, clips, things that you can't get
23 inside of a glue tank?

24 A Yes, sir.

25 Q And even if an item has been rained on or left out

1 in the elements, y'all can dry it and attempt to
2 get fingerprints off of something like that?

3 A You can always try.

4 Q Don't know if you are going to get anything until
5 you try?

6 A That's correct.

7 MR. MADSEN: That's all the questions I have.

8 MR. GRAHAM: Nothing else, Your Honor.

9 THE COURT: You may come down.

10 (Witness leaves the witness stand.)

11 MR. GRAHAM: The State calls Duane Johnson.

12 DUANE JOHNSON, being

13 first duly sworn, testifies as follows:

14 CLERK: State your full name, spelling your
15 last.

16 THE WITNESS: My name is Duane Johnson,
17 D-U-A-N-E, J-O-H-N-S-O-N.

18 **DIRECT EXAMINATION**

19 BY MR. GRAHAM:

20 Q Mr. Johnson, where are you currently employed?

21 A Lexington County Sheriff's Department.

22 Q How long have you worked for Sheriff Metts?

23 A Approximately ten years.

24 Q In what capacity, sir?

25 A I'm an identification specialist.

DUANE JOHNSON -- DIRECT -- MR. GRAHAM

457

1 Q What does that mean?

2 A That means that I examine evidence for the presence
3 or development of latent prints, and I compare
4 those prints with suspects in cases. If there are
5 none, then I will conduct automated searches on the
6 fingerprints and palm prints against the S.L.E.D.
7 database.

8 Q How long have you been in law enforcement?

9 A Forty-seven years.

10 Q In your 47 years, how much of that has been spent
11 in latent prints?

12 A Since 1972.

13 Q Where were you employed in 1972?

14 A Washington, D.C.

15 Q In what agency?

16 A F.B.I.

17 Q How long did you work for the Federal Bureau of
18 Investigation?

19 A Thirty-seven years.

20 Q When you retired then you came here with Sheriff
21 Metts; is that correct?

22 A Yes, I did.

23 Q As part of your job in working with latent prints
24 in the Sheriff's Department, do you have access to
25 the crime scene laboratory?

1 A I do.

2 Q That's a badge access?

3 A It is.

4 Q We are hear today on the State versus William
5 Brockmeyer. Do you have any connection to that
6 case?

7 A No.

8 Q At any time in this case or any case, have you
9 gone to the crime scene lab and touched, altered,
10 manipulated, or changed evidence in a case that
11 you were not involved in?

12 A No.

13 Q Did you do that in this case?

14 A No.

15 Q How many times have you qualified as an expert in
16 latent prints?

17 A Approximately 150 times.

18 Q There are several processes that you can use to
19 develop prints on objects; is that correct?

20 A That's correct.

21 Q One of those would be, in layman's terms, dusting
22 with powder?

23 A Yes.

24 Q Another would be glueing, using a glue tank?

25 A Superglue, yes.

1 Q What's the effect of either one or both of those
2 processes on an object that you are trying to
3 develop prints from?

4 A The superglue process is used first, and it has a
5 very detrimental effect on the surface that you are
6 processing. Because of the process that this glue
7 goes through with a polymerization process, it
8 deposits glue onto the surface.

9 It's virtually impossible to wipe off with the
10 finger. It has to be chemically removed, if it can
11 be removed at all. As far as the powdering
12 process, it's a follow-up process to the glue
13 process if it's needed. The powder just simply
14 makes it more dirty, but it can be cleaned up
15 completely.

16 Q In your opinion what effect, if any, would
17 supergluing or dusting have on the ability to
18 collect potential D.N.A. from an object?

19 A In my opinion it would most likely destroy the
20 D.N.A.

21 Q Thank you. Please answer any questions the defense
22 has.

23 **CROSS EXAMINATION**

24 BY MR. MADSEN:

25 Q Mr. Johnson, are you aware that there are numerous

1 reports that talk about the fact that supergluing
2 an item does not affect potentially getting D.N.A.?

3 A No, I'm not. He asked my opinion and that's my
4 opinion.

5 Q That's your opinion?

6 A That's my opinion.

7 Q You don't have any background in that; correct?

8 A I didn't write any articles, and I have no idea
9 what articles you are referring to. But I know
10 from my experience in working with it, it's very
11 detrimental.

12 Q There's such things as the *Journal of Forensic*
13 *Identification*? It's kind of a periodical that is
14 out there?

15 A Yes.

16 Q And ultimately sometimes y'all might fingerprint
17 something and then send it other places for people
18 to do other type of evidence collection on it;
19 correct?

20 A Are you speaking of Lexington County?

21 Q Lexington County. You can do it within your own
22 department. You could send it to S.L.E.D. for
23 other things. But there are other things that can
24 be done?

25 A If it was my decision to do it, I would send it.

DUANE JOHNSON -- CROSS -- MR. MADSEN

461

1 first and have the D.N.A. examination done first,
2 then do any subsequent examinations afterwards.

3 Q Well, obviously, handling of an item by anyone else
4 could somehow have a detrimental effect on getting
5 fingerprints; can't it?

6 A Yes, it can.

7 Q You could smudge or smear a fingerprint. If I walk
8 over here and touch this (indicating), I might have
9 left a fingerprint there, but if I (indicating), it
10 might be gone now?

11 A Correct.

12 Q Or if I lay my hand down, I might get something
13 different; correct?

14 A That's right.

15 Q You weren't asked to attempt to lift or look at any
16 latent prints off of this case; were you?

17 A I'm not familiar with this case at all.

18 MR. MADSEN: That's all the questions I have.

19 MR. GRAHAM: Nothing else. Thank you,

20 Mr. Johnson.

21 THE COURT: You may come down.

22 THE WITNESS: Thank you.

23 (Witness leaves the witness stand.)

24 MR. GRAHAM: The State calls Emily Homer.

25 EMILY HOMER, being

1 first duly sworn, testified as follows:

2 CLERK: Once you are seated, state your full
3 name, spelling your last on the record.

4 THE WITNESS: Emily Homer, H-O-M-E-R.

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q Ms. Homer, where are you employed, ma'am?

8 A Lexington County Sheriff's Department.

9 Q What do you do for Sheriff Metts?

10 A I'm the chemist and I'm also a deputy.

11 Q Do you have access to the crime scene lab?

12 A Yes, I do.

13 Q That's for the purpose of chemical analyses on
14 drugs?

15 A Yes. Sometimes I help with the marijuana analysis
16 or the chemicals. I also have another lab in the
17 building itself.

18 Q We are here today on State versus William Mark
19 Brockmeyer. Are you familiar with that case at
20 all?

21 A No.

22 Q At any time that you had access to the lab, did you
23 touch, manipulate, alter, or change any evidence on
24 any case that you weren't involved in and on this
25 case specifically?

1 A No, I don't touch any evidence.

2 Q At any time that you went back there and had
3 anybody in your presence that you escorted back
4 there or saw back there, did you see anybody touch
5 or manipulate or change evidence that they
6 shouldn't have been touching?

7 A No.

8 Q Please answer any questions the defense counsel
9 has. Thank you.

10 **CROSS EXAMINATION**

11 BY MR. MADSEN:

12 Q Emily, how are you doing?

13 A Good. How are you?

14 Q Good. When you're testing or handling evidence,
15 it's important that once you are done to put it
16 back in a secure location; isn't it?

17 A Uh-huh. (Indicating affirmative response.)

18 Q That's why, I guess, you have your own lab where
19 you test the drugs?

20 A Uh-huh. (Indicating affirmative response.)

21 Q And most of the stuff you do is not marijuana, but
22 it's everything else; correct?

23 A Sometimes I do marijuana.

24 Q But a majority of your stuff is not marijuana
25 stuff?

1 A The majority is not.

2 Q Once you ultimately get done doing your tests, you
3 actually take those items and take them to the
4 actual evidence locker that I think is across the
5 parking lot from where your lab is?

6 A No. It all depends on the case. If I have a large
7 meth lab, sometimes that evidence can take an
8 entire day for me to get through, and I can't
9 physically hold it myself. But you can step out
10 for a minute and then come back.

11 Q Right. But once you are all done with it?

12 A I don't take it to the evidence locker. I have a
13 locker, a safe, inside the lab itself.

14 Q So they don't take any drugs in the evidence locker
15 itself?

16 A I don't go -- you mean the evidence locker in the
17 evidence room?

18 Q Yes, the one that Beth Harmon works at?

19 A No. I keep it in the lab until I'm done with the
20 analysis and reviewing my results.

21 Q And then you take it there?

22 A Uh-huh. (Indicating affirmative response.)

23 MR. MADSEN: That's all the questions I have.

24 THE COURT: You may come down.

25 (Witness leaves the witness stand.)

ROBBIE LINT -- DIRECT -- MR. GRAHAM

465

1 MR. GRAHAM: The State calls Detective
2 Sergeant Robbie Lint.

3 CHARLES ROBERT LINT, JR.,
4 being first duly sworn, testifies as follows:

5 CLERK: State your full name, spelling your
6 last.

7 THE WITNESS: Charles Robert Lint, Jr. The
8 last name is L-I-N-T.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q Sergeant Lint, where are you employed, sir?

12 A The Lexington County Sheriff's Department.

13 Q How long have you been in law enforcement?

14 A Since 1997, roughly 14 years.

15 Q And how long have you been with Sheriff Metts?

16 A Since May of 2003.

17 Q Currently what position do you hold?

18 A I am a sergeant in the major crimes unit.

19 Q Back on July 11, 2010, in what capacity did you
20 serve Sheriff Metts?

21 A I was a sergeant over the road patrol in the west
22 region area.

23 Q Did you, in fact, respond to the shooting of Nick
24 Rae at Jager's bar on Highway 6 on July 11, 2010?

25 A I did.

1 Q And did you assist in searching for a gun that
2 morning?

3 A Yes, sir.

4 Q And although you didn't find a gun, did you
5 actually spot something?

6 A Yes, sir, I did.

7 Q What did you see?

8 A I found a black magazine.

9 Q And did you touch it?

10 A No, sir.

11 Q What did you do once you saw it and located it?

12 A When I located it, I advised crime scene
13 investigator David Day, advised him to come over to
14 where I was, where I pointed it out to him, and he
15 basically handled the situation from there, marked
16 it.

17 Q He photographed it and took possession of it?

18 A Yes, sir.

19 Q That's all the questions I have. Please answer any
20 questions the defense has.

21 **CROSS EXAMINATION**

22 **BY MR. MADSEN:**

23 Q How are you doing, Sergeant Day [sic]?

24 A How are doing?

25 Q You started with probation. Then you went to

ROBBIE LINT -- CROSS -- MR. MADSEN

467

- 1 Lexington County. I think you were a detective,
2 then a sergeant, and now is it a detective
3 sergeant?
- 4 A Yes, sir.
- 5 Q Sergeant detective?
- 6 A Correct.
- 7 Q You were called out -- I guess, were you on call
8 that night?
- 9 A No, sir.
- 10 Q How do you end up out there then?
- 11 A I was a sergeant over the road patrol. My shift
12 currently was day shift. We work 6:00 in the
13 morning till 6:00 in the afternoon.
- 14 Q So you had just kind of come on?
- 15 A We just came on. I was advised by the sergeant
16 from that night shift, Sergeant Black, with the
17 situation of where he was at. Basically I was
18 going down there with my team to go down there to
19 help relieve some of those night shift guys.
- 20 Q Ultimately you get there and you conduct a search?
- 21 A Yes, sir.
- 22 Q And you end up finding a clip?
- 23 A Magazine, yes, sir.
- 24 Q A magazine that goes into a gun and holds bullets?
- 25 A Yes, sir.

1 Q You found that and no one else found that except
2 for you?

3 A Yes, sir.

4 Q Once do you that, you let other people know?

5 A Yes, sir.

6 MR. MADSEN: That's all the questions I have.

7 MR. GRAHAM: Nothing else, Your Honor.

8 THE COURT: You may come down.

9 (Witness leaves the witness stand.)

10 MR. GRAHAM: The State calls Margaret Harmon
11 to the stand.

12 MARGARET ELIZABETH HARMON,
13 being first duly sworn, testified as follows:

14 CLERK: Please state your full name on the
15 record and spell your last.

16 THE WITNESS: Margaret Elizabeth Harmon,
17 H-A-R-M-O-N.

18 **DIRECT EXAMINATION**

19 BY MR. GRAHAM:

20 Q Ms. Harmon, where are you employed, ma'am?

21 A The Lexington County Sheriff's Department.

22 Q And how long have you worked there?

23 A Since October of 2002.

24 Q In what capacity do you work for the Sheriff?

25 A Currently I'm assigned as an evidence custodian.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

469

1 Q What is an evidence custodian?

2 A An evidence custodian is a person that's assigned
3 to the evidence room. We are responsible for the
4 chain of custody and control of all of the evidence
5 items that are delivered by officers,
6 investigators, and crime scene personnel and
7 occasionally other agencies as well.

8 Q You used the term chain of custody. What does that
9 mean?

10 A Chain of custody initially starts with the
11 individual who obtains the item. It could be the
12 person who collects the item. Once it goes from
13 there, that person is responsible for filling out
14 evidence paperwork. The paperwork is submitted
15 with the evidence.

16 We, as the evidence custodians, verify that
17 the item is actually what they turned in and
18 submitted on their paperwork. At this time we were
19 using a computer system where we entered all the
20 data in. We are responsible for data entry. Then
21 we will store the item until it's sent for testing
22 or sent to court.

23 Q Chain of custody, basically isn't it keeping track
24 of who touches it and what happens to the evidence?

25 A It is.

1 Q Let's talk about some evidence that you touched in
2 this case. Back on July 12th of 2010 -- do you
3 know Detective Grant?

4 A Yes, I do.

5 Q And we are here on the State versus William
6 Brockmeyer. I believe that he placed some evidence
7 in a evidence locker, and then you took it from the
8 evidence locker; is that correct?

9 A That's correct.

10 Q So if I show you this bag, which is State's Exhibit
11 Number 11, and ask you to take a look at it, do you
12 recognize that?

13 A Yes, I recognize it by the label.

14 Q The label. You are talking about the white label
15 that is on the front?

16 A That's correct. We assign bar-code labels to all
17 of the evidence. The bar-code label is unique to
18 that item.

19 Q What does that label say?

20 A That label tells us what the item is.

21 Q Does it assign it a -- is there a case number that
22 is assigned specifically to this case?

23 A It is.

24 Q Is there an item number specifically assigned to
25 this item?

MARGARET HARMON -- DIRECT -- MR. GRAHAM

471

- 1 A It is.
- 2 Q So what does your paperwork say that item number 1
- 3 is?
- 4 A Item 1 is a pair of white K-Swiss sneakers.
- 5 Q Here they are (indicating). Once they are turned
- 6 into you, this item and every item, do you or
- 7 anyone else alter, change, or manipulate them?
- 8 A No.
- 9 Q It's your job to keep custody of them?
- 10 A Yes.
- 11 Q Item number two in this case that was turned in to
- 12 the evidence locker by Detective Grant was also
- 13 collected by you out of the evidence locker; is
- 14 that correct?
- 15 A That's correct.
- 16 Q What was that?
- 17 A The black Motorola boost cell phone.
- 18 Q Let me show you State's Exhibit Number 10 and ask
- 19 if that's what you are referring to?
- 20 A Yes, it is.
- 21 Q Once it's placed in the bag and the label -- again,
- 22 the labels are on there; is that correct?
- 23 A We put the labels on there.
- 24 Q You do?
- 25 A Yes.

1 Q You or nobody else would go in and alter or change
2 it or manipulate it?

3 A No.

4 Q You would be fired if you did; wouldn't you?

5 A Yes.

6 Q Item number 3 in this case is what?

7 A A pair of gray underwear.

8 Q There is also 4 and 5 that was in the locker at the
9 same time; is that correct?

10 A That's correct.

11 Q So items 3, 4, and 5, what are those?

12 A Item 3 is a pair of gray underwear. Item 4 is a
13 pair of black and gray socks. Item 5 is a white
14 belt inside of a pair of blue plaid shorts.

15 Q I want to show you what is State's Exhibit Number 9
16 and ask if you recognize that box?

17 A Yes.

18 Q How do you recognize it?

19 A I recognize the box by the labels on the outside.

20 Q How many labels are on the outside?

21 A Three.

22 Q What do those three labels say that this item is?

23 A It says that it's a pair of black and gray socks, a
24 white belt inside of blue plaid shorts, and a pair
25 of gray underwear.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

473

1 Q I notice that a lot of these items have cards that
2 are attached to them. What are those cards for?

3 A At this time we were using chain of custody cards
4 for each item. The cards are only for that item.
5 There is a card for each item in the case, and
6 that's the way to track who has that item. Since
7 this time we have moved to a new system which
8 tracks that electronically.

9 Q Back then during this case or most of this case,
10 people actually signed cards saying when they got
11 it and who they turned it over to?

12 A That's correct. We used chain of custody of cards
13 until July 6th of 2011.

14 Q In addition to taking these items in on this case,
15 did you also take some items from Investigator Troy
16 Crump that came from the autopsy?

17 A Yes, I did.

18 MR. GRAHAM: And it's my understanding, Your
19 Honor, that the defense counsel has stipulated to
20 everything from the autopsy, except for the fired
21 projectile and jacket, item number 6?

22 MR. MADSEN: That's correct, Your Honor.

23 THE COURT: The record will so reflect.

24 BY MR. GRAHAM:

25 Q Let me show you State's Exhibit Number 53 and ask

1 if you recognize that?

2 A Yes, I do.

3 Q What is that?

4 A It's the autopsy container with a fired projectile.

5 Q And did you manipulate, change, or alter it in any
6 way?

7 A No, I did not.

8 Q In addition, did you take items from David Day?

9 A Yes, I did.

10 Q And that would have been from -- it was directly
11 handed to you; is that correct? Let me show you a
12 document and ask if that refreshes your memory?

13 A Yes.

14 Q Specifically what you had labeled as number 15 was
15 what?

16 A A white short-sleeve shirt with Sean John.

17 Q Let me show you State's Exhibit Number 25 and ask
18 if you recognize that?

19 A Yes, I do.

20 Q Is that your item 15 which you received from David
21 Day's hand?

22 A It is.

23 Q When you received this, was the item sealed by him
24 with the red tamperproof tape?

25 A Yes.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

475

1 Q You or nobody else would have gone in there and
2 manipulated or altered it or changed it?

3 A No, sir. Evidence custodians are not allowed to
4 open packages that are sealed.

5 Q Let me show you State's Exhibit Number 26 and ask
6 if you recognize that?

7 A Yes.

8 Q What is that item?

9 A It's a black 1088 pellet pistol gun.

10 Q When you received it from David Day's hands, this
11 bag was closed and had tamperproof red evidence
12 tape on it; is that correct?

13 A Yes.

14 Q And it's a pellet pistol. Item 18 in your
15 numbering system is what?

16 A A Kershaw folding knife.

17 Q Let me show you State's Exhibit 27 and ask if you
18 can recognize that?

19 A I do.

20 Q What is it?

21 A It's a Kershaw folding knife.

22 Q When this bag was given to you from Investigator
23 Day, it was sealed with tape, and neither you nor
24 anybody else went into it; is that correct?

25 A That's correct.

1 Q What is item 19?

2 A Item 19 is a .380 auto casing.

3 Q Let me show you State's Exhibit Number 28 and ask
4 if you recognize that?

5 A Yes, I do.

6 Q Is that item 19?

7 A It is.

8 Q When you received it, it was inside the paper bag
9 on the inside?

10 A It was.

11 Q Again, your bar-code label that we are talking
12 about is on there, and it would actually have the
13 number 19 at the end of this; wouldn't it?

14 A Yes.

15 Q You nor anybody else went into the bag and altered
16 or manipulated it or changed it?

17 A No, sir.

18 Q Item 20 is what?

19 A A black pistol magazine.

20 Q Let me show you State's Exhibit 30 and ask if you
21 recognize that?

22 A Yes, I do.

23 Q Is that your item number 20, the black pistol
24 magazine?

25 A It is.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

477

1 Q When you received this from David Day's hands, was
2 it, in fact, in this bag sealed with the tape and
3 initialed and dated?

4 A Yes.

5 Q Did you or anybody else go into this?

6 A No.

7 Q Item number 21 is what?

8 A Two Aguila .380 bullets.

9 Q Let me show you State's Exhibit Number 42 and ask
10 if you recognize that?

11 A Yes, I do.

12 Q And is that item 21, the two bullets that we are
13 talking about?

14 A Yes, it is.

15 Q When you received that from David Day's hands, was
16 it inside the brown paper bag sealed with the
17 evidence tape and initialed and signed?

18 A Yes, it was.

19 Q And did you or anybody else go into it and alter
20 it, manipulate it, or change it in any way?

21 A No, sir, I did not.

22 MR. GRAHAM: I believe 22 is stipulated by the
23 defense. That is a swab from Mr. Brockmeyer's right
24 palm.

25 MR. MADSEN: It is, Your Honor.

1 MR. GRAHAM: Twenty-four is the gunshot
2 residue kit for Nick Rae. I believe that is stipulated
3 by defense as well.

4 MR. MADSEN: It is, Your Honor.

5 THE COURT: Twenty-five is a G.S.R. kit for
6 the defendant William Brockmeyer. That is stipulated as
7 well.

8 MR. MADSEN: It is, Your Honor.

9 BY MR. GRAHAM:

10 Q Item number 26, what is item number 26?

11 A It's a swab from a black pistol magazine.

12 Q Let me show you State's Exhibit Number 31 and ask
13 if you recognize that?

14 A Yes, I do.

15 Q Is that, in fact, your item 26, the swab from the
16 black pistol magazine?

17 A Yes, it is.

18 Q And we know that by both the number that's up
19 there, as well as the description on the bar-code?

20 A Yes.

21 Q When you received this from David Day's hand, was
22 it in this bag?

23 A It was.

24 Q Was it sealed with evidence tape?

25 A It was.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

479

- 1 Q Was it dated and initialed by him?
- 2 A Yes.
- 3 Q You wouldn't have received it from him otherwise;
- 4 would you?
- 5 A No, sir.
- 6 Q Did you or anybody else cut into this bag and
- 7 manipulate, alter or change it in any way?
- 8 A No, I did not.
- 9 Q On July 13, 2010, at 2:53 in the afternoon, did you
- 10 also receive some other items from Detective Day?
- 11 A Yes, I did.
- 12 Q What were those two items?
- 13 A A .380 bullet and a Ceska pistol.
- 14 Q What is your sheriff's department item number for
- 15 the bullet?
- 16 A The bullet is item 29.
- 17 Q Let me show you State's Exhibit Number 49 and ask
- 18 if you recognize it?
- 19 A Yes, I do.
- 20 Q And how do you recognize it?
- 21 A By our bar-code label.
- 22 Q That is one .380 Aguila bullet?
- 23 A Yes.
- 24 Q When you received it from Detective Day on that
- 25 date, it was inside this bag, sealed with the red

1 tape, initialed and signed by him; is that correct?

2 A That's correct.

3 Q Did you or anyone else go into the bag and alter,
4 change, manipulate it in any way?

5 A No, I did not.

6 Q In addition to that, did you also receive what you
7 have called item 29 -- excuse me -- item 28, a
8 black Ceska .380 pistol?

9 A That's correct.

10 Q Let me show you State's Exhibit 48 and ask if you
11 recognize that?

12 A Yes, I do.

13 Q And when Investigator Day relinquished possession
14 of this to you, did he seal it with the red
15 evidence tape?

16 A Yes, he did.

17 Q You wouldn't have taken it until it had been; would
18 you?

19 A No.

20 Q He also initialed and dated it?

21 A That's correct.

22 Q Did you or anybody else with the Lexington County
23 Sheriff's Department cut into this box and alter,
24 manipulate, or change it in any way?

25 A No, sir, I did not.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

481.

1 MR. GRAHAM: I believe, Your Honor, that item
2 Sheriff's Department 43, which is the buccal swab from
3 the defendant, has also been stipulated to the chain of
4 custody as well.

5 MR. MADSEN: It has, Your Honor.

6 THE COURT: All right, sir.

7 BY MR. GRAHAM:

8 Q In preparing for this case, are you familiar with
9 the chain of custody on these items?

10 A Yes, I am.

11 Q Let's start with your item number 1, which is the
12 K-Swiss sneakers. What do your records reflect as
13 far as who obtained them originally?

14 A On July 11, 2010, at approximately 7:48 hours, the
15 sneakers were obtained by Shawn Grant, who is an
16 investigator with the Lexington County Sheriff's
17 Department.

18 Q And what do your records reflect that Shawn Grant
19 did with those sneakers?

20 MR. MADSEN: Your Honor, I would object. I
21 think she is reading from something. I think it would
22 be hearsay. She can testify as to who she got something
23 from or who she gave something to, but I don't think
24 that she can sit there and just read documents.

25 THE COURT: Rephrase your question, please.

1 BY MR. GRAHAM:

2 Q As part of your job and part of everybody's job,
3 are you all responsible for keeping track of the
4 chain of custody of items at the Sheriff's
5 Department?

6 A Yes, we are.

7 Q And are those records kept in the regular course of
8 business?

9 A Yes, they are.

10 Q And they are kept on either paper or computer; is
11 that correct?

12 A That's correct.

13 THE COURT: These are records in the normal
14 course of business and are admissible, and she is
15 permitted to testify from them since they are business
16 records.

17 MR. MADSEN: Judge, I would just object. I
18 don't think that the business records exception applies
19 to a law enforcement agency.

20 THE COURT: I understand what you say. I
21 conclude -- and I respectfully disagree -- but I
22 conclude that she is entitled to the use of the business
23 records in the Sheriff's Office.

24 MR. MADSEN: Thank you, Your Honor.

25 MR. GRAHAM: Thank you, Your Honor.

MARGARET HARMON -- DIRECT -- MR. GRAHAM

483

1 BY MR. GRAHAM:

2 Q After Detective Grant obtained these K-Swiss
3 sneakers, at what time did they get turned into the
4 evidence locker?

5 A On July 11, 2010, at approximately 7:58, he turned
6 those items into the evidence locker at the
7 Sheriff's Department.

8 Q As we testified earlier, you received them when?

9 A I received them July the 12th at approximately 9:35
10 in the morning.

11 Q At some point later, do you relinquish custody of
12 them to somebody?

13 A Yes.

14 Q Who is that?

15 A David Day.

16 Q At some point does Investigator Day turn them back
17 into Candy Kyzer?

18 A Yes, he does.

19 Q What date and time was that?

20 A He signed them out July 4th at 12:25 -- that's of
21 this year -- and turned them back in August the 4th
22 of this year at approximately 15:10 hours, which
23 would be 3:10 in the afternoon.

24 Q So once whey they were turned in by Detective
25 Grant, except for a breach period of time that

1 Investigator Day had them until court, they have
2 been in the custody of evidence at Lexington County
3 Sheriff's Department?

4 A That's correct.

5 Q Your item number 2, which is the black Motorola
6 boost phone?

7 A Yes.

8 Q Again, would you just explain the chain of custody
9 on that item.

10 A Sure. July 11, 2010 --

11 MR. MADSEN: Judge, instead of objecting to
12 each one, can I have a continuing objection that Your
13 Honor just ruled upon to each item of evidence so I
14 don't have to stand up?

15 THE COURT: You may do that and my ruling
16 would be the same. These are business records within
17 the Sheriff's Office, and she is entitled to testify as
18 to those records. Your objection is noted as to each
19 item.

20 MR. MADSEN: Thank you, Your Honor.

21 THE COURT: Thank you.

22 A July 11, 2010, at approximately 7:48 hours, the
23 Motorola boost cell phone, black in color, was
24 obtained by Shawn Grant. He turned it into the
25 evidence locker on July the 11th, 2010, at

MARGARET HARMON -- DIRECT -- MR. GRAHAM

485

1 approximately 7:58.

2 On July 12, 2010, at approximately 9:35, it
3 was signed in by me. July 12, 2010, at 11:12
4 hours, I released the phone to Investigator Grant.
5 On July 13, 2010, at approximately 8:58, Detective
6 Grant returned the phone back to me.

7 On July 1, 2011, at approximately 10:57, I
8 released the phone back to Investigator Grant. On
9 July 1, 2011, Investigator Grant released the phone
10 to S.L.E.D.

11 On July the 8th, 2011, at approximately 14:32
12 hours, which would be 2:32 in the afternoon,
13 S.L.E.D. computer crimes released the phone to
14 Investigator David Day. On July 8, 2011, at
15 approximately 16:35 hours, which would be 4:35 in
16 the afternoon, Investigator Day released the phone
17 to Candy Kyzer.

18 Q Item number 3, 4, and 5, which is the gray
19 underwear of the defendant, the black and gray
20 socks, and the white belt inside the blue plaid
21 shorts, I believe those all have the same chain of
22 custody?

23 A They do.

24 Q Is that correct?

25 A Yes, they do.

1 Q Would you publish what the chain of custody is for
2 those items.

3 A Sure. July 11, 2010, at approximately 7:48 in the
4 morning, the items were obtained by Investigator
5 Shawn Grant. He turned those into the evidence
6 locker July 11, 2010, at approximately 7:58. They
7 were signed in by me on July 12, 2010, at
8 approximately 9:35.

9 On July 8, 2011, at 11:32 hours I released
10 those items to Investigator David Day. On July the
11 8th, at approximately 13:35 hours, which would be
12 1:35 in the afternoon, Investigator Day released
13 those items to S.L.E.D. evidence control.

14 My records indicate that that was to Nikki
15 Perry. On July 28, 2011, at approximately 16:06
16 hours, which would be 4:06 in the afternoon,
17 S.L.E.D. evidence control technician Amy Stephens
18 gave them to Candy Kyzer.

19 Q Item number 6, which is the fired projectile and
20 jacket collected from the autopsy, would you state
21 the chain of custody for that item.

22 A The fired projectile and jacket at July 11, 2010,
23 at approximately 11:09 hours, it was obtained by
24 Investigator Troy Crump from the Newberry Hospital.
25 July 12, 2010, at approximately 9:46 he turned

MARGARET HARMON -- DIRECT -- MR. GRAHAM

487

1 those items into the evidence room.

2 On July 12, 2010, at approximately 9:47, they
3 were signed in by myself. July 14, 2011, at 09:49
4 hours I released those items to Investigator David
5 Day. I'm sorry that was July 14, 2010, at 9:49 and
6 released those to David Day.

7 July 14, 2010, at 10:19 David Day released
8 those to S.L.E.D. evidence control technician Amy
9 Stephens. September the 1st, 2010, at
10 approximately 10:44 S.L.E.D. evidence control
11 technician Amy Stephens released those items to
12 Candy Kyzer.

13 Q When you say Candy Kyzer, you said that name
14 before. Is she another evidence custodian that
15 works for you?

16 A She is. There are three evidence custodians at the
17 Sheriff's Department.

18 Q Your item number 15 is the white Sean John shirt?

19 A That's correct.

20 Q Give the chain of custody of that item.

21 A Sure. July 11, 2010, at 04:30 hours it was
22 obtained by Investigator David Day. July 12, 2010,
23 at approximately 16:49, which is 4:49 in the
24 afternoon, it was signed in by myself.

25 July 14, 2010, at approximately 9:16 in the

1 morning, Candy Kyzer released it to David Day.
2 July 14, 2010, at approximately 10:19 Investigator
3 David Day released it to S.L.E.D. evidence control
4 evidence technician Amy Stephens.

5 December 1, 2010, at approximately 12:15
6 S.L.E.D. evidence control technician Pat Crooks
7 released it to Candy Kyzer. July 8, 2011, at
8 approximately 11:32, I released it to David Day.

9 July 11th at approximately 13:35, which is
10 1:35 in the afternoon, David Day released the items
11 to S.L.E.D. evidence control technician Nikki
12 Perry.

13 July 28, 2011, at approximately 16:06, which
14 is 4:06 in the afternoon, S.L.E.D. evidence control
15 technician Amy Stephens released it to back to
16 Candy Kyzer.

17 Q Your item number 17 is the black pellet pistol.
18 That has been in the possession of the Sheriff's
19 Department until today since it was turned in by
20 Investigator Day on July 11, 2010?

21 A That's correct.

22 Q Is that also true for your item number 18, the
23 Kershaw folding knife?

24 A That's correct.

25 Q Your item number 19 is a .380 auto casing. Would

MARGARET HARMON -- DIRECT -- MR. GRAHAM

489

1 you state the chain of custody for that.

2 A July 11, 2010, at approximately 04:30 hours, it was
3 obtained by Investigator David Day. July 12, 2010,
4 at approximately 16:43, which is 4:43 in afternoon,
5 it was signed in by myself. July 14, 2010, at
6 approximately 9:16 Candy Kyzer released the item to
7 David Day.

8 July 14, 2010, at approximately 10:19 David
9 Day released the item to S.L.E.D. evidence control
10 technician Amy Stephens. And September the 1st,
11 2010, at approximately 10:44 S.L.E.D. evidence
12 control technician Amy Stevens released it to Candy
13 Kyzer.

14 Q Your item number 20 is a black pistol magazine.
15 Isn't it true that it has been in the possession of
16 the Sheriff's Department evidence custodians from
17 the date it was turned in, July 11, 2010, by
18 Investigator Day until it was introduced in court?

19 A That is correct.

20 Q Your item number 21 were two .380 bullets that were
21 found inside the magazine. Would you state the
22 chain of custody on that item.

23 A Sure. July the 11th, 2010, at 4:30 a.m. it was
24 obtained by Investigator David Day. July 12, 2010,
25 at approximately 16:43 or 4:43 in the afternoon, it

1 was signed in by myself. July 14, 2010, at
2 approximately 9:16 Candy Kyzer released the items
3 to David Day.

4 July 14, 2010, at approximately 10:19
5 Investigator David Day released the times to
6 S.L.E.D. evidence control technician Amy Stephens.
7 And September 1st, 2010, at approximately 10:44
8 S.L.E.D. evidence control technician Amy Stephens
9 released the items to Candy Kyzer.

10 Q Your item number 26 is the swab from the black
11 pistol magazine; is that correct?

12 A Yes, it is.

13 Q Would you give the chain of custody for that item.

14 A July 11, 2010, at 04:30 hours it was obtained by
15 Investigator David Day. July 12, 2010, at
16 approximately 16:43, 4:43 in the afternoon, it was
17 signed in by myself. July 14, 2010, at 09:16 hours
18 Candy Kyzer released the item to David Day.

19 July 14, 2010, at approximately 10:19 David
20 Day released the item to S.L.E.D. evidence control
21 technician Amy Stephens. December the 1st, 2010,
22 at approximately 12:15 S.L.E.D. evidence control
23 technician Pat Crooks released the item to Candy
24 Kyzer.

25 Q Your item number 28 is a black Ceska .380 pistol

MARGARET HARMON -- DIRECT -- MR. GRAHAM

491

1 itself. Could you give the chain of custody on
2 that, please.

3 A. July 13, 2010, at 08:40 hours it was obtained by
4 Investigator David Day. July 13, 2010, at
5 approximately 14:53, which is 2:53 in the
6 afternoon, it was signed in by myself. July 14,
7 2010, at approximately 9:16 Candy Kyzer released
8 the item to David Day.

9 July 14, 2010, at approximately 10:19 David
10 Day released the item to S.L.E.D. evidence control
11 technician Amy Stephens. September the 1st, 2010,
12 at approximately 10:44 S.L.E.D. evidence control
13 technician Amy Stevens released the item to Candy
14 Kyzer.

15 July 26, 2011, at approximately 10:33 Candy
16 Kyzer released the item to David Day. July 28,
17 2011, at approximately 13:40 David Day released the
18 item to Candy Kyzer.

19 August the 11th, 2011, at approximately 9:17
20 in the morning, I released the item to David Day.
21 August the 11th, 2011, at approximately 16:25,
22 which is 4:25 in the afternoon, David Day released
23 the item back to me.

24 Q The last item we need to discuss is your item
25 number 29, which is another .380 bullet. Would you

1 give the chain of custody for that item, please.

2 A July 13, 2010, at approximately 8:40 the item was
3 obtained by Investigator David Day. July 13, 2010,
4 at approximately 14:53, 2:53 in the afternoon, it
5 was signed in by myself. July 14, 2010, at
6 approximately 9:16 Candy Kyzer signed the item out
7 to David Day.

8 July 14, 2010, at approximately 10:19 David
9 Day signed the item over to S.L.E.D. evidence
10 control technician Amy Stephens. September the
11 1st, 2010, at approximately 10:44 S.L.E.D. evidence
12 control technician Amy Stephens released the item
13 to Candy Kyzer.

14 Q Thank you, Ms. Harmon.

15 THE COURT: Have you concluded your
16 examination?

17 MR. GRAHAM: I have, Your Honor. I'm sorry.

18 THE COURT: You may proceed.

19 MR. MADSEN: I didn't want to step on his
20 toes, Judge. I was kind of wondering the same thing.

21 **CROSS EXAMINATION**

22 BY MR. MADSEN:

23 Q You had testified to a lot of these different
24 items, but when they ultimately come in, you don't
25 actually see what is in here? It comes in sealed?

1 A We receive the sealed package which is a
2 said-to-contain.

3 Q Right. And I think you testified you don't open it
4 up?

5 A No, we do not.

6 Q Generally on a chain of custody, it starts with the
7 first person who gets or finds an item, and then it
8 kind of goes all the way through; doesn't it?

9 A It doesn't have to be the first person who finds
10 it. It's the first person who touched it.

11 Q So the first person who ultimately collects it?

12 A That's correct.

13 Q And ultimately you would agree with me that y'all
14 get -- every day that you come to work, you are
15 getting items in?

16 A That's correct.

17 Q Realistically you can't remember this box as
18 compared to the next one; can you?

19 A I can because I place a label on that box. That
20 label is put on there by an evidence control
21 technician.

22 Q Right. But ultimately that's why you do it because
23 you can't tell that you get these set of boxes in
24 as compared to a set of boxes in another case;
25 correct?

1 A That is correct, but we work one case at a time.

2 Q Ultimately though you are always getting in
3 evidence consistently while you work?

4 A That's correct.

5 Q And even when y'all -- y'all don't work in the
6 middle of the night generally; correct?

7 A We have before but not generally.

8 Q You have got kind of your normal hours?

9 A That's correct.

10 Q So when you are not there, there's evidence lockers
11 that if someone comes in, they can put it in a
12 secured evidence locker. Once it's shut on the
13 outside, only y'all can access on the other side
14 then?

15 A That's correct.

16 Q So people can drop stuff off when you or no other
17 evidence custodians are working?

18 A Yes.

19 Q Y'all can ultimately take items up -- I think you
20 even have a lot that you can take cars, boats,
21 things of that nature?

22 A Yes. Large items by policy, officers or
23 investigators are required to call in an evidence
24 custodian to come and pick up large items that
25 don't fit in the lockers.

MARGARET HARMON -- CROSS -- MR. MADSEN

495

- 1 Q The only way that you have of knowing what is
2 inside, say, a box you get is if someone tells you
3 what it is or they write it on the outside of the
4 box?
- 5 A That's correct. They write on the outside.
- 6 Q And you can't testify in front of this jury what
7 someone else has done with a piece of evidence when
8 it's outside of your presence; can you?
- 9 A It's very rarely outside of our presence, unless
10 it's at a lab for testing.
- 11 Q That's correct. As far as if someone transports it
12 somewhere else, you have no idea what they have
13 done?
- 14 A That's correct.
- 15 Q And would you agree with me that what you were
16 reading from as far as things that Candy Kyzer or
17 Amy Stephens or David Day -- that unless you handed
18 it to David Day, you are relying on what someone
19 else says? You don't have personal knowledge of
20 that?
- 21 A I am relying on the computer records.
- 22 Q Unless you see it with your eyes, you are relying
23 on just records?
- 24 A That's correct.
- 25 MR. MADSEN: That's all the questions I have.

1 MR. GRAHAM: Thank you, Ms. Harmon.

2 THE COURT: You may come down.

3 (Witness leaves the witness stand.)

4 THE COURT: Gentlemen, it's about time for the
5 mid morning break. Let's take a break.

6 Mr. Foreman, we will be out for about 15
7 minutes. Please let me my bailiff know when you and
8 your jury are ready to return, and we will come right
9 back.

10 We are in recess subject to the call of the
11 Court. We are taking about approximately 15 minutes.

12 (Whereupon there is a recess.)

13 THE COURT: All right. Is the State ready to
14 proceed?

15 MR. GRAHAM: Yes, Your Honor, but I believe
16 the defense has a matter we need to take up before our
17 next witness or so.

18 THE COURT: Yes, sir, have at it.

19 MR. GRAHAM: I've got a photograph, Your
20 Honor, that I was showing to defense that I planned on
21 introducing through one of the crime scene
22 investigators. I will pass it up.

23 What that photograph is, Your Honor, was a
24 photograph and a file name downloaded from the boost
25 Motorola phone, which is State's Exhibit Number 10.

1 That was the phone that was found on the defendant.

2 THE COURT: The one on the right was found on
3 the defendant?

4 MR. GRAHAM: I'm sorry. That picture came off
5 this phone, Your Honor. Then the black pellet gun was
6 found on the victim.

7 THE COURT: There's two phones here. Tell me
8 which is on the left and which is on the right.

9 MR. GRAHAM: No, Your Honor. Those are guns.

10 THE COURT: I understand. I didn't mean to
11 say phones.

12 MR. GRAHAM: What the State's contention is is
13 that the gun on the left is the .380 murder weapon.

14 THE COURT: Right.

15 MR. GRAHAM: The gun on the right is the
16 pellet pistol.

17 THE COURT: Right. That's what I perceived it
18 to be.

19 MR. GRAHAM: And the file name that is
20 associated with this picture, somebody went in and
21 labeled the phone by spelling all these words out. The
22 file name is will -- space -- gun -- space -- on --
23 space -- left -- space -- my -- space -- gun -- space --
24 on -- space -- R-I-G-H dot Jpeg, which is Jpeg or a file
25 for a photograph.

1 THE COURT: Well, those guns are in evidence;
2 aren't they?

3 MR. GRAHAM: They are, Your Honor, and so is
4 the phone,

5 THE COURT: The guns are in evidence. What is
6 the objection to a picture that compares the two
7 weapons?

8 MR. MADSEN: Judge, there's writing on top of
9 that picture that identifies one as being Will's gun and
10 the other assumably being Nick's gun. I think that
11 would be hearsay.

12 THE COURT: Instead of a picture, why don't --
13 they are in evidence -- why don't you stand before the
14 jury and say, "Here they are"?

15 MR. GRAHAM: Well, the photograph shows that
16 picture was on the phone, Your Honor, and the file name
17 is an indication of which gun belonged to which
18 individual. It's worth what it's worth to the jury.

19 THE COURT: They are in evidence, and I will
20 let the picture in. They are already -- it's just a
21 picture of what is in evidence. I don't see any adverse
22 implication to the defendant on that issue.

23 MR. MADSEN: Yes, Your Honor. Once they go to
24 introduce it, I will renew my objection.

25 THE COURT: Yes, sir, that will be fine. What

1 his objection is is this language on the top.

2 MR. GRAHAM: Yes, Your Honor. I don't believe
3 that hearsay applies. It is what it is. The file name
4 that was typed in on the phone by somebody is the name
5 that is associated -- somebody particularly named that
6 picture with that phrase.

7 THE COURT: I see nothing wrong with the
8 picture since both guns are in evidence.

9 MR. GRAHAM: Yes, Your Honor.

10 THE COURT: We will proceed. I note the
11 language on the top, but there is evidence all over the
12 courthouse as to which gun belonged to who. Your
13 objection is noted for the record. Bring the jury in,
14 please. Let the record reflect that issue will be of
15 help to the jury in comparison.

16 (The jury returns to the courtroom.)

17 THE COURT: Please resume and call your next
18 witness.

19 MR. HUBBARD: Thank you, Your Honor. The
20 State recalls Detective Shawn Grant to the stand.

21 CLERK: Is he still under oath, Your Honor?

22 THE COURT: Yes.

23 SHAWN GRANT, having been
24 previously duly sworn, resumes the witness stand and
25 testifies as follows:

DIRECT EXAMINATION

1

2 BY MR. HUBBARD:

3 Q Detective Grant?

4 A Yes, sir.

5 Q I want to show you what has already been placed
6 into evidence State's Exhibit Number 10. Can you
7 identify that object?

8 A Black Motorola boost cell phone.

9 Q Black Motorola boost cell phone?

10 A Yes, sir.

11 Q Do you recall pulling this item, this cell phone,
12 out of evidence?

13 A Yes, sir.

14 Q What day did you pull it out of evidence?

15 A July 12, 2010.

16 Q Who did you receive it from?

17 A Beth Harmon.

18 Q The woman who just testified?

19 A Yes, sir, the evidence custodian.

20 Q Who did you deliver it to?

21 A C.S.I. Investigator Mike Phipps.

22 Q Mike Phipps?

23 A Yes, sir.

24 Q When he was through with his work on it, who
25 retrieved this phone?