

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions

Doyet A. Early, Circuit Court Judge

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Appellate Case No. 2018-001848

Case No. 2016-GS-10-00241-242

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**RECEIVED**

**May 08 2020**

**SC Court of Appeals**

The State of South Carolina,

Respondent,

v.

William T. Gule, Jr.,

---

Appellant.

**RECORD ON APPEAL**

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THE CHARLESTON COUNTY CLERK OF COURT’S OFFICE: STATE’S EXHIBIT #71 (DVD – BODY CAM) AND STATE’S EXHIBIT #72 (CD – 911 CALL).**

|                           |   |                           |
|---------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA   | ) | COURT OF GENERAL SESSIONS |
|                           | ) | NINTH JUDICIAL CIRCUIT    |
| COUNTY OF CHARLESTON      | ) |                           |
|                           | ) |                           |
| State of South Carolina,  | ) | CASE NO. 2016-GS-10-00241 |
|                           | ) | 2016-GS-10-00242          |
|                           | ) |                           |
| PLAINTIFF,                | ) | TRANSCRIPT OF RECORD      |
|                           | ) |                           |
| VS.                       | ) | CERTIFIED COPY            |
|                           | ) |                           |
| William Thomas Gule, Jr., | ) |                           |
|                           | ) |                           |
| DEFENDANT.                | ) |                           |
|                           | ) |                           |

---

October 8 - 10, 2018

Charleston, South Carolina

B E F O R E:

The Honorable Doyet A. Early, and a Jury.

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

E. Culver Kidd, IV, Esquire, Assistant Solicitor  
For the State

Edward Regin Corvey, III, Assistant Solicitor  
For the State

Christopher Davie Lizzi, Esquire  
For the Defense

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

| <u>S T A T E     E X H I B I T S</u> |                    |             |              |
|--------------------------------------|--------------------|-------------|--------------|
| <u>NO.</u>                           | <u>DESCRIPTION</u> | <u>MARK</u> | <u>ADMIT</u> |
| 1                                    | Photo              | 47          | 71           |
| 2                                    | Photo              | 47          | 71           |
| 3                                    | Photo              | 47          | 71           |
| 4                                    | Photo              | 47          | 119          |
| 5                                    | Photo              | 48          | 119          |
| 6                                    | Photo              | 48          | 119          |
| 7                                    | Photo              | 48          | 119          |
| 8                                    | Photo              | 48          | 119          |
| 9                                    | Photo              | 48          | 119          |
| 10                                   | Photo              | 48          | 119          |
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| 15                                   | Photo              | 48          | 119          |
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| 19                                   | Photo              | 49          | 119          |
| 20                                   | Photo              | 49          | 119          |
| 21                                   | Photo              | 49          | 119          |
| 22                                   | Photo              | 49          | 119          |
| 23                                   | Photo              | 49          | 119          |
| 24                                   | Photo              | 49          | 125          |

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>MARK</u> | <u>ADMIT</u> |
|------------|--------------------|-------------|--------------|
| 25         | Photo              | 49          | 125          |
| 26         | Photo              | 49          | 125          |
| 27         | Photo              | 49          | 125          |
| 28         | Photo              | 49          | 125          |
| 29         | Photo              | 50          | 125          |
| 30         | Photo              | 50          | 125          |
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| 33         | Photo              | 50          | 149          |
| 34         | Photo              | 50          | 130          |
| 35         | Photo              | 50          | 130          |
| 36         | Photo              | 50          | 130          |
| 37         | Photo              | 50          | 130          |
| 38         | Photo              | 50          | 130          |
| 39         | Photo              | 50          | 130          |
| 40         | Photo              | 50          | 130          |
| 41         | Photo              | 51          | 130          |
| 42         | Photo              | 51          | 130          |
| 43         | Photo              | 51          | ---          |
| 44         | Photo              | 51          | 134          |
| 45         | Photo              | 51          | 134          |
| 46         | Photo              | 51          | 134          |
| 47         | Photo              | 51          | 134          |
| 48         | Photo              | 51          | 134          |
| 49         | Photo              | 51          | 134          |

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>MARK</u> | <u>ADMIT</u> |
|------------|--------------------|-------------|--------------|
| 50         | Photo              | 51          | 134          |
| 51         | Photo              | 51          | 134          |
| 52         | Photo              | 51          | 134          |
| 53         | Photo              | 51          | 134          |
| 54         | Photo              | 52          | 134          |
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| 56         | Photo              | 52          | 149          |
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| 58         | Photo              | 52          | 157          |
| 59         | Photo              | 52          | 157          |
| 60         | Photo              | 52          | 157          |
| 61         | Photo              | 52          | 157          |
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| <u>NO.</u> | <u>DESCRIPTION</u>                                        | <u>MARK</u> | <u>ADMIT</u> |
|------------|-----------------------------------------------------------|-------------|--------------|
| 75         | Bag w/Drum Magazine<br>(*Substitute w/Photo End of Trial) | 94          | 96           |
| 76         | Glock Box<br>(*Substitute w/Photo End of Trial)           | 94          | 96           |
| 77         | Bullet                                                    | 97          | 98           |
| 78         | Bullets                                                   | 98          | 98           |
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| 80         | Bullet                                                    | 160         | 201          |
| 81         | Bullet                                                    | 160         | 201          |
| 82         | Bullet                                                    | 160         | 201          |
| 83         | Bullet                                                    | 160         | 201          |
| 84         | Bullet                                                    | 161         | 201          |
| 85         | Bullet                                                    | 161         | 201          |
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|-------------------------------------------|----------------------|---------------|--------------|
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| 109                                       | Photocopies          | 311           | 316          |
| 110                                       | Photocopies          | 311           | 316          |
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| 112                                       | Photocopies          | 311           | 316          |
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| <u>NO.</u>                                | <u>DESCRIPTION</u>   | <u>MARKED</u> | <u>ADMIT</u> |
| 1                                         | Photo                | 171           | 172          |

1           THE COURT: All right. Mr. Solicitor, you may call  
2 the first case.

3           MR. KIDD: Thank you, Your Honor. The State calls  
4 the case versus -- State versus William Gule. Indictment  
5 Number 2016-GS-10-0241 for murder, 2016-GS-10-0242  
6 possession of a firearm during the commission of a  
7 violent crime.

8           THE COURT: Thank you. If you would pass the  
9 indictments up. If the clerk would hand me the  
10 indictments.

11           Mr. Lizzi, are you ready to proceed?

12           MR. LIZZI: The defense is ready to proceed, Your  
13 Honor.

14           THE COURT: All right. Ladies and gentlemen of the  
15 jury panel, the State has called to trial the case of the  
16 State of South Carolina versus William Thomas -- and help  
17 me pronounce.

18           MR. LIZZI: Gule.

19           THE COURT: Gule. And that is spelled G-U-L-E, Jr.

20           There are two indictments. The first indictment is  
21 for the offense of murder. And the second indictment is  
22 for the offense of possession of a weapon during the  
23 commission of a violent crime.

24           To these indictments Mr. Gule has pled not guilty.  
25 By pleading not guilty that puts the burden on the State

1 of South Carolina to prove his guilt to you beyond a  
2 reasonable doubt. They have to prove each and every  
3 element of both indictments to you beyond a reasonable  
4 doubt.

5 Please do not infer anything from the fact that he  
6 has been charged, arrested, and indicted for these two  
7 offenses. This is simply the legal document by way this  
8 case comes into the courtroom. It informs the defendant  
9 of the charges against him. But the State has the burden  
10 of proof pleading his guilt to you beyond a reasonable  
11 doubt.

12 So what we are going to do now is select a jury to  
13 try this case. I will need twelve jurors and two  
14 alternatives. Before I do that I have to ask certain  
15 questions as it pertains to this case. Like we just did  
16 in the jury assembly room, if any of the questions apply  
17 to you please once again stand, identify yourself by  
18 name. And if you know your number let us know the  
19 number. And then we will discuss your responses and then  
20 we will go through this exercise until we have a jury  
21 ready to be selected.

22 At that time your names will be put into a random  
23 computer program, so to speak. You will be selected  
24 randomly. And as we call your name randomly you will  
25 come forward.



1           The State will have five strikes. The defendant  
2 will have ten strikes. I will explain all of that to you  
3 in just a little while.

4           What I intent to do is draw the jury. Those of you  
5 who are not selected will go down to Judge McCoy.

6           I have a number of pretrial motions that I have to  
7 listen to and decide upon. I don't want you having to  
8 sit around and wait while we do that.

9           So what we will probably do is draw the jury.  
10 Hopefully get that done within about 45 minutes. I will  
11 discuss with the lawyers how much time we need for lunch.  
12 And then we will break, come back, and start the trial  
13 right at about the time we decide to come back, and go  
14 until about 5:00 o'clock this afternoon. But we will  
15 know a little bit more about that in just a few minutes.

16           I think that is the most efficient way of doing it  
17 instead of selecting you, making you sit back there and  
18 wait until I do the motions, come back out, get started  
19 with just a little bit and then have to break for lunch.  
20 I think that is probably -- the first way I described it  
21 is the most efficient way of doing it.

22           I am very cognizant of your time and the efforts you  
23 have made to be here. And I want to make sure we run a  
24 very efficient courtroom, moving it along in a very  
25 orderly manner. So that is -- I think that is the best

1 way to use our time.

2 Now please listen carefully to my questions. If  
3 they apply to you, please stand.

4 Do I have any member of the jury panel who is  
5 related by blood or marriage or do you know or have you  
6 in the past had a close person or social relationship  
7 with the defendant William Thomas Gule, G-U-L-E, Jr., or  
8 the victim in the case, the alleged victim, Pamela  
9 Burgess, B-U-R-G-E-S-S; if so, please stand.  
10 (WHEREUPON, no one standing.)

11 THE COURT: Now don't get frightened when I do this.  
12 I have to read off the potential witnesses in the trial  
13 of the case. That doesn't mean they are going to call  
14 all of them. We have to make sure that we know who the  
15 potential witnesses are.

16 I am going to read off the potential witnesses. And  
17 then I am going to ask you the same question, do you know  
18 or have you in the past been related by blood or marriage  
19 or do you know or have you in the past had a close  
20 personal or social relationship.

21 And the witnesses are -- potential witnesses are as  
22 follows:

23 Dale Hanna; Antonio Drayton; Leslie Snyder; Trish Pye,  
24 P-Y-E-E; Pablo Perez, Melissa Andrews; Lauren Sisson,  
25 S-I-S-S-O-N; Erin Schiavi, S-C-H-I-A-V-I; Lisa

1 Villeponteaux - I'm sorry - V-I-L-L-A-P-O-N-T-E-A-U-X;  
2 Jan Zimmer; Tonia Mallette; Corporeal Crystal Bright; PFC  
3 Boldin; Officer James Jackson; Detective Thomas Bailey;  
4 Jennifer Wooley; Sara Senn; Mary Phillips; Randall  
5 Unterbrink; Officer Matthew Tulla; Officer Caleb Hutson;  
6 Lieutenant Jason Bruder; Leslie Ambrose; Richard  
7 Burckhardt; Detective Martin; Detective Daniel English;  
8 Erin Presnell; Jamie Green; Suzann Cromer; Catherine  
9 Leisy, L-E-I-S-Y; Megan Fletcher; Ashley Newell; Luke  
10 Sprat; Amy Stephens; Rodney Van Horn; Loretta Mitchum;  
11 Jackie Davis; Doris Yarborough; Amy Stephens Black.

12 Question, do I have any member of the jury panel who  
13 is related by blood or marriage or do you now or have you  
14 in the past had a close personal or social relationship  
15 with any of the potential witnesses in the trial of the  
16 case; if so, please stand.

17 (WHEREUPON, no one standing.)

18 THE COURT: The State of South Carolina will be  
19 represented by the solicitors from Charleston County, Mr.  
20 Culver Kidd, K-I-D-D -- if you would you stand. And  
21 Mr. ---

22 MR. CORVEY: Ted Corvey, Your Honor.

23 THE COURT: Say it out loud.

24 MR. CORVEY: Ted Corvey.

25 THE COURT: The defendant will be defended by Mr.

1 Christopher D. Lizzi, L-I-Z-Z-I. He practices at Ashley  
2 Phosphate here in North Charleston.

3 My question is this - thank you Mr. Lizzi - do I  
4 have any member of the jury panel now or in the past who  
5 have had legal services, you or your family, performed by  
6 any of the lawyers; if so, please stand.

7 (WHEREUPON, no one standing.)

8 Do I have any member of the jury panel related by  
9 blood or marriage or have you now or have you in the past  
10 had a close personal or social relationship with any of  
11 the attorneys in the case, please stand.

12 (WHEREUPON, no one standing.)

13 THE COURT: Ladies and gentlemen, it is alleged -  
14 and these are simply allegations which must be proven to  
15 you beyond a reasonable doubt by the State - but it is  
16 alleged that here in Charleston County on or about August  
17 5 of the year 2015 Mr. Gule, G-U-L-E, Jr., William  
18 Thomas, by means of a gun and a gunshot wound, shot and  
19 killed Pamela Burgess.

20 Obviously they -- also is charged with having a gun  
21 during the commission of a violent crime, to wit murder.

22 Where did this allegedly occur? What ---

23 MR. KIDD: In West Ashley.

24 THE COURT: West Ashley. Obviously there will be a  
25 lot more description of it. But my question is this:

1 Does any member of the jury panel know anything about  
2 this case; has anyone discussed it with you; have you  
3 seen anything on TV, social media, newspapers, anything;  
4 know anything about the facts of this case August 5 of  
5 2015 -- in West Ashley?

6 MR. KIDD: Yes, sir, Braxton Avenue.

7 THE COURT: Braxton Avenue. The person who was  
8 killed was Pamela Burgess.  
9 (WHEREUPON, no one standing.)

10 THE COURT: Ladies and gentlemen, let me give you a  
11 little background on how it works, how the system works.  
12 I have been on the bench now going on 15 years. Tried  
13 cases in just about all of the counties in the state.  
14 And when we have a trial criminal such as a murder trial  
15 like this or any type of criminal trial or a civil trial  
16 where people are suing for monetary damages during the  
17 trial of the case we have two judges who participate in  
18 the trial, two judges.

19 My position makes me the judge of the law in the  
20 case. And I tell and instruct you as to what the law is,  
21 and you are sworn to accept the law as I give it to you.

22 Of course my other responsibility is to rule on the  
23 admissibility of evidence in the case. The lawyers have  
24 to ask their questions to comply with the rules of  
25 evidence and the rules of criminal procedure. And then

1 once they properly ask the question the evidence is  
2 admitted into the trial of the case.

3 And oftentimes notwithstanding the fact that the  
4 evidence is admissible it will be contradictory. People  
5 will say different things. So that is where the most  
6 important judge comes into play. And that is the judge  
7 of the facts in the case.

8 And the 12 jurors who are selected in this case will  
9 collectively act as the judge of the facts. You will  
10 listen to the testimony and you will obviously have to  
11 decide the credibility or believability of the witnesses.  
12 And it will become your duty to decide what evidence you  
13 believe to be the true facts in the case.

14 And then once you make that decision as the judge of  
15 the facts you take those facts and you apply the law as I  
16 give it to you and then it becomes your decision to  
17 determine whether or not the State has proven their case  
18 to you beyond a reasonable doubt. So that is the judge  
19 of the facts duty, to determine the true facts, apply it  
20 to the law as I give it to you, and then to determine  
21 whether or not the State's has met its burden of proof.  
22 You are the judges of the facts. You are the most  
23 important judge in the trial of the case.

24 Now my question is this: Do I have any member of  
25 the jury panel who is unable to perform that important

1 civic duty of being a judge of the facts and determining  
2 whether the State's has met its burden of proof? Do you  
3 have any personal beliefs, religious beliefs, political  
4 beliefs, anything that would preclude or keep you from  
5 performing that civil duty?

6 We have the best justice system in the world. When  
7 someone is accused of a crime such as this instead of  
8 having a dictator or a squad or something to determine or  
9 decide it in the streets we have the citizens from the  
10 community who come in and in an orderly process you are  
11 the judges of the facts to determine if the State has  
12 proven its case beyond a reasonable doubt.

13 So if I have anybody that cannot perform that duty,  
14 I need to know it now.

15 (WHEREUPON, jury panel member standing.)

16 THE COURT: Yes, sir, name and number.

17 JURY PANEL MEMBER: Khaseem Capers, Number 44.

18 THE COURT: Well, come up here and tell me why you  
19 can't be a good citizen.

20 (WHEREUPON, bench conference as follows:)

21 THE COURT: Your name?

22 JURY PANEL MEMBER: Khaseem Capers. It's personal.

23 THE COURT: What is personal about it?

24 JURY PANEL MEMBER: I just wouldn't want to be the  
25 judge.

1 THE COURT: I don't want to be the judge either, but  
2 I have a duty to perform. You are a citizen in our  
3 state. You can't do that?

4 JURY PANEL MEMBER: I wouldn't -- I wouldn't feel  
5 comfortable.

6 THE COURT: Why wouldn't you feel comfortable?

7 JURY PANEL MEMBER: Somebody's life in my hands.

8 THE COURT: You don't -- all you do is determine is  
9 whether or not the State has proven their case. You  
10 don't have to worry about life in your hands. What  
11 number are you?

12 JURY PANEL MEMBER: Forty-four.  
13 (WHEREUPON, end of bench conference.)

14 THE COURT: All right, transfer Number 44 to the  
15 next civil roster. Make sure he gets on one that is sort  
16 of less.

17 THE CLERK: Yes, sir.

18 THE COURT: But you are excused.

19 THE BAILIFF: Your Honor, Juror 208.

20 THE COURT: Come forward, please.

21 (WHEREUPON, bench conference as follows:)

22 THE COURT: Yes, sir.

23 THE CLERK: Good morning. It is more of a personal  
24 issue. My job does not pay me for jury duty, and I had  
25 to evacuate my family during Hurricane Florence so I used



1 up all of my time. And so I would be -- having to take  
2 unpaid leave, ---

3 THE COURT: Well, the County is going to pay you ---

4 JURY PANEL MEMBER: --- and I really can't take a  
5 financial ---

6 THE COURT: The County will be paying ---

7 JURY PANEL MEMBER: I really can't ---

8 THE COURT: That is not -- that is not a valid  
9 excuse. Thank you.

10 (WHEREUPON, end of bench conference.)

11 THE BAILIFF: Juror 21.

12 (WHEREUPON, bench conference as follows:)

13 THE COURT: Good morning.

14 JURY PANEL MEMBER: Good morning. My name is Amy  
15 Boehm. I work at the Medical University of South  
16 Carolina with the National Crime Victim's Center. And I  
17 help them with their grant funding which we get from the  
18 Department of Justice, National Institute of Justice and  
19 are to -- the Mother Emmanuel grant and domestic violence  
20 grant.

21 THE COURT: And domestic violence is one of the --  
22 top of y'all's list?

23 JURY PANEL MEMBER: Yes, it is right at the top of  
24 our list. And Dr. Rangel in our group helps victims of  
25 homicide which would be families and victims of homicide.

1 THE COURT: All right. What number are you?

2 JURY PANEL MEMBER: Twenty-one.

3 (WHEREUPON, end of bench conference.)

4 THE COURT: I am going to put 21 on the civil panel.

5 (WHEREUPON, resume bench conference as follows:)

6 THE COURT: I will excuse you and you come back when  
7 they call you, okay?

8 JURY PANEL MEMBER: All right.

9 (WHEREUPON, end of bench conference.)

10 THE CLERK: Your Honor, Juror 259.

11 THE COURT: Two fifty-nine.

12 (WHEREUPON, bench conference as follows:)

13 THE COURT: Good morning.

14 JURY PANEL MEMBER: Good morning. I don't know if I  
15 should have said this earlier.

16 THE COURT: I can't hear you.

17 JURY PANEL MEMBER: Oh, I'm sorry. I don't know if  
18 I should have said this earlier, but I am leaving town on  
19 Wednesday. I own my own business. I don't know if I  
20 should have said this in the other round.

21 THE COURT: You should have told me earlier.

22 JURY PANEL MEMBER: I am so sorry.

23 THE COURT: That's okay. I can't excuse you, but I  
24 can transfer you. What is your number?

25 JURY PANEL MEMBER: Two fifty-nine.

1 (WHEREUPON, end of bench conference.)

2 THE COURT: Two fifty-nine transfer. Thank you.

3 THE CLERK: Your Honor, Juror 174.

4 (WHEREUPON, bench conference as follows:)

5 THE COURT: Good morning. How are you?

6 JURY PANEL MEMBER: I am good. How are you? I  
7 just feel really worried about hearing about a murder  
8 trial and making a decision. I don't feel like I am -- I  
9 feel very anxious about being wrong. I never read bad  
10 news because ---

11 THE COURT: Read what?

12 JURY PANEL MEMBER: Read bad news or read stories or  
13 watch movies about murder. It just scares me. And I  
14 don't want to be wrong if I -- on something. And then I  
15 will feel -- I will think about it forever.

16 THE COURT: Well, I can't excuse you. I can put you  
17 on a civil roster.

18 JURY PANEL MEMBER: That would be wonderful. Thank  
19 you.

20 THE COURT: All right. We are going to put you on a  
21 civil docket. Thank you.

22 JURY PANEL MEMBER: Okay. Should I go somewhere  
23 right now or?

24 THE COURT: I will excuse you. You may leave.

25 JURY PANEL MEMBER: For today?

1 THE COURT: Yes, ma'am.

2 JURY PANEL MEMBER: Okay. Thank you, sir.

3 THE COURT: Call back after 6:00.

4 (WHEREUPON, end of bench conference.)

5 THE CLERK: Your Honor, Juror Number 45.

6 (WHEREUPON, bench conference as follows:)

7 JURY PANEL MEMBER: I have a cruise on the 20th. Do  
8 you think this is going to run past?

9 THE COURT: When?

10 JURY PANEL MEMBER: The 20th. It leaves on the  
11 20th.

12 THE COURT: Oh, yes, ma'am, this is going to last at  
13 least three weeks.

14 JURY PANEL MEMBER: Oh, really.

15 THE COURT: You are going to miss -- I am just  
16 kidding. This should be -- we will be through by  
17 Thursday. Thank you.

18 THE COURT: Where are you going?

19 JURY PANEL MEMBER: Out of Charleston to Nassau.

20 THE COURT: Behave.

21 (WHEREUPON, end of bench conference.)

22 THE COURT: Is there any member of the jury panel  
23 who has presently criminal charges pending against you;  
24 you haven't been found guilty or not guilty, they are  
25 just currently pending; please stand.

1 (WHEREUPON, no one standing.)

2 THE COURT: Do we have any member of the jury panel  
3 who you or your immediate family works in law-  
4 enforcement, Police Department, Sheriff's Office, FBI,  
5 SLED, Solicitor's Office; if so, please stand.

6 Yes, ma'am, name and number with the burgundy outfit  
7 right here.

8 JURY PANEL MEMBER: Tammie Proctor, number is 221.  
9 And my brother works in Charleston County ---

10 THE COURT: Works where?

11 JURY PANEL MEMBER: Charleston County Sheriff's  
12 Department.

13 THE COURT: Your brother does?

14 JURY PANEL MEMBER: Yes.

15 THE COURT: Who is the investigating officer in this  
16 case?

17 MR. KIDD: This is Charleston Police Department. So  
18 there's no sheriffs.

19 THE COURT: All right. Would the fact that you have  
20 a brother who is a police officer with the Sheriff  
21 Offices would that in any way, ma'am, keep you from  
22 performing your duties in this case?

23 JURY PANEL MEMBER: No, sir.

24 THE COURT: Thank you so much. You may be seated.

25 Yes, ma'am, name and number? Over here (pointing).

1 JURY PANEL MEMBER: Sherika Rhodes, 227. My aunt  
2 works here. I forgot what -- for the solicitor. She is  
3 an investigator.

4 THE COURT: I'm sorry, what ...?

5 JURY PANEL MEMBER: My aunt woks here. She works as  
6 an investigator for the Solicitor.

7 THE COURT: You have got an aunt in the Solicitor's  
8 Office as an investigator?

9 JURY PANEL MEMBER: Yes, sir.

10 MR. KIDD: She is one of our investigators, yes,  
11 sir.

12 THE COURT: All right. I will excuse you from the  
13 trial of this case. But stay with us so we can give you  
14 instructions on what to do.

15 And the reason for that, ladies and gentlemen, is  
16 obviously the Solicitor's Office is prosecuting it and  
17 you want to avoid any appearance of impropriety -- or not  
18 impropriety but bias or -- obviously you are going to  
19 believe your sister more than you might believe somebody  
20 else maybe.

21 Yes, ma'am, name and number?

22 JURY PANEL MEMBER: Lee Allison, Number 2. My  
23 husband -- I mean he is DNR.

24 THE COURT: DNR?

25 JURY PANEL MEMBER: Yeah, Fish and Game Wildlife Law

1 enforcement.

2 THE COURT: That is a great job.

3 JURY PANEL MEMBER: He enjoys it very much.

4 THE COURT: I can imagine.

5 JURY PANEL MEMBER: But no, I have no ---

6 THE COURT: You will be able to serve?

7 JURY PANEL MEMBER: Right.

8 THE COURT: Thank you, ma'am.

9 Any member of the jury panel that contributes to  
10 groups that primarily back victims or law enforcement  
11 such as CAVE or MADD or those types of organizations; if  
12 so, please stand.

13 (WHEREUPON, no one standing.)

14 THE COURT: Do I have any member of the jury panel  
15 who has been a victim of domestic violence or abuse; if  
16 so, please stand.

17 (WHEREUPON, no one standing.)

18 THE COURT: All right. Any additional questions by  
19 the State? I think I have covered them all in one way or  
20 another.

21 MR. KIDD: No, sir.

22 THE COURT: Is there any member of the jury panel  
23 who has a concealed weapons permit?

24 (WHEREUPON, several standing.)

25 THE COURT: All right. All men. Interesting. Name

1 and number, please.

2 JURY PANEL MEMBER: Dean Nicholas, I believe I am  
3 199.

4 THE COURT: Thank you.  
5 Name and number, please.

6 JURY PANEL MEMBER: Quinton Smith. I am not sure of  
7 my number.

8 THE COURT: Sir?

9 JURY PANEL MEMBER: I am not sure of my number.  
10 Quinton Smith.

11 THE COURT: Mr. Smith.

12 JURY PANEL MEMBER: Brent Jones, 141.

13 THE COURT: Thank you.

14 JURY PANEL MEMBER: Ernest Heins, 119.

15 JURY PANEL MEMBER: Tim Jasinski, 130.

16 JURY PANEL MEMBER: Richard Ruth, 234.

17 THE COURT: Gentlemen, the fact that you all have  
18 concealed weapons permits would that in any way prevent  
19 or keep you from being fair and impartial and being able  
20 to listen to the evidence and perform your duties as a  
21 juror in this case?

22 (WHEREUPON, unison answer of no and/or shaking heads.)

23 THE COURT: All of them say no. Thank you.

24 All right. Sort of the last question: Does anyone  
25 have -- know of any reason whatsoever why you should not



1 serve as a juror in this case with particular emphasis  
2 being placed on your ability to be fair both to the State  
3 and to the defendant and listen to my jury instructions  
4 and follow them and to perform your duty as the judge of  
5 the facts in the case and to determine whether or not the  
6 State has met its burden of proof in this case; if so,  
7 please stand.

8 (WHEREUPON, no one standing.)

9 THE COURT: Any additional questions by the State?

10 MR. KIDD: May I approach, Your Honor?

11 THE COURT: Just tell me which number. Or you may  
12 approach. Yes, whatever.

13 MR. KIDD: Number 7 was just kind of a two-part  
14 question as to being a victim or ever been accused. I  
15 didn't know if ---

16 (WHEREUPON, bench conference was had 10/8/18, 11:13 a.m.,  
17 with both attorneys.)

18 (WHEREUPON, end of bench conference.)

19 THE COURT: All right. I asked if anybody has ever  
20 been the victim of domestic violence. Has any -- do I  
21 have any member of the jury panel who has ever been  
22 accused of domestic violence?

23 (WHEREUPON, no one standing.)

24 THE COURT: Do I have any member of the jury panel  
25 who has had personal business, personal, comma, business,

1 or professional relationship with the two solicitors in  
2 this case or the solicitor for the circuit, Ms. Scarlett  
3 Wilson?

4 (WHEREUPON, no one standing.)

5 THE COURT: All right. I think that covers it,  
6 gentlemen. Any ---

7 (WHEREUPON, jury panel member stands.)

8 THE COURT: Hold on one second. Yes, sir, name and  
9 number?

10 THE JUROR: Ernest Heins, 119. I grew up many years  
11 ago with Scarlett.

12 THE COURT: All right, sir, the fact that you have  
13 known Ms. Wilson and grew up with her many years ago  
14 would that in any way -- she is not going to prosecute  
15 this case?

16 MR. KIDD: No.

17 THE COURT: Would that in any way preclude you from  
18 being fair and impartial?

19 JURY PANEL MEMBER: No.

20 THE COURT: Thank you. You may be seated.

21 MR. LIZZI: Could we approach?

22 THE COURT: Sure.

23 (WHEREUPON, bench conference as follows:)

24 MR. LIZZI: I guess asking Number 9.

25 THE COURT: Number what?

1 MR. LIZZI: Nine.

2 THE COURT: I have asked them if they know of any  
3 reason whatsoever.

4 What is your position on that?

5 MR. KIDD: I think it is too fact-specific.

6 THE COURT: I think it is too. I think I have  
7 covered it.

8 (WHEREUPON, end of bench conference.)

9 THE COURT: Last question. Once again does anyone  
10 know of any reason, whether it be based on a person  
11 belief or religious, political or anything; stand.

12 (WHEREUPON, no one standing.)

13 THE COURT: All right. Jury panel, please, ma'am.  
14 And just give me the list and we will call them. And  
15 print me out a list.

16 The way we will do it, as I said earlier, my  
17 wonderful clerk is going to now do a random list. She  
18 will call your name randomly. As your name is called  
19 which way it is easiest to get out. But either come  
20 through that door (pointing) or this door (pointing) and  
21 come right up here and stand and face the lawyer.

22 They want you to come through this door over here  
23 (pointing).

24 And the State, as I said, has five strikes. The  
25 defendant has ten strikes. They can strike you for most

1 any reason within bounds that they know about as set out  
2 by certain Supreme Court cases. And so don't get your  
3 feelings hurt if you get struck. We will go through that  
4 process until we get twelve jurors and two alternates.  
5 (WHEREUPON, pause awaiting preparation of strike sheets.)  
6 THE COURT: Okay. If your name is called please  
7 come forward.  
8 THE CLERK: Ladies and gentlemen, when I call your  
9 name please come forward and stand in front of the podium  
10 right here (pointing). Please turn and face both parties  
11 when you come through that gate over there. Also bring  
12 all of your belongings with you when I call you.  
13 Juror Number 157, Ricky Learn.  
14 (WHEREUPON, a white male came forward.)  
15 THE CLERK: What say you for the State?  
16 MR. KIDD: Please present the juror.  
17 THE COURT: What say you for the defendant?  
18 MR. LIZZI: Please seat the juror.  
19 THE CLERK: Sir, if you can please have a seat in  
20 the juror box. You have been selected as a juror for  
21 this case.  
22 Juror Number 13, April Baxter.  
23 (WHEREUPON, a black female came forward.)  
24 THE CLERK: What say you for the State?  
25 MR. KIDD: Please present the juror.

1           THE CLERK: What say you for the defendant?  
2           MR. LIZZI: Please seat the juror.  
3           THE CLERK: Ma'am, please have a seat in the juror  
4 box.  
5           Juror Number 117, Eric Harrod.  
6 (WHEREUPON, a white male came forward.)  
7           THE CLERK: What say you for the State?  
8           MR. KIDD: Please present the juror.  
9           THE CLERK: What say you for the defendant?  
10          MR. LIZZI: Please strike the juror.  
11          THE CLERK: Sir, if you can please have a seat back  
12 in the audience.  
13          Juror Number 155, Megan Lange.  
14 (WHEREUPON, a white female came forward.)  
15          THE CLERK: What say you for the State?  
16          MR. KIDD: Please present the juror.  
17          THE COURT: What say you for the defendant?  
18          MR. LIZZI: Please seat the juror.  
19          THE CLERK: Ma'am, if you would please have a seat  
20 in the juror box. You have been selected as a juror of  
21 this case.  
22          Juror Number 198, Jason Newmoyer.  
23          THE CLERK: Excuse me, if you can take a seat. We  
24 skipped a name. We will call you in just a second.  
25          THE CLERK: Juror 291, Kristen Wolan.

1 (WHEREUPON, a white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. KIDD: Please present the juror.

4 THE CLERK: What say you for the defendant?

5 MR. LIZZI: Please strike the juror.

6 THE CLERK: Ma'am, if you can please have a seat  
7 back in the audience.

8 Juror Number 198, Jason Newmoyer.

9 (WHEREUPON, a white male came forward.)

10 THE CLERK: What say you for the State?

11 MR. KIDD: Please present the juror.

12 THE CLERK: What say you for the defendant?

13 MR. LIZZI: Please seat the juror.

14 THE CLERK: Sir, if you can please have a seat back  
15 in the juror box. You have been selected as a juror for  
16 this case.

17 Juror Number 92, Michael Frame.

18 (WHEREUPON, a white male came forward.)

19 THE CLERK: What say you for the State?

20 MR. KIDD: Please present the juror.

21 THE CLERK: What say you for the defendant?

22 MR. LIZZI: Please strike the juror.

23 THE CLERK: Sir, you may have a seat back in the  
24 audience.

25 Juror Number 64, John Dahlke.

1 (WHEREUPON, a white male came forward.)

2 MR. DAHLKE: Dahkle.

3 THE CLERK: I'm sorry, sir.

4 What say you for the State?

5 MR. KIDD: Please present the juror.

6 THE COURT: What say you for the defendant?

7 MR. LIZZI: Please seat the juror.

8 THE CLERK: Sir, you may have a seat in the juror  
9 box. You have been selected as a juror for this case.  
10 Juror Number 63, Rickey Cuttino.

11 (WHEREUPON, a black male came forward.)

12 THE CLERK: What say you for the State?

13 MR. KIDD: Please present the juror.

14 THE CLERK: What say you for the defendant?

15 MR. LIZZI: Please seat the juror.

16 THE CLERK: Sir, you may have a seat in the juror  
17 box. You have been selected as a juror for this case.  
18 Juror Number 148, Rebecca Kiser.

19 (WHEREUPON, a white female came forward.)

20 THE CLERK: What say you for the State?

21 MR. KIDD: Please present the juror.

22 THE CLERK: What say you for the defendant?

23 MR. LIZZI: Please excuse the juror.

24 THE CLERK: Ma'am, you can please have a seat back  
25 in the audience.

1 Juror Number 251, Tangela Smalls.  
2 (WHEREUPON, a black female came forward.)  
3 THE CLERK: What say you for the State?  
4 MR. KIDD: Please present the juror.  
5 THE CLERK: What say you for the defendant?  
6 MR. LIZZI: Please strike the juror.  
7 THE CLERK: Ma'am, if you can please have a seat  
8 back in the audience.  
9 Juror Number 235, Jenny Sain.  
10 (WHEREUPON, a white female came forward.)  
11 THE CLERK: What say you for the State?  
12 MR. KIDD: Please present the juror.  
13 THE COURT: What say you for the defendant?  
14 MR. LIZZI: Please seat the juror.  
15 THE CLERK: Ma'am, you may have a seat in the juror  
16 box. You have been selected as a juror in this case.  
17 Juror Number 277, Marsha Walker.  
18 (WHEREUPON, a white female came forward.)  
19 THE CLERK: What say you for the State?  
20 MR. KIDD: Please present the juror.  
21 THE COURT: What say you for the defendant?  
22 MR. LIZZI: Please strike the juror.  
23 THE CLERK: Ma'am, you can have a seat back in the  
24 audience.  
25 The defendant has exhausted six strikes.



1 Juror Number 187, Janice Morrison.

2 (WHEREUPON, a white female came forward.)

3 THE CLERK: What say you for the State?

4 MR. KIDD: Please present the juror.

5 THE COURT: What say you for the defendant?

6 MR. LIZZI: Please strike the juror.

7 THE CLERK: Ma'am, you may have a seat back in the  
8 audience.

9 Juror Number 2, Lee Allison.

10 (WHEREUPON, a white female came forward.)

11 THE CLERK: What say you for the State?

12 MR. KIDD: Please present the juror.

13 THE COURT: What say you for the defendant?

14 MR. LIZZI: Please strike the juror.

15 THE CLERK: Ma'am, you may have a seat back in the  
16 audience.

17 Juror Number 266, Kelsey Thompson.

18 (WHEREUPON, a white female came forward.)

19 THE CLERK: What say you for the State?

20 MR. KIDD: Please present the juror.

21 THE COURT: What say you for the defendant?

22 MR. LIZZI: Please seat the juror.

23 THE CLERK: Ma'am, please have in the audience. You  
24 have been selected as a juror for this case.

25 Juror Number 99, Katherine Gallagher.

1 (WHEREUPON, a white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. KIDD: Court's indulgence. Please excuse the  
4 juror.

5 THE COURT: Ma'am, you may have a seat back in the  
6 audience.

7 Juror Number 262, Matthew Swan.

8 (WHEREUPON, a white male came forward.)

9 THE CLERK: What say you for the State?

10 MR. KIDD: Please present the juror.

11 THE COURT: What say you for the defendant?

12 MR. LIZZI: Please seat the juror.

13 THE CLERK: Sir, you may have a seat in the juror  
14 box. You have been selected as a juror for this case.

15 Juror Number 19 ---

16 THE COURT: No, fifty-three.

17 THE CLERK: Juror Number 53. I'm sorry, Thomas  
18 Cissell.

19 (WHEREUPON, a white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. KIDD: Please present the juror.

22 THE COURT: What say you for the defendant?

23 MR. LIZZI: Please strike the juror.

24 THE CLERK: Sir, you may have a seat in the  
25 audience.

1 Juror Number 135, Connie Johnson.  
2 (WHEREUPON, a white female came forward.)  
3 THE CLERK: What say you for the State?  
4 MR. KIDD: Please present the juror.  
5 THE COURT: What say you for the defendant?  
6 MR. LIZZI: Please seat the juror.  
7 THE CLERK: Ma'am, please have a seat in the juror  
8 box. You have been selected as a juror of this case.  
9 Juror Number 300, Gretchen Zimmer.  
10 MS. ZIMMER: Gretchen.  
11 THE CLERK: Gretchen.  
12 (WHEREUPON, a white female came forward.)  
13 THE CLERK: What say you for the State?  
14 MR. KIDD: Please present the juror.  
15 THE COURT: What say you for the defendant?  
16 MR. LIZZI: Please seat the juror.  
17 THE CLERK: Ma'am, please have a seat in the juror  
18 box.  
19 Michael Bradley, Juror Number 24.  
20 (WHEREUPON, a white male came forward.)  
21 THE CLERK: What say you for the State?  
22 MR. KIDD: Please present the juror.  
23 THE COURT: What say you for the defendant?  
24 MR. LIZZI: Please seat the juror.  
25 THE CLERK: Sir, please have a seat in the juror

1 box.

2 THE COURT: We have two alternates. Two and one.

3 THE CLERK: Juror Number 191, Melissa Muhl.

4 (WHEREUPON, a white female came forward.)

5 THE CLERK: What say you for the State?

6 MR. KIDD: Please present the juror.

7 THE COURT: What say you for the defendant?

8 MR. LIZZI: Please strike the juror.

9 THE CLERK: Ma'am, you may have a seat back in the

10 audience.

11 Juror Number 45 Margaret Capps.

12 (WHEREUPON, a white female came forward.)

13 MR. KIDD: I'm sorry, what was the number?

14 THE COURT: Forty-five.

15 MS. CAPPS: Forty-five.

16 THE CLERK: What say you for the State?

17 MR. KIDD: Please present the juror.

18 THE COURT: What say you for the defendant?

19 MR. LIZZI: Please strike the juror.

20 THE CLERK: Ma'am, please have a seat back in the

21 audience.

22 Juror Number 74, Meghan Dennis.

23 (WHEREUPON, a white female came forward.)

24 THE CLERK: What say you for the State?

25 MR. KIDD: Court's indulgence. Please present the

1 juror.

2 MR. LIZZI: No strike for cause. Please present the  
3 juror.

4 THE CLERK: Ma'am, you may have a seat in the juror  
5 box.

6 THE COURT: All right. One more alternate, please.  
7 Juror Number 234, Richard Ruth.

8 (WHEREUPON, a white male came forward.)

9 THE CLERK: What say you for the State?

10 MR. KIDD: Please excuse the juror.

11 THE COURT: You may have a seat back in the  
12 audience.

13 THE CLERK: Judge Number 100, Timothy Gavin --  
14 Galvin.

15 (WHEREUPON, a white male came forward.)

16 THE CLERK: What say you for the State?

17 MR. KIDD: Please present the juror.

18 THE COURT: What say you for the defendant?

19 MR. LIZZI: Please seat the juror. No strikes for  
20 cause.

21 THE CLERK: Sir, you may have a seat in the juror  
22 box.

23 THE COURT: Any motion by the State in connection  
24 with the selection of the jury?

25 MR. KIDD: No, sir.

1 THE COURT: By the defendant?

2 MR. LIZZI: No, sir.

3 THE COURT: Ladies and gentlemen, those who are  
4 remaining in the audience we are going to now send you to  
5 Judge McCoy. She is a much nicer judge than I am. Brand  
6 new. She is doing an excellent job, and she is doing a  
7 great job.

8 THE CLERK: They are going to go down to the jury  
9 assembly room.

10 THE COURT: Just follow the bailiff to the jury  
11 assembly room. Thank you. I enjoyed being with all of  
12 it.

13 (WHEREUPON, unselected jurors exit 10/8/18, 11:38 a.m.)

14 (WHEREUPON, bench conference was had.)

15 (WHEREUPON, bench conference concludes.)

16 THE COURT: Ladies and gentlemen of the jury panel,  
17 we have got a number of motions. I am going to allocate  
18 about an hour for that. And then I have got to give my  
19 court personnel and the rest of us a little bit of time  
20 for lunch. Let's start back about -- 1:45 or two  
21 o'clock, which one suits y'all.

22 JURY MEMBER: Whatever one you want.

23 THE COURT: I kind of like that answer. I don't  
24 hear it very often. Let's do two o'clock. How about  
25 that.

1           And what we will do when we get back is we will have  
2 our opening statement and then the State will start the  
3 trial of presenting witnesses.

4           Is five o'clock is that -- I try to don't -- I try  
5 to make us have a full day so we won't waste any time. I  
6 know it puts us all in the traffic. We will go to -- we  
7 will see how we are running. But it will be about five  
8 o'clock. And then we will discuss what time to start in  
9 the morning and all that sort of situation.

10           I am going to let you go now with the bailiff. She,  
11 he, they will show you how to get back up here. We will  
12 start right at 2:00. I am easy to get along with except  
13 if you are late sometimes I get a little testy. So don't  
14 make me testy on Monday. Any more than I am?

15           Thank you. Have a pleasant lunch.

16 (WHEREUPON, jury exits courtroom 10/8/18, 11:39 a.m.)

17 (WHEREUPON, break was had 11:40 a.m.)

18 (WHEREUPON, resume 10/8/18 11:49 a.m.)

19           THE COURT: Is there any particular order, Mr.  
20 Lizzi, as to how you want to do these?

21           MR. LIZZI: Your Honor, ---

22           THE COURT: Or do you want me to just call them?

23           MR. LIZZI: I guess just call them, Your Honor, and  
24 we will ---

25           THE COURT: All right. We will do the first motion

1 in limine about a tumultuous relationship and the opening  
2 remarks.

3 MR. KIDD: Judge, I don't plan on -- so I think this  
4 kind of ties into his 404(b) motion. I do not plan on  
5 addressing any of that in my opening statement.

6 There are two witnesses that in trial will -- would  
7 testify about seeing bruises on the victim in previous  
8 occasions and seeing threatening text messages and things  
9 of that nature.

10 THE COURT: Hold on a second.  
11 (WHEREUPON, break was had regarding person entering the  
12 courtroom.)

13 THE COURT: Well, here is what I do on that type of  
14 situation. I ask you not to mention it in opening  
15 statements. When you get to it in the trial of the case  
16 alert me. We can send the jury out and we will do a  
17 proffer and we will argue whether or not it is  
18 appropriate, relevant, and whether or not it is more  
19 probative than prejudicial, more prejudicial than  
20 probative. Any objections to it at that time.

21 But make no mention in opening statements. Fair  
22 enough?

23 MR. LIZZI: That is fair enough, Your Honor.

24 MR. KIDD: Yes, sir, that is perfectly fine. The  
25 only thing I would say is that -- and I don't plan on



1 even alluding to any prior issues, but I do plan on using  
2 the phrase domestic violence because I deem this crime an  
3 act of domestic violence. So I am not referring to any  
4 prior domestic violence issues.

5 THE COURT: That's correct. That is what the  
6 statute says. I mean it is domestic violence.

7 All right. What is the next one? That sort of  
8 covers that. Any deals with witnesses? Any agreements  
9 is probably a better word.

10 MR. KIDD: So as to sequestration, Judge, the only  
11 people that I would have that are on my witness list that  
12 I would ask to be in the courtroom would be my lead  
13 agent, Detective Bailey, and the victim's sister,  
14 Patricia or Trish Pye.

15 THE COURT: And sequester the rest?

16 MR. KIDD: I would agree to sequester the rest, yes,  
17 Your Honor.

18 THE COURT: No problem.

19 MR. LIZZI: And, Your Honor, I would just say that I  
20 understand with the lead investigator. But Ms. Pye is an  
21 actual one of our 404 motion witnesses.

22 THE COURT: Well, she represents the victim's  
23 family. I will allow her to be in. But everybody else  
24 is sequestered. You are protected on that.

25 Now do you have any agreement between potential

1 witnesses as far as plea agreement, etc., etc.?

2 MR. KIDD: I don't have any -- I have no  
3 relationships like that with any of my witnesses. There  
4 are no cooperating co-defendants or anyone that I have  
5 charges on.

6 THE COURT: All right. Do you have any of the  
7 potential witnesses have criminal records that ---

8 MR. LIZZI: He has already turned them over, Your  
9 Honor.

10 MR. KIDD: I sent to Mr. Lizzi -- I believe there  
11 was one that have a prior shoplifting that I sent him.

12 THE COURT: All right. And prior bad acts that is  
13 the same thing as the 402. We will deal with that. We  
14 will do a proffer at the appropriate time. And I will  
15 rule.

16 And what else do we have, gentlemen?

17 MR. LIZZI: That should be is, Your Honor.

18 MR. KIDD: I believe that is it.

19 THE COURT: We allocated too much time. All right.

20 MR. KIDD: I can take advantage of this time to have  
21 all of my exhibits pre-marked.

22 THE COURT: That would be wonderful.

23 MR. KIDD: We do have a firearm in the courtroom.  
24 We have made it safe with zip ties, etc. I can't think  
25 of anything else. THE COURT: Anything else we can do?

1 MR. LIZZI: Nothing else, Your Honor.

2 THE COURT: Sir, any questions?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. We will start at two  
5 o'clock. I will be back in a little bit before. Mr.  
6 Lizzi, if you want to talk with me -- or if y'all both  
7 want to talk with me I will be available.

8 MR. LIZZI: Your Honor, if just the deputies could  
9 give me a place to meet with my client.

10 THE COURT: They will arrange that.  
11 (WHEREUPON, scheduling discussions were had.)

12 THE COURT: Anything I can do for either side to  
13 facilitate, help?

14 MR. LIZZI: No, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, further scheduling discussions were had and  
17 break for lunch October 8, 2018, 11:55 a.m)

18 (WHEREUPON, exhibits were pre-marked for identification.)

19 (WHEREUPON, State's Exhibit Number 1, photo, was marked  
20 for identification.)

21 (WHEREUPON, State's Exhibit Number 2, photo, was marked  
22 for identification.)

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7 (WHEREUPON, State's Exhibit Number 69, photo, was marked  
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9 (WHEREUPON, State's Exhibit Number 70, Gun Holster, was  
10 marked for identification.)

11 (WHEREUPON, State's Exhibit Number 71, DVD Body Cam, was  
12 marked for identification.)

13 (WHEREUPON, State's Exhibit Number 72, CD - 911 call, was  
14 marked for identification.)

15 (WHEREUPON, State's Exhibit Number 73, DVD - Car Footage,  
16 was marked for identification.)

17 (WHEREUPON, resume 2:00 p.m., October 8, 2018.)

18 THE COURT: Is the State ready to proceed?

19 MR. KIDD: We are, Your Honor.

20 THE COURT: Mr. Lizzi?

21 MR. LIZZI: The defense is ready, Your Honor.

22 (WHEREUPON, resume 2:00 p.m., October 8, 2018.)

23 THE COURT: Bring the jury.

24 (WHEREUPON, jury enters 2:05 p.m. 10/8/18)

25 THE COURT: I hope you had a pleasant lunch. We got

1 everything done and we are ready to start. The first  
2 thing we have to do is you have to be sworn in for this  
3 particular case.

4 (WHEREUPON, the jury was duly sworn.)

5 THE COURT: Ladies and gentlemen of the jury, what I  
6 will do to start off with is just give you some brief  
7 opening remarks as to sort of where you are going and how  
8 we are going to get there, some general remarks. And  
9 then I will turn it over to the lawyers to start the  
10 case.

11 Let me remind you once again that in this case the  
12 defendant has been indicted by the Charleston County  
13 Grand Jury for the offense of murder and also for the  
14 offense of possession of a weapon during the commission  
15 of a violent crime.

16 Please bear in mind that the fact that he has been  
17 indicted, that is not evidence in the case and you should  
18 not infer anything from the fact that he has been  
19 indicted. It is simply the legal document by way this  
20 case comes into the courtroom.

21 He has pled not guilty to these charges. And a plea  
22 of not guilty gives him the constitutional presumption of  
23 innocence unless the State is able to prove his guilt to  
24 you beyond a reasonable doubt as to both indictments.

25 And I will explain to you the term presumption of

1 innocence and beyond a reasonable doubt at the conclusion  
2 of the case when I charge or instruct you on the law.

3         The way the case works, because the State has the  
4 burden of proof they go first in presenting their case.  
5 So when I finish my opening remarks they will make some  
6 opening remarks and then they will start the presentation  
7 of their case by presenting evidence -- by presenting  
8 witnesses who will testify about relevant matters.

9         The way that works is that the State will call the  
10 witness. They will examine him. The defense has the  
11 right to cross examine, and then the State has the right  
12 to redirect the witness. Once the State has put up all  
13 of its testimony the defendant, if he chooses, has a  
14 right to put up a defense.

15         The defendant has absolutely no burden of proof. So  
16 therefore he doesn't have to put up any witnesses if he  
17 so desires. That is his choice. But he has nothing to  
18 prove. All the proof -- the burden of proof is on the  
19 State.

20         But if he does call witnesses then it is sort of  
21 reversed; his lawyer will ask the direct questions,  
22 cross-examine by the State, and redirect by the lawyer.

23         Before we get into testimony the lawyers have an  
24 opportunity to make an opening statement. The State will  
25 go first followed by the defendant.

1           Please bear in mind that opening statements is not  
2 evidence in the case. It is sort of what the lawyers  
3 will give you a road map as to where they are going from  
4 Point A to Point B and what you are to look after, what  
5 they intend to prove, what their defenses. But that is  
6 not evidence in the case.

7           The evidence that you will consider will be  
8 presented to you by live witnesses and relevant exhibits  
9 during the trial of the case.

10          As I told you, you are the judges of the facts in  
11 the case. So you hear probably different versions of the  
12 facts. You have to determine the credibility or the  
13 believability of the witnesses and determine what the  
14 true facts are in the case, apply those facts to the law  
15 as I give it to you and make a determination as to  
16 whether or not the State has met its burden of proving  
17 the defendant's guilt to you beyond a reasonable. So  
18 that is the way it sort of works.

19          Now some general guidelines. I try, as I told you  
20 earlier, to run an efficient courtroom, making the  
21 witnesses go one after the other. We try not to waste  
22 any time.

23          Obviously it is a very important case for the State  
24 and for the defendant, the defendant's family, the  
25 victim's family. So I ask that you pay very close

1 attention to everything that is going on.

2 If at any time during the trial of the case you  
3 become uncomfortable and you need a bathroom break, you  
4 need to stretch your legs, you just get tired of  
5 listening to me, or whatever, you get cold or you get  
6 hot, please, please, raise your hand and I will make sure  
7 that any needs that you have -- any needs that you have  
8 are met. So don't get uncomfortable over there. If you  
9 just get tired and you just need a break raise your hand.  
10 I understand. You are not going to bother me. That is  
11 what I am up here for.

12 I will ask you each time we take a break that you  
13 should not start any deliberation on the case until all  
14 of the testimony is in, the final arguments have been  
15 made, and I have charged you on the law. So please don't  
16 start talking about the case until we have concluded  
17 everything.

18 I will ask at the first break the 12 regular jurors  
19 to select a foreperson for me. A foreperson is simply  
20 someone who acts as the spokesperson for the jury. They  
21 head up the deliberations. They will sign the verdict  
22 form. If you can't do that then I am going to randomly  
23 select somebody. So do that at the first go.

24 I think you will find this to be an interesting  
25 civic duty. As I told you earlier it's I think probably

1 the highest civic duty someone can have, particularly  
2 when somebody is charged with an offense as serious as  
3 murder. You will be asked to determine whether or not  
4 the State can prove his guilt to you beyond a reasonable  
5 doubt. So please pay close attention.

6 We are going to start in just a second with the  
7 lawyers making their opening statements. As I said, that  
8 is not evidence.

9 Once they have made the opening statements then we  
10 will go into the testimony. Once we conclude the  
11 testimony then we will charge and instruct you on the law  
12 after their arguments, and then you will be in a position  
13 to start your deliberations.

14 I look forward to working with you. I think you  
15 will, like I said, find it very interesting. It is not  
16 TV. This is the real-world. So this is a very  
17 interesting way justice is handled.

18 Any objections to my opening remarks by the State?

19 MR. KIDD: None from the State, Judge.

20 MR. LIZZI: None from the defense, Your Honor.

21 THE COURT: All right. You may make your opening  
22 statements.

23 MR. KIDD: Thank you, Your Honor. May it please  
24 the court.

25 THE COURT: Yes, sir.

1 MR. KIDD: Mr. Lizzi.

2 **OPENING BY MR. KIDD:**

3 Ladies and gentlemen, before I get started I want to  
4 extend my profound thanks. I know you all have things in  
5 your personal lives that had to be put on hold this week.  
6 That is not lost on me or anyone in this courtroom. And  
7 I know I speak for everyone thanking you for your time  
8 and attention this week. I know it is not easy.

9 But this is an important case. Because in the early  
10 hours of August the 5th, 2015, this man right here,  
11 William Gule, took his Glock nine-millimeter pistol,  
12 walked into the bedroom of the mother of his child,  
13 Pamela Burgess, and shot her four times in the head while  
14 she lay in bed, taking a mother's daughter, a sister's  
15 sister, and most importantly a little boy's mother away  
16 from him forever.

17 Now the defendant has been charged with murder and  
18 possession of a weapon during the commission of a violent  
19 crime. And as the judge indicated to you, that is my  
20 burden; that is what I have to prove to you beyond a  
21 reasonable doubt in order for you to come back and  
22 convict him. So I have to prove to you the elements of  
23 each of those offenses.

24 So what is murder? Murder is the unlawful killing  
25 of another with malice aforethought. It doesn't sound

1   overly complex.  Malice is the only part of that which is  
2   a little bit of a legal term.

3           But in this case it is not going to be that hard for  
4   you because our question is so narrow.  You will hear a  
5   911 call in which the defendant admits to shooting Ms.  
6   Burgess.  You will see the GSR residue with the gunshot  
7   residue on his hands and the shell casings that match his  
8   Glock nine millimeter.  There is no question he shot her.  
9   So the question is malice aforethought.  That is the  
10   question that you are here to answer.

11           So what is malice aforethought?  Malice is the  
12   conscious intent to cause death or great bodily harm to  
13   another person.  That means you intended to do what you  
14   did.  You intended to cause that harm or depraved state  
15   of mind in which a person is unconcerned for the lives of  
16   others.

17           Malice can be either expressed or implied.  
18   Expressed malice means like if there's words of ill will  
19   or hatred or wickedness or something like that in which  
20   you can determine malice existed in someone's mind.  But  
21   you can also imply or infer malice through someone's  
22   actions.  Through someone four times you can infer  
23   malice.

24           So that is the question.  And domestic violence,  
25   violence in the home, it is about power and it is about



1 control. And it is really about the desire for power and  
2 control. And it is about the defendant losing that  
3 control or that power over the probably the one thing he  
4 had in his life.

5       You see, about a month before he killed Ms. Burgess  
6 she had kicked him out of the home, moved all of his  
7 stuff out and left the home. He lost that power. He  
8 lost that control. And he couldn't handle it. He  
9 couldn't handle it. He couldn't handle not having a grip  
10 on that relationship anymore.

11       Too weak to handle the rejection and not man enough  
12 to walk away. He executed the mother of his child.  
13 There can be no act more malicious or depraved than the  
14 case you are about to sit through.

15       And I ask you to use your common sense, to listen to  
16 the witnesses, look at the pictures, see the evidence in  
17 this case, and hold him accountable for what he did, and  
18 bring justice to an act that is unforgivable and return a  
19 verdict of guilty. Thank you.

20       MR. LIZZI: May it please the court.

21 **OPENING BY MR. LIZZI:**

22       Ladies and gentlemen, my name is Christopher Lizzi.  
23 I have a practice in North Charleston. I have been there  
24 for the last 27 years. I am here with Mr. Gule today  
25 exercising his constitutional right. One of the good

1 things about being an American is we get to have that  
2 ability to bring in 12 people to hear the evidence or  
3 lack of evidence and you have a fair day in a trial.

4 Now the day in question, the day that the solicitor  
5 talks about, there was only two people there. Now he  
6 will bring in witnesses that will try to piece together  
7 or give you their opinions as to what certain piece of  
8 evidence that were in a room. But none of these people  
9 were there. None of these people know exactly what  
10 happened. Nobody knows the dynamic that was going on  
11 that night.

12 These are two people that shared a child. They were  
13 co-parenting the child. They were doing things together.  
14 This dynamic of power that was spoken of is something  
15 that the State wants to try to piece together but really  
16 has no knowledge of what was going on between these two  
17 people and especially that night.

18 My client is the one that called the police. You  
19 are going to hear the 911 tape. And he basically says  
20 they were having an argument and he accidentally shot  
21 her.

22 He went, turned himself in. He gave the gun to the  
23 police and the bullets, after he had taken their child  
24 and placed the child at his father's house so the child  
25 wouldn't be in the middle of it.

1           Now the burden of proving that what happened and  
2 those actions that night would have reached to the level  
3 of murder, to the level of description of what he put up  
4 on that board, that is his duty (pointing); that is his  
5 responsibility.

6           My client sits veiled in the cloak of innocence.  
7 They have to remove that veil. And they have to show you  
8 beyond a reasonable doubt that that veil comes off.

9           A lot of things happen. A lot of things get  
10 labeled. As I like to say -- and when we look at things  
11 and when we go through systems and we look at label,  
12 domestic violence; we want to label everything. We are a  
13 society that labels everything.

14          Some things are just naturally things that go on and  
15 things that happen. They don't fall into the labels.  
16 But we strive to find them.

17          I do ask you to look at the evidence, hear the  
18 witnesses, hear what they don't tell you and what they  
19 don't know. And I feel confident that you will come back  
20 and give a just verdict. Thank you.

21          THE COURT: Mr. Kidd, you may call your first  
22 witness.

23          MR. KIDD: Thank you, Your Honor. The State calls  
24 Tonya Mallette.

25          THE COURT: Mr. Bailiff, please keep the door locked

1 when we are doing business. I don't know who that young  
2 man was. If he wants to step in he may now while we are  
3 taking a short break. But don't let them in and out at  
4 their pleasure.

5 (WHEREUPON, awaiting witness.)

6 (WHEREUPON, the witness was duly sworn.)

7 THE CLERK: Please state your name for the record  
8 and spell your last name for the record, please

9 THE WITNESS: It is Tonia Mallette.  
10 M-A-L-L-E-T-T-E.

11 **DIRECT EXAMINATION BY MR. KIDD OF TONIA MALLETTE:**

12 Q. Good afternoon, Ms. Mallette.

13 A. Good afternoon.

14 MR. KIDD: Hold on one second.

15 (WHEREUPON, pause for audience member to be seated.)

16 THE COURT: All right. Everyone is welcome in the  
17 courtroom. I do demand that everyone please don't  
18 whisper, talk, stand up, move around.

19 (WHEREUPON, pause for member of audience leaving.)

20 THE COURT: All right, for the audience my rule is  
21 this: While we are conducting business no one comes in,  
22 no one goes out to disturb anybody from paying attention.  
23 When we take breaks obviously you are welcome to step  
24 back out and step back in. Fair enough?

25 MR. KIDD: Thank you, Your Honor.

1 Q. Good afternoon, Mr. Mallette.

2 A. Good afternoon.

3 Q. Can you please tell the jury where you are employed?

4 A. Sure. Charleston County Consolidated 911 Center.

5 Q. And what are your duties, job title, ---

6 A. A ---

7 Q. --- with Consolidated Dispatch?

8 A. I'm sorry. My job title is analyst. And my duties  
9 are I serve as complaint officer. I am also the records  
10 custodian. I answer to subpoenas, FOYA's, internal  
11 requests involving the various agencies that we service.

12 Q. Okay. So if you could briefly tell the jury what  
13 happens when someone calls 911 and how are those calls  
14 recorded.

15 A. Sure. When a call is made to 911 as you know once  
16 the phone starts to ring it automatically records. A  
17 call taker picks up. They ask pertinent information.  
18 That information is entered into a CAD, referred to as a  
19 computer aided dispatch. That information is then sent  
20 over to the actual police dispatcher where it is  
21 dispatched to an actual officer. Go ahead. I'm sorry.

22 Q. Oh, okay.

23 A. That's it. That's it.

24 Q. Did you -- or maybe not you yourself, but did the  
25 Consolidated Dispatch get a subpoena in reference to this

1 case for the 911 calls from the morning of August 5th,  
2 2015?

3 A. Yes, I did.

4 Q. Okay. I am going to show you what has been marked  
5 as State's Exhibit 72 and see if you can recognize this  
6 item for me.

7 A. Sure. I do.

8 Q. And how do you recognize it?

9 A. My initials. TM is written on the CD.

10 Q. And what does the CD contain?

11 A. The CD is the 911 call made by a William Gule as  
12 related to an incident.

13 Q. From August 5th, 2015?

14 A. Correct.

15 Q. And does this fairly and accurately portray the  
16 content of that 911 call?

17 A. It is. Yes.

18 MR. KIDD: Your Honor, at this time the State would  
19 offer State's Exhibit 72 into evidence.

20 MR. LIZZI: No, objection.

21 (WHEREUPON, State's Exhibit Number 72 was admitted into  
22 evidence.)

23 MR. KIDD: Permission to publish.

24 (WHEREUPON, publish 911 call, State's Exhibit Number 72.)

25 MR. KIDD: I have no further questions of Ms.

1 Mallette. Please answer any questions ---

2 THE WITNESS: Sure.

3 MR. KIDD: --- that Mr. Lizzi may have for you.

4 MR. LIZZI: No questions.

5 THE COURT: You may step down, Ms. Mallette.

6 Next witness, please.

7 MR. KIDD: The State calls Crystal Bright.

8 (WHEREUPON, the witness was duly sworn.)

9 THE CLERK: Please state your name and spell your  
10 last name for the record, please.

11 THE WITNESS: My name is Crystal Bright. Spelling  
12 of B-R-I-G-H-T.

13 **DIRECT EXAMINATION BY MR. KIDD OF CRYSTAL BRIGHT:**

14 Q. Good afternoon, Ms. Bright. Can you please tell the  
15 jury where you are currently employed.

16 A. MUSC Public Safety.

17 Q. All right. And what about in August 2015 where were  
18 you employed?

19 A. In Dorchester County Sheriff's Office.

20 Q. In what capacity?

21 A. As a deputy.

22 Q. As a deputy. And in general -- in general what are  
23 your duties as a deputy for Dorchester County Sheriff's  
24 Office?

25 A. Answer calls for service, protect property and

1 people.

2 Q. And not beating around the bush and getting right to  
3 why we are here today, do you recall taking the defendant  
4 William Gule into custody the morning of August 5th,  
5 2015?

6 A. Yes, sir.

7 Q. Do you remember approximately what time that was?

8 A. If I can refer to my report.

9 Q. Yes, ma'am.

10 A. I got the call at approximately 8:31 that morning.

11 Q. And can you tell the jury how did that take place.  
12 What -- where were you, what -- where did you go?

13 A. I was dispatched to the 525 Orangeburg Road in  
14 Summerville within the County of Dorchester. Apparently  
15 a 911 call was received of a male subject wanting to turn  
16 himself in after shooting his girlfriend. And I was  
17 advised he was armed with a handgun.

18 Q. And what sort of vehicle were you driving?

19 A. I was driving a marked patrol car.

20 Q. Is it equipped with camera?

21 A. Yes, sir, it is.

22 Q. I mean like a video camera?

23 A. Yes, sir.

24 Q. And when you arrived or as you arrived to -- what --  
25 do you remember what was at the location, 525 Orangeburg?



1 A. It was a Dollar General.

2 Q. Did you have the camera activated in your cruiser?

3 A. As soon as I turn on the blue lights when -- when I  
4 was initially dispatched to that call it activated.

5 Q. Okay. So when you activate your blue lights the  
6 camera automatically turns on?

7 A. Yes, sir.

8 Q. I want to show you what has been marked for  
9 identification as State's Exhibit 73. Do you recognize  
10 that?

11 A. Yes, sir, I do.

12 Q. And what is that?

13 A. It is the DVD containing my onboard camera.

14 Q. And have you watched it before?

15 A. Yes, sir, I have.

16 Q. Okay. And does it fairly and accurately portray the  
17 events that took place as you pulled up to ---

18 A. Yes, sir.

19 Q. --- the Dollar General?

20 A. Yes, sir.

21 MR. KIDD: Your Honor, at this time the State would  
22 offer State's Exhibit 73 into evidence.

23 MR. LIZZI: No objection.

24 (WHEREUPON, State's Exhibit Number 73 was admitted into  
25 evidence.)

1 MR. KIDD: Court's indulgence.

2 (WHEREUPON, State's Exhibit Number 73 published.)

3 MR. KIDD: All right. Corporeal Bright, in the  
4 interest of time so we don't watch the whole thing I am  
5 just going to ask questions through the last part of it.  
6 When you arrived at that Dollar General what did you see  
7 when you pulled up in the parking lot?

8 A. The defendant was seated on the curb in front of the  
9 establishment on a cell phone. As soon as I pulled in he  
10 stood up. And there was a gun right next to him on the  
11 curb in very close proximity to his left side.

12 Q. And what did you do?

13 A. I immediately held him at gunpoint and gave him  
14 verbal commands to which he complied with. Waited for my  
15 backup to arrive. At which time I did walk over to where  
16 the gun was located and kicked it further away from him  
17 and stood over it until my backup arrived, at which time  
18 he was detained.

19 Q. Gotcha. And after taking him into custody did you  
20 take photographs of the firearm and his personal effects?

21 A. Yes, sir, I did.

22 Q. I am going to show you what has been marked for  
23 identification as State's Exhibit 1, 2, and 3. See if  
24 you can recognize those photographs.

25 A. Yes, sir.

1 Q. And what are they?

2 A. Photographs of the gun. Also his wallet and his  
3 personal effects that were found on the scene.

4 Q. Do they fairly and accurately represent the gun and  
5 personal effects ---

6 A. Yes, sir.

7 Q. --- you collected that morning on August 5th?

8 A. Yes, sir.

9 MR. KIDD: At this time, Your Honor, the State would  
10 offer State's Exhibit 1, 2, and 3 into evidence.

11 THE COURT: Any objection?

12 MR. LIZZI: None, Your Honor.

13 (WHEREUPON, State's Exhibit 1, 2, 3 was admitted into  
14 evidence.)

15 (WHEREUPON, exhibit published.)

16 Q. And just real briefly, Ms. Bright, so what we are  
17 looking at here in State's Exhibit 1 this is the firearm  
18 and wallet and personal effects that you collected?

19 A. Yes, sir, it is.

20 (WHEREUPON, exhibit published.)

21 Q. And State's Exhibit 2 a closer up of that firearm?

22 A. Yes, sir.

23 (WHEREUPON, exhibit published.)

24 Q. And finally State's Exhibit 3, the personal effects  
25 that Mr. Gule had on him when you took him into custody?

1 A. Yes, sir.

2 Q. What did you ultimately do once you collected that  
3 evidence?

4 A. It was turned over to the detectives with Charleston  
5 Police Department.

6 Q. So because you were working in Dorchester County; is  
7 that correct?

8 A. Correct.

9 Q. And which Police Department was in charge of the  
10 investigation?

11 A. Charleston Police Department where the incident took  
12 place.

13 Q. So do you remember who with the Charleston Police  
14 Department made contact with you and collected evidence  
15 from you?

16 A. Yes, sir, Detective Jackson.

17 Q. Do you recall -- did you make note of the serial  
18 number on that firearm that you collected?

19 A. Yes, sir, I did.

20 Q. What was that serial number?

21 A. It was a Glock 26 with a serial number of WRE676.

22 Q. And what happened to Mr. Gule from there; did he  
23 stay in your custody or did y'all transfer him to  
24 Charleston custody as well?

25 A. No, sir, he was transferred over to the custody of

1 Charleston Police Department.

2 MR. KIDD: Court's indulgence.

3 I have no further questions, Ms. Bright. Please  
4 answer questions from Mr. Lizzi.

5 THE COURT: Cross.

6 MR. LIZZI: May it please the court.

7 **CROSS-EXAMINATION BY MR. LIZZI OF CRYSTAL BRIGHT:**

8 Q. Ms. Bright, when you came up my client was compliant  
9 with you, correct?

10 A. Correct.

11 Q. And he didn't -- he didn't give you any difficulties  
12 or trouble?

13 A. No, sir, he didn't.

14 Q. He obeyed all of your commands?

15 A. Yes, sir, he did.

16 Q. And were you given prior notice that he would be  
17 sitting on the firearm that -- and how -- and what he  
18 would do when you got there?

19 A. I was advised that he was armed. In reference to  
20 the other I don't recall.

21 Q. Okay. So when you got there he stood up and the  
22 firearm was on the ground?

23 A. Yes, sir.

24 Q. Okay. And at no time he became non compliant or  
25 combative?

1 A. Correct.

2 MR. LIZZI: Nothing further.

3 THE COURT: Redirect.

4 MR. KIDD: No questions.

5 THE COURT: You may step down.

6 Next witness.

7 MR. KIDD: The State calls Officer Matthew Tulla.

8 (WHEREUPON, the witness was duly sworn.)

9 THE CLERK: Please state your name and spell your  
10 last name for the record, please.

11 THE WITNESS: My name is Matthew Tulla. T-U-L-L-A.

12 **DIRECT EXAMINATION BY MR. KIDD OF OFFICER MATTHEW TULLA:**

13 Q. Good afternoon, Officer Tulla. Can you please tell  
14 the jury where you are employed, please, sir.

15 A. I am employed with the City of Charleston Police  
16 Department.

17 Q. And how long have you been with CPD?

18 A. Approximately five years.

19 Q. And what are your current duties with the Charleston  
20 Police Department?

21 A. Currently on the City's SWAT Quick Response Squad.

22 Q. What about in August of 2015?

23 A. During that time I was on Charleston West Ashley  
24 Patrol, Team 4 Patrol.

25 Q. So Team 4 Patrol on August 2015. What is a typical

1 day like in Team 4 Patrol?

2 A. Respond to calls for service, calls that come in  
3 through 911 dispatch.

4 Q. So that can range from ---

5 A. Traffic accidents to domestic violence to larceny  
6 reports.

7 Q. So a wide variety ---

8 A. Correct.

9 Q. --- of calls? Do you recall responding to a call  
10 for service at [REDACTED] Braxton Avenue on August the 5th,  
11 2015?

12 A. I do.

13 Q. Did remember about what time you got that call?

14 A. It was approximately 8:30 in the morning I believe.

15 Q. And are you familiar with that location?

16 A. I am.

17 Q. Is that located in Charleston County?

18 A. It is.

19 THE COURT: May I approach the reporter?

20 (WHEREUPON, State's Exhibit Number 74, map, was marked  
21 for identification.)

22 Q. Officer Tulla, I am going to show you what has been  
23 marked for identification as State's Exhibit Number 74  
24 and see if you recognize that.

25 A. I do.

26

1 Q. And what are we looking at here?

2 A. It is a map of the West Ashley area.

3 Q. Does that contain the Braxton Avenue address?

4 A. It does. That is marked on the brick marker.

5 Q. And does that fairly and accurately depict that area  
6 of town?

7 A. Yes, sir, it does.

8 MR. KIDD: Your Honor, at this time the State would  
9 offer State's Exhibit 74 into evidence.

10 THE COURT: Any objection?

11 MR. LIZZI: No objection, Your Honor.

12 (WHEREUPON, State's Exhibit Number 74 was admitted into  
13 evidence.)

14 Q. Just for benefit of the jury, Officer Tulla, that  
15 screen in front of you is a touch screen.

16 A. Okay.

17 Q. So I can't read this stuff too well. But if you  
18 could just help explain to the jury kind of what part of  
19 town we are looking at here.

20 A. Certainly.

21 Q. Any landmarks we might be familiar with.

22 A. Sure. So this is Wappoo Road down on this end  
23 (pointing). Savannah Highway (pointing). This is the  
24 Chick-fil-A down in West Ashley right off of Savannah  
25 Highway. And directly across the street is -- or just



1 almost across -- directly across the street is Braxton  
2 Ave.

3 Q. And so where that sort of red marker is?

4 A. The red marker is the location of the residence.

5 Q. And that is where you responded to that morning?

6 A. Yes, sir.

7 Q. All right. And where is the West Ashley the  
8 Charleston Greenway in relation to this?

9 A. So the Charleston Greenway runs behind this  
10 location. Down there (pointing).

11 Q. All right. Thank you. All right. So as part of  
12 being -- well, let's walk through it in reverse. When  
13 you arrived at Braxton Avenue what did you do?

14 A. So upon approaching I checked the exterior of the  
15 residence to see if there's any signs of -- you know,  
16 anything that I would find necessary to see, so broken  
17 doors or broken windows, seeing if the residence was  
18 locked or left open. Found that it was locked. Do to  
19 the nature of the call I waited for additional units to  
20 get there.

21 Q. So what was the nature of the call for you?

22 A. What I received through dispatch and on my mobile  
23 computer was that there was a person on the line saying  
24 they had possibly just shot their companion or the mother  
25 of their child, they weren't sure if they were alive or

1 dead was essentially the call.

2 Q. Okay. So basically responding to potentially a  
3 person in need?

4 A. Correct.

5 Q. And were there other officers there with you?

6 A. Correct. So I was the first one to show up on the  
7 scene. Officer Hudson arrived shortly thereafter. We  
8 continued to check the exterior of the residence, found  
9 that it was secured. Due to the exigent circumstances  
10 decided we were going to have to force entry into the  
11 residence. So we waited for that time. Sergeant Ratliff  
12 and Lieutenant Bruder showed up on the scene as well.

13 Q. Okay. And so y'all forced your way into the  
14 residence?

15 A. Correct. At this time due to the exigent  
16 circumstances of the call Lieutenant Bruder forced entry  
17 into the front door.

18 Q. And how did he do that?

19 A. By kicking it.

20 Q. Kicking in the front door?

21 A. Correct.

22 Q. Okay. And then once you get into the residence what  
23 is your goal; what is everyone's job?

24 A. So upon entry into the residence, again due to the  
25 nature of the call, a possible weapon involved, we did a

1 search of the residence.

2 So basically -- not a search, a clearing of the  
3 residence, making sure there was no -- no one else inside  
4 that was going to cause us harm. For officer safety and  
5 then to also look for a potential person in need.

6 Q. So you want to look for a victim but remain safe at  
7 the same time?

8 A. Correct. Yeah. We are trying to render aide to  
9 someone who may be in need at that time.

10 Q. And with CPD are you supplied body-worn cameras?

11 A. Yes, sir, I am.

12 Q. And were you wearing one at that time?

13 A. I was.

14 Q. I am going to show you what has been marked for  
15 identification as State's Exhibit 71. Do you recognize  
16 that?

17 A. I do.

18 Q. How do you recognize that disk?

19 A. I have that initialed with my initials.

20 Q. You initialed it. So you have seen the contents of  
21 this disk before?

22 A. Correct.

23 Q. And what does it contain?

24 A. It contains my body-worn camera footage from that  
25 day.

1 Q. From that day. And does it fairly and accurately  
2 represent what took place when you arrived at the Braxton  
3 Avenue residence?

4 A. Yes, sir, it does.

5 MR. KIDD: Your Honor, at this time the State would  
6 offer State's Exhibit 71 into evidence.

7 MR. LIZZI: No objection, Your Honor.  
8 (WHEREUPON, State's Exhibit 71 was admitted into  
9 evidence.)

10 (WHEREUPON, publish State's Exhibit 71, body cam DVD.)

11 Q. All right. Officer, Tulle, I guess we saw that  
12 there was a dog on the scene?

13 A. Correct.

14 Q. And it looked like you gave the dog to animal  
15 services?

16 A. Correct.

17 Q. So can you tell this jury what you saw in the  
18 bedroom as you made entry into the opposite bedroom.

19 A. Okay. So as I approached the bedroom door then I  
20 made brief entry into the bedroom at the end of the  
21 hallway. I saw a person -- what appeared to be a person  
22 laying in bed underneath the covers with a pillow on top  
23 of them and a large amount -- a large quantity of blood.

24 Q. And did you see other than obviously a body in the  
25 bed did you see any other signs of a struggle throughout

1 the residence?

2 A. I did not.

3 Q. So no like lamps knocked over or pictures knocked  
4 off walls or anything ---

5 A. No, sir.

6 Q. --- or anything like that? And as part of your job  
7 you often respond to domestic-type calls?

8 A. Correct. Yes, sir.

9 Q. So you are familiar I guess with what a scene with a  
10 struggle looks like?

11 A. Correct. Yes, sir.

12 Q. And you didn't see any of those type signs?

13 A. I did not, sir, no.

14 MR. KIDD: Court's indulgence. No further  
15 questions. Please answer questions that Mr. Lizzi may  
16 have.

17 THE COURT: Any questions?

18 MR. LIZZI: May it please the court.

19 **CROSS-EXAMINATION BY MR. LIZZI OF OFFICER MATTHEW TULLA:**

20 Q. Officer Tulla, every scene is different; correct?

21 A. Yes, sir.

22 Q. And two people who have a tussle there doesn't have  
23 to be things knocked off the wall and things in disarray,  
24 does it?

25 A. No, sir.

1 Q. And you weren't in there that night, correct, ---

2 A. No, sir.

3 Q. --- before this happened?

4 A. No, sir.

5 Q. You don't know what happened in that room prior to  
6 you getting there?

7 A. I do not.

8 Q. Okay. And when you came in there you responded to  
9 the call. And obviously you have to for your own safety  
10 have to sweep the building?

11 A. Correct.

12 Q. And when you first went into the room you saw the  
13 body and then you exited back out because you weren't  
14 done sweeping that floor, correct?

15 A. Correct.

16 Q. But there were also other officers that went into  
17 the room right behind you?

18 A. Yes, sir.

19 Q. Okay. And other than your video at that point Crime  
20 Scene hadn't come in and taken any -- weren't in there  
21 taking pictures because you are still sweeping the scene,  
22 correct?

23 A. Correct.

24 Q. And from what I understand almost immediately after  
25 you had cleared the scene to make sure that all the

1 officers would be safe EMS then came in?

2 A. That's correct.

3 Q. Okay. And when EMS came in their job is not really  
4 worrying about the placement of everything in the scene;  
5 they are supposed to respond a person in need, correct?

6 A. That is correct, sir.

7 Q. So when they came in they actually moved the body  
8 and kind of tried to render some type of aid, correct?

9 A. Correct.

10 Q. And still at this point we don't have Crime Scene in  
11 there yet taking pictures because we are trying to -- we  
12 are trying to render aide, correct?

13 A. That is correct.

14 Q. So the scene and the pictures of the scene are done  
15 later after we have had all the -- all of these people  
16 and EMS in there, correct?

17 A. Yes, sir.

18 Q. And they moved the blankets and they moved  
19 everything when they got there?

20 A. I believe so. I wasn't -- yes.

21 Q. Okay. And when you came in there she was --  
22 appeared to be laying on her side?

23 A. Appeared to be.

24 Q. Okay. And you never went all the way up real close  
25 to the body?

- 1 A. I went up along the side of the bed.
- 2 Q. Okay. And then you backed out?
- 3 A. Correct. As I was checking underneath the bed,
- 4 around the -- around the bed for a person, do --
- 5 protective sweep.
- 6 Q. Okay. And there was a pillow on top of her head?
- 7 A. Yes, sir.
- 8 Q. Did you move that?
- 9 A. I did not.
- 10 Q. Okay. And did you move the covers?
- 11 A. No, sir.
- 12 Q. Okay. So you weren't really 100 percent sure what
- 13 her body state was and you couldn't -- you could only see
- 14 the silhouette under the covers?
- 15 A. Correct.
- 16 Q. Now did you make contact with any of the neighbors
- 17 yourself?
- 18 A. I did.
- 19 Q. And did anybody report gunshots or noise or
- 20 anything?
- 21 A. Not that I am aware of.
- 22 Q. When you got there the door was locked?
- 23 A. Yes, sir.
- 24 Q. And the residence was secured?
- 25 A. Correct.



1 Q. And the dog was still there?

2 A. Yes, sir.

3 Q. Now I heard you on your video say something about  
4 you thought she may have been asleep.

5 A. Correct.

6 Q. But part of her glasses were on the floor, correct?

7 A. I do not know.

8 Q. Okay. But you have no idea what her state was prior  
9 to any of the gunshots?

10 A. No, I do not.

11 Q. Okay. And you had never been out to that  
12 residence -- that was your area, correct?

13 A. That day, yes. West Ashley in general, yes.

14 Q. Okay. And you had never been out to that residence  
15 before?

16 A. No, sir, I hadn't.

17 Q. Okay. And you weren't made aware of any history or  
18 anything of calls to that residence before you went  
19 there?

20 A. No, sir, I was not.

21 Q. And isn't that a normal kind of thing if there is a  
22 history of domestic violence or disturbances prior to  
23 getting there?

24 A. Sometimes. You know, if -- there's many different  
25 shifts at work. Sometimes dispatch is able to pull that

1 up and let you know. But not always.

2 Q. Okay. How long had you been working that area when  
3 this happened?

4 A. Approximately a year-and-a-half. Maybe two years.

5 Q. And did you work the night shift, or what shift did  
6 you work?

7 A. That day I was working day shift.

8 Q. Okay. Were you on a rotating shift or ---

9 A. Correct.

10 Q. Okay. So you worked nights sometimes?

11 A. Worked nights, evenings; yes, sir.

12 Q. And I guess there is no real time that domestic  
13 disturbance calls come in?

14 A. Any time of the day.

15 Q. Okay. About how many officers would you say  
16 actually came into that room initially after you finished  
17 your sweep?

18 A. I would say there were approximately including  
19 myself approximately four officers. Three to four.

20 MR. LIZZI: Nothing further, Your Honor.

21 MR. KIDD: Just very briefly

22 **REDIRECT EXAMINATION BY MR. KIDD OF OFFICER MATTHEW**

23 **TULLA:**

24 Q. Mr. Lizza asked you if blankets and things like that  
25 had been moved, and you answered in the affirmative. Can

1 you explain that. What was ---

2 A. When EMS arrives on the scene their job is to check  
3 the status of the patient or of the victim at the time.  
4 Because the victim was underneath covers I believe they  
5 moved to check -- hook the patient up to a monitor to  
6 check status.

7 Q. Check for a pulse. So they have to sort of peel the  
8 blanket back off the body ---

9 A. I believe so, yes, sir.

10 Q. --- in order to access her arm?

11 A. Yes, sir.

12 Q. And the same with the pillow that was on ---

13 A. Correct.

14 Q. --- top of her head? Other than those two actions  
15 that we are talking about right there, pulling the pillow  
16 off the head and moving the blanket back to access her  
17 arms do you know of any other areas around the bed that  
18 were disturbed by officers or EMS?

19 A. I do not.

20 Q. And when you go to a scene like this are you  
21 cognizant of trying not to disturb evidence?

22 A. Yes, sir.

23 Q. Do you take precautions to preserve evidence on the  
24 scene?

25 A. Sure. As we clear the residence that is your sole

1 job is to make sure there is, you know, no other harm for  
2 officer's safety essentially; but at that time you -- if  
3 you believe this to be a crime scene you are trying to  
4 preserve it as best as possible.

5 MR. KIDD: No further questions.

6 THE COURT: All right. You may step down.

7 Ladies and gentlemen of the jury, we are going to  
8 take about a ten-minute afternoon. I will remind you two  
9 things: Don't discuss the case or deliberate. Second,  
10 please select me a foreperson.

11 And if we are right on time we will probably go to  
12 about five-ish, somewhere in that neighborhood. I think  
13 we are going to try to do two more witnesses this  
14 afternoon if we can get them in. And then we will talk  
15 about tomorrow.

16 Everyone else remain seated. The jury may step out.  
17 (WHEREUPON, jury exits courtroom 10/8/18, 3:41 p.m.)

18 THE COURT: We will stand at ease for about 10 or 15  
19 minutes. Thank you.

20 (WHEREUPON, break was had.)

21 (WHEREUPON, jury enters 10/8/18, 3:59 p.m.)

22 THE COURT: You may call your next witness.

23 MR. CORVEY: Thank you, Your Honor. The State calls  
24 Detective James Jackson.

25 (WHEREUPON, the witness was duly sworn.)

1 THE CLERK: Please state your name and spell your  
2 last name for the record, please.

3 THE WITNESS: Detective James Jackson.  
4 J-A-C-K-S-O-N.

5 **DIRECT EXAMINATION BY MR. CORVEY OF DETECTIVE JAMES**  
6 **JACKSON:**

7 Q. Good afternoon, Detective Jackson. Where are you  
8 employed?

9 A. City of Charleston Police Department.

10 Q. How long have you been with CPD?

11 A. Almost ten years.

12 Q. Okay. And since the time you have been in CPD what  
13 are some of the various roles, duties, assignments you  
14 have had in the department?

15 A. I started in patrol. I worked there for several  
16 years. Started as a detective in 2013 and have been in  
17 that role since 2013.

18 Q. Okay. And what cases are you primarily  
19 investigating?

20 A. I mostly handle white-collar crimes. Financial  
21 investigations primarily. But do assist in many other  
22 types of investigations.

23 Q. Okay. And generally with CPD how are cases assigned  
24 or how do you get to become involved in investigations  
25 outside of your particular area?

1 A. Based on needs, being on call; things of that  
2 nature. Assist -- just assisting wherever the help is  
3 needed.

4 Q. Okay. And were you working as a detective with CPD  
5 on the morning of August 5th, 2015?

6 A. Yes, I was.

7 Q. Okay. And what were you assigned doing that  
8 morning?

9 A. That morning I was just kind of starting my day. I  
10 have a lot going on. Yeah, just trying to figure out  
11 what I was going to accomplish that day.

12 Q. Okay. And then did you have the opportunity to get  
13 involved in this case?

14 A. Yes. I was -- heard the call go out on the radio in  
15 reference to a male calling 911 and saying that his  
16 girlfriend had been shot over on Braxton Avenue.

17 Q. Okay. And then how did you respond?

18 A. Officers responded to Braxton Avenue. And I was  
19 asked to go to Summerville where the 911 caller was  
20 detained by Dorchester County because I was familiar with  
21 the area.

22 Q. Okay. So you then responded in Summerville?

23 A. Yes.

24 Q. Okay. And what happened when you got on the scene  
25 in Summerville?

1 A. Got to the Dollar General is Summerville off of Old  
2 Orangeburg Road. And Corporeal Bright with Dorchester  
3 County had the suspect in custody in her patrol vehicle.

4 Q. Okay. And by the time you arrived up in Summerville  
5 had Corporeal Bright or anyone else with Dorchester  
6 County taken any items off of the defendant?

7 A. Yes. Corporeal Bright provided me with a firearm  
8 that was in a black holster, a Glock firearm. She had  
9 placed it in a paper bag. And then some other personal  
10 effects, a wallet, insurance card and things of that  
11 nature. Cigarettes I believe.

12 Q. Was there a phone?

13 A. I believe so, yes.

14 Q. And then after getting there -- I mean after kind of  
15 taking custody of his items what were next steps up there  
16 at the Dollar General?

17 A. Detective Simmons was in route to take custody of  
18 him. Corporeal Bright advised me that he had already  
19 invoked his right to counsel.

20 So when Detective Simmons got there I explained to  
21 Mr. Gule what the next procedures were going to be and  
22 that we were taking him to CPD for further processing.  
23 And he stated he understood.

24 Q. Okay. And then did he go with Detective Simmons?

25 A. He did.

1 Q. Okay. And then staying there in Summerville what  
2 were your next steps on the scene with the investigation  
3 at that point?

4 A. While -- after Detective Simmons was putting him in  
5 a restraint belt to be transported back to CPD I placed  
6 paper bags over his hands to preserve any trace evidence  
7 such as gunshot residue or DNA or anything of that  
8 nature.

9 Q. What kind of paper bags, ---

10 A. Just plain ---

11 Q. --- just plain ---

12 A. --- paper bags. Yeah, like lunch bag.

13 Q. Well, and I guess before moving forward to what you  
14 did next let's talk a little bit about the defendant.  
15 During your time being in contact with him did you notice  
16 anything, you know, of note on his person as far as  
17 injuries or anything else of evidentiary value?

18 A. When I was placing the paper bag on his hand there  
19 was a small cut on the back of one of his hands like in  
20 the area in the base of the thumb.

21 Q. Okay. And like the webbing of his hand?

22 A. Yeah, like right in here (pointing).

23 Q. Okay. And was that significant to you at all?

24 A. A little bit. It was the only really injury I noted  
25 on him. But it could be consistent with firing of a gun



1 and getting pinched by the slide.

2 Q. Okay. And how exactly would that happen?

3 MR. LIZZI: Objection, Your Honor.

4 THE COURT: Hold on.

5 The objection is what?

6 MR. LIZZI: Not an expert in this area.

7 THE COURT: Sustained. He cannot give opinion  
8 testimony unless he is qualified as an expert.

9 Disregard that last opinion that he had. Thank you.

10 MR. CORVEY: Thank you, Your Honor.

11 Q. Now so you note the small injury to his left hand,  
12 and then you indicated you placed the bags on his hands  
13 to preserve any trace evidence. Did you have any other  
14 contact with the defendant at that point?

15 A. No. He went to CPD Detective Centers.

16 Q. Other than the small cut to his hand that you noted  
17 did you notice any other visible injuries at that point?

18 A. Nothing that stood out to me, no.

19 Q. Nothing to his face?

20 A. Nothing to his face, clothing. Clothing appeared to  
21 be relatively clean and -- yeah.

22 Q. Okay. And then he is now transported at that point  
23 to CPD. And what are your next steps on the scene?

24 A. Responded to the apartment where Dorchester County  
25 advised that his DMV address came back to which was [REDACTED]

1 Orange Grove Road, Apartment ■.

2 Q. Okay. And what did you do at the apartment?

3 A. Got there. It was secured by Dorchester County  
4 Sheriff's Office. Mr. Gule's father was on the scene  
5 along with his juvenile son.

6 I coordinated with DSS to make sure the custody  
7 needs of his son was met during that time. Detective  
8 Burkhardt was working with Dorchester County to secure a  
9 search warrant for the residence.

10 Q. Were you guys -- did you end up obtaining a search  
11 warrant for the residence?

12 A. Yes.

13 Q. And were you involved in the search?

14 A. I was involved in the search, yes.

15 Q. Okay. And were you able to locate anything from the  
16 results of that search?

17 A. Yes. In the bedroom that was occupied by Mr. Gule  
18 we located a Glock box and a 50-round drum magazine to a  
19 Glock firearm.

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

21 Q. Detective Jackson, I am going to had you what is  
22 pre-marked for ID as State's 75 and State's 76.

23 (WHEREUPON, State's Exhibit 75, drum magazine, marked for  
24 identification.)

25 (WHEREUPON, State's Exhibit 76, Glock Box, marked for

1 identification.)

2 Q. If you could open those up and just let me know if  
3 you recognize those items.

4 (WHEREUPON, witness complied with opening bags.)

5 A. It is a box that ---

6 THE COURT: What number is that, please?

7 THE WITNESS: This is - I'm sorry - 75.

8 A. It appears to be a box containing a drum magazine.

9 Q. Okay. And do you recognize that?

10 A. Yes.

11 Q. How do you recognize that?

12 A. It was recovered from the apartment that day in  
13 the -- from the room occupied by the defendant in the  
14 search warrant.

15 Q. And did you take custody of it?

16 A. I did.

17 Q. Did you log it into evidence?

18 A. I did. My initials are on the back.

19 Q. And is that in the same or substantially similar  
20 condition as it was when you found it?

21 A. Yes.

22 MR. CORVEY: Your Honor, at this time the State  
23 would seek to submit 75 into evidence.

24 THE COURT: Any objection?

25 MR. LIZZI: No objection, Your Honor.

1 (WHEREUPON, State's Exhibit Number 75 was admitted into  
2 evidence.)

3 Q. And if you could also look at what has been marked  
4 for ID as State's 76.

5 A. Seventy-six.

6 (WHEREUPON, witness opened evidence bag.)

7 A. It is a Glock firearm or Glock box.

8 Q. And was that also recovered from his bedroom?

9 A. Yes.

10 Q. Was it in the same or substantially similar  
11 condition as to when you found it?

12 A. Yes.

13 Q. And then did you log it into evidence?

14 A. I did.

15 MR. CORVEY: Your Honor, at this time the State  
16 would seek to admit State's 76.

17 THE COURT: Any objection?

18 MR. LIZZI: No objection, Your Honor.

19 (WHEREUPON, State's Exhibit Number 76 was admitted into  
20 evidence.)

21 Q. Now following this search of the residence what were  
22 your next steps in Summerville?

23 A. Once we finished the search of the residence called  
24 for Jimmy's Towing to tow two vehicles that were  
25 identified as belonged to Mr. Gule to the crime scene

1 office for further search.

2 Q. Do you remember the makes of those vehicles?

3 A. One was a 2007 Dodge Magnum. It was black in color.  
4 The other one was a blue in color '93 Chevrolet S-10.

5 Q. Were those transported to the CPD warehouse?

6 A. To the Crime Scene office, yes.

7 Q. To the Crime Scene office. Okay. And then  
8 following that what did you do next?

9 A. Came back to headquarters and removed the -- all of  
10 the items and particularly those two items I just  
11 identified and the firearm and the personal effects that  
12 were obtained from Corporate Bright. Logged the firearm  
13 into evidence and the wallet and other items.

14 Q. Okay. And with regard to the firearms was there  
15 anything special you had to do in order to log it into  
16 evidence?

17 A. Yes. I had to remove it from the holster that it  
18 was currently stored in. Had to make it safe which  
19 entitled taking the one live found out of the chamber and  
20 moving the magazine which contained seven rounds.

21 Q. So eight rounds all together?

22 A. Eight rounds all together.

23 MR. CORVEY: Your Honor, may I approach?

24 THE COURT: You may.

25 (WHEREUPON, State's Exhibit Number 77, bullets, marked

1 for identification.)

2 (WHEREUPON, State's Exhibit Number 78, bullet, marked for  
3 identification.)

4 Q. I am showing you what has been pre-marked as State's  
5 77 and 78. If you could take a minute and look at those.

6 Do you recognize those?

7 A. Yes.

8 Q. What are those?

9 A. The rounds -- the rounds that were in the --  
10 originally in the magazine and the one round that was in  
11 the chamber of the firearm.

12 Q. And are they in the same or substantially similar  
13 condition as they were when you collected them?

14 A. Yes.

15 MR. CORVEY: Your Honor, at this time the State  
16 would seek to admit State's 77 and 78 into evidence.

17 THE COURT: Any objection?

18 MR. LIZZI: No, Your Honor.

19 (WHEREUPON, State's Exhibit 77 was admitted into  
20 evidence.)

21 (WHEREUPON, State's Exhibit 78 was admitted into  
22 evidence.)

23 Q. Now Detective Jackson, I want to draw your attention  
24 to what has been pre-marked for ID as State's 70. If you  
25 could take a look at that.

1 A. It is a black in color holster and a Glock firearm,  
2 Glock 26, 9 x 19; and 190 Lee Nichols tin also.

3 Q. And is that the firearm that you recovered that day?

4 A. Yes.

5 Q. Same -- and you logged it into evidence?

6 A. Yes.

7 MR. CORVEY: Your Honor, at this time the State  
8 would seek to admit 70 into evidence.

9 THE COURT: Seventy, is there any objection; a  
10 pistol and a holster?

11 MR. LIZZI: No objection.

12 (WHEREUPON, State's Exhibit 70 was admitted into  
13 evidence.)

14 MR. CORVEY: Beg the court's indulgence, Your Honor.

15 THE COURT: Certainly.

16 Q. Now, Detective Jackson, did you have any other  
17 involvement in this particular investigation?

18 A. No.

19 MR. CORVEY: Court's indulgence, Your Honor.

20 No further questions. Please answer any that Mr.  
21 Lizzi may have.

22 **CROSS-EXAMINATION BY MR. LIZZI OF JAMES JACKSON:**

23 Q. Your contact with Mr. Gule was it relatively short?

24 A. Yes.

25 Q. And you didn't examine his whole body; you didn't --

1 you weren't -- it wasn't your job to go in there and take  
2 pictures or look at his body for injuries or anything  
3 like that?

4 A. Not overly, no. Just kind of general appearance.

5 Q. Okay. And what was he wearing when he -- when  
6 he ---

7 A. I know he was wearing an orange shirt, a blue in  
8 color pants, and tennis shoes.

9 Q. And you have no knowledge how he got a cut on his  
10 left hand?

11 A. No.

12 Q. And do you know if he is right- or left-handed?

13 A. No.

14 Q. And the Glock 50-round magazine does it appear like  
15 it was still in the box and hadn't been used?

16 A. That is in the condition that I found it, yes.

17 Q. Okay. You didn't find any bullets in it?

18 A. No.

19 Q. And the bullets that you marked into evidence was  
20 that the only bullets you found?

21 A. Yes.

22 Q. Were there any other boxes of bullets or any other  
23 kind of large amounts of ammunition?

24 A. No.

25 Q. And it is your understanding I mean he gave up the



1 gun right at the time they apprehended him, correct?

2 A. I wasn't present during that time. But I got it  
3 from Corporeal Bright.

4 Q. Okay. And he left you and went on his way and was  
5 processed; and now when you came in you waited for DSS?

6 A. Yes.

7 Q. Okay. And where did the child go?

8 A. With DSS.

9 Q. And besides the clothes that he was wearing did you  
10 take any other clothes or anything else into -- in ---

11 A. I did not, no.

12 Q. Did you actually execute the search warrant yourself  
13 or did Dorchester County execute it and with your  
14 present, or what happened?

15 A. Dorchester County executed the search warrant with  
16 us present.

17 Q. Okay. And everything that was taken as to that  
18 search warrant was it given over to you?

19 A. Yes.

20 Q. And was there any additional items besides those  
21 items that we have here today?

22 A. There were a few. Another gun case, a black gun  
23 case they located in the apartment.

24 Q. And did you all again all of his -- the things in  
25 his wallet did you do that as to what cards or things

1 were located in his wallet?

2 A. Yes.

3 Q. Okay. And did he have a concealed weapons permit in  
4 there?

5 A. He did.

6 Q. Was there anything in the other gun case?

7 A. No.

8 MR. LIZZI: Nothing further.

9 MR. CORVEY: No further questions, Your Honor.

10 THE COURT: You may step down.

11 Next witness.

12 MR. CORVEY: Thank you, Your Honor. The State calls  
13 crime scene, Randy Unterbrink.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: State your first name and spell your  
16 last name, please.

17 THE WITNESS: Randall Unterbrink.

18 U-N-T-E-R-B-R-I-N-K.

19 **DIRECT EXAMINATION BY MR. CORVEY OF RANDALL UNTERBRINK:**

20 Q. Good afternoon, Mr. Unterbrink. Where are you  
21 employed?

22 A. I am with the Charleston Police Department.

23 Q. How long have you been with CPD?

24 A. Twenty-eight years.

25 Q. Okay. And I guess in your 28 years with CPD what

1 are the various roles and duties and assignments you have  
2 had inside of the Department?

3 A. I have worked in patrol. I have worked in what we  
4 call foot patrol where you are walking down King Street  
5 for example. I have also spent time in the  
6 Identification Unit. And this is where we do  
7 fingerprinting, some photography. And then also I have  
8 been spending the last 15 years with the crime scene  
9 unit.

10 Q. Okay. And then what specifically is your role at  
11 the crime scene unit?

12 A. It is to identify, collect, and also preserve  
13 evidence that you find at the scene.

14 Q. Okay. And what sort of special training or  
15 background do you have that allows you to become involved  
16 with the crime scene unit?

17 A. We start off really just riding along to help us  
18 understand the general daily activities of a crime scene  
19 person. Once that is completed then we begin to go to  
20 classes. It could be at SLED. It could be in other  
21 locations. One could be for photography specifically.  
22 Another one could be for latent fingerprint processing.

23 I went to the National Forensic Academy in  
24 Knoxville, Tennessee. That is a ten-week course where  
25 they cover everything from explosions to blood splatter

1 to shaken baby syndrome. They go, again, through the  
2 fingerprint processing and how to measure and document a  
3 scene.

4 Q. Okay. And then in your role as a crime scene  
5 investigator were you working on August 5th, 2015?

6 A. I was.

7 Q. And did you have the opportunity to become involved  
8 in this case?

9 A. I did.

10 Q. How so?

11 A. I was requested to show -- to respond to 180  
12 Lockwood Boulevard which is the headquarters for the  
13 Police Department and to go to the detective's office.  
14 And there they wanted me to photograph an individual.

15 Q. Okay. And I guess prior to coming and getting  
16 involved in the case I mean do you know anything about  
17 what you are coming to investigate; I mean how are you  
18 prepared before coming into your involvement?

19 A. In this particular case I was not involved in it  
20 prior. I was simply asked to show up and I was being  
21 guided as far as this is the individual, I needed to take  
22 these photographs of the person. And so that was really  
23 the extend of my involvement.

24 Q. Okay. And then with your role in photographing and  
25 when you are coming to photograph a suspect do you have

1 any sort of parameters that you are operating under or  
2 just trying to document in essence how he perceived to  
3 CPD?

4 A. Yeah, the goal was to simply document. Because once  
5 you leave, the next day everything changes. So I needed  
6 to document the individual how he appeared at that time,  
7 what he was wearing, how he looked.

8 Q. Okay. And so in doing so -- and I guess you spent  
9 some time with the suspect in this case?

10 A. It was limited. It was actually very limited.

11 Q. Well, in your brief time in photographing did you  
12 notice any visible injuries to the defendant?

13 A. I was not aware of an injury at the time. Because I  
14 did not put that in my report. Otherwise I would have.  
15 So at the time I was not aware of a specific injury.

16 Q. And had you noticed an injury would you have put it  
17 in your report?

18 A. I would have, yes.

19 Q. Okay.

20 MR. CORVEY: Your Honor, may I approach?

21 Q. Mr. Unterbrink, I am handing you what has been  
22 premarked for ID as State's 63 through 68. If you could  
23 just take a moment ---

24 THE COURT: Sixty-two through sixty-eight?

25 MR. CORVEY: Sixty-three through sixty-eight, Your

1 Honor.

2 THE COURT: I'm sorry. Thank you.

3 A. Yes, sir.

4 Q. Do you recognize those photographs?

5 A. I do.

6 Q. And what are they?

7 A. These are the photographs that I took of the  
8 individual in the detective's office at that time.

9 Q. Okay. And are they a fair and accurate  
10 representation of how he presented at that point?

11 A. Yes, sir.

12 MR. CORVEY: Your Honor, at this time the State  
13 would seek to admit State's Exhibit 63 through 68.

14 THE COURT: Any objection?

15 MR. LIZZI: No objection, Your Honor.

16 (WHEREUPON, State's Exhibit Number 63 was admitted into  
17 evidence.)

18 (WHEREUPON, State's Exhibit Number 64 was admitted into  
19 evidence.)

20 (WHEREUPON, State's Exhibit Number 65 was admitted into  
21 evidence.)

22 (WHEREUPON, State's Exhibit Number 66 was admitted into  
23 evidence.)

24 (WHEREUPON, State's Exhibit Number 67 was admitted into  
25 evidence.)

1 (WHEREUPON, State's Exhibit Number 68 was admitted into  
2 evidence.)

3 MR. CORVEY: Permission to publish, Your Honor?

4 THE COURT: Certainly.

5 Q. Now, Mr. Unterbrink, I just kind of want to go  
6 through these rather quickly. And as you indicated your  
7 role in coming here is just to document I guess the  
8 condition that a suspect is in and the condition his  
9 clothing is in at the time that he presents?

10 A. That is correct.

11 Q. So this is just a front-facing photograph of the  
12 defendant?

13 A. Yes, sir.

14 THE COURT: What number, please?

15 MR. CORVEY: Sixty-three.

16 Q. Now I am showing you 64. Just a closer up of the  
17 front of the defendant's face?

18 A. That is correct.

19 Q. Sixty-five?

20 A. The same. Yes, sir.

21 Q. Sixty-six?

22 A. Yes, sir.

23 Q. Sixty-seven?

24 A. Yes, sir.

25 Q. And then 68?

1 A. Yes, sir.

2 Q. Now, Mr. Unterbrink, outside of the photographs do  
3 you have any other roles as it pertains to the defendant  
4 in your interaction with him that day?

5 A. I was also asked to perform what we call a GSR kit  
6 on the individual. So I also completed that.

7 Q. Okay. What is a GSR kit?

8 A. It is a short for gunshot residue. And the point of  
9 it is an attempt to collect gun powder that might be on  
10 an individual's hand. It is a sticky tab. Really it is  
11 not much different than Scotch tape really. But it is a  
12 cylinder with a sticky side to it. And you tap the  
13 individual's hand. And the goal of course is to collect  
14 any gun powder that may be on it.

15 Q. Okay. And you would accumulate gun powder on ones  
16 hands I guess from firing a gun or being in the vicinity  
17 of one being fired?

18 A. You can, yes.

19 Q. Okay. And so in going to perform the GSR kit what  
20 condition was the suspect in before you performed that  
21 kit?

22 A. The condition really is was displayed in the  
23 photographs. He was present. He had paper bags that  
24 were covering both hands. Which ---

25 Q. And is that -- is that -- I'm sorry to interrupt.



1 Is that kind of standard protocol for somebody?

2 A. It is. The point of the paper bag over the hands is  
3 to protect the hands. You are dealing with gunpowder  
4 which can be easily knocked off. And so so long as it is  
5 protected with a bag that minimizes that. So I would  
6 then remove the bags and then I would perform that GSR.

7 Q. Okay. And then how do you perform that? I mean you  
8 are going to need the sticky tab, but is there -- is  
9 there I guess multiple tabs or ...?

10 A. There are. They are labeled. And one will be for  
11 the right hand. And then another set would be for the  
12 left hand so that you can distinguish from which hand you  
13 are collecting from.

14 Q. And then inside of right and left are you testing  
15 various surfaces of the hand?

16 A. Yes. So we are doing the palm from really the  
17 fingers down to the end of the palm side. And then you  
18 are also flipping the hand over and you are doing the  
19 same thing on the back of the hand.

20 MR. CORVEY: Your Honor, may I approach?

21 (WHEREUPON, State's Exhibit Number 79, GSR kit, marked  
22 for identification.)

23 Q. Mr. Unterbrink, I am handing you what has been  
24 premarket for ID as State's 79. If you could -- and cut  
25 that open if need be. Just let me know if you recognize

1 that.

2 (WHEREUPON, pause for witness to open exhibit.)

3 A. Yes, sir, I do.

4 Q. Okay. What is that?

5 A. This is the envelope that would contain those sticky  
6 tabs. We insert it in here (pointing). I then seal it.  
7 Identify it on the front which has my name on it. Also  
8 that comes with it is some general information as far as  
9 the individual that I am performing this task on, whether  
10 the -- the circumstances behind it, the date and the time  
11 it is performed.

12 Q. And then following the test would it be logged into  
13 evidence?

14 A. Yes, after I am all completed with this, as I say, I  
15 seal it. And then it is transferred into the evidence  
16 room which is at 180 Lockwood Boulevard where it is  
17 stored until it is determined that it needs to maybe go  
18 for evaluation. But that is the next step. It is  
19 storage for -- long-term storage.

20 Q. And then possible later testing?

21 A. That is correct.

22 Q. Okay. Thank you, Mr. Unterbrink.

23 MR. CORVEY: No further questions, Your Honor.

24 MR. LIZZI: May it please the court.

25 **CROSS-EXAMINATION BY MR. LIZZI OF RANDALL UNTERBRINK:**

1 Q. And so I don't butcher this, how do you pronounce  
2 your last name?

3 A. It is phonetic. It is Un-ter-brink.

4 Q. Mr. Unterbrink.

5 A. Yes, sir.

6 Q. So when you did this GSR test on my client you did  
7 the whole area by his hands and his arms?

8 A. No, sir, just the hands.

9 Q. Just the hands?

10 A. Yes, sir.

11 Q. And was he wearing this orange shirt at the time?

12 A. Yes, sir.

13 Q. And he was clothed just like you -- as you took his  
14 photo?

15 A. Correct.

16 Q. Okay. And he was wearing a short-sleeve shirt at  
17 the time?

18 A. I believe so.

19 Q. Okay. And did you notice any blood on his arms or  
20 any on his hands or any blood at all on him?

21 A. No, sir.

22 Q. Okay. And this GSR, we put bags on their hands to  
23 make sure because it can get knocked off pretty easy;  
24 correct?

25 A. Yes, sir, it can.

1 Q. And if you washed yourself and you washed your hands  
2 and washed your -- there is a good chance it would just  
3 get knocked off and would -- it would come off, right?

4 A. Yes, sir.

5 Q. So if you expect -- if you find GSR you would expect  
6 that he hadn't cleaned or cleaned himself up at that  
7 point?

8 A. Could you repeat that, please.

9 Q. If you -- if the test is positive for GSR ---

10 A. Yes, sir.

11 Q. --- you pretty well assume that he hadn't cleaned up  
12 his -- he hadn't washed his hands or cleaned himself up?

13 A. That's correct.

14 Q. Okay. And you don't know what the results of the  
15 test are; you just take the test and ---

16 A. That is correct. I just take it and then it is  
17 submitted into evidence and then other people take it  
18 from there.

19 Q. Okay. And from the time that they got him you are  
20 pretty -- pretty certain that they had bags on him so he  
21 didn't disturb anything that was on him?

22 A. That's correct.

23 Q. Okay. And if you had seen blood splatter or any  
24 kind of blood on him would you have noted that?

25 A. I would, yes.

1 Q. And you never noted that, right?

2 A. That is correct. I did not.

3 MR. LIZZI: Nothing further.

4 MR. CORVEY: No, Your Honor.

5 THE COURT: Thank you. You may step down.

6 Mr. Foreman, ladies and gentlemen of the jury, I had  
7 represented that we would go to five o'clock. But trying  
8 a case is sort of like putting on a play sometimes  
9 getting everybody all the moving parts together.

10 So I told -- it is my fault. I told them to have  
11 five witnesses for us this afternoon which I thought  
12 would take up until about five. We have been a little  
13 more efficient so we are stopping 30 minutes early. But  
14 we have accomplished what we have tried to accomplish  
15 this afternoon.

16 So we will start back in the morning. I normally  
17 start at 9:30. Is that going to be a problem for  
18 anybody? Would you like for me to have you some  
19 refreshments in this morning?

20 JURY PANEL MEMBER: Sure.

21 THE COURT: All right.

22 (WHEREUPON, discussion with clerk regarding  
23 refreshments.)

24 THE COURT: Now please do me a favor. Don't discuss  
25 the case with anyone. Don't let anybody discuss it with

1 you. Please don't go home and do any research on  
2 newspaper articles or anything.

3 I haven't seen any press in here, but I am not  
4 familiar with the press in Charleston. I am not sure it  
5 is being reported. But if it is please don't read about  
6 it. You know more than anyone else about the case. You  
7 have heard it all.

8 And we will start bright and early right at 9:30.  
9 And we will get way down the road tomorrow and see how we  
10 are running.

11 Thank you. You have been very attentive. And I  
12 appreciate that and look forward to seeing you all in the  
13 morning. Everybody got rides, no problems with rides or  
14 any of that nature?

15 All right. I will see you in the morning. Everyone  
16 else please remain seated.

17 (WHEREUPON, jury exits courtroom October 8, 2018, 4:31  
18 p.m.)

19 THE COURT: Is there anything from the State before  
20 we break for the evening?

21 MR. KIDD: No, sir.

22 MR. LIZZI: Nothing from the defense.

23 THE COURT: Okay. We will break. We will start at  
24 9:30

25 in the morning. Y'all be here just a few minutes early

1 in case we need to put anything on the record. And may I  
2 see y'all just for a second before you leave for the  
3 afternoon. Everyone else, time to go. Thank you.

4 (WHEREUPON, recess 10/8/18, 4:32 p.m.)

5 (WHEREUPON, resume trial 10/9/18, 9:48 a.m.)

6 (WHEREUPON, jury enters courtroom 10/9/18, 9:48 a.m.)

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your name and spell your  
9 last name for the record, please.

10 THE WITNESS: Okay. My name is Sara Tuuk. T-U-U-K.

11 **DIRECT EXAMINATION BY MR. KIDD OF SARA TUUK:**

12 Q. Good morning, Ms. Tuuk. I apologize. I called you  
13 as Ms. Senn. Old hat. You used to be Ms. Senn; is that  
14 correct?

15 A. It is. Yes, sir.

16 Q. Where do you currently work, Ms. Tuuk?

17 A. I currently work at the Charleston County Coroner's  
18 Office.

19 Q. Back in August of 2015 where were you reporting to  
20 work?

21 A. I was crime scene investigator for the City of  
22 Charleston Police Department.

23 Q. At the -- part of the crime scene office what were  
24 your general job duty -- how did -- what did that entail?

25 A. We respond to incidents of crime, to document the

1 scene, identify and collect and preserve any items of  
2 evidence.

3 Q. How long did you work with Crime Scene?

4 A. I have worked there about four years.

5 Q. And what sort of training, education, programs like  
6 that did they put you through to get you proficient at  
7 that sort of job?

8 A. Lots of in-house training. You know, through other  
9 senior crime scene investigators. Also we went out of  
10 house just to do some specialized training in any type of  
11 area that we had interest in especially.

12 But, yeah, through our accreditation we had to have  
13 a certain amount. About 12 or 15 hours a year of  
14 training.

15 Q. So when you come to a crime scene, whether it be a  
16 murder scene like this one or an assault or whatever what  
17 is -- what are your goals when entering a scene?

18 A. To -- we photograph the scene to document it as we  
19 see right then. And then do a general, you know, walk  
20 through to begin with just to kind of identify any  
21 possible items of evidence that we will come back later  
22 to. And also we document how we came to arrive on the  
23 scene.

24 Q. Kind of document and preserve; ---

25 A. Yes, sir.



1 Q. --- is that fair to say?

2 A. Yes, sir.

3 Q. And do you recall getting involved in the homicide  
4 investigation on August 5th of 2015?

5 A. Yes, sir.

6 Q. And what was your role in regards to that  
7 investigation?

8 A. Document and preserve. We responded at about -- we  
9 got the call at about 8:50 in the morning. Responded to  
10 the location. It had been secured with crime scene tape  
11 at that time. And then it was decided that a search  
12 warrant was needed for us to go in to be able to do  
13 anything. So then we sat outside until about 11:00 a.m.  
14 until that warrant was signed by the judge. And then we  
15 proceeded to enter.

16 Q. And walk me thorough the process sort of as you walk  
17 through the front door, what are you doing, what are you  
18 looking for; that sort of thing.

19 A. Sure. We actually take pictures of the outside, the  
20 exterior of the residence first just to show if there's  
21 any damage to any parts, you know, windows, doors,  
22 anything like that.

23 Then we walked -- when I walked through the front  
24 door, you know, we look at the door frame, the door lock,  
25 just to see. And in this case there was forced entry, so

1 I documented the damage to the door and the door frame.

2 And this was a duplex. So we just started on the  
3 ground floor. I photographed the living room, kitchen  
4 area, just to show, you know, if there -- there was no  
5 signs of struggle in this case. You know, no tables  
6 upended or chairs or anything like that. Nothing broken.  
7 But we just like to document that as well.

8 MR. KIDD: If I may approach the witness, Your  
9 Honor.

10 Q. I am going to show you what has been marked  
11 State's 4 through 23 and see if you recognize these  
12 photographs.

13 A. These were the photos -- yeah, I took. Yes.

14 Q. Okay. State's 4 through 23 you took these  
15 photographs?

16 A. Yes, sir.

17 Q. And do they fairly and accurately represent the  
18 conditions and how the duplex appeared to you on the  
19 morning of August 5th, 2015?

20 A. Yes, sir.

21 MR. KIDD: Your Honor, at this time the State would  
22 offer State's Exhibit 4 through 23 into evidence.  
23 (WHEREUPON, pause for defense counsel to review  
24 documents.)

25 MR. LIZZI: No objection, Your Honor.

1 THE COURT: Thank you.

2 (WHEREUPON, State's Exhibit Number 4 through 23 were  
3 admitted into evidence.)

4 Q. All right, Ms. Tuuk, I am just going to walk through  
5 these photographs with you one by one; all right, Ms.  
6 Tuuk?

7 A. Okay.

8 Q. First I am going to show you what has been marked  
9 and entered into evidence State's Exhibit Number 4. And  
10 if you can just tell the jury - I know it is kind of self  
11 explanatory - but what we are looking at here in State's  
12 Exhibit 4.

13 A. Just the front exterior of the duplex on the B --  
14 the B apartment is on the right.

15 Q. Okay. So that is the apartment that you went in and  
16 documented the crime scene?

17 A. Yes, sir.

18 Q. And I am going to show you State's Exhibit Number 5.  
19 And it is closer up the same photograph?

20 A. Yes, sir.

21 Q. All right. State's Exhibit Number 6?

22 A. That is the front door of Apartment B.

23 Q. All right. And State's Exhibit - this is oriented -  
24 Number 7?

25 A. That is just documenting the damage to the door

1 frame from the forced entry.

2 Q. State's Exhibit Number -- I'm sorry, it is a little  
3 confusion when I overlap it this way.

4 (WHEREUPON, exhibit displayed.)

5 A. That is the downstairs bathroom.

6 Q. State's Exhibit Number 9?

7 A. That is just walking in the door on the right-hand  
8 side, the front -- the first part of the living room.

9 Q. State's Exhibit Number 10.

10 A. And that is just sweeping a little bit to the left  
11 of the living room.

12 Q. And I am just going to draw your attention. The  
13 screen in front of you is a touch screen.

14 A. Oh, okay.

15 Q. So if you need to circle anything or anything like  
16 that for the jury you can just do so with your finger. I  
17 draw your attention to the couch in the -- back here  
18 (pointing)?

19 A. Yes, sir.

20 Q. What do we have on that couch?

21 A. It appears to be a blanket and some additional  
22 pillow -- pillows on the couch.

23 Q. State's Exhibit Number 11?

24 A. This is further scanning to the left, kind of right  
25 in front of you when you enter the residence of the

1 living room as well.

2 Q. State's Exhibit Number 12?

3 A. This is the wall between the living room and the  
4 kitchen in the downstairs. You know, nothing -- we were  
5 just documenting that -- no picture frames were broken  
6 and there was no -- it didn't look like anything, no  
7 struggle happened down here.

8 Q. And State's Exhibit Number 13?

9 A. Once again just documenting, you know, who possibly  
10 lives here or could have lived here or could have, you  
11 know, been around here and that, you know, nothing was  
12 broken.

13 Q. State's Exhibit 14?

14 A. This is going towards the back of the duplex  
15 entering into like the dining room area and then the  
16 kitchen on the left.

17 Q. State's Exhibit 15?

18 A. This is the living room in the back of the duplex.

19 Q. Dining room?

20 A. Or dining room. Sorry. On the -- in the back of  
21 the duplex just kind of showing normal living and  
22 nothing -- no struggle.

23 Q. State's Exhibit 16?

24 A. This is the kitchen. Also in the back -- back of  
25 the duplex, you know, documenting once again that there

1 was nothing -- nothing was knocked over or anything out  
2 of -- abnormally out of place.

3 Q. Now we do have some it looks like letters or  
4 something like that on this wall?

5 A. Yes. It looks like magnetic letters possibly  
6 from -- from the frig.

7 Q. That might be more ---

8 A. There is the fridge. There you go.

9 Q. --- apparent here, State's Exhibit 17?

10 A. That is the refrigerator and the letters that had  
11 possibly, yeah, come off of the fridge.

12 Q. Okay. State's Exhibit 18?

13 A. This is picture is of the pantry and the fridge --  
14 or in the kitchen.

15 Q. And I guess the fridge is right there on the  
16 right-hand side ---

17 A. Correct.

18 Q. --- of the living room?

19 A. Yeah. With the magnet.

20 Q. Okay. And State's Exhibit 19?

21 A. This South Carolina driver's license was taken from  
22 the purse that was located inside of the residence just  
23 as a possible identification of who was upstairs.

24 Q. Any cell phone located inside of that purse?

25 A. No, sir.

1 Q. State's Exhibit 20?

2 A. So as soon as you enter the residence, you know, the  
3 living room is on the right. And then you can also go  
4 up -- straight up the stairs right away. And so this  
5 just kind of shows where we are headed next.

6 Q. In all of the documentation and everything you did  
7 on the downstairs of the duplex or home or apartment or  
8 whatever you want to call it, any blood?

9 A. No. There was no blood that we located on the  
10 lower-level at all.

11 Q. State's Exhibit 21?

12 A. This was the bathroom. I believe upstairs. Just  
13 looks -- you know, documenting the normal -- normal  
14 living. And once again no -- nothing knocked over that  
15 we observed.

16 Q. State's Exhibit 22?

17 A. There were two bedrooms upstairs. This was one of  
18 them, believed to be the child's bedroom. Just  
19 documented that it looks like a normal child's bedroom.  
20 You know, once again nothing broken, nothing, you know,  
21 overturned, or any signs of a struggle in that room.

22 Q. And State's -- finally State's Exhibit 23?

23 A. This was the second bedroom upstairs and where the  
24 victim was located. And so it just kind of shows where  
25 the bedroom was in relation to the top of the stairs.

1 MR. KIDD: Court's indulgence for one moment.

2 (WHEREUPON, documents shown to defense counsel.)

3 MR. KIDD: Your Honor, may I approach?

4 THE COURT: Why don't you go through the ones you  
5 have no objections with. The ones you have objections  
6 with then we will -- do you want to hand those the ones  
7 up here that you object to.

8 MR. KIDD: Yes, sir.

9 THE COURT: Let me take a look at them and then we  
10 will -- so we all are on the same page. But go ahead and  
11 examine her or ask her questions on the ones that are not  
12 being objected to. Those that are being objected to let  
13 me review those.

14 When we get through with those then we will address  
15 the objection. I will see what part -- whether it is  
16 cumulative, etc., etc.

17 MR. KIDD: Thank you, Your Honor.

18 THE COURT: Or other objections.

19 (WHEREUPON, documents provided to the court.)

20 THE COURT: All right. You may proceed.

21 Q. Ms. Tuuk, I am going to show you first what has been  
22 marked for identification as State's Exhibit 24 through  
23 30. We will go through these in batches, okay.

24 State's Exhibit 24 through 30 and see if you  
25 recognize those photographs.



1 A. Yes. These are the photos I took in the bedroom.

2 Q. And do they fairly and accurately represent where  
3 the bedroom appeared on the morning of August 5th, 2015?

4 A. Yes, sir.

5 MR. KIDD: Your Honor, at this time the State would  
6 offer State's Exhibit 24 through 30 into evidence.

7 THE COURT: Any objection?

8 MR. LIZZI: No objection, Your Honor.

9 THE COURT: Thank you.

10 (WHEREUPON, State's Exhibit 24 admitted into evidence.)

11 (WHEREUPON, State's Exhibit 25 admitted into evidence.)

12 (WHEREUPON, State's Exhibit 26 admitted into evidence.)

13 (WHEREUPON, State's Exhibit 27 admitted into evidence.)

14 (WHEREUPON, State's Exhibit 28 admitted into evidence.)

15 (WHEREUPON, State's Exhibit 29 admitted into evidence.)

16 (WHEREUPON, State's Exhibit 30 admitted into evidence.)

17 Q. First, Ms. Tuuk, I am going to show you what has  
18 been marked and entered into evidence as State's Exhibit  
19 Number 24.

20 A. This is walking not quite through the doorway of the  
21 bedroom. And this is what -- what we observed. It  
22 appeared to be an individual, you know, lying on the left  
23 side of the bed.

24 Q. And so as you take these photograph you don't walk  
25 in and look at everything and then come back and take the

1 photographs, you are doing it as you ---

2 A. Correct.

3 Q. --- move through?

4 A. Yes, sir. We just do a, you know, overall  
5 walkthrough kind of on the exterior -- as close to the  
6 exterior of the room as we can, shooting inside from, you  
7 know, many different angles just to be able to show what  
8 we see before anybody touches anything. So that is what  
9 this shows.

10 Q. All right. State's Exhibit Number 25?

11 A. This is looking to the right -- to the left, right  
12 inside of the doorway. You know, there is a dog bed and  
13 a closet. You know, nothing -- and also a TV and a  
14 dresser. You know, nothing disturbed that we can see,  
15 you know, at this vantage point.

16 Q. And so the bed would be to your right ---

17 A. Correct.

18 Q. --- in the photograph?

19 A. Correct. You can see a little bit right here  
20 (pointing), you know, the post of the bed.

21 Q. All right. And State's Exhibit 26?

22 A. This is the dresser that we saw on the left.

23 Q. So this is that dresser (pointing)?

24 A. This dresser (pointing) right here, yes, sir. We  
25 just looked to see if there was anything inside. And

1 there was not.

2 Q. So the drawers are empty?

3 A. Yes, sir.

4 Q. State's Exhibit 27?

5 A. This is also the bed from a little bit closer  
6 different vantage point. You know, it appeared she had  
7 been the only person sleeping in that bed. You know, the  
8 covers on this right side of the bed, you know, were  
9 pretty smooth still. You know, it didn't look like, you  
10 know ---

11 MR. LIZZI: Object, Your Honor.

12 THE COURT: Sustained. Ma'am, just tell us what you  
13 see, not -- don't make opinions.

14 A. Yes, sir. Just observed the victim, you know, lying  
15 on the left side of the bed ---

16 Q. What do we -- what do we see right here?

17 A. It appears to be a television remote on the top of  
18 the covers.

19 Q. And I guess while we have this photograph up I am  
20 going to show you State's Exhibit 28.

21 A. Once again a little closer different angle of the  
22 victim lying -- lying on the left side of the bed.

23 Q. And draw your attention to -- what are we looking at  
24 right here?

25 A. Part of the headboard. You know, it looks like

1 something is missing. But at this time we didn't observe  
2 any, you know, any wood shavings or anything like that to  
3 make it appear like that was anything new. It looked  
4 like it had happened at a later -- or a previous date.  
5 But, yeah, we didn't see any evidence that that was ---

6 MR. LIZZI: Your Honor ---

7 THE COURT: Hold on, ma'am. Please just tell us  
8 what you observed. Do not make any conclusions from what  
9 you observed.

10 THE WITNESS: Yes, sir.

11 THE COURT: You have not been qualified as an expert  
12 to give opinions so the rules don't allow you to give  
13 opinions. Just tell us what you see.

14 Q. How did it -- did you see any woodchips?

15 A. No, sir.

16 Q. Or sawdust or anything of that nature?

17 A. No, sir.

18 Q. Was the area of the break was it rough or smooth?

19 A. I believe it was smooth.

20 Q. State's Exhibit Number 29?

21 A. This was on the right side of the bed, a bedside  
22 table. I observed a water bottle and I believe a  
23 lighter. Just documenting where it was at.

24 Q. All right. And just a closer up of that, State's  
25 Exhibit 30?

1 A. Yes, sir, just a closer.

2 Q. With that water bottle did you collect that?

3 A. We did. We -- it wasn't opened. But as you can see  
4 there was some liquid inside. It was decided by myself  
5 and the crime scene supervisor who was on the scene with  
6 me that the liquid inside was of no evidentiary value.  
7 So that was emptied.

8 But back at Crime Scene it was swabbed. The lip of  
9 the water bottle was swabbed with a cotton swab for  
10 possible DNA. And I believe -- I just -- I just  
11 submitted it into evidence.

12 Q. All right. So ---

13 A. Both items.

14 Q. So you collected a bottle, emptied the water,  
15 swabbed the rim, and then logged the swab?

16 A. Yes, sir. Both the water bottle and the swab.

17 Q. I am going to show you what has been marked for  
18 identification as State's Exhibits 32 and 34 through 43.

19 THE COURT: Thirty-four through forty-three?

20 MR. KIDD: Yes, sir. Excuse me, 34 through 42.

21 THE COURT: Forty-two. Thank you.

22 A. These were also pictures I took.

23 Q. And do they fairly and accurately represent the  
24 condition inside of that bedroom ---

25 A. Yes, sir.

1 Q. --- on August 5th, 2015?

2 A. Yes, sir.

3 MR. KIDD: Your Honor, at this time the State would  
4 offer exhibits 32 and 34 through 42 into evidence.

5 MR. LIZZI: No objection, Your Honor.

6 (WHEREUPON, State's Exhibit 32 was admitted into  
7 evidence.)

8 (WHEREUPON, State's Exhibit 34 admitted into evidence.)

9 (WHEREUPON, State's Exhibit 35 admitted into evidence.)

10 (WHEREUPON, State's Exhibit 36 admitted into evidence.)

11 (WHEREUPON, State's Exhibit 37 admitted into evidence.)

12 (WHEREUPON, State's Exhibit 38 admitted into evidence.)

13 (WHEREUPON, State's Exhibit 39 admitted into evidence.)

14 (WHEREUPON, State's Exhibit 40 admitted into evidence.)

15 (WHEREUPON, State's Exhibit 41 admitted into evidence.)

16 (WHEREUPON, State's Exhibit 42 admitted into evidence.)

17 Q. All right. As to State's Exhibit 32?

18 A. This was to the left of the bed we observed what  
19 appeared to be a broken pair of eyeglasses on the floor.

20 Q. And what are we looking at right here?

21 A. I believe that was also a lighter.

22 Q. And then obviously some blood evidence there on the  
23 floor as well?

24 A. Yes, sir.

25 Q. State's Exhibit 34?

1 A. This was a buffet or another large dresser to the  
2 left of the bed just showing once again we could just --  
3 normal life and also that nothing was, you know, knocked  
4 down or anything like that.

5 Q. State's Exhibit 35?

6 A. This was a small dresser or small side table to the  
7 left of the bed between that big dresser. This just  
8 shows there was an iPhone there, also a baby monitor; you  
9 know, nothing was disturbed there.

10 Q. State's Exhibit 36?

11 A. This was shot underneath the bed. You can see the  
12 lighter there. And also a projectile -- or a casing,  
13 fired cartridge casing, was located underneath the bed.

14 Q. Okay. And there is an arrow up there on the top  
15 right of your screen. Oh, it disappeared. And there is  
16 a clear button.

17 (WHEREUPON, screen was cleared.

18 MR. KIDD: Great. Thank you.

19 Before I move on to State's 36 what are we looking  
20 at right here?

21 THE COURT: What number is that again, please?

22 MR. KIDD: State's 36.

23 A. I believe that looks like a cup or a ....

24 Q. Okay. State's Exhibit 37?

25 A. This is just another photo of the bed and the

1 victim's position on the bed. It is shot from the right  
2 side of the bed looking towards the rear back of the  
3 bedroom.

4 Q. All right. If you can tell the jury what we are  
5 looking at right here.

6 A. That right there was a piece of eyeglass as well.

7 Q. And State's Exhibit 38?

8 A. This is also a picture of the bed and more of the  
9 right side of the bed. And the piece of eyeglass I  
10 believe is right -- oops.

11 (WHEREUPON, display moved.)

12 Q. Yeah, It is hard to -- it is not -- I'm sorry, I  
13 moved ---

14 A. No, you are good.

15 Q. --- the picture on you.

16 A. Right there.

17 Q. But the glare on this is sometimes it is hard to  
18 see.

19 A. Okay. Yeah, that is the piece of eyeglass we saw on  
20 the previous picture.

21 Q. Thank you. And so if you are standing at the foot  
22 of the bed looking at body that piece of eyeglass is on  
23 the -- which side?

24 A. Right side.

25 Q. The right side. Okay.



1 A. Yes, sir.

2 Q. And when we saw the photograph earlier of the larger  
3 portion of the eyeglass frames on the floor if you are  
4 standing at the foot of the body looking at the body  
5 which side was that on?

6 A. On the left side on the floor.

7 Q. Left side. Okay. And then I guess -- I'm sorry, we  
8 will move it over. One more. State's Exhibit 39?

9 A. That is just -- yeah, a closer up picture of the  
10 piece of eyeglass on the right side of the body on the  
11 bed.

12 Q. And these photographs were taken prior the body  
13 being removed by the coroner?

14 A. Yes, sir.

15 Q. State's Exhibit 40?

16 A. Just another picture from the right side of the bed  
17 looking to the left of the -- the lower part of the left  
18 side of the bed.

19 Q. State's 41.

20 A. Also a picture of -- yeah, the bottom foot of the  
21 bed. And also the dresser and the closet we saw earlier.

22 Q. And finally State's 42?

23 A. And this is from the right side of the bed looking  
24 out towards the stairs we came up previously.

25 Q. Ms. Tuuk, I am now going to show you what has been

1 marked for identification as State's Exhibit 44 through  
2 54. See if you recognize those photographs.

3 (WHEREUPON, documents provided to the witness.)

4 A. These are also photos I took at that -- on that day.

5 Q. Do they fairly and accurately represent the inside  
6 of the bedroom on August 5th, 2015?

7 A. Yes, sir.

8 MR. KIDD: Your Honor, at this time the State would  
9 offer State's Exhibit 44 through 54 into evidence.

10 MR. LIZZI: No objection, Your Honor.

11 THE COURT: Thank you.

12 (WHEREUPON, State's Exhibit 44 admitted into evidence.)

13 (WHEREUPON, State's Exhibit 45 admitted into evidence.)

14 (WHEREUPON, State's Exhibit 46 admitted into evidence.)

15 (WHEREUPON, State's Exhibit 47 admitted into evidence.)

16 (WHEREUPON, State's Exhibit 48 admitted into evidence.)

17 (WHEREUPON, State's Exhibit 49 admitted into evidence.)

18 (WHEREUPON, State's Exhibit 50 admitted into evidence.)

19 (WHEREUPON, State's Exhibit 51 admitted into evidence.)

20 (WHEREUPON, State's Exhibit 52 admitted into evidence.)

21 (WHEREUPON, State's Exhibit 53 admitted into evidence.)

22 (WHEREUPON, State's Exhibit 54 admitted into evidence.)

23 Q. Ms. Tuuk, I am going to show you what has been  
24 marked and entered into evidence as State's Exhibit 44.

25 A. This was a closer picture of that bedside table to

1 the left of the left side of the bed that showed that  
2 iPhone.

3 Q. And you collected that iPhone?

4 A. Yes, sir.

5 Q. And just for the jury too, what are the number  
6 markers?

7 A. That denotes what item number we give it. So this  
8 was my Item Number 103. So just it helps correlate what  
9 was collected and the number it was given.

10 Q. So whenever you come across a piece of evidence that  
11 you would collect do you give it a marker, photograph it,  
12 and that way it has an evidence number for purposes of  
13 your report?

14 A. Yes, sir. Yes, sir.

15 Q. And State's Exhibit 45?

16 A. After we did all of our overall pictures we pulled  
17 the bed -- head of the bed frame from the wall to give us  
18 a better idea. And we were able to locate two  
19 projectiles on the floor -- or two fired cartridge  
20 casings on the floor.

21 Q. And that is what you denoted with the markers five  
22 and six; is that correct?

23 A. Yes, sir. Yes, sir.

24 Q. And I believe that is the cup we were referring to  
25 earlier?

1 A. Yes, sir.

2 Q. Earlier picture. Okay. And Items 5 and 6 did you  
3 collect those shell casings?

4 A. Yes, sir, I did.

5 Q. And then once again just for the jury, this is  
6 located between the headboard and the wall; is that  
7 correct?

8 A. Yes, sir, on the floor. Yep. So the headboard is  
9 on -- this item on the left.

10 Q. And a little bit closer up, State's 46?

11 A. Yes, just a closer up picture of Item 106, the fired  
12 cartridge casing.

13 Q. State's Exhibit 47?

14 A. A closer up of Item 105, another fired cartridge  
15 casing.

16 Q. And State's Exhibit 48?

17 A. This was another picture of what -- that bedside  
18 table on the right, the water bottle and -- the water  
19 bottle that I swabbed, the lighter.

20 And then when the body was moved we moved items of  
21 evidence so they wouldn't get lost. So that is where  
22 Number 8 came from.

23 That -- this piece of eyeglasses was the one that  
24 was found on the bed I believe. And also the frame was  
25 located when the body was moved.

1 Q. Okay. So these -- that glass and that frame is not  
2 the one that was in the earlier picture on the floor?

3 A. No. On the left of the bed, no, sir.

4 Q. Okay.

5 MR. KIDD: Can you hit clear for me.

6 (WHEREUPON, display screen was cleared.)

7 MR. KIDD: Thank you.

8 Q. State's Exhibit 49?

9 A. This was just a different angle I believe from under  
10 the right side of the bed showing where the fired  
11 cartridge casings were located under the bed.

12 Q. All right. And State's 50?

13 A. This was after the victim was removed from the  
14 scene. Just we document what it looks like under, you  
15 know, anything under -- under her.

16 And in this case Item 104 was a partial projectile  
17 that when she was moved, you know, I don't know if it  
18 came out of hair or somewhere. But it was located when  
19 she was moved. And that is what this is kind of showing.

20 Q. And I just want to clear up some -- obviously this  
21 is after the body had been moved, this photograph?

22 A. Yes, sir.

23 Q. If you will refer back to State's Exhibit 37. And,  
24 you know, there is obviously not a blood mark there that  
25 is now where your Marker Number 4 is.

1 A. Right. So that ---

2 Q. Could you explain that.

3 A. Yes, sir. That happened, you know, when we are --  
4 you know, attempting to remove her. That just was caused  
5 by the injury and how that just ....

6 Q. In removing the body in essence?

7 A. Yes, sir. Yes, sir.

8 Q. Okay. State's Exhibit 51?

9 A. This is just a different angle from after the body  
10 was removed. Also it has my evidence markers showing  
11 where items of evidence were located that I was going to  
12 collect.

13 Q. State's Exhibit 53?

14 A. That was a fired cartridge casing that was located  
15 on the big buffet dresser to the left of the bed.

16 Q. I am going to show you what has been marked as  
17 State's Exhibit 52.

18 A. There was a box fan that was also located on the big  
19 dresser next to the -- on the -- to the left of the bed  
20 here is that cartridge casing I was just -- shown in the  
21 previous picture.

22 Q. All right.

23 MR. KIDD: Can you clear that for me, please.

24 (WHEREUPON, display was cleared.)

25 MR. KIDD: Thank you.

1 Q. All right. And what are we looking at here on the  
2 side of that thing?

3 A. I was just trying to document, you know, some blood  
4 stain pattern that was deposited on the fan to the left.  
5 That was located, like I said, on the left big dresser to  
6 the left of the bed.

7 Q. Do you have any training in blood splatter  
8 interpretation?

9 A. I do. Yes, sir.

10 Q. What sort of training do you have?

11 A. I have a 40-hour class of blood stain pattern  
12 analysis I took the spring of 2012 as kind of my, you  
13 know, specialty in what I could bring to the Crime Scene  
14 unit.

15 Q. And as part of that class did they give you a lot of  
16 like test cases and things like that and different blood  
17 splatters to interpret?

18 A. Yes, sir. Yes, sir. The first couple of days was,  
19 you know, classroom training. And then the last couple  
20 of days they would give us, you know, patterns and have  
21 us interpret them from our training that we received.

22 Q. And through your duties at Charleston Police  
23 Department in the Crime Scene unit do you know how many  
24 crime scenes you have been a part of?

25 A. Oh, hundreds. Maybe even in the thousands.

1 Q. Have you ever been qualified as an expert in the  
2 area of blood spatter interpretation?

3 A. Yes, sir.

4 Q. In what courts?

5 A. In this court.

6 Q. In this court?

7 A. General Sessions. Yes, sir.

8 Q. How many times?

9 A. Oh, once.

10 Q. Just one.

11 THE COURT: How many?

12 THE WITNESS: One time, sir.

13 MR. KIDD: Your Honor, at this time we would offer  
14 Ms. Tuuk as an expert in the area of blood spatter  
15 interpretation.

16 MR. LIZZI: Your Honor, I don't believe a 40-hour  
17 course and her limited time and practice in this would  
18 qualify her as an expert in this matter.

19 THE COURT: Well, you certainly haven't -- she  
20 hasn't testified as to what the course was about, what it  
21 consisted of, where it was, what degrees if any she  
22 obtained. So based on the testimony you have elicited so  
23 far I would sustain the objection.

24 Q. Ms. Tuk, can you explain a bit more about the blood  
25 splatter interpretation course that you were a part of?



1 A. It was taught by an individual that has had many  
2 years in the field and is qualified himself. You know,  
3 we spent eight hours a day, four or five days, learning  
4 as much as we could and being taught by one of the  
5 experts in the field.

6 And then we were able to give -- not only produce  
7 blood stains, you know, to understand where they came  
8 from, but also to when given one use the training that we  
9 received to be able to interpret them and interpret them  
10 successfully.

11 Q. So what are the sort of things you can determine  
12 through looking at the blood splatter, high velocity  
13 versus low velocity; what is the difference in that?

14 A. High velocity spatter is very small, a mist-like.  
15 Which -- and it comes from, you know, any type of ---

16 MR. LIZZI: You know, I have objected.

17 THE COURT: That is right. We are just doing  
18 qualifications now.

19 Where was the course taught?

20 THE WITNESS: In Savannah, Georgia.

21 Q. Did you receive any certifications from the  
22 completion of that training?

23 A. I'm sorry?

24 Q. Were there any like certifications from ---

25 A. Yes, sir.

1 Q. --- from the training?

2 A. I got a certified -- or certification certificate  
3 for taking.

4 Q. And you used the experience you gained from that  
5 course in helping you interpret blood splatter and blood  
6 splatter evidence throughout your course with the  
7 Charleston Police Department?

8 A. Yes, sir.

9 Q. And I guess specifically do you recall the Kronsberg  
10 case from James Island?

11 A. Yes, sir.

12 Q. Were you involved in that crime scene?

13 A. Yes, sir.

14 Q. And you interpreted blood spatter evidence in that  
15 case?

16 A. Yes, sir.

17 Q. And I believe you were qualified as an expert to  
18 testify ---

19 A. Yes, sir.

20 Q. --- in that case?

21 A. Yes, sir.

22 THE COURT: What was the name of the case?

23 MR. KIDD: The State versus Eric Kronsberg.

24 THE COURT: Was it appealed? Was there an appellant  
25 decision on it that you are aware of?

1 MR. KIDD: It is not pending that I am aware of.  
2 And I do not believe there was any -- there was no issue  
3 on appeal in regards to her testimony.

4 THE COURT: But there is here.

5 All right. Ladies and gentlemen of the jury panel,  
6 how about step back in your jury room. I have got two  
7 things I have got to discuss with the lawyers outside of  
8 your presence. One is some additional photographs that  
9 they have objected to. And I need to make a decision on  
10 whether or not she is properly qualified to give an  
11 opinion. That is what this is all about.

12 She can testify about what she sees all day long.  
13 In order to give an opinion about something she has to be  
14 qualified, and I need to deal with that particular issue.  
15 And then it won't take us but just a few minutes and we  
16 will have you back in.

17 Everybody please remain seated other than the jury.  
18 (WHEREUPON, jury exits 10/9/18, 10:32 a.m.)

19 THE COURT: All right. Is there anything else you  
20 want to present concerning her qualification other than  
21 testifying one time, one-week course of 40 hours,  
22 obtaining a certification, and her experience in the lab?

23 MR. KIDD: No, Your Honor.

24 THE COURT: Anything you want to ask her dealing  
25 with qualifications on cross-examination? And before you

1 do that, gentlemen, are either side aware of any  
2 appellate decision to give me guidance on blood stain  
3 interpretation, blood splatter interpretation?

4 MR. KIDD: I am not aware of any. I will do a quick  
5 search however.

6 THE COURT: Go ahead with your cross. We are  
7 looking too.

8 MR. KIDD: I would say for purposes of -- the only  
9 thing I am trying to elicit from this testimony is that  
10 you can see this one spot right here (pointing)  
11 indicating trajectory, angle of which the blood splatter  
12 was coming from.

13 So it is a pretty limited scope that I am looking  
14 for her opinion on. But that being said.

15 THE COURT: Go ahead. And this is on qualification,  
16 not on ---

17 MR. LIZZI: Yes. Yes, Your Honor.

18 **VOIR DIRE BY MR. LIZZI OF SARA TUUK (IC):**

19 Q. The course that you went to do you have any  
20 information on national certification or certification of  
21 the course?

22 A. I do not. It was put on by West Virginia  
23 University. But I don't have -- I don't know anything  
24 else.

25 Q. So and as to the person teaching the course any

1 knowledge of what degrees or certifications that he  
2 holds?

3 A. Not off hand. He has authored a few books and  
4 things like that. But as far as anything further, no.

5 MR. LIZZI: Nothing further, Your Honor.

6 MR. KIDD: Your Honor, we just came across State  
7 versus Myers.

8 THE COURT: Yes, I am looking at Myers right here.  
9 It is cited in Gooding versus St. Francis Xavier  
10 Hospital.

11 And in Gooding versus St. Francis Xavier they talk  
12 about apparently the lower court refused to qualify a  
13 defense expert. That was in Myers. And they said that  
14 was ---

15 MR. KIDD: Abuse of discretion.

16 THE COURT: That was error to refuse.

17 MR. KIDD: Yes, sir.

18 THE COURT: And in that case the expert had been a  
19 forensic science investigator for eight years. She had  
20 attended approximately 100 crime scenes. She has  
21 assisted pathologists with autopsies. She had attended a  
22 one-week seminar on the characteristics of bloodstain  
23 evidence and had never testified in court.

24 In reversing, the Supreme Court emphasized it --  
25 added prior opinions made it clear that generally defects

1 in the amount and quality of education or experience go  
2 to the weight, not to its admissibility; the scope of the  
3 trial judge's discretion as to admissibility of experts  
4 is the same whether context is criminal or civil.

5 So I find that -- I will qualify her as an expert to  
6 interpret the blood splatter -- blood splatter patterns  
7 after having reviewed Gooding v. St. Francis Xavier and  
8 State v. Myers.

9 Now let's go ahead and deal with the photographs,  
10 Mr. Lizzi, if you don't mind. Do you have those in front  
11 of you?

12 MR. LIZZI: I don't have with the numbers, Your  
13 Honor.

14 THE COURT: All right. Solicitor -- you -- why  
15 don't you walk up here. You have objected to 55, 56, 31,  
16 32, and 43. And if you would -- I assume your objection  
17 may be cumulative and more prejudicial than probative?

18 MR. LIZZI: That is correct, Your Honor.

19 THE COURT: And I think 43 is probably cumulative to  
20 what she has already talked about. Look at that,  
21 gentlemen.

22 I don't know if you are trying to show anything  
23 else. I think 31 is probably cumulative. Thirty-three,  
24 fifty-six, and fifty-five are really the only photographs  
25 that you have of her face and the left side of her head.

1 Which is in my opinion on ruling would not be cumulative.  
2 Obviously they are very graphic. But we do not have any  
3 graphic photographs to date. And obviously it depicts  
4 the scene.

5 And I think in your opening you mentioned something  
6 about an accidental type situation that you may be  
7 claiming. And obviously this goes to some evidence as to  
8 whether or not perhaps it was accidental or not. Whether  
9 or not it was malice shown or not.

10 So my ruling will be to exclude -- sustain ---

11 MR. KIDD: Thirty-one and forty-three.

12 THE COURT: --- thirty-one and forty-three and allow  
13 the other three which are fifty-five, fifty-six, and  
14 thirty-three.

15 Do you need to put anything on the record to protect  
16 yourself?

17 MR. LIZZI: I -- just ---

18 THE COURT: I know you disagree with me. But if you  
19 want to state more than just cumulative ---

20 MR. LIZZI: Right.

21 THE COURT: --- and prejudicial more than probative.

22 MR. LIZZI: That as to Number 55 that this does not  
23 accurately depict where the body was laying because of  
24 the obviously testimony that EMS had moved the body. And  
25 so the prejudicial effect of this would be outweighed by

1 any type of showing of the body placement at the time of  
2 the incident.

3 The same thing would be as to 55, the placement of  
4 the body had been moved. There is testimony already on  
5 the record that EMS had tried to resuscitate and tried to  
6 move her.

7 THE COURT: And I think that was shown in one of the  
8 body cams from when they put kind of the defibrillator or  
9 something of that nature.

10 MR. LIZZI: And the same thing with State's Number  
11 33.

12 THE COURT: All right. Thank you. I am going to  
13 stand by my ruling. Obviously it goes to the weight as  
14 opposed to the admissibility in my opinion. You will be  
15 given ample opportunity to cross-examine the witness on  
16 just what you have argued before me.

17 I may make this observation. They are rather  
18 graphic. We have got family members here who I have  
19 observed throughout the trial obviously upset at some of  
20 the photographs. These are more graphic so you may want  
21 to discuss with them whether they want to stay in here or  
22 not.

23 MR. KIDD: And I don't want to second-guess your  
24 ruling, Judge. My only -- don't do it? My -- I would  
25 only ask that in regards to State's 43 it is important to



1 us because of the blood splatter and the directionality  
2 in which we are going to claim that the shots took place,  
3 the blood splatter on the side of the fan I believe this  
4 is not a graphic photo and it shows really the relation  
5 of that side of the fan to the body and where it is  
6 located.

7 MR. LIZZI: There's other photos that show that.  
8 There's ---

9 MR. KIDD: There are other photos that depict it.

10 THE COURT: There are -- that are already in  
11 evidence?

12 MR. KIDD: That are already in evidence.

13 THE COURT: Just use those then if you would. I am  
14 going to stand by my ruling.

15 MR. KIDD: Yes, sir. Thank you.

16 THE COURT: Because the work on -- cumulative. And  
17 you do have other photos that you can use to depict what  
18 you are ---

19 MR. KIDD: Yes, sir. Thank you.

20 (WHEREUPON, State's Exhibit Number 55, admitted into  
21 evidence.)

22 (WHEREUPON, State's Exhibit Number 56, admitted into  
23 evidence.)

24 (WHEREUPON, State's Exhibit Number 33, admitted into  
25 evidence.)

1           THE COURT: Is everybody okay? Can we keep on going  
2 or do we need a break?

3           Anybody need -- discuss with that mom back there  
4 those pictures.

5           MR. KIDD: Yes, sir.

6           THE COURT: All right. Bring the jury back, please.  
7 (WHEREUPON, break awaiting jury.)

8 (WHEREUPON, jury enters courtroom.)

9           THE COURT: All right. My ruling is that she does  
10 have the requisite training, education, and experience to  
11 render an opinion dealing with blood splatter.

12           I reviewed some cases on that. And obviously I will  
13 tell y'all when I charge you about how you handle someone  
14 who I have identified or qualified as an expert. And  
15 basically the main thing is that they are allowed to give  
16 an opinion in that field, whereas if they weren't an  
17 expert they could not give opinion testimony; it is only  
18 what she saw or observed. So that is where we are on  
19 that.

20           And I made a ruling on some of the photographs. We  
21 kept some in and kept some out. Some of them are  
22 cumulative. And listened to the arguments from the  
23 lawyer. So you will -- we will move along and finish it  
24 up on that basis.

25           MR. KIDD: Thank you, Your Honor.

1 THE COURT: Thank you.

2 Q. Ms. Tuuk, referring back to State's Exhibit Number  
3 52, based on your training what does the blood evidence  
4 on the side of this fan indicate to you?

5 A. Well, first of all it is concentrated on the lower  
6 half, lower third of the fan. And in my training, you  
7 know, blood travels not only in a sphere but in a  
8 straight line until it comes in contact with something.  
9 You know, and in this case it appears to be the fan.

10 You know, and so when it comes in -- it travels in a  
11 straight line. When it come in contact with something at  
12 a 90 degree angle a perfect -- almost a perfect circle  
13 forms, which is what, you know, I kind of -- I observed  
14 here.

15 And the only thing that helped me show additional  
16 directionality, which directionality trajectory is where  
17 that blood is coming from, is this blood stain right here  
18 (pointing).

19 As you can see, it has a little bit elongated. It  
20 is called the tail. And that shows me that at this point  
21 when that blood droplet contacted something it was  
22 traveling horizontally. You know, and so that is what I  
23 try to depict from a bloodstain like this.

24 Q. All right. So what does that tell you; which way  
25 across the fan ---

1 A. In my opinion ---

2 Q. --- was that blood ---

3 A. In my opinion it traveled from right to left. It  
4 contacted on this (pointing) -- this side of the fan.  
5 And these other blood spots (pointing) helped me  
6 determine that.

7 So all of these other blood spots (pointing)  
8 stopped, you know, when they hit the 90 degrees. But  
9 because this side of the fan (pointing) was curved it  
10 could travel further and that made it a little bit  
11 elongated.

12 Q. And looking at State's Exhibit 51 is that -- that is  
13 that same front edge of the fan that we are looking at  
14 here (pointing)?

15 A. Yes, sir. This area, yes.

16 Q. And just to refer back to State's Exhibit 52, the  
17 droplet you are looking at - I don't know - is an inch or  
18 two below the screw in the fan?

19 A. Yes, sir.

20 Q. Okay. And so looking at State's Exhibit 51 can you  
21 indicate to the jury just, obviously, approximately where  
22 that, that ---

23 A. Approximately in this area (pointing) ---

24 Q. Okay.

25 A. --- is where that elongated drop was located.

1 Q. And if we --

2 MR. KIDD: If you can clear that one for me too,  
3 please, ma'am.

4 (WHEREUPON, computer screen cleared.)

5 Q. What were you -- you were talking just a minute ago  
6 a little bit about concentration and then I guess as  
7 further you get away there's less droplets?

8 A. Correct.

9 Q. Can you explain that a little bit more, please.

10 A. Sure. You know, there is an area of concentration  
11 right from where that injury had come from. And then as  
12 it goes it balloons and kind of spreads out. You know,  
13 so there are some -- some blood stains, you know, up in  
14 this area (pointing).

15 But as you can see, it is pretty concentrated, you  
16 know, in this general area (pointing). And that is  
17 where, you know, we kind of see our area of  
18 concentration.

19 Q. So what does that tell you about the source?

20 A. The area of concentration the source comes, you  
21 know, horizontally from that area. You know, so where  
22 ever -- you know, I would look directly back, you know,  
23 from this area (pointing) horizontally.

24 And that is where I would, you know, be looking for  
25 and estimating where that blood the source of that blood

1 came from.

2 MR. KIDD: All right. If you can clear that one for  
3 me, please, ma'am

4 (WHEREUPON, screen cleared.)

5 Q. And I am going to refer back to - as I drop  
6 everything - State's Exhibit 57.

7 A. All right. So here is -- if our area of  
8 concentration, you know, was in this lower part of the  
9 fan, you know, I would be looking, you know, horizontally  
10 back from these 90-degree drops and the horizontal drop  
11 that I located, you know, up here (pointing). I would be  
12 looking horizontally back, you know, to where that blood  
13 originated.

14 Q. Thank you.

15 MR. KIDD: Clear that one for me too, please, ma'am.  
16 (WHEREUPON, screen cleared.)

17 Q. Well, and before I move on -- well, I will show you  
18 State's Exhibit 54. This is just another angle. But how  
19 would you classify what type of splatter that is?

20 A. That is consistent with high velocity spatter.  
21 There is high velocity, medium velocity, and low  
22 velocity.

23 High velocity, you know, is from a -- comes -- you  
24 know, a high velocity like a weapon. You know, something  
25 that -- the speed that it is coming from is very high.

1 Medium velocity, you know, are, you know, is  
2 something that is dripping or, you know, something of  
3 that sort where there is no -- not as much force coming  
4 from it.

5 And low velocity is, you know, pooling effect where  
6 there is little to none, you know, energy coming from  
7 that blood -- or where that blood came -- forced that  
8 blood out.

9 Q. Would you expect to see splatter such as this from  
10 entrance or exit wounds?

11 A. Usually exit wounds. When it come in, you know,  
12 there is nothing from -- for that blood to -- for that  
13 blood -- cause to come out from. But when it exits that  
14 is where that, that, that spatter comes from and that is  
15 where we usually see it.

16 Q. Thank you. I am going to show you these two  
17 photographs. Pass over State's Exhibit 33 and 37. Do  
18 you recognize those photographs?

19 A. Yes, sir. These are photos I took.

20 Q. Do they fairly and accurately represent the photos  
21 of the victim in the bed as well?

22 A. Yes, sir.

23 MR. KIDD: The State would offer State's 33 and 37  
24 into evidence.

25 (WHEREUPON, exhibits were previously admitted.)

1 THE COURT: All right. The objection has been made.  
2 We have ruled on it, and I -- correct, Mr. Lizzi?

3 MR. LIZZI: That is correct, Your Honor.

4 Q. First, State's Exhibit 37.

5 A. This is from the right side of the bed showing the  
6 positioning of the victim on the left side of the bed.

7 Q. All right. And State's Exhibit 33.

8 A. This is from the left side of the bed, you know,  
9 showing the positioning of the victim, you know, as where  
10 I, where I saw her.

11 Q. And at the time you took those photograph had you  
12 moved any pillows or ---

13 A. I had not, no.

14 Q. --- anything ---

15 A. No, sir.

16 Q. All right. Last group of photos. State's ---

17 THE COURT: Well, actually those last two you just  
18 showed were not objected to before. The ones you are  
19 getting ready to go into now were the ones objected to;  
20 is that correct?

21 MR. KIDD: No, Your Honor, those two were also  
22 objected to.

23 THE COURT: Okay.

24 Q. Ms. Tuuk, I am going to show you what's been marked  
25 for identification as State's Exhibit Number 55 through



1 62. See if you recognize those.

2 (WHEREUPON, document provided to witness.)

3 A. These are photos that I had took.

4 Q. And do they fairly and accurately represent the  
5 victim's bedroom from that morning as well?

6 A. Yes, sir.

7 MR. KIDD: The State would now offer State's 55  
8 through 62 into evidence.

9 MR. LIZZI: Just a second, Your Honor, please.  
10 (WHEREUPON, defense counselor reviews documents.)

11 MR. LIZZI: Fifty-five and fifty-six were previously  
12 objected to, Your Honor. The other ones no objection.  
13 (WHEREUPON, State's Exhibit 57 admitted into evidence.)  
14 (WHEREUPON, State's Exhibit 58 admitted into evidence.)  
15 (WHEREUPON, State's Exhibit 59 admitted into evidence.)  
16 (WHEREUPON, State's Exhibit 60 admitted into evidence.)  
17 (WHEREUPON, State's Exhibit 61 admitted into evidence.)  
18 (WHEREUPON, State's Exhibit 62 admitted into evidence.)

19 Q. And, Ms. Tuuk, I am going to show you what has been  
20 marked for identification -- or what has been marked and  
21 entered into evidence as State's Exhibit 55. Do you  
22 recognize that photograph?

23 A. Yes. Yes, sir. This was a photo we took -- you  
24 know, as we complete our overall photos we gradually take  
25 items off just to reveal and further document what is

1 there. And so we were documenting the victim as she  
2 still laid.

3 Q. All right. So at this point you had removed the  
4 pillow that was over the top of her ---

5 A. Yes, sir.

6 Q. --- face, right?

7 A. Yes, sir.

8 Q. And her head is on top of what?

9 A. Also on top of a pillow, a white pillow.

10 Q. Did you ultimately collect that pillow?

11 A. Yes, sir.

12 Q. State's 56?

13 A. After once again removing the pillow and, you know,  
14 adjusting other bedding we were able to find the other  
15 arm of her eyeglass that was previously seen on the  
16 bedside table after we moved it.

17 Q. You collected that as well?

18 A. Yes, sir.

19 Q. State's 57?

20 A. This was the projectile that was located after the  
21 victim had been moved by the deputy coroner in order to  
22 remove her. That was also seen on a previous picture.  
23 But this is a closer one.

24 Q. And State's 58 tell me what we are looking at here.

25 A. This was when we -- when the victim was removed, you

1 know, at this point now we are trying to locate further  
2 evidence. And we had located the couple of casings. And  
3 now we are looking for projectiles.

4 And so this was just documenting that we pulled back  
5 the foam topper to the mattress and just to see if we  
6 could locate any further evidence.

7 Q. Was -- there appeared to be a hole in the foam  
8 topper here?

9 A. Yes, sir.

10 Q. Okay. And I think -- what are we -- what are we  
11 sort of looking at kind of right here (pointing), right  
12 here (pointing), and right here (pointing)?

13 A. You know, just it appears from -- to where, you  
14 know, possible a projectile had gone through or made  
15 impact. You know, it ---

16 Q. Well, just -- is it -- is that part of the foam  
17 topper? That is all I am asking.

18 A. Oh, yes. Yes, sir.

19 Q. Okay. Thank you. And State's Exhibit 59 tell me  
20 what we are looking at here.

21 A. In that process, you know, we are moving bedding and  
22 going through and looking through things. We were able  
23 to locate a projectile. It had fallen while we were  
24 looking through things. And that is where it had fallen.  
25 And so we documented where it fell.

1 Q. And State's Exhibit 60?

2 A. That is a closer up of that projectile.

3 Q. For that projectile there (pointing)?

4 A. Yes, sir.

5 Q. And as we indicated earlier, you collected the  
6 pillow that was underneath her head?

7 A. Yes, sir.

8 Q. I am going to show you what has been marked and  
9 entered into evidence as State's 61.

10 A. The pillow was collected and we returned it to the  
11 crime scene office where I could more thoroughly check  
12 it. And in that process a third projectile was located.

13 Q. Inside of the pillow?

14 A. Inside of the pillow. I'm sorry. Yes, sir.

15 Q. State's Exhibit 62?

16 A. That is just a closer up of the projectile that was  
17 located inside of the pillow.

18 (WHEREUPON, State's Exhibit 80, bullet, marked for  
19 identification.)

20 (WHEREUPON, State's Exhibit 81, bullet, marked for  
21 identification.)

22 (WHEREUPON, State's Exhibit 82, bullet, marked for  
23 identification.)

24 (WHEREUPON, State's Exhibit 83, bullet, marked for  
25 identification.)

1 (WHEREUPON, State's Exhibit 84, bullet, marked for  
2 identification.)

3 (WHEREUPON, State's Exhibit 85, bullet, marked for  
4 identification.)

5 Q. Ms. Tuuk, I am going to show you what has been  
6 marked for identification right here. State's Exhibit -  
7 let me just make sure I get them in order - 80 through  
8 85.

9 A. Okay.

10 Q. See if you recognize those.

11 A. Yes, sir. These are the projectiles and fired  
12 cartridge casings I collected from the scene, both the  
13 internal and the external packaging.

14 Q. Okay. And so these are the - so I get -- so I am  
15 right - the projectile from the top of the bed, the  
16 projectile that fell out from the covers, and the  
17 projectile from inside of the pillow; ---

18 A. Yes, sir.

19 Q. --- is that correct?

20 A. Yep.

21 Q. So when you collected those you packaged them how?

22 A. We -- with projectiles and casings we put them in a  
23 smaller envelope which is sealed and initialed by me.

24 And it also on the envelope is the item number, the case  
25 number, and my initials.

1           And then it goes in an outer envelope which has a  
2 sticker with the case number, my name, and also the  
3 manner -- or the type of case, offense.

4           And that also gets sealed externally completely and  
5 signed by me as well so I know nothing can go in or out  
6 without me.

7 Q.   And then the three shell casings they are two from  
8 under the bed and one from the ---

9 A.   Big dresser, yeah.

10 Q.   Next to the fan ---

11 A.   Yes, sir.

12 Q.   Is that correct?

13 A.   Yep. Yep. And they are packaged the same way.

14 Q.   Okay. And so you packaged those, like you just  
15 said; labeled them and everything. And then what do you  
16 do with them?

17 A.   They get logged into our evidence management system  
18 on line. And then we drop them off at the evidence room  
19 at the station and hand them off to evidence people who  
20 secure them. But they were -- yes.

21 Q.   And then so they are maintained in a secure  
22 environment for until further testing?

23 A.   Yes, sir.

24 (WHEREUPON, State's Exhibit 86, water bottle, was marked  
25 for identification.)

1 (WHEREUPON, State's Exhibit 87, water bottle swab, was  
2 marked for identification.)

3 Q. Now, Ms. Senn, I am going to show you what has been  
4 marked for identification as State's Exhibit Number 86.

5 A. Okay.

6 Q. Do you know what that item is?

7 A. It is the water bottle that was collected and  
8 swabbed.

9 Q. And that is the water from the prior photo from the  
10 bedside table?

11 A. Correct. The right bedside table, yes, sir.

12 Q. And the --

13 MR. KIDD: Your Honor, at this time the State would  
14 offer State's 86 into evidence.

15 MR. LIZZI: No objection, Your Honor.

16 (WHEREUPON, State's Exhibit Number 86 was admitted into  
17 evidence.)

18 Q. And then I am going to show you what s has been  
19 marked for identification as State's 87.

20 A. This was the internal packaging. It has been  
21 repackaged. But the swab that I took from the water  
22 bottle.

23 Q. And if you could briefly just explain that process.  
24 I think we already talked about it a little bit but.

25 A. I swabbed the rim of the water bottle with a cotton

1 swab and distilled water to in an attempt to collect some  
2 DNA. And then I submitted it to evidence just like I did  
3 everything else. And then detectives decide if that is  
4 an item that they would like to send up to SLED for  
5 further DNA testing.

6 Q. Okay. So you -- kind of it is like a Q-Tip, seal  
7 it, package it?

8 A. Yep.

9 Q. Turn it into evidence?

10 A. That is it. Yes, sir.

11 Q. And State's Exhibit 88?

12 (WHEREUPON, State's Exhibit Number 88, iPhone, marked for  
13 identification.)

14 A. This was the iPhone collected from the left bedside  
15 table.

16 Q. All right.

17 MR. KIDD: Your Honor, at this time we would offer  
18 State's 88 into evidence.

19 THE COURT: Any objection?

20 MR. LIZZI: No objection, Your Honor.

21 (WHEREUPON, State's Exhibit Number 88 was admitted into  
22 evidence.)

23 (WHEREUPON, State's Exhibit Number 89, piece of eye  
24 glasses, marked for identification.)

25 (WHEREUPON, State's Exhibit Number 90, piece of eye



1 glasses, marked for identification.)

2 Q. And finally, State's 89 and 90?

3 A. These were the two pieces of broken eye glasses, the  
4 one from the left on the floor and then one from what was  
5 found in the bed. So broken eyeglasses.

6 Q. I want to back up to the shell casings real quick.  
7 What caliber brand were the shell casings you collected?

8 A. I believe they were nine-millimeter Winchester  
9 brand.

10 Q. At this point in your involvement in the case how  
11 many times did you believe that the victim had been shot?

12 A. At this point we believed she had been shot three  
13 times.

14 Q. And I got ahead of myself as I usually do.

15 MR. KIDD: The State would offer State's Exhibit 89  
16 and 90 into evidence. The eyeglasses.

17 MR. LIZZI: No objection, Your Honor.  
18 (WHEREUPON, State's Exhibit 89 was admitted into  
19 evidence.)

20 (WHEREUPON, State's Exhibit 90 admitted into evidence.)

21 Q. So you believed that she had been shot three  
22 point -- three times at this point?

23 A. Yes, sir.

24 Q. And how many shell casings had you collected?

25 A. We had collected three.

1 Q. And how many projectiles had you collected?

2 A. We had collected three.

3 Q. Did you conduct a thorough search of the house?

4 A. Yes, sir, we did. We did.

5 Q. Other than the iPhone that we just entered into  
6 evidence were there any other phones located inside of  
7 the residence?

8 A. No other phones were located.

9 Q. And did you later come to find out that there was an  
10 additional shell casing?

11 A. We did.

12 Q. And I will just show it to you. I am going to show  
13 you what has been marked and entered into evidence as  
14 State's Exhibit 54. In State's Exhibit 54 what has been  
15 marked and entered, it is of the -- that dresser where  
16 the fan was?

17 A. Yes, sir.

18 Q. Can you see Marker Number 2 where you collected the  
19 one shell casing?

20 A. Yes, sir.

21 Q. In hindsight looking at this do you see the shell  
22 casing that you missed?

23 A. I do.

24 Q. Where is it located?

25 A. It is located right back here (pointing) near the

1 on/off switch of the power strip.

2 Q. Okay. Is that kind of -- is there something  
3 overhanging over the top of it?

4 A. Yeah, I believe whatever -- I don't know what --  
5 some sort of pad or something was overhanging that area.

6 MR. KIDD: Court's indulgence.

7 Please answer any questions that Mr. Lizzi may have.

8 THE WITNESS: Yes, sir.

9 MR. LIZZI: May it please the court. May I  
10 approach?

11 **CROSS-EXAMINATION BY MR. LIZZI OF SARAH TUUK:**

12 Q. Now when you got to the scene there had been  
13 numerous officers had already gone into the room; is that  
14 correct?

15 A. Yes, sir. I believe they cleared the -- cleared the  
16 house.

17 Q. And EMS had gone and tried to revive her, correct?

18 A. They assessed, yes, sir.

19 Q. Okay. And to revive her I think the pictures you  
20 showed she had a blanket all the way over her when you  
21 got in there?

22 A. Yes, sir.

23 Q. Okay. But they would have had to have had that  
24 blanket off of her to try to revive her, correct?

25 A. I do not know their policy.

1 Q. So you don't know if the way the blanket was and the  
2 way the pillow was was how she was when they discovered  
3 the scene?

4 A. No, sir. Correct.

5 Q. And you don't know if the items that where you found  
6 them placed were in the locations that you photographed  
7 them at, correct?

8 A. Correct.

9 Q. In fact let me show you what is marked as Exhibit  
10 52. You don't -- you have made an opinion based on where  
11 this blood splatter is based on a fan that is a movable  
12 object, correct?

13 A. Correct.

14 Q. Okay. And unlike a wall or unlike a door jam I mean  
15 a lot of times when you go and you do these scenes you  
16 will have a wall and you will have splatter on the wall  
17 and it is kind of easy to know that it came from a  
18 certain place because that wall don't move, correct?

19 A. That is correct.

20 Q. And you can depict an angle or you can depict where  
21 something comes from because you have -- you have a  
22 baseline or you have something that you know was in the  
23 exact same place at the time of the incident, correct?

24 A. Correct.

25 Q. Okay. But if that fan was moved any degree at all

1 during the course when they first came in there and they  
2 weren't really paying attention to all that kind of stuff  
3 so much as they were trying to render aide, that would  
4 change where that blood came from?

5 A. Possibly.

6 Q. Well, if I moved that fan and I turned it over and  
7 even move it an inch or two inches are you going to tell  
8 me that you can say where the bullet came from, the exact  
9 same place that you have testified?

10 A. I would just testify as to where the blood came  
11 from. And even an inch would, you know, produce a little  
12 bit of a tail. So that would alter -- you know, we could  
13 still tell you where it came from but.

14 Q. But you would have to know exactly where the fan was  
15 or where that object was at the time that they discovered  
16 it, correct?

17 A. Correct.

18 Q. Okay. So if you don't know where they discovered it  
19 or where it was at that minute that the scene was  
20 completely sterile, completely, you know, untouched, if  
21 you don't know where that was at that point, you can't  
22 say with certainty that that fan and what angle that came  
23 from on that fan; correct?

24 A. Correct. Usually, you know, they do advise us if  
25 things were moved. And we weren't aware of anything at

1 this time.

2 Q. Okay. And this pillow that you showed on Exhibit  
3 Number 61 that was the pillow you found underneath her?

4 A. Yes, sir.

5 Q. Okay. It wasn't on top of her?

6 A. Correct.

7 Q. In fact you don't know if that pillow the way it was  
8 laid on top of her was in that position when they arrived  
9 at the scene?

10 A. The pillow underneath her?

11 Q. Right.

12 A. Yes, I was unaware of anything that was changed.  
13 But that is just how I observed it when I got there, yes,  
14 sir.

15 Q. But if the evidence shows by the body cams that  
16 things were moved and people were moved, that would  
17 change the locations of these things and your opinion as  
18 to the blood splatter; correct?

19 A. It could.

20 Q. Okay. Now I am going to show you Exhibit Number 32.  
21 Exhibit Number 32 is her eyeglasses. And that eyeglass  
22 is severed, correct?

23 A. It is broken, yes, sir.

24 Q. Okay. And does it appear that it was broken from  
25 the bullet?

1 A. That I can't testify to.

2 Q. Does it appear that she was wearing eyeglasses at  
3 the time? I will show you Exhibit 39.

4 A. Just from where the broken pieces were located it is  
5 a possibility.

6 Q. Now was that fourth casing when was it actually  
7 located; was it located that same day?

8 A. That I do not know. I was not the one that was --  
9 went and collected it.

10 Q. Okay. So you did an initial -- were you the only  
11 person doing initial collection?

12 A. I was not. In any type of major crime the crime  
13 scene supervisor also responds. And possibly a third  
14 crime scene person. Just to -- for any help that they  
15 can assist me with or for searches.

16 We also bring, you know, a canine dog through that  
17 searches for projectiles and guns as well. And the  
18 canine came through this residence as well.

19 MR. LIZZI: May I approach, Your Honor?

20 (WHEREUPON, bench conference was had.)

21 (WHEREUPON, Defendant Exhibit Number 1, photo, was marked  
22 for identification.)

23 Q. I am going to show you what has been marked as  
24 Defendant Exhibit Number 1 for identification.

25 A. Okay.

1 Q. Is that a picture you took at the scene?

2 A. Yes, sir, it is.

3 Q. And what does it depict?

4 A. It just depicts -- we opened the top drawer of the  
5 left bedside table and just documented what was in the  
6 drawer.

7 Q. Okay. And what appears in the drawer?

8 A. It appears to be some clothing items and some green  
9 plant material.

10 Q. Okay.

11 THE COURT: Are you going to introduce it?

12 MR. LIZZI: Yes, I am going to ---

13 MR. KIDD: No objection.

14 (WHEREUPON, Defendant Exhibit 1 was admitted into  
15 evidence.)

16 Q. And the green -- the green material is that -- right  
17 there (pointing)?

18 A. Yes, sir.

19 Q. Was that taken into evidence?

20 A. It was, yes, sir.

21 Q. Now the other thing with blood splatter and all  
22 that, that depends on the caliber of the gun; correct?

23 A. Not -- it depends. It could.

24 Q. If you have got a bigger projectile it is going to  
25 have more of a splatter than a smaller projectile,



1 correct?

2 A. Usually. Yes, sir.

3 Q. And it also has to do with the velocity, correct? I  
4 mean a bullet with less power or less force would cause a  
5 different blood spatter pattern, correct?

6 A. It could. It all produces high velocity spatter.  
7 So then there is a lot of variability after that. You  
8 know, distance, all kinds of stuff that could vary a  
9 pattern.

10 Q. And the ideal world would be to actually test a  
11 certain gun with the type of ammo that it had at the time  
12 it is shot, correct?

13 A. Yes.

14 Q. And that is how you did it when you trained; they  
15 showed that they could test a bullet and a certain  
16 caliber, a certain powder, velocity?

17 A. Not necessarily. We didn't do that type of testing.

18 Q. But it would make a difference, correct?

19 A. It could.

20 Q. And wouldn't you expect to find somebody's DNA if  
21 they have already admitted that they were at the scene?

22 A. Yes, sir.

23 Q. And the eyeglasses you found one on one side of her  
24 and one on the other side of the head, correct?

25 A. Yes. When we removed her and we found that the --

1 the other arm, that the other piece of glasses was on the  
2 right side.

3 Q. And you talked about how one of the projectiles had  
4 been moved by y'all when you were moving things. And do  
5 you know where it fell from?

6 A. We -- you know, we -- at that point we were removing  
7 all of the blankets and all of the bedding. So that is  
8 where we -- appeared and thought it came from. But we  
9 don't have an exact.

10 Q. You have no idea?

11 A. No. That general area.

12 MR. LIZZI: Nothing further.

13 THE COURT: Redirect.

14 MR. KIDD: No further questions.

15 THE COURT: Thank you. You may step down.

16 Ladies and gentlemen, we are going to take our  
17 morning break, about 10 or 15. I have asked that lunch  
18 be here 12:30.

19 (WHEREUPON, scheduling discussions were had.)

20 THE COURT: Let's take a break. Stretch your legs.  
21 Please do not discuss the case or deliberate or anything.  
22 We will come back in a few minutes and go until around  
23 12:30. Thank you.

24 Everyone else remain seated, please.

25 (WHEREUPON, jury exits the courtroom.)

1 THE COURT: Anything on the record by the State  
2 before we proceed to take a break?

3 MR. KIDD: Nothing further, Judge.

4 MR. LIZZI: Nothing.

5 THE COURT: All right. We will stand at ease for  
6 about ten minutes.

7 (WHEREUPON, break was had 10/9/18, 11:24 a.m.)

8 (WHEREUPON, resume 10/9/18, 11:29 a.m.)

9 THE COURT: Anything for the record, Mr. Lizzi,  
10 before we start?

11 MR. LIZZI: Your Honor?

12 THE COURT: Anything for the record before we start?

13 MR. LIZZI: No, Your Honor.

14 (WHEREUPON, jury enters.)

15 (WHEREUPON, the witness was duly sworn.)

16 THE CLERK: Please state your name and spell your  
17 last name for the record, please.

18 THE WITNESS: Jennifer Wooley, W-O-O-L-E-Y.

19 **DIRECT EXAMINATION BY MR. KIDD OF JENNIFER WOOLEY:**

20 Q. Good morning, Ms. Wooley.

21 A. Good morning.

22 Q. Thank you for being here. Can you tell the jury  
23 where did you work in August of 2015.

24 A. I worked for the City of Charleston Police  
25 Department.

1 Q. In what capacity?

2 A. Crime scene supervisor.

3 Q. And we will get right to it. Do you recall coming  
4 involved in a homicide investigation on August 5th, 2015?

5 A. I do.

6 Q. And that was at [REDACTED] Braxton Avenue?

7 A. That is correct.

8 Q. What was your initial role in relation to that  
9 investigation?

10 A. I was the crime scene supervisor at the scene.  
11 Arrived. Accessed the scene. And assigned a main crime  
12 scene technician to process the scene and assisted her  
13 with that processing.

14 Q. So you -- do you remember who that was?

15 A. Sara Senn.

16 Q. Who I believe is Tuuk now?

17 A. Yes.

18 Q. So she was -- she was the lead crime scene  
19 investigator and you assisted in searching and  
20 documenting the scene?

21 A. Correct.

22 Q. Do you remember when you finished after documenting  
23 the scene how many times did investigators believe the  
24 victim had been shot?

25 A. She had multiple injuries, area of injuries to the

1 head. So that part we were not able to determine. But  
2 we had located three fired shell casings at the scene.  
3 So determine that it was probably three.

4 Q. And then on August the 6th the next day what did you  
5 do?

6 A. The following day I attended the autopsy of the  
7 victim.

8 Q. And did you learn differently at that point?

9 A. Correct. When we were able to see the details of  
10 injuries at that point and determined that there were  
11 four bullet entries to the victim.

12 Q. All right. Before we get to that I want to show  
13 you -- I will show these to the defense attorney first.

14 (WHEREUPON, defense counsel reviews documents.)

15 (WHEREUPON, State's Exhibit Number 91, fingernail  
16 clippings, marked for identification.)

17 Q. I am going to show you three items and I am going to  
18 go one at a time. First I am going to show you what has  
19 been marked for identification as State's Exhibit 91 and  
20 see if you recognize that.

21 A. Yes, sir.

22 Q. And what is that?

23 A. These were the fingernail clippings that were  
24 collected from the autopsy from the victim.

25 Q. And did you take custody of those from the autopsy?

1 A. Correct.

2 Q. And then what would you do after taking custody of  
3 those?

4 A. I packaged them in this envelope, signed it, and  
5 then sealed that, and then entered them into the evidence  
6 at the Charleston Police Department.

7 (WHEREUPON, State's Exhibit Number 92, DNA from blood  
8 spot, marked for identification.)

9 Q. Okay. And then State's Exhibit 92. It might not be  
10 as clear what it is. Do you recognize it? You can get  
11 an evidence sheet to help ---

12 A. I have that in my report.

13 Q. Okay.

14 A. So this is Item 911 which is a blood spot also  
15 collected from the autopsy as a blood -- or DNA standard  
16 for the victim.

17 Q. Okay. And then so you took custody of that from the  
18 autopsy?

19 A. Correct.

20 Q. And then packaged it?

21 A. Packaged it, sealed it, turned it into evidence at  
22 the CPD.

23 Q. At the CPD. For central and later testing ---

24 A. Correct.

25 Q. --- that you had nothing to do with, right?

1 (WHEREUPON, State's Exhibit Number 95, bullet fragment,  
2 marked for identification.)

3 Q. And then finally State's Exhibit 95?

4 A. This is Item 913, was also collected from autopsy as  
5 a bullet fragment collected from the victim.

6 Q. Okay. And the same thing, you packaged it ---

7 A. Correct.

8 Q. --- sealed it, turned it into evidence?

9 A. Exactly.

10 MR. KIDD: Your Honor, at this time we would offer  
11 State's 95 into evidence.

12 MR. LIZZI: No objection, Your Honor.

13 (WHEREUPON, State's Exhibit Number 95 was admitted into  
14 evidence.)

15 Q. Okay. So you attended the autopsy, learned that the  
16 victim had four bullet wounds; is that correct?

17 A. Correct.

18 Q. Okay. So when you left autopsy what did you decide  
19 to do?

20 A. I contacted Detective Bailey because we knew we were  
21 missing a fourth projectile and a fourth shell casing and  
22 we needed to locate those items.

23 So I returned to the office and reviewed all of the  
24 crime scene photos and actually located the missing shell  
25 casing in one of the photos. Further, knew that the

1 projectiles had to be in one of two locations. One was  
2 one of the pillows that was collected from the scene.  
3 The other one it could be in the bedding.

4 The pillows had been collected and were stored, so I  
5 entered the sealed evidence locker that had been secured  
6 by Sara Senn and searched that pillow recovering the  
7 fourth projectile.

8 Q. All right. First I want to show you what has been  
9 marked and entered into evidence as State's Exhibit 35.  
10 And let me see if I can zoom in a little better. Do you  
11 recognize this photograph?

12 A. Yes, I believe that is the photograph of the  
13 nightstand table that was near the victim.

14 Q. All right. And if I could draw your attention to  
15 that right there (pointing).

16 A. That is the missing shell casing.

17 Q. And then so did you go back to the scene then the  
18 following day?

19 A. Correct. Yeah, they had secured a second search  
20 warrant. We went and entered back into the scene to  
21 collect that shell casing.

22 Q. And so then you -- the next day you went back over  
23 there. I am going to show you what has been marked for  
24 identification as State's Exhibit 69. Do you recognize  
25 that photograph?



1 A. Yes, that is a closer up image of the shell casing  
2 as it lies on the shelf.

3 Q. Okay. And did you take this photograph?

4 A. Yes, I do believe.

5 Q. Okay.

6 MR. KIDD: Your Honor, at this time the State's  
7 would offer State's 69 into evidence.

8 MR. LIZZI: No objection, Your Honor.  
9 (WHEREUPON, State's Exhibit 69 was admitted into  
10 evidence.)

11 Q. And I am going to display State's Exhibit Number 69.  
12 That is the shell casing you went back and collected from  
13 the crime scene the next day?

14 A. Correct.

15 Q. Do you know what kind of make and caliber it was?

16 A. It was a Winchester nine-millimeter Luger.

17 (WHEREUPON, State's Exhibit Number 94, projectile, marked  
18 for identification.)

19 Q. And I am going to show you what has been marked as  
20 State's Exhibit 94.

21 A. Okay.

22 Q. Do you recognize that item?

23 A. I do. This is marked Item 151 which is the  
24 projectile that had been collected from the pillow  
25 casing.

1 Q. And just to backtrack. I know you already talked  
2 about it a little bit. But so you learned from autopsy  
3 four shots, went back to the scene and collected the  
4 fourth shell casing that we just talked about, and then  
5 went back to search the pillows ---

6 A. Yes.

7 Q. --- that were in evidence?

8 A. Correct. I believe I actually did the pillows  
9 first.

10 Q. Okay.

11 A. But I am not 100 percent sure on that.

12 Q. All right.

13 A. So that we knew whether or not we were still looking  
14 for a projection at the scene.

15 Q. Gotcha. So before you went to the scene and  
16 collected the shell casing you went and searched the  
17 pillows that were in evidence?

18 A. Correct.

19 Q. And in doing so did you find the projectile?

20 A. Correct.

21 Q. And is that what is marked as -- was that 94?

22 A. Yes, it is 94.

23 Q. And is that what 94 is?

24 A. Yes.

25 Q. So the fourth projectile that you pulled out of the

1 pillow itself?

2 A. Correct.

3 Q. Okay.

4 MR. KIDD: Your Honor, at this time we would offer  
5 State's Exhibit 94 into evidence.

6 MR. LIZZI: No objection.

7 (WHEREUPON, State's Exhibit Number 94 was admitted into  
8 evidence.)

9 (WHEREUPON, State's Exhibit Number 93, shell casing,  
10 marked for identification.)

11 Q. And finally, Ms. Wooley, State's Exhibit 93. Do you  
12 recognize that?

13 A. Yes, this is the missing shell casing that was  
14 recovered from the scene.

15 Q. Okay. And you collected it, packaged it, and  
16 submitted it into evidence?

17 A. Correct.

18 MR. KIDD: Please answer any questions Mr. Lizzi may  
19 have.

20 THE COURT: Any questions?

21 MR. LIZZI: One second, Your Honor.

22 No questions, Your Honor.

23 THE COURT: Thank you. You may step down, Ms.  
24 Wooley. Thank you for coming.

25 Next witness, please.

## DIRECT EXAMINATION BY MR. KIDD OF JAMES GREEN

1 MR. KIDD: The State calls Jamie Green.

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: State your name and spell your last name  
4 for the record, please.

5 THE WITNESS: James Green. G-R-E-E-N.

6 **DIRECT EXAMINATION BY MR. KIDD OF JAMES GREEN:**

7 Q. It is still morning. Good morning, Mr. Green.

8 A. Good morning.

9 Q. Thank you for being here today. Would you please  
10 tell the jury where you are employed.

11 A. I am employed by the South Carolina Law Enforcement  
12 Division, commonly referred to as SLED.

13 Q. How long have you been with SLED?

14 A. Since June of 2005.

15 Q. Thirteen years?

16 A. Yes, sir.

17 Q. And what are your current title duties with SLED?

18 A. I am a forensic scientist in the firearm's  
19 department.

20 Q. And does that sort of specialize in the field of  
21 firearms identification; is that ---

22 A. Yes, sir. I am a firearms examiner. But the main  
23 science we study is firearm and toolmark identification.

24 Q. And what sort of educational background and training  
25 do you have that qualifies you for that job?

1 A. I have a bachelor's and a master's from Charleston  
2 Southern University. And then when I was hired at SLED  
3 in 2005 I underwent their about two-and-a-half to  
4 three-year course of instruction in an apprentice type  
5 fashion studying under court-qualified firearm's  
6 examiners learning to do what I do now.

7 Q. And are you authorized by SLED to conduct firearm's  
8 identification?

9 A. Yes, sir.

10 Q. Are you a member of any professional organization  
11 relating to firearm's identification?

12 A. I am a regular member of the Association of Firearm  
13 and Tookmark Examiners, or AFTE, A-F-T-E.

14 Q. Do you have any Glock specific -- Glock handgun  
15 specific certifications or titles?

16 A. Yes, sir. I am currently certified as a Glock  
17 armor.

18 Q. And what does that mean?

19 A. You go through a course once every three years. It  
20 is an all-day course where you learn from a Glock  
21 qualified instructor how a Glock operates, how to take it  
22 apart and how to troubleshoot if there's any problems.

23 Q. Have you ever been qualified as an expert in the  
24 area of firearm's identification?

25 A. Yes, sir.

1 Q. Do you know how many times?

2 A. Seventy-seven. Seventy-five state and twice  
3 federal.

4 Q. Okay. So I think -- so that is state and federal  
5 court?

6 A. Yes, sir.

7 MR. KIDD: Your Honor, at this time the State would  
8 offer Jamie Green as an expert in the area of firearm's  
9 identification.

10 THE COURT: Any cross-examination on his  
11 qualifications?

12 MR. LIZZI: None, Your Honor.

13 THE COURT: I will admit him as an expert in  
14 firearm's examination. Ladies and gentlemen, he will be  
15 allowed to give opinion testimony. You may proceed.

16 MR. KIDD: Thank you, Your Honor.

17 Q. Mr. Green, could you explain to our jury sort of in  
18 general terms how you go about determining whether a  
19 particular shell casing came from a particular weapon?

20 A. Yes, sir. When a firearm is fired, whether it be a  
21 bullet or cartridge cases, fired through the firearm,  
22 during the manufacturing process there are tiny  
23 individual margins or striations, scratches, left on the  
24 working surface of the bullet or the cartridge case that  
25 are put there by the gun.

1           There have been many studies of which I have taken  
2 part of where that they have taken ten consecutively or  
3 twenty consecutively made slides, part of a pistol, and  
4 they are made one after the other after the other after  
5 the other. And while you can see some general  
6 similarities because they were used -- or created by the  
7 same tool, you can see the individualization in each one.

8           So what we do is when we get a case -- a case I had  
9 a couple of weeks ago before I went out at work I had  
10 like a bullet and a cartridge case and a gun. So what I  
11 did was I looked at the bullet and made sure it had  
12 markings sufficient to make an identification. Looked at  
13 the cartridge case the same way on our comparison  
14 microscope, which is just one microscope -- actually,  
15 excuse me, it is two microscopes connected by a single  
16 optical bridge that let's us look at two things  
17 simultaneously under different angles.

18           And then I looked at the firearm and made sure it  
19 was safe to fire and test fired it myself to obtain test  
20 bullets and test cartridge cases that I know came from  
21 the gun because I fired them myself.

22           And then I will compare the test with the known  
23 evidence -- or excuse me, the unknown evidence to see if  
24 they were fired by the specific gun or not.

25 Q.   And did you do a similar sort of analysis in this

1 case?

2 A. Yes, sir.

3 Q. First I am going to show you before we get to that  
4 what I believe is State's exhibit - if I can look at this  
5 right - I think it is 70, firearm -- can't read --  
6 (WHEREUPON, conferred with court reporter to confirm  
7 exhibit number.)

8 Q. I want to show you what has been marked and entered  
9 into evidence as State's Exhibit 70 and see if you can  
10 look at that for me, please, sir.

11 A. Yes, sir, State's Exhibit 70 is the pistol that was  
12 submitted in this case. And ladies and gentlemen of the  
13 jury, if you saw me rotating the pistol around, what I am  
14 doing is I am looking for my markings.

15 Any time you get a firearm or a bullet or cartridge  
16 case, any type of evidence in the firearm's department,  
17 we use an electric pencil or a Dremel tool to scribe the  
18 lab number, the item number, and our initial. So if I  
19 rotate the evidence around, that is what I am doing.

20 Yes, this is the pistol I examined.

21 Q. That is the pistol you examined. And before you  
22 run -- compare shell casings that's -- do you test a  
23 pistol like that for functionality and the way it  
24 operates?

25 A. Yes, sir. I like my fingers. I don't want to shoot



1 a gun that is unsafe and lose my fingers or part of my  
2 hand or an eye or anything. I've seen it happen, videos  
3 and talking to people at conferences.

4 So I will make sure a firearm submitted to the  
5 laboratory that I am working specifically is safe to fire  
6 before I will even attempt to fire it.

7 Q. And so what sort of testing do you run a firearm  
8 like that through to determine functionality?

9 A. It is as simple as making sure the firearm is  
10 unloaded, and then if I am very familiar with it like I  
11 am a Glock I will just pull the trigger and see if it  
12 clicks. Obviously when it is unloaded.

13 If it clicks I know it will fire. It may  
14 malfunction when I am firing it later down the line, but  
15 at least I know I can get a test. If it malfunctions  
16 then I can take it apart and see what happens.

17 Q. And did you -- and you conducted that sort of  
18 examination on this firearm?

19 A. Yes, sir.

20 Q. And you test fired this firearm?

21 A. Yes.

22 Q. Anything to note about the way this firearm  
23 functioned?

24 A. No, sir. It had a couple of aftermarket parts to  
25 it, but they did not -- well, the grip plug in the model

1 that -- that did not have an effect on it. But it did  
2 have an aftermarket connector on it that goes --  
3 incorporated brand connector that was supposed to make  
4 the trigger pull lighter. But in my testing it was just  
5 normally what I would expect to find out of a Glock.

6 Q. So do you test trigger pull?

7 A. Yes, sir. After we obtain test specimens we will  
8 test the trigger pull as part of our operations.

9 Q. And what was the trigger pull weight on this  
10 specific firearm?

11 A. May I refer to my notes?

12 Q. Sure.

13 A. I believe it was six-and-a-quarter pounds. But let  
14 me double check. I'm sorry, when I tested the trigger  
15 pull it weighed in as six-and-a-half pounds.

16 Q. Six-and-a-half pounds. All right. And let's talk  
17 about specifically what are some of the internal safety  
18 mechanisms within a Glock just like that.

19 A. Okay. A Glock whether it is a police officer's  
20 Glock or a Glock you can buy at, you know, Dick's  
21 Sporting Goods or anything, it all comes standard with  
22 three safeties.

23 They are not safeties like most people think of  
24 where you can flick a lever and it turns the gun on  
25 safety. All three Glock safeties are internal safeties.

1 There is a trigger safety, a drop safety, and a firing  
2 pin safety in a Glock.

3 Q. Would it aid you to explain the mechanism of those  
4 safeties to the jury with the -- with a Glock sort of  
5 video demonstration?

6 A. Yes, sir.

7 (WHEREUPON, counselors confer.)

8 (WHEREUPON, bench conference was had.)

9 Q. All right, Mr. Green, can you tell the jury what we  
10 are looking at here and explain the best you can the  
11 three separate safety functions that we were just  
12 discussing?

13 A. Can y'all -- can everybody see? Okay.

14 Q. And that screen in front of you is a touch screen,  
15 so you can write ---

16 A. Okay.

17 Q. Put your finger on it if you need to if it helps.

18 THE COURT: First of all, is that the same type of  
19 pistol we have in evidence?

20 MR. KIDD: Yes, sir. Well, I take that back, Your  
21 Honor; it is a Glock nine-millimeter pistol. This is not  
22 a Model 26, but the safety functions are identical in  
23 this model as it is in our model.

24 MR. LIZZI: I don't -- it doesn't actually depict  
25 the -- the gun in evidence.

## DIRECT EXAMINATION BY MR. KIDD OF JAMES GREEN

1 THE COURT: Well, ask your witness who is an expert  
2 are the safety features the exact same as the gun that is  
3 in evidence, Exhibit 70.

4 Is it?

5 THE WITNESS, MR. GREEN: Yes, sir.

6 THE COURT: I will allow.

7 THE COURT REPORTER: And, Your Honor, we don't have  
8 that marked as an exhibit.

9 THE COURT: Well, it is for demonstrative purposes.  
10 It is not going into evidence I don't think.

11 THE COURT REPORTER: Okay.

12 THE COURT: Is that correct -- now we will mark it  
13 later on and we will make a copy of it for the record.

14 MR. KIDD: That is correct, I was not planning on  
15 introducing it into evidence.

16 Q. And, Mr. Green, will this help you discuss the  
17 safety functions within the Item 70 Glock that you have  
18 in front of you?

19 A. Yes, sir, it will be a little bit easier to  
20 understand if you can see it.

21 Q. All right. Thank you.

22 A. All right. So the first safety right here  
23 (pointing) is the trigger safety. There is a little shoe  
24 on the trigger that fits right in the middle of the  
25 trigger. That will keep someone from inadvertently

1 bumping the side of the trigger and making the gun go  
2 off.

3 Now there is a little tail to it right here  
4 (pointing) where I marked in blue that if you don't  
5 properly have your finger on the trigger the trigger will  
6 not move back. That little piece of plastic will block  
7 the trigger from being pulled to the rear causing the gun  
8 to fire.

9 The second safety right there (pointing) is the  
10 firing pin safety. The trigger bar -- or the trigger and  
11 trigger bar is right here (pointing). There is a  
12 vertical extension of the trigger bar right there  
13 (pointing).

14 When the trigger is pulled to the rear that vertical  
15 bar pushes up on the firing pin safety and there is a  
16 little cut in the firing pin safety which allows the  
17 striker to move forward and strike the primer causing the  
18 gun to fire.

19 The drop safety back here (pointing) is just a  
20 little ledge of plastic. This trigger bar we were  
21 talking about a few minutes ago and it has what they call  
22 a cruciform on it. It looks like a cross on the back of  
23 it. And it is a little bit raised onto it. It contacts  
24 the striker.

25 And the drop safety is designed -- it will be a

1 little bit easier to show you. If the firearm is dropped  
2 like this (motioning) the sear will not disengage causing  
3 the gun to fire. It actually that little plastic ledge  
4 keeps the sear from dropping. It's just a piece of  
5 plastic that keeps it up.

6 When the trigger is pulled to the rear this -- the  
7 ledge stops and it -- the cruciform will actually be able  
8 to drop causing the gun to release the sear and the  
9 striker will come forward and fire.

10 All three of these safeties have to be disengaged  
11 manually and automatically. And they do so when you pull  
12 the trigger.

13 Q. If you pull the trigger on a Glock firearm or on  
14 Item 70 in front of you and just hold the trigger down  
15 will it keep shooting?

16 A. Without any modifications, no, sir. It is a  
17 semi-automatic pistol, which means every time you pull  
18 the trigger it will shoot; until you stop pulling the  
19 trigger or until it runs out of ammunition. And it won't  
20 shoot again until you release the trigger.

21 Q. But this firearm right here (pointing) if you hold  
22 the trigger down will it keep shooting?

23 A. No, sir. When I tested it I had to pull the trigger  
24 for each shot.

25 Q. Okay. So you have to pull the trigger, release the

1 trigger, and then pull it again in order to get  
2 subsequent discharges?

3 A. Yes, sir.

4 Q. Do you know how many times you test-fired Item 70?

5 A. I shot it three times.

6 Q. Did it double fire or misfire; anything ---

7 A. No, sir. In that limited shooting I did, it worked  
8 as it was intended.

9 Q. And how do you -- six-and-a-half pound trigger pull,  
10 what is that like?

11 A. A gallon of water weighs approximately eight pounds.  
12 So a six-and-a half pound trigger pull would be like  
13 lifting three-quarters of a gallon of water with one  
14 finger.

15 Q. All right. I am going to show you State's Exhibit  
16 84. Let me get them in order.

17 I am going to show you what has been marked for  
18 identification as State's Exhibit 80 through 85 and  
19 State's Exhibit 93. But 80 through 85 and 93 and see if  
20 you recognize those documents.

21 A. Is that an eight or a nine?

22 Q. I believe this is 93.

23 A. Okay.

24 Q. Yes, this is 93. So 80 through 85 and then 93.

25 A. Yes, sir. State's Exhibits 80 through 85 and 93 are

1 the fired ammunition components, the cartridge cases,  
2 and/or bullets that I received in this case.

3 Q. Okay. And did you do a specific comparison of those  
4 shell casings and projectiles to Item Number 70 the  
5 Glock?

6 A. Yes, sir, what I do with any case before I even look  
7 at the firearm I actually compare cartridge cases. The  
8 cartridge cases evidence wise. And then bullets to  
9 bullets before I looked at the test to see if all the  
10 cartridge cases and/or bullets were fired by the same  
11 firearm. So, yes, sir, I did.

12 I looked at 80 -- State's 80, 81, 82, and 93 against  
13 each other. And then I looked at those versus tests from  
14 State's Exhibit 70. And then I looked at exhibits --  
15 State's Exhibit 83, 84, and 85 with each other and then  
16 with test bullets fired by State's Exhibit 70.

17 Q. And can you tell the jury what the results of your  
18 comparison analysis was.

19 A. Yes, sir. All four of the cartridge cases which  
20 would have been State's 80, 81, 82, and 93 were all fired  
21 by the State's Exhibit 70 pistol.

22 And then State's Exhibits 83, 84, and 85 those  
23 bullets did not have sufficient markings to either  
24 include State's Exhibit 70 or exclude it. Meaning I was  
25 inconclusive. Which is a fancy word for I don't know if



1 they were fired by State's Exhibit 70 or another firearm  
2 with similar riflings.

3 Q. Is that because of the condition of those  
4 projectiles?

5 A. That is partly due to the condition. Also it is due  
6 to the type of rifling in State's Exhibit 70, the  
7 polygonal rifling. It is what Glock employs in their  
8 rifling. It doesn't really mark very well.

9 Q. So to summarize, the shell casings were fired by  
10 State's 70 and you can't determine one way or the other  
11 the other projectiles?

12 A. Yes, sir.

13 Q. Okay. I want to talk a couple more things about  
14 State's Exhibit 70. When a firearm such as this is  
15 discharged can you talk about the general mechanism that  
16 takes place as a bullet is expelled out of the barrel and  
17 a new round is chambered?

18 A. Yes, sir. The magazine on State's Exhibit 70 is  
19 right here (pointing). When you load it with cartridges  
20 and insert it into the magazine, well, if there is -- if  
21 the slide is locked back like it is now you pull the  
22 slide to the rear and let it go under its own spring  
23 force. And the slide itself will strip the first  
24 cartridge off the magazine and load it into the chamber.

25 When you pull the trigger and all of the safeties

1 work like we just described a few minutes ago, when the  
2 striker hits the firing pin that causes a flash to go  
3 through or the primer is crushed causing a flash to go  
4 through and start burning the gun powder.

5 When it reaches a certain point and all the gas is  
6 produced by the burning gun powder it will expel the  
7 bullet down the barrel.

8 As that happens the slide -- or the action is  
9 unlocked and the slide will move to the rear. And there  
10 is a little almost like a reverse C-shaped extractor that  
11 grabs the rim of the cartridge case and it will eject  
12 it -- or pull it out of the chamber.

13 And there is a standing ejector or just a little  
14 post on the left side of the pistol. And when the  
15 cartridge case comes back and hits that ejector it has  
16 ejected it from the pistol.

17 Q. And let me stop you right there for one second. In  
18 a firearm such as State's Exhibit Number 70, in which  
19 direction are shell casings ejected?

20 A. Ejection patterns are something we don't do because  
21 of all of the variables; the height of the shooter, how  
22 the gun is being held.

23 But as a very, very, very general rule Glock will  
24 normally eject back and to the right based on the fact  
25 that the cartridge case is coming to the rear and the

1 ejector is on the left. So it will go back and to the  
2 right. That is a very general rule.

3 Q. Right. And no specifics. And I hate to point a  
4 firearm in the court because I don't like pointing them  
5 at anyone.

6 But so if the firearm is pointing in this direction  
7 (motioning) cartridge casings, very generally, will eject  
8 back and to the right?

9 A. Yes, sir.

10 Q. And then so as the slide moves backwards after the  
11 discharge of a bullet what sort of negative forces take  
12 place on the firearm?

13 A. Well, the gas pressure and the recoil is causing the  
14 slide to move to the rear when it unlocks the pistol.  
15 And then there is a recoil spring and a recoil spring  
16 guide rod inside of the pistol that when it reaches its  
17 rear-most point if there is still ammunition in the  
18 magazine the slide will move forward under spring tension  
19 stripping the next cartridge off the top of the magazine  
20 and loading it into the pistol ready to be fired again.

21 Q. Okay. Do you know what sort of recoil pressures  
22 there are in a firearm such as this one?

23 A. No, sir. That is not part of my expertise.

24 Q. And to be clear, when we were talking about trigger  
25 pull -- and after the first shot through a Glock does the

1 trigger have to be released all the way to get the second  
2 shot?

3 A. No, sir. There is like -- I can't remember the  
4 technical term for it right now. I'm sorry. But you can  
5 release the trigger roughly about half way when you are  
6 actually shooting a Glock. If you know what you are  
7 feeling for you can feel it. It will click. Trigger  
8 reset. I'm sorry.

9 And when that trigger reset is roughly half of the  
10 total trigger movement of the first shot you can just  
11 pull the trigger again. It doesn't have to be a complete  
12 release. But it is just far enough to feel that trigger  
13 reset.

14 Q. So pull the trigger for the first shot, you don't  
15 have to completely take your finger off the trigger in  
16 order to pull it again; ---

17 A. Correct.

18 Q. --- you have to release it say approximately half  
19 way before you re-pull?

20 A. Correct.

21 Q. Does the trigger-pull weight differentiate between  
22 those two pulls?

23 A. No, sir.

24 Q. So the six-and-a-half-pound weight that you  
25 testified to a minute ago is the same for the full pull

1 or after the trigger set pull again?

2 A. Yes, sir, when I test trigger pull on Glocks my  
3 first one will be a complete pull the trigger. And the  
4 second, third, fourth, will be a trigger reset. And then  
5 I will do a full pull again.

6 Q. Okay. And that is what you did in this case?

7 A. Yes, sir.

8 MR. KIDD: Court's indulgence.

9 Maybe just as a matter of housekeeping the State  
10 would offer 80 through 85 and 93 into evidence.

11 THE COURT: Any objection?

12 MR. LIZZI: No objection, Your Honor.

13 (WHEREUPON, State's Exhibit 80 admitted into evidence.)

14 (WHEREUPON, State's Exhibit 81 admitted into evidence.)

15 (WHEREUPON, State's Exhibit 82 admitted into evidence.)

16 (WHEREUPON, State's Exhibit 83 admitted into evidence.)

17 (WHEREUPON, State's Exhibit 84 admitted into evidence.)

18 (WHEREUPON, State's Exhibit 85 admitted into evidence.)

19 (WHEREUPON, State's Exhibit 93 admitted into evidence.)

20 THE COURT: All right. Are you through?

21 MR. KIDD: I believe so. No, Your Honor. Please  
22 answer any questions Mr. Lizzi may have.

23 THE COURT: Any questions?

24 MR. LIZZI: Yes.

25 **CROSS-EXAMINATION BY MR. LIZZI OF JAMIE GREEN:**

1 Q. Mr. Green, so I understood you shot the gun three  
2 times?

3 A. Yes, sir.

4 Q. And those were three distinct times with a pause, or  
5 tell me what you did.

6 A. I shoot into a vertical water tank which is our  
7 two-story water tank. It is less than about three feet  
8 wide. It is a big cylinder with a colander at the  
9 bottom.

10 Will shoot into the water and the bullets and the  
11 cartridge cases fall down to the bottom. You pull the  
12 chain and there's your test specimens.

13 When shooting in the water sometimes water comes  
14 back up. So when I shoot and if my hand gets wet and  
15 there's odds are there is water in the barrel so I will  
16 wait a few seconds and kind of shake the gun pointing it  
17 down into the tank. That -- remove any excess water.  
18 Because I don't want any buildup pressure when I am  
19 shooting it. So it is not like I am shooting bang, bang,  
20 bang. I will shoot, wait a few seconds, shoot, wait a  
21 few seconds, shoot again.

22 Q. Now you keep up with the current training with  
23 Glock's, correct?

24 A. Yes, sir.

25 Q. And there are -- there are technical bulletins that

1 come out and there are things that come out that they  
2 have had problems with not just misfiring but firing  
3 without -- accidentally firing; is that correct?

4 A. I'm sorry, say that one more time.

5 Q. Accidental firings.

6 A. Yes, sir, I have. I have seen those.

7 Q. Okay. And even though there's three safeties there  
8 is -- you have still been informed in your training that  
9 there is possibilities of accidental firings?

10 A. Yes, sir, with any man-made instrument there is  
11 always a chance that something could happen.

12 Q. And two out of the three safeties that you talked  
13 about relied on that connector rod, correct?

14 A. Yes, sir.

15 Q. Okay. And that connector rod really kind of is --  
16 is built in there as the mechanism that makes the gun go  
17 back-and-forth, correct; I mean ---

18 A. Yes, sir, it is connected to the trigger. So if the  
19 trigger doesn't move that connector rod -- or -- they  
20 call it the trigger and the trigger connector. It is not  
21 supposed to move.

22 Q. Right. And that had an aftermarket connector rod in  
23 it, right?

24 A. Yes, sir. The connector is the part that I have  
25 seen -- it is kind of hard to explain. It is just a

1 piece of metal with an angle on it. The steeper the  
2 angle the harder the trigger pull is. Because the  
3 trigger bar will come back and hit it. And it has got to  
4 do more to go at a steeper angle. The shallower the  
5 angle the less the trigger pull is supposed to be, in  
6 theory.

7 Q. And if that connector rod was one meant to reduce  
8 the amount of trigger pull it would have been improperly  
9 installed, correct?

10 A. When I looked at it it was -- to me it looked  
11 properly installed. I have one just like it. I did the  
12 same thing. Installed it the same way. I just -- I  
13 don't know why it did not reduce the trigger pull on that  
14 particular pistol.

15 Q. But they are generally put in a gun to reduce the  
16 trigger pull?

17 A. Yes, sir.

18 Q. And a regular trigger pull on a Glock of that model  
19 is about five-and-a half to six-and-a-half pounds?

20 A. Yes, sir, the manufacturer says it is five-and-a-  
21 half pounds; but pretty much every one we test is going  
22 to be in that five-and-a-half to six-and-a-half-pound  
23 range, like you said.

24 Q. Right. And when people buy these things off the  
25 market then they go and install new connector rods



1 because they want to lessen that amount and have an  
2 easier trigger pull?

3 A. Yes, sir.

4 Q. And if the -- if that -- if there's problems with  
5 that rod there could be problems in the safety mechanism?

6 A. Well, the connector per say won't affect the  
7 safeties. But if the connector is malfunctioning or if  
8 it is deformed or has it bent or some kind of thing it  
9 could affect the way the gun functions, yes, sir.

10 Q. And when you took this gun -- and I am not going to  
11 pick up the gun and everything because I don't really  
12 want to flail it around the courtroom. But you -- when  
13 you load the ammunition in it you put the -- you put the  
14 magazine in?

15 A. Yes, sir.

16 Q. And then you -- did you quickly slide it or did you  
17 just -- did you gently slide it forward?

18 A. I'd do what I always do and I pull it back to the  
19 rear and let it go like I was taught. I don't, you know,  
20 kind of let it go and let my hand go forward. I just  
21 pull back and let it go and let the spring take care of  
22 itself.

23 Q. And you did that one time?

24 A. Yes, sir.

25 Q. Okay. And sometimes when guns fail they don't fail

1 the first time, the first shot; you learned in your  
2 training that some guns fail after multiple shots?

3 A. Yes, sir. And even then it may be perfectly fine  
4 when I shoot it but you could go shoot - not this  
5 particular gun - but I can shoot a gun one day and you  
6 could go shoot it the next day and something could happen  
7 to it.

8 Q. All right. They are mechanical; they are kind of  
9 hard to ---

10 A. Yes, sir.

11 Q. --- a hundred percent determine, correct?

12 A. Yes, sir, as I said before if it is made by man  
13 there is always a chance that something could go wrong.

14 Q. And --

15 MR. LIZZI: One second, Your Honor.

16 Q. As part of your job most of the job that you were  
17 performing was to get shell casings with the markings so  
18 you could identify them to be the markings that came out  
19 of that gun to identify them with one found at the scene;  
20 is that correct?

21 A. Okay, I think you said my job was to look at the  
22 cartridge cases; so State's Exhibits 80 through 85 and  
23 then State's Exhibit 93 and compare those with each other  
24 and with tests found from State's Exhibit 70; yes, sir.

25 Q. That is what primarily, the gun set up for you to

1 give an opinion if the cartridges found actually came out  
2 of that gun?

3 A. Yes, sir.

4 Q. Okay.

5 A. And then examine the firearm like ---

6 Q. Okay.

7 A. --- and everything else, yes, sir.

8 Q. Right.

9 MR. LIZZI: One second, Your Honor.

10 Q. What does a 25 cent job refer to?

11 A. That I do not know.

12 Q. Okay. What -- are you familiar when they polish the  
13 internal -- when the internal mechanisms and barrels and  
14 everything are polished to cause less friction?

15 A. No, sir, I am not.

16 Q. Okay. Did you inspect the gun to see if there  
17 was -- if the other mechanisms in there were stock or if  
18 they had had any appearance of being modified?

19 A. When I -- as part of doing the safety testing, the  
20 safeties, I have to disassemble the gun to take --  
21 actually basically it is just a field trip. I just take  
22 the slide off and examine the slide and barrel.

23 I noticed a minus on the connector, so I took it a  
24 little further apart and saw that it was a Ghost  
25 Incorporated brand. But that's all I looked at.

1 Q. Okay.

2 MR. LIZZI: Nothing further.

3 MR. KIDD: Just one more question.

4 **REDIRECT EXAMINATION BY MR. KIDD OF JAMIE GREEN:**

5 Q. Within the industry is the Glock a reliable firearm?

6 A. Yes, sir.

7 Q. And what is its reputation in the industry if you  
8 could expound on that?

9 A. Glock has a very good representation in the  
10 industry. Figure law enforcement, the lives of the  
11 public and themselves, are heavily relied on fire  
12 make area; and Glock is very very heavily in the  
13 law-enforcement community.

14 THE COURT: Thank you. You may step down.

15 Mr. Foreman, ladies and gentlemen, we are going to  
16 take our lunch break.

17 THE CLERK: It is here.

18 THE COURT: Your lunch is back there. You are  
19 welcome to eat it back there or take it outside, save it  
20 and take it home. However you want to do it. We are  
21 going to start back at about two o'clock. So please be  
22 on time. Everybody else remain seated while my jury  
23 walks out.

24 (WHEREUPON, jury exits courtroom 12:30 p.m.)

25 THE COURT: All right. We will stand at ease until

1 two o'clock.

2 MR. KIDD: Judge, Mr. Green just informed me that he  
3 might know one of the jurors.

4 THE COURT: That who may what?

5 MR. KIDD: The witness just tapped me on the  
6 shoulder on the way out and said he thinks he knows one  
7 of the jurors.

8 THE COURT: Well, I have asked all the voir dire.

9 MR. KIDD: Right.

10 THE COURT: It is not unusual for a witness to  
11 know ---

12 THE WITNESS, MR. GREEN: I just didn't want there to  
13 be any ---

14 THE COURT: --- a juror or a juror to know a  
15 witness. If you practice in a small town everybody knows  
16 everybody.

17 MR. KIDD: I just wanted to bring it to the court's  
18 attention.

19 THE COURT: Any problem?

20 MR. LIZZI: Just further for the record, do you  
21 socialize with that person?

22 THE WITNESS: His dad and my dad were roommates at  
23 the Citadel. But I haven't seen him since I was 18. And  
24 that was twenty-something years ago. That is why it took  
25 me a second to recognize him.

1 MR. LIZZI: We have no problem with that.

2 THE COURT: No, I don't think -- thank you. Thank  
3 you for telling us.

4 We will stand at ease until two o'clock.

5 (WHEREUPON, break was had for lunch.)

6 (WHEREUPON, resume following lunch.)

7 MR. KIDD: Nothing from the State.

8 MR. LIZZI: Nothing from the defendant.

9 (WHEREUPON, jury enters 10/9/18, 2:04 p.m.)

10 (WHEREUPON, the witness was duly sworn.)

11 THE CLERK: Please state your name and spell your  
12 last name for the record, please.

13 THE WITNESS: It is Megan Fletcher. F-L-E-T-C-H-E-R.

14 **DIRECT EXAMINATION BY MR. CORVEY OF MEGAN FLETCHER:**

15 Q. Good afternoon, Ms. Fletcher.

16 A. Hi.

17 Q. Thank you for being here. Where are you employed?

18 A. I am employed with the South Carolina Law  
19 Enforcement division, commonly known as SLED, in the  
20 Forensic Services Laboratory in the Trace Evidence  
21 Department.

22 Q. Okay. And how long have you been with SLED?

23 A. Just about 11 years.

24 Q. Okay. And inside of SLED what are some of the  
25 various duties, roles, assignments that you perform

1 inside the agency?

2 A. So I am a part of the Trace Evidence Unit which  
3 analyzes evidence such as fire debris, paint, fibers,  
4 glass, explosives, and gunshot primer residue.

5 Q. Okay. And I guess prior to your role in the Trace  
6 Evidence Department what is your educational background  
7 and training that led to you to be able to be a part of  
8 that department?

9 A. I have my bachelor's degree from Chatham College in  
10 biochemistry and English. I also have my master's in  
11 forensic science from Marshall University in forensic  
12 chemistry and computer forensics.

13 Q. Okay. And outside of your traditional education do  
14 you have any sort of other training in the field of trace  
15 evidence?

16 A. Yes, sir. In every discipline that I am competent  
17 to perform analyses I underwent an in-house training  
18 program with SLED that included in-house assignments as  
19 well as training outside of SLED.

20 Q. Okay. And have you been qualified as an expert in  
21 court before?

22 A. Yes.

23 Q. On how many cases?

24 A. Eleven.

25 Q. Eleven. In state and federal court?

1 A. Just state.

2 Q. Okay.

3 MR. CORVEY: Your Honor, at this time the State  
4 would tender Ms. Fletcher as an expert in trace evidence  
5 analysis.

6 THE COURT: Any cross-examination?

7 MR. LIZZI: No objection.

8 THE COURT: She will be qualified as such. Thank  
9 you.

10 Q. Now, Ms. Fletcher, in your work with that department  
11 did you have an opportunity to become involved in this  
12 case?

13 A. I did.

14 Q. And what kind of analysis did you perform in  
15 reference to this case?

16 A. I performed gunshot primer residue analysis.

17 Q. Okay. Now before we get into your analysis of how  
18 the test was performed and your results I want to just  
19 talk a little bit just generally so the jury can  
20 understand it - because they have heard us mention it  
21 before - is about what gunshot residue is and I guess  
22 generally how you go about performing an analysis.

23 A. Okay. Gunshot residue is everything that comes out  
24 of a gun when it is fired. So that includes the smoke,  
25 the soot, the fire, pieces of projectile, as well as



1 gunshot primer residue.

2       What we are looking for at SLED is gunshot primer  
3 residue. Now particles that are characteristic of this  
4 residue contain the elements lead, barium, and antimony  
5 and are molted in shape, meaning that they underwent high  
6 heat in order to form. So they usually look a little  
7 rounded on the edges as opposed to crystalline.

8       How we analyze it at SLED is using a scanning  
9 electron microscope with an energy-dispersive x-ray  
10 detector. So basically that's an instrument that allows  
11 us to see very very tiny particles and we get to see the  
12 shape of them as well as determine what elements are  
13 present. So we can determine that something is round or  
14 roundish and contains the elements lead, barium, and  
15 antimony.

16 Q.   Okay. So I guess kind of getting back to how  
17 gunshot residue would end up on a person's hands or their  
18 clothing what is it about the discharge of a firearm that  
19 I guess releases those substance onto a person's body or  
20 clothing?

21 A.   So the gunshot primer residue can come out of a  
22 number of different areas on a gun. It is specific to  
23 individual weapons. On a semi-automatic it is the  
24 majority of it is going to come out of the muzzle. But  
25 it will also come out of the ejector port.

1           On a revolver it will come out of the muzzle again,  
2 but it would also come out of the cylinder gaps.

3 Q.    So now if someone was to fire a handgun or I guess  
4 any type of gun is it common for them to have gunshot  
5 residue left on their hands?

6 A.    Yes, sir, up to about six hours it is common to have  
7 gunshot primer residue on your hands if you were in the  
8 vicinity to the discharge or you actually fired a weapon.

9 Q.    Okay. So not just firing but also those in the  
10 vicinity?

11 A.    Yes.

12 Q.    Okay. And now with gunshot powder residue is there  
13 any way that you thought to describe it before I mean how  
14 it is -- is there anything unique about it that allows it  
15 to stay on someone's hands for six hours, or is it just  
16 usual substance?

17 A.    So gunshot primer residue is really fragile. It is  
18 easily transferred from different surfaces. You can  
19 easily remove it by washing your hands. You can  
20 profusely sweating, wiping your hands on your pants,  
21 touching different objects, all of those things will  
22 start to remove potential primer residue.

23           You can sort of think about it like if you are  
24 baking a cake and you get flour on your hands you can see  
25 that transfer of the flower on your hands to your apron

1 then. That is how easily gunshot primer residue is  
2 transferred.

3 Q. And sort of like flower or like with baking a cake  
4 the longer you have that powder on your hands the more  
5 susceptible it is to be wiped off or fall off on its own?

6 A. Correct.

7 Q. And now in light of how fragile and it is and I  
8 guess how easily it can be removed, common practice for  
9 law enforcement is to bag an individual's hands following  
10 a shooting incident?

11 A. I believe it is up to the individual departments  
12 whether they would bag somebody's hands or not.

13 Q. And if someone -- if an individual hands are bagged  
14 following -- you know, following an incident or being  
15 suspected of discharging a firearm I guess that would  
16 have the effect of maintaining whatever is on their  
17 hands?

18 A. It would maintain it better than if they were just  
19 exposed to the environment, yes.

20 Q. And then with regard to proximity, obviously if you  
21 are are firing a gun you are going to be very close to  
22 it. But how far can gunshot residue expel out of a  
23 firearm when it is fired?

24 A. Towards the target or where the bullet is going  
25 there has been studies that show that it goes about 18

1 meters which is about 60 feet. It can also go out a  
2 number of feet to each side and behind. I believe about  
3 it is out six feet to each side and three feet behind.

4 Q. And does distance play any role with I guess how  
5 much gunshot residue you might expect on a person if they  
6 are in the vicinity of a gun being fired?

7 A. It can play a role. The type of gun, the type of  
8 ammunition, also plays a role. Like I said before, the  
9 majority of the gunshot primer residue is going to come  
10 out of the muzzle. So the majority of all of that  
11 residue is going to go towards where the bullet is going  
12 as opposed to the sides or to the back.

13 Q. Okay. And so I guess just to kind of put a common  
14 sense to it, if you and I are this close (motioning) and  
15 I fired a weapon in your vicinity you would expect to  
16 have gunshot residue powder on you?

17 A. It is very possible, yes.

18 Q. And then if I were to go to the back of the  
19 courtroom the chances are going to be I guess diminished?

20 A. Correct.

21 Q. Now with specific regard to your work in this case  
22 how did you go about getting your analysis in this case?

23 A. May I refer to my notes?

24 Q. Yes.

25 A. In this particular case I received a gunshot residue

1 kit from William Gule. And I opened that evidence on  
2 May 18th, 2018, in order to process the kit, meaning I  
3 was checking to make sure everything was present, that  
4 the information sheet that is included in the kit was  
5 present and then began my analysis.

6 Q. Okay.

7 MR. CORVEY: And, Your Honor, may I approach the  
8 witness?

9 THE COURT: You may.

10 Q. Ms. Fletcher, I am handing you what has been marked  
11 for ID as State's 79. If you would just take a  
12 moment ---

13 A. Sure.

14 Q. --- and look at that and let me know when you are  
15 ready.

16 A. This is a manila envelope labeled with our SLED  
17 laboratory number L15-12840, as Item Number 10. The date  
18 that it was opened along with my initials are also  
19 present on this item.

20 Inside the kit -- or inside the manila envelope is a  
21 gunshot residue kit with also the label of L15-12840,  
22 Item Number 10, and my initials, and the information  
23 sheet that would have been included in this kit.

24 Q. Now when that kit came to you I assume it would have  
25 been sealed?

1 A. Yes, sir, it was sealed.

2 Q. Okay. And would you have tested it had it not been  
3 properly sealed?

4 A. It would depend on how -- lack of -- the lack of  
5 sealed that was present. But in this particular case the  
6 seal was present so there was no issue.

7 MR. CORVEY: Your Honor, at this time the State  
8 would seek to admit State's 79.

9 MR. LIZZI: No objection, Your Honor.  
10 (WHEREUPON, State's Exhibit Number 79 was admitted into  
11 evidence.)

12 Q. Now upon receiving that kit what is the next step  
13 you took?

14 A. We inventory it. We determine who the kit was  
15 collected from. We determine the length of time between  
16 the incident and the collection time. And then I  
17 process it on the scanning electron microscope with  
18 energy-dispersive x-ray detector.

19 Q. And in processing the evidence that you received in  
20 this case did you gather any results?

21 A. Yes, sir, I did. On Item Number 10, one GSR kit  
22 from William Gule, I found particles characteristic of  
23 gunshot primer residue.

24 In general, particles characteristic of gunshot  
25 primer residue are microscopic molten particles that

1 contain the elements lead, barium, and antimony.

2 Gunshot primer residue can come from discharging a  
3 firearm, being in the vicinity to the discharge of a  
4 firearm, or coming into contact with a surface that has  
5 gunshot primer residue on it.

6 Q. All right. And so from analyzing it and from your  
7 position and looking at the GSR kit you are only looking  
8 for the presence of GSR residue; you can't say whether  
9 Mr. Gule in this case fired a gun or was merely in the  
10 vicinity of one or how he could have come into contact  
11 with that substance?

12 A. That is correct.

13 Q. So just to summarize your results were that from the  
14 kits performed on him by the Charleston Police Department  
15 there was gunshot residue from those kits?

16 A. Yes, sir, there was.

17 MR. LIZZI: No further questions, Your Honor.

18 MR. LIZZI: May it please the court.

19 **CROSS-EXAMINATION BY MR. LIZZI OF MEGAN FLETCHER:**

20 Q. Ms. Fletcher, you would expect if somebody reported  
21 that they had fired a gun that they would have gunshot  
22 residue on their hands, correct?

23 A. Yes, sir.

24 Q. And I think what you were trying to relay is it  
25 comes off really easy. So if someone wanted to disguise

1 that they shot a gun they could just wash up real good?

2 A. Yes, washing of the hands does remove it.

3 MR. LIZZI: Nothing further.

4 MR. CORVEY: Just briefly, Your Honor.

5 **REDIRECT EXAMINATION BY MR. CORVEY OF MEGAN FLETCHER:**

6 Q. Now with regard to policy do you test kits from  
7 victims?

8 A. Yes, sir, we do.

9 Q. Thank you.

10 THE COURT: You may step down. Thank you. Next  
11 witness.

12 MR. KIDD: The State calls Detective Bailey.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: Please state your name and spell your  
15 last name for the record, please.

16 THE WITNESS: Thomas Bailey. B-A-I-L-E-Y.

17 **DIRECT EXAMINATION BY MR. KIDD OF THOMAS BAILEY:**

18 Q. Good afternoon, detective. Will you please tell the  
19 jury where you are employed, please.

20 A. City of Charleston Police Department.

21 Q. And how long have you been with CPD?

22 A. A little over 12 years.

23 Q. And can you tell the jury what your current job or  
24 title is?

25 A. My current assignment is sergeant over the robbery,



1 central detectives.

2 Q. And what about in August of 2015?

3 A. At that time I was a member of our homicide unit.

4 Q. All right. And as a member of homicide unit - I  
5 know it is kind of self-explanatory - what does that  
6 entail?

7 A. As a member of the homicide unit when not only  
8 investigate homicides but we investigate any aggravated  
9 assault, shootings, suicides, crimes that -- of that  
10 nature. We respond to the scene. We analyze the crime  
11 scene, interview witnesses, send evidence to be  
12 processed.

13 And as far as being a case agent a lot of times it  
14 is not necessarily the case agent doing everything but  
15 kind of managing the case and seeing what is going on and  
16 getting other detectives in the unit to assist.

17 Q. And so in regards to this case what was your role  
18 with the homicide investigation?

19 A. So I learned from the dispatch about the call going  
20 out that ---

21 Q. Were you on duty at that time?

22 A. I had just been on duty, yes, sir. And I learned  
23 that the call went out about an individual, the defendant  
24 had gotten into a disagreement with the mother of his  
25 child and had shot her and he had left the scene and was

1 turning himself in. Orangeburg Road at the Family  
2 Dollar.

3 Q. So where did you go?

4 A. At that point in time I prepared a search warrant  
5 for the residence so that the residence could be  
6 processed. I responded to the judge's office so it could  
7 be signed. And then I responded to the scene.

8 Q. And so were you present when the scene was searched?

9 A. I was.

10 Q. And did you interview witnesses on the scene?

11 A. When I arrived on the scene I briefly went inside,  
12 familiarized myself with the layout of the house, the  
13 scene. And then I came outside and interviewed several  
14 witnesses.

15 Q. Specifically do you recall interviewing the  
16 defendant -- I mean, excuse me, the victim's sister?

17 A. Yes, sir, I did.

18 Q. Do you remember what her name was?

19 A. Patricia.

20 Q. Do you remember the last name?

21 A. High.

22 Q. When you interviewed her was she aware that her  
23 sister had been killed?

24 A. She was not.

25 Q. You didn't advise her of that at the time you spoke

1 with her?

2 A. No, I did not.

3 Q. And what sort of questions would you have asked her  
4 or did you ask her? And don't tell me what she said.  
5 Just what sort of questions did you ask?

6 A. Just the nature of who lived at the house, the  
7 nature of the relationship with the father of her child,  
8 when the last time they had seen each other together, the  
9 last time she maybe talked to her sister, the last time  
10 that she saw her sister. Things of that nature.

11 Q. Just sort of the commonsensical questions that you  
12 would --

13 A. Yes, sir.

14 Q. --- during an interview? And do you recall  
15 identifying the victim's phone number?

16 A. I do.

17 Q. And what phone number was that?

18 A. That was 843-324-5907.

19 Q. 5907. Okay. And through the course of your  
20 investigation did you also learn the defendant's phone  
21 number?

22 A. I did.

23 Q. And what was that?

24 A. That was 843-471-9861.

25 Q. All right. And did you have a search warrant

1 prepared for the defendant's phone records?

2 A. I did.

3 (WHEREUPON, State's Exhibit Number 97, DVD; and State's  
4 98, phone records, marked for identification.)

5 MR. KIDD: Your Honor, at this time we would offer  
6 State's Exhibit --

7 A. Let me show it to you first. I will show you what  
8 has been marked for identification as State's Exhibit 98.  
9 Do you recognize that?

10 A. I do. These are the call-detail records for that  
11 phone number to the defendant's phone.

12 MR. KIDD: Your Honor, at this time we would offer  
13 State's Exhibit 98 into evidence.

14 MR. LIZZI: Your Honor, at this time I would object.  
15 There is no certificate of authenticity.

16 THE COURT: I'm sorry, I couldn't hear you.

17 MR. LIZZI: No certificate of authenticity on that.

18 MR. KIDD: May we approach, Judge?

19 THE COURT: You may.

20 (WHEREUPON, bench conference was had 10/9/18, 2:22 p.m.)

21 Q. Detective Bailey, when the first warrant for those  
22 phone records was prepared who -- do you recall who the  
23 provider was?

24 A. Sprint.

25 (WHEREUPON, plaintiff Exhibit 99, Sprint record, was

1 marked for identification.)

2 Q. And when you -- how does Sprint respond to search  
3 warrants and subpoenas at that age?

4 A. They provide you with an e-mail with the items that  
5 you requested, call-detail records, voice mails, such as  
6 things of that nature.

7 Q. And so did Sprint provide those in response to your  
8 search warrant?

9 A. They did.

10 Q. Okay. I am going to show you what has been marked  
11 for identification as State's Exhibit 99 and see if you  
12 recognize that.

13 A. I do.

14 Q. And what is that document?

15 A. This is a letter of authenticity from Sprint for  
16 these records for the phone number in question.

17 Q. So this is from the Sprint provider, the certificate  
18 of authenticity as to these phone records?

19 A. Yes, sir.

20 MR. KIDD: Your Honor, at this time the State would  
21 offer State's Exhibit 98 into evidence.

22 THE COURT: Any objection?

23 MR. LIZZI: Your Honor, the only problem I have is  
24 that this certificate of authenticity was executed on  
25 October 8th, 2018 for records that were provided on

1 August 10th, 2015, and not contemporaneous with the  
2 records provided.

3 THE COURT: All right. I am going to overrule your  
4 objection. It goes to weight, not the admissibility.

5 THE COURT REPORTER: Your Honor, if I can clarify  
6 what number that was; 98 is the phone records, 99 is the  
7 Sprint. Which one are we ---

8 MR. KIDD: We are entering 98.

9 THE COURT REPORTER: Ninety-eight.  
10 (WHEREUPON, State's Exhibit 98 was admitted into  
11 evidence.)

12 Q. And Detective Bailey in the course of your  
13 investigation in looking at the defendant's phone records  
14 were you able to identify contacts made between the  
15 defendant and the victim through his records?

16 A. I was. I requested a time period of about two weeks  
17 starting on the 22nd of July. And I believe there were  
18 seven contacts between the victim and the defendant.

19 Q. Between 22nd of July and August 5th?

20 A. Yes. Between -- it goes to August 6th actually.

21 Q. August the 6th. So seven contacts between -- so  
22 that is 14 days, 15 days; is that right?

23 A. Yes, sir.

24 Q. Doing my math correct. What is the most recent  
25 contact between the defendant and the victim leading up

1 to the homicide?

2 A. So that would have been on 3rd of August.

3 Q. Of August 3rd. Do you have a date and time ---

4 A. I do.

5 Q. --- that is listed?

6 A. The 3rd of August at 17:37:31.

7 Q. Said that is military time, so that is what five ---

8 A. 5:31 p.m.

9 Q. On what day again? I apologize.

10 A. August 3rd, ---

11 Q. August 3rd.

12 A. --- 2015.

13 A. So no contacts on August 4th ---

14 A. No, sir.

15 Q. --- on these phone records? And what time -- do you  
16 see the 911 call on these records?

17 A. I do.

18 Q. And at what time was the 911 call made according to  
19 the records?

20 A. There was an outbound call from this number at 8:20  
21 in the morning on 5th of August 2015.

22 Q. And this is the call you were referring to there; is  
23 that correct?

24 A. Yes, sir.

25 Q. Okay. And that is 8:20 a.m. on August the 5th. And

1 I want to draw your attention to when does -- I don't  
2 need to know too many of the details about it, but when  
3 does the communication on the phone start taking place on  
4 the morning of August the 5th?

5 A. So these record show that on August 5th there was an  
6 incoming call that only lasted three seconds at 1:33 in  
7 the morning on the 5th.

8 Q. And that will be this one right here (pointing)?

9 A. Yes, sir.

10 Q. All right. And what is the next call down from  
11 that?

12 A. The next call is an outbound call -- that the  
13 duration is the number that is listed next to the dates  
14 and times. And that is in seconds. So that is the next  
15 call is at 5:49:51 in the morning.

16 Q. And then there is -- can you tell whether that is a  
17 phone call or a text message?

18 A. When it has the zeros next to it that is indicative  
19 of it being a text message.

20 Q. So there is an outbound call at 5:49 and then three  
21 with a zero and then an inbound call at 7:15?

22 A. Yes, sir. Or at 7:18 -- 7:15 to 7:18.

23 Q. And there are a variety of other phone calls and  
24 actively on the phone leading up until the 911 call?

25 A. I think it is 17 total.



1 Q. And from the time that phone activity starts until  
2 the 911 call is made how much time elapses?

3 A. It is about two-and-a-half hours from the 5:49 call.

4 Q. Now were you ever able to access the victims i-Cloud  
5 account?

6 A. I attempted to, however there was no -- I was able  
7 to get into it, but there was no information on there.

8 Q. And similarly I am going to show you what has been  
9 marked as State's Exhibit 88. Do you recognize that?

10 A. I do. This looks like a phone that was next to the  
11 bedside table at the victim's residence.

12 Q. Were you able to determine whether there was a phone  
13 number or anything associated with this phone?

14 A. I was not. It didn't have any messages. The call  
15 log was very it seemed to be outdated. No text messages.  
16 No SMS's. No really content with it. A lot of pictures.

17 Q. Did it appear to be an active phone?

18 A. No, sir.

19 MR. KIDD: Court's indulgence.

20 Q. In preparation for this trial do you recall going --  
21 or do you recall checking State's Exhibit Number 70 out  
22 of evidence?

23 A. I did. In preparation for the trial I had to check  
24 this firearm out of evidence in order for an expert  
25 witness for the defense to test fire this gun and examine

1 the gun.

2       So I took it up to the range. After that  
3 examination and firing was complete then I brought it  
4 back down to the CPD to be entered back into evidence.

5 Q.    So when you went out to the range who all was there?

6 A.    There was the defense counsel, the Solicitor's  
7 Office, myself, the expert witness for the defense; and  
8 the CPD firearms range instructor, the lead instructor  
9 out there.

10 Q.    Okay. And did -- was the gun test fired?

11 A.    It was.

12 Q.    Do you recall how many times it was shot?

13 A.    About 30.

14 Q.    Now I know you weren't the one firing the gun, but  
15 did you see any misfires or any malfunctions?

16 A.    I did not.

17       MR. KIDD: A piece of evidence here. I apologize.  
18 (WHEREUPON, State's Exhibit 96, swab, marked for ID.)

19 Q.    I am going to show you what has been marked for  
20 identification as State's Exhibit 96. Do you recognize  
21 that?

22 A.    I do.

23 Q.    Go ahead.

24 A.    This is the -- so I obtained a search warrant to  
25 obtain Mr. Gule's buccal sample which is his DNA sample.

1 So this is what that is. And it is basically a Q-tip.  
2 That I responded to the county jail and wearing latex  
3 gloves I typically take one -- one Q-tip to each side of  
4 his mouth, and it is placed in a sealed box and entered  
5 into evidence.

6 Q. So you swabbed the inside of Mr. Gule's mouth,  
7 sealed it up, labeled it, and logged it into CPD  
8 evidence?

9 A. Yes, sir.

10 Q. Were you able to locate the victim's phone?

11 A. I was not.

12 Q. No further questions.

13 MR. LIZZI: May it please the court.

14 **CROSS-EXAMINATION BY MR. LIZZI OF MR. THOMAS BAILEY:**

15 Q. You were the lead investigator?

16 A. Yes, sir.

17 Q. And the lead investigator, are you the one who kind  
18 of directs all of the other detectives to do their job?

19 A. Yes, sir.

20 Q. And was a GSR test ever done on the victim?

21 A. It was not. Due to them being -- me knowing that  
22 that it was fired in close proximity to the victim I am  
23 fully aware that GSR would be found on her person and  
24 clothing.

25 Q. And so short answer is you didn't do one?

1 A. I did not.

2 Q. Okay. What time did you arrive there that day?

3 A. I arrived there probably around after I got the  
4 search warrant signed it was probably closer to 10:30,  
5 11 o'clock.

6 Q. Okay. Because we heard testimony before about the  
7 crime scene had to wait until you got back, correct?

8 A. Yes, sir.

9 Q. Okay.

10 A. After the initial clearing, yes, sir.

11 Q. And the initial people were in the house - and we  
12 saw the videos but - so when you got to the crime scene  
13 the crime scene may not have reflected exactly how it was  
14 when they first walked in?

15 A. No, the crime scene -- how it reflected on the body  
16 camera is how it was when they entered and the pictures  
17 of -- that were shown is how it would have looked when I  
18 entered.

19 Q. So the pictures -- the pictures show how when you  
20 went in there?

21 A. Yes, sir.

22 Q. Okay. But not when they actually went in initially?

23 A. Correct.

24 Q. Okay. And the body cameras, we have how many  
25 officers that were initially in there?

1 A. I would say three to four, four to five.

2 Q. Okay. And did they all have body cams on?

3 A. No, sir.

4 Q. Is that unusual?

5 A. Not at that time, because we had just started to put  
6 those out into the field.

7 Q. So now everybody has to have body cams, correct?

8 A. Pretty much, yes, sir.

9 Q. And the reason is so that we can tell what they were  
10 doing and keep track of things being moved around or how  
11 the evidence is to protect both the defendants as well as  
12 the State, correct?

13 A. Sure.

14 Q. Okay. So it is safe to say there were several of  
15 the police officers that were in the room where the  
16 victim was that weren't wearing body cams, so we are not  
17 sure exactly what went on in here during that time?

18 A. I can't say what officers actually went in that  
19 room. I wasn't there.

20 Q. Well, you saw the body cam. And as I understand  
21 initially they went into the scene and -- and I think the  
22 procedure is when a scene is opened up, you know, they  
23 have a control point; correct?

24 A. Yes, sir. Yes, sir.

25 Q. And initially when that control point -- that

1 control point is supposed to be set up when the first  
2 person goes in, but sometimes that don't happen and then  
3 you control it and get everybody's name when they come  
4 back out?

5 A. Yes, sir.

6 Q. So you are my lead investigator on this case. So  
7 wouldn't you know exactly who was in that house who  
8 didn't have body cameras?

9 A. I do know who was in that house and didn't have body  
10 cameras. I just don't know exactly where they were in  
11 the house when they were in there.

12 Q. Okay. And they were in there before the pictures  
13 were taken?

14 A. Yes, sir.

15 Q. Okay.

16 Q. And we saw on the initial body camera of I think  
17 Officer Tulle?

18 A. Tulla, yes, sir.

19 Q. Tulla. And when EMS came in they kind of pulled  
20 back the covers to render -- try to do assistance?

21 A. I saw them lift her arm and take her pillow off of  
22 her head, yes, sir.

23 Q. But then all that was put back -- somebody  
24 rearrange- -- somebody put everything back into what the  
25 scene looked like at the time that the photos were taken,

1 correct?

2 A. I would say that when the photos were taken that is  
3 how she was when they -- when EMS got -- was finished  
4 with her.

5 Q. Okay. So if they took the pillow off of her head  
6 when the pictures were taken and there is a pillow on her  
7 head somebody had -- somebody had placed a pillow back on  
8 her head?

9 A. Yes, sir.

10 Q. Okay. And obviously if you are trying to do  
11 assistance to her they -- her body position probably  
12 wasn't exactly the same?

13 MR. KIDD: Objection, Judge. Speculation.

14 THE COURT: If you know that.

15 THE WITNESS: I can't say.

16 Q. Now the phone that she collected from my client was  
17 an iPhone, correct?

18 A. Yes, sir.

19 Q. And the other phone that was in the house was an  
20 iPhone?

21 A. Yes, sir.

22 Q. And I think there was an iPad?

23 A. Yes, sir.

24 Q. Okay. And aren't messages able to be sent or  
25 communications sent using iDevices that are not -- that

1 do not show up on a phone or on phone records?

2 A. Can you ask that again?

3 Q. When you get the Sprint phone records, messages that  
4 are sent through the iPhone system or the iCloud or the  
5 iMessaging they would not show up on the string?

6 A. I would say if it was sent through a regular text  
7 message to another phone it would show up.

8 Q. If it was a text message. But if it was an iMessage  
9 it wouldn't, correct?

10 A. I can't -- I can't answer that.

11 Q. Okay. You don't investigate these -- how many  
12 iPhone cases have you dealt with that had iPhones?

13 A. Quite a few.

14 Q. And communications through iPhone's?

15 A. Quite a few, sir.

16 Q. Okay. And the communications through the iPhone's  
17 don't show up on the phone records, do they; from iPhone  
18 to iPhone without using the carrier?

19 A. I can't say with 100 percent certainty that they are  
20 not going to show up every time.

21 Q. And that first call you talked about you said three-  
22 second call?

23 A. Yes, sir. It was a routed call. Sometimes a lot of  
24 times with a routed call that might mean it goes to a  
25 voicemail.



1 Q. Okay. So it doesn't mean somebody answered it or he  
2 actually communicated with somebody?

3 A. Not necessarily.

4 Q. Okay. Did you communicate with those other people  
5 that were -- he communicated with on his phone bill?

6 A. No. I learned who they were -- who they were once I  
7 was able to get some information off of another device.

8 Q. But you didn't communicate with them?

9 A. I did not.

10 Q. And you never disassembled that gun, the gun  
11 that ---

12 A. I have not.

13 Q. Okay. And you don't hold yourself out as a gun  
14 expert to know if the gun works properly or not?

15 A. I know when a gun misfires or jams. But I am not an  
16 expert, no, sir.

17 Q. Was Mr. Gule cooperative?

18 A. I never really personally dealt with Mr. Gule, due  
19 to meeting him at the scene, for an extended period of  
20 time.

21 Q. You did do a buccal swab, correct?

22 A. I did. He was cooperative during that process.

23 Q. And at no point -- he turned himself in and turned  
24 the gun in, correct?

25 A. He called -- yes, he called in and ---

1 Q. Okay. And you can't on -- you can't say with 100  
2 percent certainty that everything at the scene that  
3 was taken in the pictures was as it was when those  
4 pictures ---

5 A. I think it is a little bit unreasonable to think  
6 that it is going to be that way when officers are going  
7 in there to render medical aid. So it is not going to be  
8 exactly how it was. I think it is unreasonable to think  
9 that.

10 Q. So the answer is you can't, correct?

11 A. Yeah, you are right.

12 Q. Nothing further.

13 MR. KIDD: Just very briefly.

14 **REDIRECT EXAMINATION BY MR. KIDD OF THOMAS BAILEY:**

15 Q. Officers are also trained not to move evidence,  
16 correct?

17 A. Yes, sir.

18 Q. And they would try not to disturb the crime scene at  
19 least as possible?

20 A. Absolutely.

21 Q. And I think what Mr. Lizzi was trying to get at and  
22 I think we can agree that, you know, through cell phones  
23 and third-party apps and things like that phones are able  
24 to communicate with one another and not show up on phone  
25 records?

1 A. Sure. Social media and other apps that are  
2 downloaded, absolutely. But people messaging to  
3 themselves, that is what I -- I can't -- I wouldn't feel  
4 comfortable saying that they wouldn't show up because  
5 they ---

6 Q. Sure. So we are -- I mean we are not saying it is  
7 not possible that communications happen through other  
8 apps and things of that nature?

9 A. Sure.

10 Q. But as to the phone records the communications you  
11 testified to are the ones that are there?

12 A. Yes, sir.

13 Q. Okay. And just briefly, so - only because he  
14 brought it up - there was an iPad in the residence as  
15 well?

16 A. Yes, sir.

17 Q. And you were able to cross reference, what, contacts  
18 through the iPad with the phone?

19 A. Yes, sir, particularly those numbers in that range  
20 from 1:33 a.m. the morning of to the 911 call -- a little  
21 bit after. Yes, sir.

22 Q. And when looking at the iPad were you able to get  
23 any content of messages and things like that in the weeks  
24 leading up ---

25 A. I was not.

## REDIRECT EXAMINATION BY MR. KIDD OF THOMAS BAILEY

1 MR. KIDD: No further questions.

2 THE COURT: All right. You may step down.

3 Next witness.

4 MR. KIDD: The State's calls Investigator Leisy,  
5 Catherine.

6 (WHEREUPON, the witness was duly sworn.)

7 THE CLERK: Please state your name and spell your  
8 last name for the record, please.

9 THE WITNESS: Catherine Leisy. L-E-I-S-Y.

10 **DIRECT EXAMINATION BY MR. KIDD OF CATHERINE LEISY:**

11 Q. Good afternoon. Ms. Leisy.

12 A. Good afternoon.

13 Q. I appreciate you being here. I'm sorry we messed up  
14 on the time a little bit. Probably always happens,  
15 doesn't it?

16 A. Yes, sir.

17 Q. Tell the jury where you are employed, please, ma'am.

18 A. The South Carolina Law Enforcement Division, more  
19 commonly referred to as SLED.

20 Q. And how long have you been with SLED?

21 A. Just over 12 years.

22 Q. Okay. And what is your current job with SLED?

23 A. I am a forensic scientist assigned to the DNA  
24 Casework Department?

25 Q. All right. And what is your educational background?

26

1 A. I have a bachelor of science degree in genetic  
2 engineering from Cedar Crest College in Allentown,  
3 Pennsylvania.

4 Q. Do you have any specialized training in the area of  
5 forensics?

6 A. Yes, sir, I have been trained by other court-  
7 qualified analysts in all of the different types of tests  
8 and analysis I am required to perform. And I am also  
9 required to perform continuing education on an annual  
10 basis to keep up with new trends and technologies in  
11 forensic DNA testing.

12 Q. Have you been qualified as an expert in the past in  
13 forensic serology and DNA analysis before?

14 A. Yes, sir.

15 Q. Do you know how many times?

16 A. On over 50 occasions.

17 Q. Over 50?

18 A. Yes, sir.

19 MR. KIDD: Your Honor, At this time we would offer  
20 Ms. Leisy as an expert in the area of forensic DNA  
21 analysis.

22 MR. LIZZI: No objection.

23 THE COURT: Thank you. She will be qualified in the  
24 DNA area or forensics.

25 MR. KIDD: Thank you, Your Honor. Can you explain

1 to the jury what DNA stands for, what is it; that sort of  
2 thing.

3 A. DNA stands for deoxyribonucleic acid. It is the  
4 genetic materials found in all of our body cells with the  
5 exception of our red blood cells.

6 And DNA is packaged into structures called  
7 chromosomes which contain our genes. And genes are  
8 simply strands of DNA that code for our physical  
9 characteristics such as our height or our eye color.

10 We inherit one copy of DNA from our mother and one  
11 from our father and therefore have two copies of every  
12 gene. And approximately 99.9 percent of an individual's  
13 DNA is identical to that of everyone else's. And it is  
14 the variation of that remaining .1 percent that we test  
15 that allows us to tell different people apart.

16 Q. Okay. So with the exception of identical twins no  
17 two people's DNA is the same?

18 A. That is correct.

19 Q. So how do you go about doing DNA testing at SLED?

20 A. When cases are submitted to SLED we first try to  
21 develop DNA profiles from items of evidence. If we are  
22 able to develop a DNA profile from an evidentiary sample  
23 we then compare it to the DNA profile of a known  
24 individual to try and determine whether that known  
25 individual is the contributor of this evidence that has

1 been related to a particular crime.

2 Q. And do you recall -- one more question to that.

3 What sort of safeguards or controls are used to maintain  
4 and ensure the integrity of your analysis?

5 A. We have quite a few different types of safeguards.  
6 Only one item will ever be opened and processed at a  
7 time. We run what we referred to as negative controls  
8 which are to tubes to which we add all of the same types  
9 of chemicals and go through all of the same processes as  
10 the evidentiary samples to make sure there is no  
11 contaminant being introduced during testing.

12 Each sample is assigned a specific item number  
13 within a specific case number to make sure that there is  
14 no chance that we have misplaced samples or contaminated  
15 anything in any way.

16 Q. And do you recall receiving samples in this case?

17 A. Yes, sir.

18 Q. To track them down I am going to show you what has  
19 been marked as State's Exhibit 96, State's Exhibit 91,  
20 State's Exhibit 92, and I believe State's Exhibit 87. Do  
21 you recognize those items?

22 A. Yes, sir, I do.

23 Q. All right. And what are those items?

24 A. These items are two sets of standards that were  
25 submitted for this case. One being SLED Item Number 2

1 which was a set of buccal swabs from William Gule, Jr.  
2 SLED Item 12 was identified as a blood spot from Pamela  
3 Burgess.

4 We also received what was identified as SLED Item  
5 Number 5 which was a swab from a water bottle. I also  
6 received a set of fingernail clippings from Pamela  
7 Burgess which was identified as SLED Item Number 13. And  
8 then further sub itemized within the laboratory as 13.1,  
9 left-hand fingernail clippings, and 13.2, right-hand  
10 finger clippings.

11 Q. And when you received those items were they package  
12 as they are now or in that internal packaging?

13 A. Right, everything that is submitted to the  
14 laboratory is placed into a head-sealed pouch. It is  
15 then sealed and the individual sealing the pouch dates  
16 and initials that seal so that we can tell that the pouch  
17 is intact and has not been tampered with prior to  
18 testing.

19 Q. Was there any signs of tampering or anything like  
20 that on any of the items that you ---

21 A. There was not.

22 Q. And can you tell the jury please what were the  
23 results of your analysis of those items.

24 A. SLED Item Number 5, the swab from the water bottle,  
25 the DNA profile developed is a mixture of at least two



1 individuals. A partial DNA profile developed from the  
2 major contributor to this mixture matches the DNA  
3 profile of William Gule, Jr.

4 The probability of randomly selecting an unrelated  
5 individual having a profile matching the major  
6 contributor to this mixture is approximately one in one  
7 hundred forty septillion.

8 And the partial DNA profile developed from the minor  
9 contributor to this mixture is insufficient for  
10 interpretation.

11 Q. Okay. And so to break that down as simply as we  
12 can, the defendant Mr. Gule's DNA was on the swab from  
13 the water bottle, there was at least a partial sample  
14 from an unknown party that was too faint for you to be  
15 able to analyze?

16 A. Correct, so again the major contributor or the  
17 majority of the DNA does match the DNA profile of Mr.  
18 Gule. There was a very weak indication of secondary  
19 contributor. It was just too insufficient or too weak  
20 weak for me to be able to interpret and make a comparison  
21 to anyone's.

22 Q. So what can be some common sources for minor  
23 contributors or weak things like that; can it be from  
24 touch; does it have to be from saliva?

25 A. Yeah, there is really no way to tell exactly how

1 that DNA was transferred. It could have been a second  
2 person drinking from the bottle. It could have been  
3 someone picking the bottle what. And what we refer to as  
4 touch DNA is just your skin cells being transferred to an  
5 item when you come into contact with it. But with an  
6 item like this there is no way to specifically tell what  
7 source that secondary contributor was.

8 Q. It could have been someone in the manufacturing  
9 plant, it could have been one of the police officers on  
10 the scene, or it could have been someone else taking a  
11 sip from the bottle?

12 A. That is correct.

13 Q. Okay. As to the next item that you now analyzed,  
14 the fingernail clippings, can you discuss those results.

15 A. SLED sub item 13.1 which would be left-hand  
16 fingernail clippings, the DNA profile developed is  
17 attributable to Pamela Burgess.

18 And for SLED Item 13.2, the right-hand fingernail  
19 clippings, the DNA profile developed is also attributable  
20 to Pamela Burgess.

21 Q. As to 13.2 you were able to develop a partial Y-STR  
22 profile; is that correct?

23 A. Correct. During testing of 13.2 there was some  
24 indication of the presence of a male DNA contributor. I  
25 therefore went back and performed a specific test for

1 Y-DNA, which we refer to as Y-STR testing. It targets  
2 the Y-chromosomes so we will only get a DNA profile from  
3 a male contributor. And with Y-STR testing a partial DNA  
4 profile was developed. That partial profile does match  
5 the Y-STR profile of William Gule, Jr.

6 The probability of randomly selecting an unrelated  
7 male individual having a Y-STR profile matching this item  
8 is approximately one in twenty-four hundred. And  
9 paternal male relatives of William Gule, Jr., may not be  
10 excluded as the contributor of this profile.

11 Q. All right. And specifically for this case the --  
12 Mr. Gule, Jr., has a son. Would you be able to  
13 differentiate between the son's DNA and Mr. Gule, Jr.'s  
14 DNA from that sample under Ms. Burgess' fingernails?

15 A. In terms of Y-STR testing most likely not. The Y-  
16 chromosome is passed directly and intact from father to  
17 son. So we would expect individuals in the same paternal  
18 lineage to have the same Y-profile.

19 So a father and his biological child or any other  
20 paternal member of that family we would assume to have  
21 the same Y-chromosome barring some rare mutation.

22 So we would not necessarily be able to tell the  
23 difference between the son's Y-STR profile and Mr.  
24 Gule's.

25 Q. So to -- so I have your results correct, and correct

1 me if I am wrong here, there is a male's DNA under the  
2 right fingernail clippings of the victim?

3 A. Correct.

4 Q. And it is at least a partial match to the defendant  
5 Mr. Gule but you can't distinguish it whether it was his  
6 or his son ---

7 A. That is correct.

8 Q. --- as the contributor?

9 A. That is correct.

10 Q. And just briefly from talking about probabilities,  
11 you obviously have a high number in regards to the water  
12 bottle. I think you said one in something septil- ---

13 A. Correct, it was approximately ---

14 Q. One in one hundred forty septillion?

15 A. That is correct.

16 Q. It is a big number, right?

17 A. Yes, sir.

18 Q. Can you explain what that exactly means?

19 A. One septillion would be a one with twenty-four zeros  
20 behind it. It is significantly larger than the current  
21 population of the earth.

22 Q. Okay. So that is a sure thing in that regard?

23 A. It is a very large number. It gives strong  
24 connections.

25 Q. And as to the fingernail clipping profile I believe

1 you have one in twenty-four hundred, which is still  
2 pretty good odds would you say?

3 A. In terms of Y-STR testing it is. We typically  
4 expect smaller numbers with Y-STR testing.

5 MR. KIDD: Court's indulgence. Please answer any  
6 questions Mr. Lizzi may have.

7 THE WITNESS: Yes, sir.

8 MR. KIDD: Can I ask one more question?

9 Your Honor, at this time the State would like to  
10 offer State's Exhibits 87, 91, 92, and 96 into evidence.  
11 (WHEREUPON, documents provided to defense counsel.)

12 MR. LIZZI: No objection.

13 (WHEREUPON, State's Exhibit Number 87 was admitted into  
14 evidence.)

15 (WHEREUPON, State's Exhibit Number 91 was admitted into  
16 evidence.)

17 (WHEREUPON, State's Exhibit Number 92 was admitted into  
18 evidence.)

19 (WHEREUPON, State's Exhibit Number 96 was admitted into  
20 evidence.)

21 THE COURT: Any questions?

22 MR. LIZZI: Yes.

23 **CROSS-EXAMINATION BY MR. LIZZI OF MS. CATHERINE LEISY:**

24 Q. Good afternoon. Do you pronounce your name Leisy?

25 A. Yes, sir.

1 Q. Ms. Leisy, when you do the testing you get testing  
2 from both scenes and you get to test from her blood and  
3 from his buccal swab; you can't exclude out that the  
4 victim in this took a drink out of the bottle first, can  
5 you?

6 A. No, sir, I can't. Again, I can't make a formal  
7 comparison with any minor contributor.

8 Q. Okay. And you can get the amount of DNA from under  
9 the fingernails from simply grabbing on or touching  
10 somebody's skin, correct?

11 A. That is correct. It can be very casual contact  
12 causing enough transfer to be able to detect another  
13 individual underneath your skin -- or underneath your  
14 fingernails.

15 Q. Like picking up your child?

16 A. Yes, sir.

17 Q. Okay. And we can't exclude the child as this being  
18 his, correct?

19 A. Again, assuming it is the biological child of Mr.  
20 Gule, without taking a sample I can't, you know,  
21 definitively make that statement. But we would expect  
22 him to have a matching Y-STR profile, and he may be  
23 included as the contributor as well.

24 Q. And the State could have given you the child's DNA  
25 and that would have helped you out a lot, correct?

1 A. It would have been an additional sample to test.  
2 How much it would have helped I can't say.

3 Q. Okay.

4 MR. LIZZI: Nothing further.

5 MR. KIDD: No further questions.

6 THE COURT: Ma'am, you may step down.

7 THE WITNESS: Thank you.

8 THE COURT: Who do you have next? Who is next?

9 MR. KIDD: The State would call Dale Hanna.

10 THE COURT: How long is that?

11 MR. KIDD: Very short.

12 THE COURT: Well, we will take a break after that.

13 MR. LIZZI: Your Honor, I have an objection on this  
14 witness. THE COURT: An objection to the witness  
15 testifying?

16 MR. LIZZI: Well, depending on what scope he is  
17 trying to have the witness testify.

18 THE COURT: I won't know until I hear it.

19 MR. LIZZI: Do you want me to make --

20 THE COURT: Come on around, sir (witness).

21 Y'all step up here and just tell me informally what  
22 is going on.

23 (WHEREUPON, next witness takes stand and bench conference  
24 was had.)

25 THE COURT: Mr. Foreman, let's take our afternoon

1 break. About 10 or 15 minutes. Let me deal with this  
2 issue and that way we will kill two birds with one stone  
3 and not have you coming back and coming back.

4 (WHEREUPON, jury exits courtroom 10/9/18, 3:04 p.m.)

5 THE COURT: All right. You call who?

6 MR. KIDD: Dale Hanna.

7 THE COURT: Dale Hanna.

8 MR. KIDD: Yes, sir.

9 THE COURT: And Mr. Hanna -- just tell me what you  
10 have called him for you.

11 MR. KIDD: Your Honor, we did a firearm analysis on  
12 the gun with Mr. Lizzi -- Mr. Lizzi actually hired Mr.  
13 Hanna.

14 THE COURT: Well, we just heard the testimony from  
15 their chief investigator. This was the guy who did ---

16 MR. KIDD: This is the guy who actually fired the  
17 weapon. He is ---

18 THE COURT: What do you want to ask him?

19 MR. KIDD: I just want to ask him about firing the  
20 weapon and that there were no double fires, no misfires.  
21 Didn't actually said it, but I think he is -- although  
22 his Glock certification has lapsed he is more -- he is  
23 amply qualified to be a firearm's expert. Although I  
24 don't plan on calling him -- qualifying him ---

25 THE COURT: You just want to know about what he had



1 when he fired it and what -- how it fired, was it  
2 misfired and had any problems firing it?

3 MR. KIDD: Correct.

4 THE COURT: All right. Mr. Lizzi.

5 MR. LIZZI: Your Honor, he was never listed as a  
6 State's witness. And they are calling him to try to  
7 bolster their own firearm's expert testimony or to repair  
8 it.

9 I -- he -- his certification has lapsed.

10 THE COURT: What kind of certification?

11 MR. LIZZI: He was a Glock armor, and it has now  
12 lapsed and he is no longer certified on those. That is  
13 why we elected not to call him as expert in the case.

14 THE COURT: But you are not going to offer him for  
15 any opinion testimony, you are not going to qualify him  
16 as an expert; you simply want that when he performed the  
17 field test so to speak on the Number 70 what the results  
18 were -- or not -- just explain the examination or explain  
19 the firing, explain what happened?

20 MR. KIDD: Yes, sir.

21 THE COURT: No opinion?

22 MR. KIDD: No opinion whatsoever.

23 THE COURT: All right. Anything else?

24 MR. LIZZI: Nothing else.

25 THE COURT: All right. I am going to allow it.

1 Let's take a quick bathroom break.

2 (WHEREUPON, break was had 10/9/18, 3:06 p.m.)

3 (WHEREUPON, resume following break.)

4 THE COURT: Is the State ready?

5 MR. KIDD: Yes, Your Honor.

6 THE COURT: Mr. Lizzi?

7 MR. LIZZI: Yes, Your Honor.

8 (WHEREUPON, jury enters 10/9/18, 3:22 p.m.)

9 THE COURT: You may swear the witness, please.

10 (WHEREUPON, the witness was duly sworn.)

11 THE CLERK: Please spell your name and spell your  
12 last name for the record, please.

13 THE WITNESS: Dale Hanna. H-A-N-N-A.

14 **DIRECT EXAMINATION BY MR. KIDD OF DALE HANNA:**

15 Q. Good afternoon, Mr. Hanna. Thank you for being  
16 here. Briefly can you tell the jury about your  
17 experience with firearms, what sort of training and  
18 things like that you have in handling and working on  
19 guns.

20 A. I have been working as a gunsmith for about 29  
21 years. Was previously certified as a Glock armor NRA  
22 instructor and NRA safety officer. I'm certified now  
23 with Smith and Wesson M&P armor. I've worked for small  
24 shops in the area, manufacturers in the area. Worked on  
25 a wide variety of firearms.

1 Q. So you have got a lot of experience in firearms?

2 A. Yes, sir.

3 Q. Do you recall test firing State's Exhibit  
4 Number 70 - and let me show it to you - with myself,  
5 defense counsel, Detective Bailey, and Mr. Corvey from  
6 the Solicitor's Office as well?

7 A. Yes, sir.

8 Q. Can you walk the jury through the different shooting  
9 exercises you put that weapon through.

10 A. We -- I think we fired something like 23 rounds  
11 total. We loaded up the magazine on the first round of  
12 shots fired with three -- and by itself that was a safety  
13 check for me. That was in case the firearm did have a  
14 malfunction or something like that it wouldn't run off.

15 After that, we looked at the magazine completely  
16 with one round in the chamber and fired four rounds. And  
17 then re-topped the magazine off and fired four rounds  
18 again. We did that five times.

19 Q. And were you firing in fast succession, slow  
20 succession?

21 A. Both.

22 Q. Both. Different for different ---

23 A. Yes, sir. The last -- I'm sorry, the last -- I am  
24 going to work off of memory. The last magazine we fired  
25 we fired a complete magazine.

1 Q. Okay. So I think maybe you actually fired 34 rounds  
2 through it total; does that sound about right?

3 A. Twenty-three and thirty-two last I looked.

4 Q. You issued a report from that?

5 A. Yes, sir.

6 MR. KIDD: May I approach, Your Honor?

7 Q. Would it refresh your recollection if you saw it?

8 A. I'm sorry?

9 Q. Would it refresh your recollection if you saw it?

10 A. Yes, sir.

11 (WHEREUPON, document provided to witness.)

12 A. Thirty-four rounds.

13 Q. And in the discharge of those 34 rounds through  
14 State's Exhibit Number 70 did it ever jam?

15 A. No, sir.

16 Q. Did it ever double fire?

17 A. No, sir.

18 Q. Triple fire?

19 A. No, sir.

20 Q. Or fire four times in a row real fast?

21 A. No, sir.

22 Q. Any malfunctions whatsoever in the operation of that  
23 firearm?

24 A. Zero malfunctions.

25 Q. And do you test the trigger pull as well on ---

1 A. Yes, sir.

2 Q. And do you remember how -- what the trigger pull  
3 weight came out to?

4 A. The trigger pull gauge that was provided there at  
5 the City range maxed out at 6.5. So we pulled it to the  
6 6.5. It bottomed out basically. And then continued to  
7 pull. So it was in excess of 6.5.

8 Q. In excess of six -- six-and-a-half pounds?

9 A. Yes, sir. In excess.

10 Q. And just to be clear, I didn't arrange for you to be  
11 there for that test firing, did I?

12 A. No, sir.

13 Q. Who did that?

14 A. The defense. Mr. Lizzi did.

15 MR. KIDD: No further questions for Mr. Hanna.

16 THE COURT: Would you put on the record what date  
17 that was, please.

18 THE WITNESS: September 6th

19 MR. KIDD: September 6th.

20 THE COURT: Of what year?

21 MR. KIDD: 2018.

22 THE COURT: Thank you.

23 **CROSS-EXAMINATION BY MR. LIZZI OF DALE HANNA:**

24 Q. Mr. Hanna.

25 A. Yes, sir.

1 Q. There's a couple of things that were noted when you  
2 inspected the gun. It wouldn't go all the way up forward  
3 when you -- it was like dragging?

4 A. It wouldn't -- it was referred to as not completely  
5 going in the battery. The slide wouldn't completely lock  
6 up forward, up about a 16th of an inch. Maybe even less.

7 Q. And you weren't able to tear the gun apart and  
8 inspect beyond this field stripping, correct?

9 A. Yes, that is correct.

10 Q. And you didn't pull and take apart and look at the  
11 lever or trigger mechanism inside?

12 A. That is correct.

13 Q. And there is a trigger, and there is that bar that  
14 goes across. What is the name -- what is that called?

15 A. You mean -- the connector or the cruciform?

16 Q. The connector?

17 A. The connector.

18 Q. Okay. And you weren't able to determine that that  
19 didn't have a stop connector in it at the time though ---

20 A. That is right, without fully disassembling it.

21 Q. Okay. And though you fired it at those times the  
22 gun was -- I guess was for the better -- called dry;  
23 it -- the gun was dry, was the oil had evaporated ---

24 A. Oh, yeah, it was like it was -- yeah, it wasn't --  
25 it was very dry. It wasn't -- didn't have any lubricant

1 in it.

2 Q. Okay. And the lubricant is what makes it move  
3 better, correct?

4 A. Yes, sir.

5 Q. Were you able to determine -- do you know what a  
6 25 cent kit is? Twenty-five cent?

7 A. I think you are referring to a 25 cent trigger job  
8 is what -- I am kind of guessing here. So that may  
9 not -- that you see on ---

10 THE COURT: Sir, please don't -- please don't guess.  
11 We are not here to guess.

12 Q. Are you familiar with polishing the internal parts  
13 of the gun?

14 A. Yes, sir.

15 Q. And what does that do?

16 A. It smoothes out, smoothes out the trigger.

17 Q. And is it supposed to make it go easier or ---

18 A. Easier. It would smooth it out.

19 Q. And when there's problems with lubrication that puts  
20 more of a draw on the slide movement, right?

21 A. Yes, sir. It could be, yes, sir.

22 Q. And when you operated the slide did you let it slam  
23 in place or how did you do it; did you let it go freely  
24 or ...?

25 A. On the range or while I am inspecting it?

1 Q. On the range.

2 A. Yes, sir, I let it slam in place. On the initial  
3 firing. After that we left a round in the magazine and  
4 just topped off the magazine and put it in there so that  
5 there was a round left in the chamber.

6 Q. Now a firearm is mechanical, and a gun can fire  
7 numerous times and then have a malfunction; is that  
8 correct?

9 A. There is always that possibility.

10 Q. Okay. And there have been cases of Glocks misfiring  
11 or firing, accidental firings?

12 (WHEREUPON, pause for cell phone to be turned off.)

13 Q. There have been reported accounts of accidental  
14 firings in Glocks?

15 A. To my knowledge it would be more negligent fires.  
16 To my knowledge, negligent.

17 Q. Negligent firings?

18 A. Yes, sir.

19 Q. And that ---

20 A. And I don't know every one of them. Just, you know,  
21 to my knowledge.

22 Q. Does that gun have a history of being reported for  
23 negligent firing?

24 THE COURT: Which gun are you talking about, Glock  
25 in general or this gun?



1 MR. LIZZI: The Glock.

2 THE COURT: Thank you.

3 A. No, sir.

4 Q. No?

5 A. Not to my knowledge.

6 MR. LIZZI: Nothing further, Your Honor.

7 **REDIRECT EXAMINATION BY MR. KIDD OF DALE HANNA:**

8 Q. Have you ever heard of a gun firing -- or a Glock  
9 firing four times accidentally?

10 A. No, sir.

11 MR. KIDD: No further questions.

12 THE COURT: All right. You may step down. Thank  
13 you. That is it.

14 Next witness.

15 MR. KIDD: The State calls Patricia Pye.

16 Your Honor, may we approach?

17 THE COURT: You may.

18 (WHEREUPON, bench conference was had.)

19 THE COURT: Mr. Foreman, ladies and gentlemen, I  
20 hate to do this to you. Sometimes it is hard for me to  
21 make a ruling on whether or not something is admissible  
22 under our rules of evidence without me hearing it. So I  
23 going to do what we call a proffer which means they will  
24 put -- they will proffer the testimony to me to make --  
25 so I will know what the testimony is that I can make a

1 proper ruling. It's going to take about five minutes.

2 I hate to ask y'all to step right back out. But we  
3 haven't had to do that a whole lot in this trial. So  
4 just right back out and we will be right back when we  
5 finish it.

6 (WHEREUPON, jury exits courtroom 10/9/18, 3:32 p.m.)

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your name and spell your  
9 last name for the record, please.

10 THE WITNESS: Patricia Pye. P-Y-E.

11 THE COURT: All right. Get straight to the heart of  
12 the matter. She is a sister; is that correct?

13 MR. KIDD: That is correct, the victim's sister,  
14 yes, sir.

15 THE COURT: And you informed me that you wish to  
16 elicit testimony concerning some perhaps alleged threats,  
17 some bruising, and some text messaging; is that correct?

18 MR. KIDD: And a phone call as well, yes, sir.

19 THE COURT: And a phone call.

20 So why don't you go ahead and proffer and then we  
21 will -- I will hear arguments on it. Fair enough, Mr.  
22 Lizzi?

23 MR. LIZZI: Yes, Your Honor.

24 **DIRECT EXAMINATION BY MR. KIDD OF MS. PATRICIA PYE (IC):**

25 Q. All right. Ms. Pye, we are going to get right to

1 it. What was your relationship - obviously we just said  
2 that - with Ms. Burgess?

3 A. I was her sister.

4 Q. Okay. And did you live near to her?

5 A. I lived four doors down.

6 Q. And how ---

7 A. Or four to five doors down. Right down on the  
8 corner.

9 Q. So you lived right down the street from her?

10 A. Yes, sir.

11 Q. How often would you see your sister?

12 A. Every day.

13 Q. Every day. And so in the year and months leading up  
14 to August of 2015 you would see her daily?

15 A. Yes.

16 Q. Okay. Did you know the defendant William Gule?

17 A. I did.

18 Q. All right. How long had you known Mr. Gule?

19 A. The whole time they had been dating. About four or  
20 five years.

21 Q. So they had been together four to five years and you  
22 knew him throughout the -- throughout their relationship?

23 A. Yes, sir.

24 Q. All right. Did you ever see Mr. Gule put his hands  
25 on your sister?

1 A. I never specifically seen it, no, sir.

2 Q. Okay. Did you ever see some bruising on your  
3 sister?

4 A. I did see marks on her neck that looked like  
5 fingerprints had been on her neck, like he -- somebody  
6 had placed their fingers on her neck. And I seen marks  
7 on her arm that looked like somebody had grabbed her.

8 Q. Did she ever explain to you where those came from?

9 A. She told me that her and William had got into a  
10 struggle. But she did not go any further in detail.

11 Q. Okay. Now specifically did you overhear a phone  
12 call between your sister and Mr. Gule on the Greenway one  
13 day?

14 A. My sister and I were walking on the Greenway and he  
15 called, and she had him on speaker. Because -- we were  
16 teasing about the way he was acting. And they were  
17 arguing. And he told her that if he could not have her  
18 that nobody else would and he would see to it.

19 Q. And you know -- I know you don't know the specific  
20 day, but do you know about how long before ---

21 A. It was about ---

22 Q. --- her death it was?

23 A. --- three, four days prior to ---

24 Q. Three to four days prior on the phone call?

25 A. Yes, sir.

1 Q. What about any text messages, did you ever see any  
2 text messages between the defendant and the victim?

3 A. I seen text messages from him where he called her  
4 fat and ugly and degraded her and telling her he didn't  
5 want her, telling her he had another woman, that he  
6 didn't want nothing to do with her, that she wasn't going  
7 to ever make a good wife. He just constantly belittled  
8 her, and he constantly told her he had other women, that  
9 they were better than her.

10 Q. Specifically as to the text messages that you read  
11 how long before August 2015 was that?

12 A. That was a constant thing. Every time they broke  
13 up. It was a constant. But I seen one the day before  
14 that he had sent to her they were arguing.

15 Q. The day before when?

16 A. The day before all of this happened.

17 Q. Okay. What about in the past, because you and I  
18 spoke before, right, and I believe you indicated to me  
19 that there was some three or four months before; is  
20 that ---

21 A. Yes, sir. And then there was one a year ago that he  
22 had told her he was going to choke her out and put her  
23 against the wall.

24 Q. So ---

25 A. About a year before they got ---

1 Q. And so that is what I -- see, I want to be as  
2 specific as possible; right.

3 A. Yes, sir.

4 Q. So you said there was one where he said he was going  
5 to choke her?

6 A. Yes.

7 Q. Specifically what do you recall reading and  
8 approximately when?

9 A. I want to say it was probably about a year ago. It  
10 was the year before all that happened. Because **Child**  
11 had been born. And they were arguing and he -- on his  
12 text message he told her that he was going to choke her  
13 out.

14 Q. Okay. And so that was about a year before?

15 A. Yes, sir.

16 Q. Do you recall the context of any messages that you  
17 read three to four months prior to what you were just  
18 referring to?

19 A. There was -- they constantly argued. But ---

20 Q. And that is fine; if you don't remember any actual  
21 specifics, that is fine. But you are saying that you  
22 were at least privy to a barrage of text messages  
23 between ---

24 A. Yes.

25 Q. --- your sister and the defendant?

1 A. Yes, sir.

2 Q. Okay. And you overheard the phone call ---

3 A. I did, yes, sir,

4 Q. --- on the Greenway?

5 A. I did hear that one on the Greenway.

6 Q. And the nature of their relationship through the  
7 four to five years that they were together how would you  
8 describe that relationship?

9 A. They were all fussing and arguing. He was always  
10 moving out. Either he was moving out because he would  
11 get mad and he would make excuses. They would argue over  
12 money, over paying bills. He would tell her he had other  
13 women, he was moving out for that; and then he would come  
14 back.

15 And Pam loved him so much. She just let him back in  
16 and out all the time.

17 Q. And leading up until August of 2015 had he moved out  
18 of the house?

19 A. Yes, sir, he was out. He was gone.

20 Q. When did he move out of the house?

21 A. About a month. Maybe a little more. But he had  
22 been out definitely a month. He didn't have a key. He  
23 had moved all of his stuff out. That empty dresser y'all  
24 seen was where his stuff was.

25 Q. Does she ever complain to you about him hitting her

1 or were the police ever called that you know of?

2 A. The police were never called. There was an incident  
3 when she lived in her other house where he broke in  
4 through the house and they had a big argument and stuff.  
5 I tried to get her to call the police then and he  
6 wouldn't -- she wouldn't. Pam was too proud.

7 MR. KIDD: Your Honor, that is not the bulk of her  
8 testimony; but that is all the testimony I would elicit  
9 as to what could be deemed as prior bad acts.

10 THE COURT: Mr. Lizzi, what is ---

11 MR. KIDD: The ---

12 THE COURT: What is -- I'm sorry?

13 MR. KIDD: I interrupted you.

14 THE COURT: Mr. Lizzi, what is your position on  
15 that?

16 MR. LIZZI: Your Honor, I think that all of that  
17 testimony should be excluded. Most of the testimony she  
18 never saw him put his hands on her. She never even  
19 explained except that they had an argument as to what --  
20 how the marks were incurred. Text messages only talked  
21 about her being fat, ugly, and not a good wife, those  
22 kind of things. That, you know, the constant breaking  
23 up.

24 These are things that just are under 403 would be  
25 just more prejudicial than probative. Your Honor, this



1 would lead and under 404(b) would be excluded due to the  
2 fact that, you know, this is trying to set up some type  
3 of common scheme that is not there.

4 I mean the one thing that she -- only one phone call  
5 that she said that she overheard about his, you know,  
6 going to nobody else can have her, leaves things to the  
7 imagination and would be highly prejudicial to my client.

8 THE COURT: Well 404(b) precludes evidence of other  
9 crimes, wrongs, or acts; but it also says that it may  
10 have or be admissible to show a number of things  
11 including the absence of mistake or accident.

12 And my understanding of your theory of the case even  
13 in opening that there is no question that he fired the  
14 gun, he turned himself in, he admitted it when he turned  
15 it in, and his position is it was an accident. And I  
16 think the testimony that this lady has proffered  
17 certainly would be relevant as to whether or not there is  
18 or is -- was or was not an accident or some type of  
19 mistake.

20 And then you -- if you say it is admissible that way  
21 then obviously you do a 403 analysis as to whether or not  
22 probative value and prejudicial value which one outweighs  
23 the other. And that analysis that is always made.

24 And obviously any testimony adverse to your client  
25 is somewhat prejudicial, but I think the probative value

1 when we are dealing with a case being defended on the  
2 legal theory of accident or mistake the -- such that it  
3 would come under -- come in under 403, the prejudicial  
4 value would not outweigh the probative value.

5 I am going to respectfully allow it. And I think  
6 you have protected yourself on the record. If you need  
7 to put anything else on I would be more than glad to give  
8 you that opportunity.

9 MR. LIZZI: Just as, Your Honor, the acts that were  
10 so remote as to being a year out that how that could  
11 elicit as to ---

12 THE COURT: Well, from what she -- just from her  
13 testimony was that it was an ongoing, toxic relationship  
14 that culminated in obviously in him leaving, taking his  
15 clothes out.

16 And then if you believe the State's evidence that  
17 ultimately results in her murder. If you believe your  
18 client's testimony or what your client's position that it  
19 was purely an accident, the gun went off by mistake or  
20 accident -- I do have a little trouble being a year out.  
21 I may preclude that testimony. I think those were on the  
22 text messages. Were they not?

23 MR. KIDD: That was the text message that indicated  
24 that would choke her out.

25 THE COURT: Well, considering the totality of the

1 circumstances, the magnitude of what all is going on  
2 here, I am going to allow that testimony.

3 MR. KIDD: Thank you, Your Honor.

4 THE COURT: I think you are protected.

5 Bring the jury in, please.

6 THE COURT: Did we call the witness in the presence  
7 of the jury or was that ---

8 MR. KIDD: I do not believe she was sworn in the  
9 presence of the jury.

10 THE COURT: All right. Let's call her again and  
11 swear in front of the jury.

12 (WHEREUPON, jury enters courtroom 10/9/18, 3:46 p.m.)

13 MR. KIDD: The State calls Patricia Pye.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: State your name and spell your last name  
16 for the record, please

17 THE WITNESS: Patricia Pye. P-Y-E.

18 **DIRECT EXAMINATION BY MR. KIDD OF PATRICIA PYE:**

19 Q. Good afternoon, Ms. Pye. Thank you for being here.

20 Can you tell the jury, please, what your  
21 relationship is with the victim Pamela Burgess?

22 A. She was my sister. My best friend.

23 Q. How often would you see her?

24 A. Every day.

25 Q. Where did you live in reference to ---

1 A. I lived right down the street from her. I was about  
2 four or five doors down.

3 Q. About four or five doors down. I am going to show  
4 you what has been marked as State's Exhibit 74. Do you  
5 recognize that ---

6 A. Yes, sir.

7 Q. --- general area?

8 A. Uh-huh.

9 Q. That screen in front of you is a touch screen. Do  
10 you think you can mark just the approximate area where  
11 you were living?

12 A. I lived right there -- right in that area  
13 (pointing). That is my townhome right there (pointing).

14 Q. All right. So you lived less than a block away,  
15 right?

16 A. Uh-huh.

17 Q. And were you close with Pamela's child as well?

18 A. Yes, sir.

19 Q. Do you remember what kind of phone Pamela had?

20 A. She had a black iPhone.

21 Q. A black iPhone?

22 A. Yes, sir.

23 Q. Do you know did she have a case on it usually, or  
24 no, or ---

25 A. No, sir.

1 Q. No case?

2 A. Not normally.

3 Q. But you know it was black?

4 A. Yes, sir.

5 Q. And did you know the defendant William Gule?

6 A. Yes, sir.

7 Q. And how long had you known Mr. Gule?

8 A. Four or five years. The whole time that they were  
9 dating.

10 Q. What did you call him; was it William, Willie?

11 A. William, Willie.

12 Q. Willie?

13 A. Mostly William. I didn't really ....

14 Q. Do you know how did he and Pam meet?

15 A. They met at the Owner Box on Rivers Avenue I believe  
16 is the road it is on. We were all out one night at the  
17 Owner Box and they met there.

18 Q. And I believe you just testified that they had been  
19 dating for four to five years before she died?

20 A. Yes.

21 Q. Can you describe their relationship for the jury,  
22 please.

23 A. They constantly argued. It was very toxic. They  
24 would break up and get back together. They would argue  
25 over money. They would argue -- he would call her fat

1 and demean her. He would get a girlfriend and then  
2 the -- he would come back to her. It was just a constant  
3 on and off.

4 Q. And they have a child together?

5 A. Yes, sir.

6 Q. And how old is **Child**?

7 A. He was almost three when Pam was killed. He is five  
8 now.

9 Q. Where does he live now?

10 A. He lives with my mother.

11 Q. Had you ever seen them physically fight before, Pam  
12 and William?

13 A. No, sir. Never seen him put his hands on Pamela.

14 Q. Had you ever seen any bruising on Pamela before?

15 A. Yes, sir. I seen like marks on her neck where it  
16 looked like somebody had put their hand around and those  
17 fingers. And marks on her arm where somebody had grabbed  
18 her.

19 Q. You say somebody. Did she ever explain that to you?

20 A. Well, when I asked her she said that her and William  
21 had gotten into it. She didn't elaborate.

22 Q. Now when Pamela was killed was William living in the  
23 house?

24 A. No, sir.

25 Q. Okay. When had he moved out that residence?

1 A. At least over a month.

2 Q. Do you know why he moved out?

3 A. He told her he had another girl and he was moving  
4 out and he didn't want anything to do with her. Pam  
5 wanted him -- they kind of -- she wanted him to stay.  
6 She wanted to have a family. And she wanted **Child** to  
7 grow up with his dad. But he had another girlfriend and  
8 told her he didn't want anything to do with her anymore.

9 Q. Did she love William?

10 A. Yes, sir, she really did.

11 Q. Now I want to talk a little bit about Pamela's --  
12 and I'm sorry.

13 A. I'm sorry.

14 Q. Do you need a minute?

15 (WHEREUPON, pause for witness to regain composure.)

16 A. I'm sorry.

17 Q. That is okay. Had Pamela recently gotten a new job?

18 A. Yes, sir.

19 Q. Where was she?

20 A. She worked for Ben Peeples for a long time and then  
21 Ben retired so she got a job with Parker Poe, the  
22 attorney office down here.

23 Q. Okay. And what was she doing for him?

24 A. She was working at a paralegal.

25 Q. Okay. Was the change of job a positive thing for

1 her?

2 A. It was. It was a very positive for her.

3 Q. And how long had she been with Parker Poe before she  
4 was killed?

5 A. I want to say a little over six months. Maybe close  
6 to a year if even that. It wasn't very long. It was  
7 kind of a brand-new thing.

8 Q. When the defendant moved out of her house did -- do  
9 you know if he took all of his belongings?

10 A. Yes, sir, he took everything. He didn't have a key  
11 or anything for the house.

12 Q. How do you know he didn't have a key?

13 A. Because Pamela told me he didn't have one, she took  
14 it.

15 Q. Did Pamela have any firearms in the house?

16 A. No, sir. She didn't want -- she had one a while  
17 before and it had gotten stolen before **Child** had came  
18 along. But that one had gotten stolen. But she didn't  
19 have any in her house, no, sir. She didn't want them in  
20 there with **Child** and her.

21 Q. Do you know the defendant to own firearms?

22 A. Yes, sir. He had multiple ones.

23 Q. Have you ever personally heard the defendant  
24 threaten Pam?

25 A. Pam and I were walking -- we used to walk on the



1 Greenway every evening. And she had the phone on the  
2 speaker, and he -- I took it as a threat when he told her  
3 that if he couldn't have her then nobody else could and  
4 he would see to it.

5 And also about a year ---

6 Q. Well let's stop there for one second. So how long  
7 before ---

8 A. That was ---

9 Q. --- Pamela was killed did you overhear that phone  
10 call?

11 A. That was about -- that was three days prior to.

12 Q. Three days prior?

13 A. Yes, sir.

14 Q. Now what about did Pam ever show you any text  
15 message or things like that that she was --  
16 communications with William?

17 A. He would text message. This was about a year ago  
18 that he had sent to her and told her he was going to  
19 choke her out.

20 Q. When you say about a year ago do you mean ---

21 A. I mean a year ---

22 Q. --- a year before she died?

23 A. Before she passed, yes.

24 Q. Any other specific text messages that you recall  
25 Pamela showing you?

1 A. Just them fighting and arguing over her being fat  
2 and he would call her ugly and just demeaning stuff and  
3 how he didn't want her no more and he had a girlfriend.  
4 It was just a constant belittling.

5 Q. All right. So I want to talk now about the evening  
6 of August 4th, 2015. Where were you that night?

7 A. After we walked on the Greenway I went home. And my  
8 mother was out of town so I had to go feed the cats. So  
9 I had left my house and drove past Pam's.

10 It was about nine o'clock at night and I looked  
11 over. I always -- we used to make a joke and say I  
12 always stalked her. But so I was looking at her house,  
13 and his vehicle was parked in her driveway. And I  
14 actually kind of got mad because he was there.

15 I tried to call her and she didn't answer. And I  
16 just went on to my mothers and fed the cats. And I came  
17 back about 10:00, 10:30 and he was still there.

18 Q. Let me slow you down and stop you for one second,  
19 okay. So you left your residence at approximately  
20 9:00 p.m.; is that right?

21 A. Yes, sir.

22 Q. And then which way did you head -- did you get on  
23 Savannah Highway?

24 A. Yes, sir. I always come out and go -- I go that way  
25 (pointing). And then I would turn down her driveway.

1 That is why she always said I stalked her because I would  
2 turn down Braxton to get onto Savannah.

3 Q. Okay. And so at about 9:00 p.m. on August the 4th  
4 you drove out and noticed William's car in her driveway?

5 A. Yes, sir.

6 Q. And where does your mother live?

7 A. Red Top, Ravenel.

8 Q. Ravenel. So you went to your mother's house to take  
9 care of her animals and you came back home?

10 A. Yes, sir.

11 Q. Do you know -- and I don't expect you to remember  
12 exact times. Do you remember approximately what time you  
13 came back?

14 A. It was about 10:30.

15 Q. About 10:30. Did you drive back by Pamela's house?

16 A. Yes, sir.

17 Q. Was William's car still there at that time?

18 A. Yes, sir.

19 Q. And then what did you do?

20 A. I tried to call her again and she didn't answer.

21 And of course I got mad and I just went home. Because I  
22 wasn't going to knock on her door that late.

23 Q. Do you remember what kind of car it was?

24 A. Yes, sir. He drove a Magma, a Dodge Magma. It had  
25 rims and all on it. It was black.

1 Q. The next morning on August the 5th, 2015 what time  
2 did you leave for work that morning?

3 A. I leave work every morning at 5:30.

4 Q. 5:30 a.m.?

5 A. Yes, sir.

6 Q. Do you drive out of the neighborhood the same way?

7 A. The same way, yes, sir.

8 Q. All right. What did you see at 5:30 the next  
9 morning when you drove out?

10 A. William was standing there in the door. He had his  
11 arm up and he was leaned against the door and he was  
12 smoking a cigarette.

13 Q. Did you stop?

14 A. No, sir. I was mad at my sister again.

15 Q. Now were there occasions that you are aware of from  
16 the time that he moved out of that residence that he  
17 would come over or spend the night or anything of that  
18 nature?

19 A. Yes, sir. He would come to Pam's house and he would  
20 be drunk and Pamela wouldn't let him leave because she  
21 didn't want him drinking and driving.

22 And she would always tell me she didn't want to  
23 scrape her son's kid off of -- dad off of the pavement so  
24 she would let him spend the night because he would be  
25 drunk and she didn't want him driving drunk. So she

1 would let him in to spend the night. And ---

2 Q. Where -- would he sleep in the bed with her or ---

3 A. No, sir, he would sleep on the couch downstairs.

4 Q. Was that something that would happen often or did it  
5 happen occasionally? Or in that -- in that month from  
6 when he moved out that you are aware of?

7 A. In that month that he had moved out it probably  
8 happened about two to three times. But she was getting  
9 stronger about it and she wasn't letting them back in.  
10 She was trying to completely just make it him be

11 **Child** 's father and their relationship ---

12 MR. LIZZI: Objection as to testimony what the  
13 victim was trying to do, Your Honor.

14 THE COURT: Sustained.

15 MR. KIDD: I have no further questions. Please  
16 answer any questions Mr. Lizzi may have.

17 THE WITNESS: Yes, sir

18 **CROSS-EXAMINATION BY MR. LIZZI OF PATRICIA PYE:**

19 Q. Good afternoon.

20 A. Hi.

21 Q. You talked to investigators right after this all  
22 happened. I think they tape recorded a conversation  
23 between you and them, correct?

24 A. Yes, sir.

25 Q. And unfortunately at that time you didn't know your

1 sister had passed, correct?

2 A. Right.

3 Q. And you told the investigators at that time that  
4 your sister still was very much in love with Mr. Gule?

5 A. Yes, sir.

6 Q. And that she wanted him to come back and live like a  
7 family?

8 A. She wanted to be a family.

9 Q. Okay. And you also testified that your sister and  
10 him had their disagreements, correct?

11 A. Yes, sir.

12 Q. And that your sister could hold her own basically,  
13 that she was ---

14 A. My sister was very strong-headed.

15 Q. Okay. And that when I took it hold her own, that  
16 was kind of the two of them kind of mutual sometimes?

17 A. I'm sorry, I don't understand when you are saying  
18 that.

19 Q. She could -- she could stand up to him?

20 A. In what manner?

21 Q. Physically.

22 A. I've never seen her do so, sir; so I can't answer  
23 you on that one.

24 Q. How tall was your sister?

25 A. She is six foot.

1 Q. About how much did your sister weigh?

2 A. I am not quite sure.

3 Q. Okay. And she is a pretty strong girl?

4 A. Well, I don't know -- I don't what you would  
5 incorporate with a strong female.

6 Q. Well, y'all -- you grew up together ---

7 A. I think I am a strong female.

8 Q. Okay. Well, I mean physically strong. I mean ---

9 A. I am physically strong.

10 Q. Well, I probably -- I believe you are. And this had  
11 gone -- this kind of behavior between the two of them had  
12 gone on for a long time?

13 A. Yes, sir.

14 Q. He would move out and go to his dad's?

15 A. Yes, sir.

16 Q. And a couple -- and a couple of weeks or a couple of  
17 months later they would be back together?

18 A. Yes, sir.

19 Q. This was almost like a cyclical thing?

20 A. It was very violent, yes.

21 Q. Okay. And when people were apart they talked bad  
22 about each other and then all of a sudden they are back  
23 together and you don't know what to say, correct?

24 A. Pamela was very private and she didn't really bash  
25 him. She loved him.

1 Q. You've never liked him, since day one?

2 A. No, sir, I did like him.

3 Q. Well, everybody else called him Willie; and when you  
4 were giving your how you referred to him you called him  
5 William?

6 A. Yes, sir.

7 Q. Okay.

8 A. That doesn't mean I didn't like him.

9 Q. Well, you told investigators that night that you  
10 have never liked him; is that correct?

11 A. I don't recall.

12 Q. Okay. And after their separation the two of them  
13 still went out and did things together with their child,  
14 correct?

15 A. I don't recall them doing too much after they  
16 separated that much together out. I think they might  
17 have went to dinner or something. But I don't really  
18 recall them doing a whole lot together. She was really  
19 working on getting him out of the door. She was done.

20 Q. You say you talked to her every day?

21 A. Yes, sir.

22 Q. Are you aware she went to a cancer walk with him and  
23 his family in the month of July?

24 A. Yes, sir, I am aware of that.

25 Q. Okay. And they went out and did other things



1 socially together in the month while they were apart?

2 A. They did with **Child**.

3 Q. And they were trying to co-parent him, right?

4 A. Yes, sir.

5 Q. And she would pretty much let him come over almost  
6 every day and see **Child**?

7 A. She had. And she had told him that he was to start  
8 picking **Child** up and taking him elsewhere instead of  
9 visiting with him at her house.

10 Q. Okay.

11 A. Because he wasn't coming to visit **Child**.

12 Q. And besides money, besides, you know, the issue of  
13 which you said his infidelity, did they argue about other  
14 things?

15 A. He belittled her a lot. Called her fat and  
16 worthless and she didn't know how to keep a house and she  
17 wouldn't never make a good wife. So he was very  
18 demeaning to her. If you want to call that arguing.

19 Q. Did they have disagreements as to how **Child** was  
20 cared for?

21 A. No, sir, they pretty much agreed on the way **Child**  
22 was cared for.

23 Q. Your sister -- you have an iPhone?

24 A. I do, yes, sir.

25 Q. And she communicate -- you communicate on your

1 iPhone's?

2 A. Yes, sir. We used to call each other. We didn't  
3 text each other because of the fact that William could  
4 see what we texted each other on the iPad. Because it  
5 does link. So we didn't text each other because he would  
6 get mad. Because when I would get angry I would talk  
7 smack about him to her.

8 Q. So you would ---

9 A. I would talk smack, yes, sir.

10 Q. You would talk a lot about him?

11 A. So I did not text her anymore because he seen one  
12 and he got angry with her because I called him a name.

13 Q. But you could text on the iCloud and not be on the  
14 phone itself, correct; y'all could do ---

15 A. No, sir, I didn't ---

16 Q. --- the iMessaging?

17 A. No, sir, I didn't iMessage her. I called her ---

18 Q. You didn't iMessage her?

19 A. --- or I seen her face to face. We didn't  
20 really....

21 Q. When is the last time she called you?

22 A. I talked to her the day prior to him killing her.  
23 Because we walked the Greenway every day. So it was  
24 about 7:00 o'clock that evening. No, actually it was  
25 about 5:00 o'clock when I got off. I called her -- we

1 called every day when I got off of work. And I talked to  
2 her. I work on the Weapon's Station. And I talked to  
3 her from the time I got off of the Weapon's Station to  
4 the house. And then I'd get out of my vehicle and walk  
5 down the street and me and her would take a walk on the  
6 Greenway.

7 So it was about five o'clock, 5:30 that day.

8 Q. And when they would take walks and ---

9 A. They ---

10 Q. --- would ---

11 A. They didn't take walks.

12 Q. Let me finish my question, please. When William and  
13 your sister would take the baby for walks with the wagon?

14 A. They didn't.

15 Q. They didn't?

16 A. No, sir. William may have walked the Greenway once  
17 or twice with us with the wagon. But they didn't.

18 Q. What hours do you work?

19 A. I work -- starting hours at 6:30 to 5:00. But I  
20 have to be on the Weapon's Station by 6:00. So I had to  
21 leave my home at 5:30.

22 Q. And you are home every night?

23 A. Yes, sir.

24 Q. Now you said that when you saw him you saw him at  
25 5:30 in the morning?

1 A. Yes, sir.

2 Q. There were no lights on?

3 A. Yes, sir.

4 Q. How do you know it was only him if there's no lights  
5 on?

6 A. There is a street light that shines. And it shined  
7 right -- it shined right up against the door. So that is  
8 how I could see him. He was lit up. I mean I can tell  
9 you what he was wearing and that he was smoking a  
10 cigarette and there was nobody else standing in that  
11 doorway.

12 Q. Don't you remember telling the detectives that you  
13 could -- you couldn't make out -- mostly just a  
14 silhouette?

15 A. No, sir. I told the detective that we was wearing a  
16 white -- he was wearing a white shirt. I couldn't make  
17 out his pants as to whether or not they were basketball  
18 short or cargo pants.

19 Q. And you don't know for sure if your sister was there  
20 with him at that point, do you?

21 A. It was completely dark. I couldn't tell you if she  
22 was in the house or not.

23 MR. LIZZI: One second, Your Honor.

24 Q. Your sister had a concealed weapons permit, correct?

25 A. Yes, sir. They got it together.

1 Q. So they went -- they went to fire guns together?

2 A. Yes, sir.

3 Q. When you told the investigators that when you spoke  
4 to your sister at 7:00 p.m., went on a wagon walk, ---

5 A. Yes, sir.

6 Q. --- who went on a wagon walk?

7 A. Me, Pamela, and **Child**. We used to walk the  
8 Greenway every day. We put him in a wagon and we would  
9 walk about a mile or two. She was working on losing  
10 weight.

11 Q. You also told the defendants when they questioned  
12 you about the situation between the two -- your sister  
13 and Mr. Gule that she defended herself when they had  
14 problems; do you remember that?

15 A. Well, she would argue back. I mean I am going to  
16 argue back if somebody is demeaning me.

17 Q. And I think you said that she wasn't perfect?

18 A. Are you?

19 THE COURT: No, ma'am, answer the question, please.

20 THE WITNESS: I'm sorry.

21 A. No, sir, she is not. I am not neither.

22 MR. LIZZI: Nothing further questions.

23 MR. KIDD: No further questions, Judge.

24 THE COURT: You may step down.

25 MR. KIDD: Your Honor, may we approach?

1 (WHEREUPON, bench conference was had.)

2 THE COURT: Mr. Foreman, ladies and gentlemen, I  
3 have got to do the same thing with this next witness  
4 coming up. It will be about five more minutes. I  
5 apologize. We will do it is efficiently as we can.

6 (WHEREUPON, jury exits courtroom 10/9/18, 4:13 p.m.)

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: Call your witness.

9 MR. KIDD: The State calls Lisa - and I can't  
10 pronounce your name. Villaponteaux.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: Please state your name and spell your  
13 last name for the record, please.

14 THE WITNESS: It is Lisa Villeponteaux.

15 V-I-L-L-E-P-O-N-T-E-A-U-X.

16 **DIRECT EXAMINATION BY MR. KIDD OF LISA VILLEPONTEAUX**

17 **(IC) :**

18 Q. Villeponteaux?

19 A. Yes, sir.

20 Q. All right. That is the first time I have pronounced  
21 it right. Thank you for being here. Can you please  
22 describe what your relationship was like with Ms. Pamela  
23 Burgess.

24 A. We were friends. We met each other in high school,  
25 and we have been friends since then.

1 Q. So that is -- how long has that been?

2 A. Right about 20 years.

3 Q. Okay. Did you know the defendant, Mr. Gule?

4 A. Yes.

5 Q. How do you know him?

6 A. Through Pam.

7 Q. Okay. Do you know how they met?

8 A. I want to say it was at a bar. Somewhere random.

9 Q. Okay. And they have a child together; is that

10 correct?

11 A. Correct.

12 Q. Okay. And can you describe what their relationship

13 was like for me, please.

14 A. Very volatile. Like sometimes they were happy.

15 Sometimes they hated each other.

16 Q. Do you know what some of the sort of problems they

17 were having with the new relationship?

18 A. I think both of them had trust issues. He didn't

19 trust her and she didn't trust him.

20 Q. From an infidelity standpoint?

21 A. Correct?

22 Q. Had you ever seen them get physical before?

23 A. No.

24 Q. Had you ever seen bruising on Pamela before?

25 A. Yes.

1 Q. What sorts and approximately when?

2 A. I know I have seen bruises on her arms before, like  
3 her upper arms right here (pointing). And when?

4 Q. Just approximately.

5 A. I don't know.

6 Q. In relation to her death was it weeks before, months  
7 before, years before?

8 A. Probably months before.

9 Q. And in the days -- did she ever explain to you where  
10 the bruising came from?

11 A. I know that she would say that like they would get  
12 in little arguments. Like not -- not punching arguments,  
13 but like she would push him; he might grab her.  
14 Something like that.

15 Q. So like pushing and shoving type ---

16 A. Yes.

17 Q. --- fights?

18 A. Yes.

19 Q. And in the days -- I am going to show you what has  
20 been marked as State's Exhibit 100. Do you recognize  
21 this?

22 A. Yes, sir.

23 Q. And what is this?

24 A. That is conversations over Facebook Messenger that  
25 Pam and I have.



1 Q. You and Pam. So you participated in this  
2 conversation with the victim?

3 A. Yes, sir.

4 Q. And when did this take place?

5 A. The Monday night before she died.

6 Q. So about 48 hours ---

7 A. Yes, sir.

8 Q. --- before she died? And I'm just going to go  
9 through this with you, okay?

10 A. Okay.

11 Q. And who is this speaking in the gray (pointing)?

12 A. That is Pam.

13 Q. Okay. And so she says I am doing better than I had  
14 been. What does that mean, LMAO, yeah, man?

15 A. Laugh my ass off.

16 Q. Okay. And then this is what you say here, right  
17 (pointing)?

18 A. Yes.

19 Q. Better is good. Is -- what do you mean is BF still  
20 in the pic?

21 A. Boyfriend.

22 Q. All right. And she says: Not like that. Just  
23 co-parenting.

24 You say: That sucks, but at least you guys are able  
25 to get along for **Child**.

1           Yeah, somewhat. I am just keeping **Child** first  
2 and keeping it moving. Whatever he do, he do. He isn't  
3 living there, is he?

4           Is that what you mean there?

5 A.    Yes, sir.

6 Q.    And she says: No.

7           And then you say: Well, if y'all are together at  
8 least he isn't mooching off of you.

9           Why do you say that?

10 A.    Because she has made a comment to me in the past  
11 that -- like William doesn't always work. He didn't have  
12 a steady job. So when he was there she was having to pay  
13 all the bills, take care of **Child**, take care of him.

14 Q.    And then continuing on. And then this is her. She  
15 says: Damn straight. I don't have to hear what a  
16 horrible GF -- girlfriend, right?

17 A.    Yes, sir.

18 Q.    ... I was and how I make him miserable. It is  
19 peaceful and cheap. Just got to get myself back  
20 together. I really let him tear my self worth to crap.

21           And then you say: I still cannot get over that,  
22 SMH -- I am shaking my head?

23 A.    Yes, sir.

24 Q.    I thought that when y'all were both off of Facebook  
25 that things were getting better.

1           What do you mean by that?

2   A.    It goes back to the how they didn't trust each  
3   other.   So according to Pam that her and William were  
4   both going to get off Facebook and not be having  
5   conversations with other people.

6   Q.    And then she says:   Girl, he never deleted his page.

7           And you say:   Oh, wow, never.   So I guess he is back  
8   with his dad.

9           Why do you say that?   Meaning like if he has moved  
10   out he is ---

11   A.    Right, that at least he is -- like he is not living  
12   off of her, he is living back with his dad at that point.

13   Q.    Okay.   And then the final page.   And it is cut off a  
14   little bit on the top.   You say:   Not saying your  
15   happiness -- happiness doesn't matter, but he depends on  
16   you.

17           I believe there are some typos here.   But she says:  
18   King man.   I am assuming she means **Child** ---

19   A.    Correct.

20   Q.    ... comes first.   He is my primary job.   And I red  
21   fused - I am assuming that is refused - to continue to  
22   let his daddy tear me down because he sees.

23           And then you say:   I am sure it sucks, but you  
24   definitely have the right idea.   Make sure he is good and  
25   then work on you.   He does see you.   And kids are smarter

1 than adults sometimes give them credit for.

2 And then she says: It is up to me to set an ample -  
3 I am assuming that is example - for **Child**. And I  
4 wong - I think that is won't - let him grow up  
5 disrespecting women because his sad - which I am assuming  
6 is Dad - disrespects me. Good Lord, error correct --  
7 Good Lord, auto correct; right?

8 A. Yes, sir.

9 Q. And then finally you say the thing is I still read  
10 right through it ---

11 A. Right.

12 Q. Is that a fair and accurate representation ---

13 A. Yes, sir.

14 Q. --- of the conversation you had with Ms. Burgess 48  
15 hours before her death?

16 A. Yes, sir.

17 Q. Okay. Have you ever partially heard the defendant  
18 threaten Pamela?

19 A. No, sir.

20 MR. KIDD: Your Honor, I think that would be all of  
21 the 404(b) -- arguable 404(b) type evidence that I would  
22 elicit from this witness.

23 MR. LIZZI: The only thing that I would have a  
24 problem with it would be the bruises, Your Honor, as to  
25 no real tie in with it. But the rest I wouldn't object

1 to.

2 THE COURT: Did she ever tell you who caused the  
3 bruises?

4 THE WITNESS: No, sir.

5 THE COURT: All right. I am going to allow all of  
6 the testimony based on my prior reasoning except for the  
7 bruising.

8 MR. KIDD: Yes, sir.

9 THE COURT: Bring the jury in, please.

10 (WHEREUPON, jury enters courtroom 10/9/18, 4:23 p.m.)

11 THE COURT: You may call your witness and swear her  
12 in.

13 MR. KIDD: The State calls Lisa Villeponteaux.

14 (WHEREUPON, the witness was duly sworn.)

15 THE WITNESS: Please state your name and spell your  
16 last name for the record, please.

17 THE WITNESS: It is Lisa Villeponteaux.

18 V-I-L-L-E-P-O-N-T-E-A-U-X.

19 **DIRECT EXAMINATION BY MR. KIDD OF LISA VILLEPONTEAUX:**

20 Q. Villeponteaux. I pronounced it right a minute ago  
21 and messed it up within the course of five minutes. Ms.  
22 Villeponteaux.

23 A. Villeponteaux.

24 Q. Villeponteaux. Call you Lisa?

25 A. Yes, sir.

1 Q. Lisa, will you please tell the jury what your  
2 relationship was with Pamela Burgess.

3 A. We were friends. Pam and I met in high school. So  
4 we were friends for about 20 years.

5 Q. Did y'all got to high school together?

6 A. Yes, sir.

7 Q. Where did y'all go to high school together?

8 A. Berkley High School in Moncks Corner.

9 Q. And afterwards did you go to one college as she went  
10 to another?

11 A. Yes. I went to Charleston Southern, and Pam went to  
12 the College of Charleston. Although we were distant, you  
13 know, I was in North Charleston and she was downtown, you  
14 know, we still kept in touch and we still hung out and  
15 stuff like that.

16 Q. And you know the defendant, William Gule?

17 A. Yes, sir.

18 Q. And how did you know him?

19 A. Through Pam.

20 Q. Were you friends with him and what was your  
21 relationship like with Mr. Gule?

22 A. I didn't have a relationship with him. I mean I  
23 knew him. When I would come to the house I would speak.  
24 He would speak. Normally he would like go upstairs,  
25 maybe go outside. So I wasn't really around him.

1 Q. Okay. Was that weird to you?

2 A. It was different. I mean I guess I just assumed  
3 maybe he didn't like me or something.

4 Q. Okay. Did you know how he met Pam?

5 A. At a bar.

6 Q. Okay. And how long had they been together prior to  
7 Pam's death?

8 A. I want to say maybe off and on three or four years.

9 Q. And did they have any children together?

10 A. Yes, they have one little boy.

11 Q. What is his name?

12 A. **Child**.

13 Q. Okay. Can you describe what Pam and William's  
14 relationship was like?

15 A. Very on-again and off-again. You know, they seemed  
16 to be happy for a little bit and then something would  
17 happen and they would hate each other. And then they  
18 would get back together. And then they would hate each  
19 other and then get back together. It was very off and  
20 on.

21 Q. What sort of things would they fight about?

22 A. The main thing I remember Pam telling me over and  
23 over is like they didn't trust each other. William  
24 would -- according to Pam William would accuse her of  
25 cheating, and then she would think that he was cheating.

1 It was always back-and-forth about who was cheating on  
2 who.

3 Q. Do you know about any money issues or anything like  
4 that that they were having as well?

5 A. I got the feeling from her that she would get  
6 frustrated because he didn't hold down a job all the  
7 time. You know, sometimes he would help with the bills,  
8 and then a lot of times it was she was responsible for  
9 everything.

10 Q. Have you ever seen them physically fight before?

11 A. No, sir.

12 Q. Was William, Mr. Gule, living in the house with  
13 Pamela at the time of her death?

14 A. No, sir.

15 Q. Do you know approximately when he moved out?

16 A. I can't tell you that. I don't know.

17 Q. Weeks, months, years?

18 A. Probably maybe two to three weeks.

19 Q. Do you know why he moved out?

20 A. I mean they weren't getting along. They had decided  
21 to break up.

22 (WHEREUPON, State's Exhibit Number 100, Facebook Screen  
23 Shot, marked for identification.)

24 Q. I am now going to show you what has been marked for  
25 identification as State's Exhibit 100. Do you recognize



1 this?

2 A. Yes, sir.

3 Q. What is this?

4 A. It is a Facebook Messenger conversation that Pam and  
5 I had.

6 Q. Does it depict -- do you know when this conversation  
7 took place?

8 A. It was the Monday night before she died.

9 Q. Okay. So about 48 hours roughly before she died?

10 A. Yes, sir.

11 Q. Does it fairly and actually represent that  
12 conversation you had with Pamela?

13 A. Yes, sir.

14 MR. KIDD: Your Honor, at this time the State would  
15 offer State's Exhibit 100 into evidence.

16 MR. LIZZI: No objection, Your Honor.  
17 (WHEREUPON, State's Exhibit 100 was admitted into  
18 evidence.)

19 Q. All right, Lisa, I am going to go through this sort  
20 of line by line, okay?

21 A. Okay.

22 Q. Who is talking in the gray (pointing)?

23 A. That is Pam.

24 Q. Okay. And so she starts off the conversation: I am  
25 doing better than I had been. Laughing my ass off.

1 Yeah, man.

2 Is that correct?

3 A. Yes, sir.

4 Q. All right. And then what do you say in response?

5 A. Better is good. Is BF, which means boyfriend, still  
6 in the picture.

7 Q. All right. And then she responds: Not like that.  
8 Just co-parenting.

9 A. I said: That sucks, but at least you guys are able  
10 to get along for **Child**.

11 Q. And her response is: Yeah, somewhat. I am just  
12 keeping **Child** first and keeping it moving. Whatever  
13 he do, he do.

14 Is that right?

15 A. Correct.

16 Q. And then what do you say?

17 A. He isn't living there, is he?

18 Q. And she says no -- or nope. And then you say?

19 A. Well, if y'all aren't together at least he is not  
20 mooching off you.

21 Q. And she responds: Damn straight, and I don't have  
22 to hear what a horrible GF - girlfriend?

23 A. Yes, sir.

24 Q. ... I was and how I make him miserable. It is  
25 peaceful and cheap. Just got to get myself back

1 together. I really let him tear my self worth to crap.

2 And then you say?

3 A. I still cannot get over that. Shaking my head. I  
4 thought when y'all both -- I thought when y'all both got  
5 off Facebook that things were getting better.

6 Q. All right. Let's take a break here for a quick  
7 second. What do you mean when y'all get off of Facebook,  
8 what are you referring to there?

9 A. Well, they had -- when they had I guess a lot of  
10 time been argued about who is cheating on who they both  
11 had decided to delete their Facebooks.

12 Q. So that is what you are referring to?

13 A. Yes, sir.

14 Q. And then so she responds: Girl, he never even  
15 deleted his page.

16 A. I said: Oh, wow.

17 Q. And then she said: Never.

18 And you say ...?

19 A. So I guess he is back with his dad.

20 Q. And we are a little cut off here on the top. But  
21 then you say: Not saying your happy -- oh, you go ahead  
22 and do you.

23 A. Oh.

24 Not saying your happy -- happiness doesn't matter,  
25 but he depends on you.

1 Q. Referring to **Child**?

2 A. **Child**.

3 Q. And then she says king man - meaning **Child** -  
4 comes first ---

5 THE COURT: Slide it down a little bit. You are  
6 missing a little bit.

7 MR. KIDD: Sorry about that.

8 THE COURT: There you go.

9 Q. **Child** comes first. He is my primary job.  
10 And what do you interpret this next -- it is a  
11 little typographically. But what do you interpret this  
12 next thing to say?

13 A. And I refuse to continue to let his daddy tear me  
14 down because he sees.

15 Q. Meaning like **Child** sees?

16 A. Like **Child** sees what -- what is going on. And  
17 then I said: I am sure it sucks, because you definitely  
18 have the right -- but you definitely have the right idea.  
19 Make sure he is good, then work on you. He does see.  
20 And kids are smarter than adults sometimes give them  
21 credit for.

22 Q. And I am going to let you interpret this next part  
23 for us too, okay.

24 A. Okay.

25 It is up to me to set an example for **Child**, and I

1 won't let him grow up disrespecting women because his dad  
2 disrespects me. Good Lord. Auto correct. And then auto  
3 correct.

4 Q. And then the last thing?

5 A. The thing is I still read right through it. LOL.

6 Q. And this conversation I think you just testified was  
7 about 48 hours before her death?

8 A. Yes, sir.

9 Q. And was that via text message, Facebook; what  
10 was ---

11 A. It was on the Facebook Messenger.

12 MR. KIDD: Court's indulgence. Please answer any  
13 questions Mr. Lizzi may have.

14 MR. LIZZI: May it please the court?

15 THE COURT: Yes, sir.

16 **CROSS-EXAMINATION BY MR. LIZZI OF LISA VILLEPONTEAUX:**

17 Q. I don't want to butcher your name.

18 A. Okay.

19 Q. How often did you two talk?

20 A. When Pam and William were not together we talked  
21 very frequently. When they were together we didn't have  
22 much conversation. She kind of cut everybody else off  
23 when they were happy.

24 Q. And this kind of on-again off-thing-again happened  
25 constantly, didn't it?

1 A. Yes, sir.

2 Q. Okay. And I take it from the tone of the Facebook  
3 message any time you communicated to her you didn't know  
4 if it was really going to be on-again or off-again, if he  
5 was going to be there or if he wasn't?

6 A. So this conversation happened when she had just  
7 gotten back on Facebook.

8 Q. Right.

9 A. So that is why I was kind of like asking was he  
10 there, was he not there; that kind of thing.

11 Q. Right. And did y'all only communicate by Facebook?

12 A. No, sir.

13 Q. Did y'all -- did you call her on the phone very  
14 often?

15 A. Yes, sir.

16 Q. When is the last time that you had talked to her on  
17 the phone?

18 A. I mean it had probably been maybe even a month, a  
19 month-and-a-half.

20 Q. So you hadn't talked to her on the phone for about a  
21 month?

22 A. Correct.

23 Q. And she hadn't been on Facebook?

24 A. Correct.

25 Q. So this conversation kind of probably a month

1 without any communications?

2 A. Correct.

3 Q. Okay. And she is basically telling you that they  
4 are co-parenting their child?

5 A. Correct.

6 Q. And other than the normal things that they  
7 complained about each other did you see anything  
8 different than normal?

9 A. What do you mean like the normal things?

10 Q. About her complaining about him saying things about  
11 her, you know, talking bad about her or a money  
12 situation. Did you notice any difference at all between  
13 them and between her conversation about the two of them  
14 from any other breakup?

15 A. I mean I knew they argued about the who is cheating  
16 on who. There was issues about their financial state. I  
17 guess I don't understand what you are getting at.

18 Q. They broke up often?

19 A. Correct.

20 Q. And when they were broke up you communicated with  
21 her normally?

22 A. Correct.

23 Q. And when they weren't broke up she didn't  
24 communicate very much?

25 A. Correct.

1 Q. And when they were broke up this time you didn't  
2 notice anything abnormal in how she communicated to you  
3 about their relationship with him?

4 A. That was the first conversation that we had. So I  
5 mean that ---

6 Q. Well, I am talking about a comparison to other times  
7 they broke up and y'all would start communicating again.

8 A. There wasn't anything different, because this was  
9 the -- I mean it was continuing the same thing that they  
10 broke up over.

11 Q. Okay. And he went to the birthday party for

12 **Child** ---

13 A. Yes, sir.

14 Q. --- at the house?

15 A. Uh-huh.

16 Q. And you saw Thomas there, correct?

17 A. Yes, sir.

18 Q. Willie. Sorry. You saw him there?

19 A. Yes, sir.

20 Q. Okay. You call him -- now how do you refer to him?

21 A. William.

22 Q. William. And did you see any conflict between the  
23 two of them during that birthday party?

24 A. No, sir.

25 Q. Did they seem to get along good?



1 A. Yes, sir. I mean if there were issues I didn't pick  
2 up on it.

3 Q. And how -- how many -- was that within the six  
4 months prior to that, like in June or somewhere like that  
5 when you came for the birthday party?

6 A. The birthday party wasn't in June?

7 Q. What month was it in?

8 A. It was earlier in the year.

9 Q. Okay. But it was that same year?

10 A. Yes, sir.

11 Q. Okay. And besides talking on the telephone and  
12 Facebook did y'all communicate in any other way?

13 A. I mean via text message. Every once in a while like  
14 I would go or there or we would go have lunch. Something  
15 like that.

16 MR. LIZZI: Nothing further, Your Honor.

17 MR. KIDD: No further questions.

18 THE COURT: You may step down.

19 (WHEREUPON, bench conference was had.)

20 THE COURT: Options. The State has one witness  
21 left. That will probably put us in to about 5:15 or  
22 5:20. The defendant may have three or four witnesses  
23 which would -- should be through with testimony by  
24 lunchtime tomorrow so we can argument and charge and get  
25 the case.

1 I can stop now and do the doctor in the morning, or  
2 we can go a little and get the doctor out of the way this  
3 afternoon. If you get out of here now you are going to  
4 beat a little bit of the traffic. If we wait and do the  
5 doctor we are going to get caught at about 5:15 or 5:20.  
6 Your choice.

7 JURY FOREMAN: Let's proceed.

8 THE COURT: Proceed?

9 JURY FOREMAN: Yes, sir.

10 THE COURT: Thank you.

11 Call your witness.

12 MR. KIDD: Thank you, Your Honor. The State would  
13 call Dr. Erin Presnell.

14 (WHEREUPON, pause awaiting witness.)

15 (WHEREUPON, the witness was duly sworn.)

16 THE WITNESS: Please state your name and spell your  
17 last name for the record, please.

18 THE WITNESS: My name is Susan Erin Presnell.

19 P-R-E-S-N-E-L-L.

20 MR. KIDD: Court's indulgence, Your Honor.

21 (WHEREUPON, State's Exhibit 101, diagram, was marked for  
22 identification.)

23 (WHEREUPON, State's Exhibit 102, photograph, was marked  
24 for identification.)

25 (WHEREUPON, State's Exhibit 103, photograph, was marked

1 for identification.)  
2 (WHEREUPON, State's Exhibit 104, photograph, was marked  
3 for identification.)  
4 (WHEREUPON, State's Exhibit 105, photograph, was marked  
5 for identification.)  
6 (WHEREUPON, State's Exhibit 106, photograph, was marked  
7 for identification.)  
8 (WHEREUPON, State's Exhibit 107, photograph, was marked  
9 for identification.)  
10 (WHEREUPON, State's Exhibit 108, photograph, was marked  
11 for identification.)  
12 (WHEREUPON, State's Exhibit 109, photograph, was marked  
13 for identification.)  
14 (WHEREUPON, State's Exhibit 110, photograph, was marked  
15 for identification.)  
16 (WHEREUPON, State's Exhibit 111, photograph, was marked  
17 for identification.)  
18 (WHEREUPON, State's Exhibit 112, photograph, was marked  
19 for identification.)  
20 **DIRECT EXAMINATION BY MR. CORVEY OF DR. SUSAN PRESNELL:**  
21 Q. Good afternoon, Dr. Presnell.  
22 A. Good afternoon.  
23 Q. Thank you for being here. Where are you employed?  
24 A. I am a forensic pathologist at the Medical  
25 University of South Carolina down the road.

1 Q. How long have you been at MUSC?

2 A. I have been there since 1989, which is when I went  
3 to medical school there. And then I stayed. And I went  
4 through medical school, pathology training, forensic  
5 pathology training, and stayed on as faculty which was in  
6 1999.

7 Q. So are you a licensed physician in South Carolina?

8 A. I am.

9 Q. How long have you been practicing medicine in South  
10 Carolina?

11 A. So MD was '93.

12 Q. Okay. And I think you gave us a little bit of a  
13 preview. But you got -- you went -- attended medical  
14 school at MUSC?

15 A. Yes.

16 Q. Okay. And then you described going through some  
17 training in pathology and forensic pathology. If you  
18 could elaborate on that for the jury.

19 A. Well, so after my school then you pick which  
20 specialty you want. I chose pathology. Which at the  
21 time it was a five-year training program. And then after  
22 that I chose the subspecialty of forensic pathology which  
23 was an additional year.

24 And so along the way I have taken the boards, boards  
25 for general medicine. But also -- well, not internal

1 medicine but for graduating medical school. As well then  
2 as pathology, the general pathology, and forensic  
3 pathology. So I am board certified in all of those  
4 things.

5 Q. Okay. And then if you could just describe for us  
6 generally what are the fields of pathology and forensic  
7 pathology.

8 A. Well, there's two broad categories of pathology.  
9 There is anatomic pathology, and there is clinical  
10 pathology. So clinical pathology is all of your body  
11 fluids that go to the lab and get tested or if you need  
12 transfusions that is blood banking or looking at leukemia  
13 so blood cancer. All of that is on the clinical  
14 pathology side.

15 And then there is the anatomic pathology side which  
16 is the big organs. So forensic pathology falls under  
17 there. As does a number of other specialties like  
18 derm- -- dermatologic pathology or - I am blanking. Breast  
19 pathology.

20 So when you think of pathology actually most of your  
21 pathologists are diagnosticians for living patients. And  
22 those are the general fields of pathology.

23 And then the subspecialty of course that I am a part  
24 of is forensic pathology. Of course you are not dealing  
25 with a living person but somebody that has passed. And

1 our intent is not just diagnosing but also determining  
2 cause and manner of death.

3 Q. Okay. And then in that capacity as a forensic  
4 pathologist you do -- you perform autopsies?

5 A. Yes.

6 Q. Okay. And how many would you say you have performed  
7 in your career?

8 A. It would be an estimate. And probably around 3,000.

9 Q. Okay. And then I within I guess the field of  
10 forensic pathology are there any board certifications  
11 that you have to take?

12 A. Yes. So I am certified in the anatomic and clinical  
13 pathology and forensic pathology.

14 Q. Okay. And then what are the requirements for being  
15 certified in forensic pathology?

16 A. So there is a board called the American Board of  
17 Pathology. So there is a national board. But you have  
18 to pass an exam.

19 Q. Have you testified in criminal trials before?

20 A. Yes.

21 Q. Approximately how many?

22 A. Approximately 100-ish.

23 Q. And have you been qualified as an expert in those  
24 trials?

25 A. In forensic pathology, I have; yes.

1 MR. CORVEY: Your Honor, at this time the State  
2 would offer Dr. Presnell as an expert in the field of  
3 forensic pathology.

4 THE COURT: Any cross-examination on her  
5 qualifications?

6 MR. LIZZI: No, Your Honor.

7 THE COURT: We will qualify her as an expert in  
8 forensic pathology.

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

10 THE COURT: You may.

11 Q. Ms. Presnell, I am handing you what has been marked  
12 as State's 101 through 112. If you could just take a  
13 look at those exhibits and let me know if you recognize  
14 those.

15 A. Look at them and do what?

16 Q. Let me know if you recognize those.

17 A. Oh, okay.

18 (WHEREUPON, witness reviews exhibits.)

19 A. Yes, I do.

20 Q. And what are those?

21 A. These are copies of diagrams and photographs that I  
22 took at the time of autopsy.

23 Q. Okay. And do these fairly and accurately depict I  
24 guess the findings of your autopsy and also with regard  
25 to the photographs the condition of that the victim was

1 in at the time of autopsy?

2 A. Yes.

3 MR. CORVEY: Your Honor, at this time the State  
4 would see to it admit State's 101 through 112.

5 MR. LIZZI: No objection Your Honor.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit Number 101 through 112 were  
8 admitted into evidence.)

9 Q. Now Dr. Presnell, in your capacity at MUSC did you  
10 have an opportunity to perform an autopsy on Pamela  
11 Burgess?

12 A. Yes. I autopsied Ms. Burgess in 2015 on August 6.

13 Q. Okay. And how old was Ms. Burgess at the time of  
14 the autopsy?

15 A. Thirty-five.

16 Q. Okay. And now in performing your autopsy were you  
17 able -- did you do a diagram?

18 A. I did. I did several diagrams.

19 Q. Jointly they have been entered as State's 101. I am  
20 going to show you the first portion here. And if you  
21 could describe for the jury what they are looking at  
22 here.

23 A. All right. So this is just the overall working  
24 diagram. And it is a copy of it. And I actually colored  
25 in these two blue areas which are reflecting bruises. I



1 will refer to them as contusions. But basically bruises.  
2 And then I was trying to get -- to show where there four  
3 major injuries, which are four gunshot wounds to her  
4 head, where they are located and actually more where the  
5 angles were going.

6 So in this general area right here (pointing) I have  
7 three circles. There's actually three entrance gunshot  
8 wounds. Three gunshot wounds entering right in front of  
9 her left ear.

10 They are all going straight across. And they all  
11 exit out behind the right ear area. So that's three  
12 going from right -- left ear to right ear area, across  
13 the bottom of the brain.

14 And then we also have one that is -- I hope I did a  
15 good dot there. It is to the inside part of the -- right  
16 above the left eye. And that is going into the brain.  
17 And it partially exits the back of the head, meaning that  
18 some of the bullet came out but some is still at the exit  
19 wound. So that was this arrow right here (pointing).  
20 There (pointing). That arrow coming from the inside left  
21 eye area to the top of the right head.

22 And then you can see the bruising. Or I have been  
23 drawing circles that are relatively vague. But if you  
24 count. This is the right side over here (pointing).  
25 Left side (pointing). Left side (pointing). And right

1 side (pointing). Just the way that that the diagram is  
2 flipped.

3 And so if you count the bruising on the arm there is  
4 11 -- 11 on the right arm -- at least 11. Seven on the  
5 left arm. Seven (pointing). Three on each leg. And  
6 then in one of the other diagrams she also has four  
7 bruises on the side of her -- the right side of her chest  
8 area.

9 Q. And showing you the second page of State's 101 I  
10 think you were just referencing that.

11 THE COURT: Hold up.  
12 (WHEREUPON, photo adjusted.)

13 THE COURT: There you go.

14 A. And so this is the diagram that -- can you make it a  
15 little larger?

16 (WHEREUPON, complied.)

17 A. You can see the four blue areas which are the four  
18 contusions I talked about. But also you can see actually  
19 where the positioning of the entrance gunshot wounds  
20 were. They are labeled A, B, and C on the front of  
21 the -- front of the left ear.

22 And then the exit wounds are F and G, behind the  
23 right ear. G that exit wound is actually very large  
24 exit. It actually counts for two of the exiting.

25 And then E is the partial exit, the one that I

1 talked about that came from the left eye, part of the  
2 bullet came out and part of it stayed in.

3 Q. Okay. And then I guess I want to move on you have  
4 described, photographic evidence. So we talked first  
5 about bullet wounds A, B, and C. I am now showing you  
6 what has been entered as State's 102. If you could  
7 please describe what we are looking at here.

8 A. I think it is pretty recognizable. There is her  
9 left ear (pointing). And we have three holes in front of  
10 it labeled A, B, and C. Not to indicate any order per  
11 se. Just to give them a designation so I can refer to  
12 them. So again the three entrance wounds.

13 I think it is also noticeable that there are all of  
14 these little puncture looking marks around it, all of  
15 these little dots. This is what we refer to as  
16 stippling. And to us this comes into play when we are  
17 trying to interpret how far away a gun is from a victim.

18 We look at three broad categories as forensic  
19 pathologists. And to kind of -- and excuse me if I am  
20 making that too simplified. But when I think of gun and  
21 think of what comes out of the end of the barrel. You  
22 get the bullet. But it is not just the bullet. You also  
23 get some soot that comes out. And you also get some gun  
24 powder particles which is what is ignited to propel the  
25 bullet down the barrel.

1           And I think -- think of the gun powder particles  
2 kind of like little pieces at sand. So if you have a gun  
3 up against skin you are going to get really just a rim of  
4 soot, some dark sooty substance. If you pull the gun  
5 away and it is not touching the skin but it is still  
6 close that soot may -- it is like a gas. The soot may or  
7 may not reach the skin. But those little particulates  
8 will reach the skin and actually scratch them, cause  
9 little scratches. And that is what the stapling is.

10           Now as she pull the gun further away then the soot  
11 is definitely not going to reach the skin, nor will those  
12 little particulates of gunpowder and you would just see a  
13 plain hole without any markings around it.

14           In this case you will see she has the three entrance  
15 wounds and she has a lot -- a fair amount of stippling  
16 around it indicating to us that this is a close-range  
17 gunshot wound.

18 Q.   Now with regard to the stippling and in regard to  
19 range based on the presence of stippling is there  
20 anything you can do to determine exactly how close that  
21 was?

22 A.   Well, the most effective way is to test fire the gun  
23 with the ammunition to try to reproduce that distribution  
24 of stippling. In general from most handguns by the time  
25 the gun is a yard away, so 36 to 42, about a yard away,

1 the gun power is not going to reach the skin. So  
2 somewhere closer than 36 inches away.

3 Q. And were you able to make any determinations I guess  
4 regarding range in this case compared to others?

5 A. Well, just that -- I mean there was a fair amount of  
6 it. So it would suggest that it is on the closer end as  
7 opposed to the further out end of the closer range  
8 distribution.

9 Q. So not contact, I guess contact with the firearm to  
10 the skin, but sometime -- somewhere inside of that yard  
11 range that you described?

12 A. Correct.

13 Q. Dr. Presnell, I want to move on to the additional  
14 entrance wound you mentioned. D in State's 103, if you  
15 could please describe what we are looking at here.

16 A. So can you go in a little closer?

17 Q. Yes.

18 (WHEREUPON, complied with display.)

19 A. The entrance wound is right in this area here  
20 (pointing). So the entrance wound, again, is right on  
21 the -- right above the inside of the left eye. You also  
22 see the stippling marks that are associated with this  
23 gunshot wound indicating that it is a close range. We do  
24 see a little bit of sparring - I don't know if you can  
25 appreciate that - around the eyes which is -- I think she

1 was known for wearing glasses and it's certainly  
2 consistent with wearing a pair of glasses.

3 Q. And in what way would it be consistent with wearing  
4 a pair of glasses?

5 A. Well, so think of when I was just describing the  
6 materials coming out of the end of the barrel. If there  
7 is some kind of intermediate target in between the victim  
8 and the gun then that may stop that material from  
9 reaching the skin.

10 Q. And is there anything else about I guess the  
11 injuries around her eye not including the stippling that  
12 could indicate the presence of eyeglasses?

13 A. I don't know.

14 Q. Now we talked about the exit wounds as well. And we  
15 looked at those on your diagram. So now I am going to  
16 show you State's 104.

17 A. Well, this is a difficult picture to imagine I  
18 believe. This is -- so it is the back of the head but a  
19 little bit to her right. And on this corner here  
20 (pointing) I am holding her ear forward so that F, Exit  
21 Wounds X and G, are what is behind the left ear. So  
22 these are the -- excuse me, the right ear.

23 So these are the two exit areas that are from the  
24 gunshot wounds to the left ear area. And then E, which  
25 is this right here (pointing), is the partial exit. And

1 you can actually still -- you can see a little piece of  
2 the bullet fragment that is still left to figure.

3 Right -- that gold piece that is showing is part of the  
4 bullet fragment.

5 Q. And so we have discussed four entrance wounds, but  
6 it appears we only have three exit wounds.

7 A. We have three exit wounds and a partial exit wound.  
8 The G accounts for -- because it is so vague and the gun  
9 way -- the bullet pathways for the three gunshot wounds  
10 to the front of the ear are -- they follow the exact same  
11 pathway. They are right across the base of the skull.  
12 And the G is big enough to account for two of them  
13 exiting in that area.

14 Q. Okay. Now then you talked about with regard to E  
15 that you recovered, the gold area that we are looking at,  
16 the bullet fragment that you were able to recover?

17 A. Yes.

18 Q. Now I am going to show you what has been entered as  
19 State's 105, 106, and 107. This is photographs of the  
20 bullet fragment that you recovered?

21 A. Correct.

22 Q. Now we discussed it a little bit when reviewing your  
23 diagram, but I want to talk about trajectory. I am going  
24 back to 104. And you helped us prepare a mannequin head  
25 for this?

1 A. Yes.

2 Q. Would that help your testimony?

3 A. It certainly shows ---

4 MR. CORVEY: Your Honor, may I approach?

5 A. -- the distribution.

6 Q. And so from the A, B, and C shots that you mentioned  
7 on the left side of the head, those were sort of a  
8 downward horizontal trajectory?

9 A. Well -- all right, so first off, this is -- it was  
10 hard to get the holes in the right areas. So it might  
11 be off a little. Also this head is very tiny. It  
12 doesn't -- it is a wig head. So it doesn't exactly  
13 re-stipulate a human's head. But I think it demonstrates  
14 fairly well that you have your two - well, actually you  
15 are three and two of them are really close - entrance  
16 wounds.

17 And I have tried to diagram being right in front of  
18 the ear. They are headed -- it is hard to say whether it  
19 is going up or down. It is pretty much straight across  
20 and into the back a little.

21 I mean you can just think it is going -- it is  
22 entering right in front of the ear, and it is exiting  
23 right behind the ear. So that is slightly back -- angled  
24 in the slightly back direction.

25 And then this (pointing) is the one that stands out



1 as different than these three in that it is -- again as  
2 you can imagine, going in front -- or the inner part of  
3 the left eye and exiting the right scalp that you get  
4 that kind of angling.

5 Q. Now I know you mentioned in looking that there was  
6 your labels with A, B, C, and D; they weren't any  
7 indication of which shot was fired first; you can't know  
8 that?

9 A. Right. Correct.

10 Q. That notwithstanding what effects could a bullet  
11 have on an individual's I guess body posture if you were  
12 to take Entrance Wound D for example could that entrance  
13 wound of a bullet have the effect of pushing someone's  
14 head over so to speak?

15 A. Possibly.

16 Q. Or to the side?

17 A. It may have.

18 Q. It may have. Now we also talked about quite a bit  
19 of bruising. Now on referring back to State's 101, your  
20 diagram, you walked us through a number of those bruises.

21 You also have I believe on the thigh and on the  
22 outside of one of the hands some green bruising. Can you  
23 explain for the jury what differentiates those bruises  
24 from the blue bruises?

25 A. Well -- all right. So one of the things that I am

1 often asked is how long the bruise has been there. And  
2 the studies over and over and over again basically say  
3 you can't predict. It is just -- it is so variable based  
4 on skin color and depth of the bruise and the  
5 individual's health.

6 And I mean just think of bruises yourself. How long  
7 does it actually show -- take to show -- you know, for  
8 one to show up. Sometime it is real quick. Sometimes it  
9 takes a lot longer.

10 One thing they have shown as a bruise starts to  
11 break down and show that yellowish color that that  
12 indicates a certain number -- at least a certain number  
13 of hours. And I believe the numbers is 18. But I mean  
14 it is not a full day.

15 But it could be beyond that. Don't get me wrong.  
16 But it is at least a certain number of hours. You don't  
17 see the yellow then it may be younger and it may actually  
18 be older than that. It is just you can't predict.

19 So and when I was examining her there were two  
20 areas that had that yellowish coloration. Actually this  
21 one on the thigh the bruise had some yellow tinge to  
22 indicate that that bruise was -- had been there for at  
23 least 18 hours.

24 Q. Doctor Presnell, not to interrupt, but I will show  
25 you State's 109. It may help you demonstrate that.

1 A. I don't know if you can appreciate it, but right  
2 here (pointing) is the bruise. And this part right here  
3 (pointing) has a yellowish tinge to it. That is on her  
4 thigh.

5 And then also on the back of her right hand there is  
6 one area that it had some bruising. But also it looked  
7 like a little scratch had started to scab. And so the  
8 scab is going to -- indicated that it wasn't -- didn't  
9 just happen.

10 Q. I am showing you State's 108.

11 A. I think that picture is hard to appreciate that this  
12 is showing some scab. It will have to be my  
13 interpretation from having been there. But this is the  
14 area of bruising (pointing). And then there is some  
15 scabbing right here (pointing).

16 Q. And then going back to I guess the rest of the  
17 bruising with what you were saying, you know, -- I guess  
18 basically there is really no way to tell how old they are  
19 or when they occurred except that they had not started  
20 healing yet, being some indication of timeframe?

21 A. It may have started healing, but we can't see it.

22 Q. But we can't see it yet. So they certainly could  
23 have occurred, you know, given a timeframe 24 hours  
24 before she was killed or maybe even five minutes before  
25 she was killed; there is just really no way for us to

1 tell?

2 A. Correct.

3 Q. So just isn't. Now with some of these bruises  
4 though particularly the ones on her arms, could they have  
5 been consistent with being grabbed?

6 A. There are -- they have the rounded oval marks that  
7 certainly fingertips could have done that.

8 Q. And then just to differentiate between the healing  
9 bruises - although I agree something may be lost in the  
10 glare - State's 111. On her right arm?

11 A. Yeah, I don't actually see an autopsy number on that  
12 one. But it looks like this is going to be her right  
13 arm.

14 Q. And then State's 112 on the interior of her left  
15 arm?

16 A. So this is livor. This isn't any -- that is not  
17 bruising right there (pointing). But these marks here  
18 (pointing) are bruises.

19 Q. And so I guess that is what you would have been  
20 talking about in so far as they had oval structures that  
21 they could possibly be finger -- fingerprints ---

22 A. Yes.

23 Q. --- or tips, excuse me?

24 A. Possibly, yes.

25 Q. And then I think going back to State's 101 you

1 indicated a rather large bruise on her shin?

2 A. Yes, on the -- on her lower right shin -- or on the  
3 inside of her right shin.

4 Q. I am showing you State's 110.

5 A. So this -- her knee is up here (pointing). And her  
6 ankle is down here (pointing). And right here (pointing)  
7 is the injury.

8 Q. And not to be repetitive, but again we just really  
9 have no way of telling if that happened immediately  
10 before death or a day before; it is just merely is at  
11 least visibly showing signs of healing?

12 A. Right, I can't -- I can't -- I wouldn't be able to  
13 narrow that range down.

14 MR. CORVEY: Begged the court's indulgence, Your  
15 Honor.

16 I don't have any more questions, Dr. Presnell.  
17 Please answer any that Mr. Lizzy may have.

18 **CROSS-EXAMINATION BY MR. LIZZI OF DR. ERIN PRESNELL:**

19 Q. Dr. Presnell.

20 A. Yes.

21 Q. Let's start with the bruises. The one of -- the  
22 yellowing we don't know when they were; and obviously  
23 they didn't occur the night of the incident, correct?

24 A. Correct.

25 Q. Okay. And in your numerous autopsies - and bless

1 you, because I don't know how you can do it - you find  
2 random bruises on a lot of bodies?

3 A. I do.

4 Q. And in day-to-day life we bump into things  
5 especially as we get older we get bruising?

6 A. Yes, we do.

7 Q. And some of them come out oval, some of them come  
8 out in different shapes; but unless there is some other  
9 history that you are given directly with it you can't  
10 make a determination what they are from?

11 A. Correct. Usually a lot of times the autopsy  
12 findings are supportive of or refute a certain scenario,  
13 as opposed to say exactly what that was. Now a gunshot  
14 wound is obviously exactly what that was. But, yes, as  
15 far as interpretation a lot of times it depends on the  
16 context.

17 Q. And the blue bruises, the one you put on and you  
18 have labeled as blue, we don't know if those happened  
19 directly before the incident either, do we?

20 A. Correct.

21 Q. It could have happened 24 hours before that?

22 A. Yes.

23 Q. Okay. Within the first 24 hours we are not going to  
24 get any of the discoloration, correct?

25 A. It just depends on the bruise.

1 Q. Right. And the skin color?

2 A. Skin color, the depth of the bruise, the healthiness  
3 of the individual, if they have liver disease. I mean  
4 there are just so many variables it is unpredictable.

5 Q. And, you know, it also deals with the pigmentation  
6 in their skin and all of these other things, correct?

7 A. Absolutely.

8 Q. Now you are able to take and you look at the  
9 deceased and you are able to see the wounds that she has  
10 and as to the how the bullets passed through her,  
11 correct?

12 A. Yes.

13 Q. That is what the demonstration was?

14 A. Yes.

15 Q. But you weren't there so you don't know how her body  
16 was, where it was, or how those shots were administered  
17 at any given time; correct?

18 A. I was not there, correct.

19 Q. Right. So you don't know if she was sitting or  
20 laying or what at the time that any of those gunshots  
21 were fired?

22 A. The autopsy will not tell me that. Correct.

23 Q. And you can't determine that except as to the angle  
24 that it went -- the wound went into the body and the  
25 exit?

1 A. Yes, from the autopsy; right.

2 Q. Right. We do know that she was wearing glasses,  
3 from the autopsy; correct?

4 A. It looks like she had been, yes.

5 Q. And if they were broken glasses found on the scene,  
6 severed about the same place where the wound was, would  
7 that be conducive as to the what you are finding on  
8 Number 103 was with the ---

9 A. Where the sparing ---

10 Q. Yes.

11 A. Yes. I'm sorry.

12 Q. And I think you testified to this, but just to kind  
13 of make it clear, with stippling it is kind of case  
14 specific as to the type of gun and the type of ammo and  
15 the perfect world would be able to take that gun and that  
16 ammo and test fire it; correct?

17 A. Yes, that would be the ideal analysis.

18 Q. And so but you don't have that in front of you as it  
19 weren't presented with that?

20 A. Correct.

21 Q. Nothing further. Briefly, Your Honor.

22 **REDIRECT EXAMINATION BY MR. CORVEY OF DR. ERIN PRESNELL:**

23 Q. Dr. Presnell, in and talking about stippling, you  
24 know, we discussed one injury to her hand, I believe a  
25 wound that you indicated you were able to observe some



1 scabbing in. Did you notice any stippling on her hands?

2 A. No, I did not.

3 Q. Any -- despite the one -- or notwithstanding the one  
4 we discussed, any other injuries to her hand?

5 A. No.

6 Q. Now Mr. Lizzi was asking you a little bit about the  
7 results of your autopsy and how you are obviously not  
8 doing the autopsy in the place where the murder occurred  
9 so your findings are limited to I guess what you are able  
10 to observe in the autopsy in so far as the pathological  
11 results of your findings.

12 But in this scenario if given the trajectory of the  
13 wounds A, B, and C, to the side of her head, if three  
14 rounds were found in a mattress or a pillow directly  
15 beneath her would that be -- do you think that might be  
16 consistent with three rounds being fired from an upward  
17 angle?

18 A. Yes, especially if they were the three intact  
19 bullets. Because that -- they -- the ones -- the gunshot  
20 wound to the front of her left ear they completely  
21 exited.

22 So if there's three type bullets in the mattress  
23 then I suspect her head was angled that way and the  
24 bullets would have come from above.

25 Q. And Mr. Lizzie also asked you about random bruises

1 showing up on people. And of course I think we have all  
2 seen that. We get bumps and bruises. Is it often that  
3 you find murder victims with - and forgive me, I forget  
4 the exact number - of bruises on them?

5 MR. LIZZI: Objection, Your Honor.

6 THE COURT: I sustain. That is not -- we are  
7 talking about this case, not other cases.

8 MR. CORVEY: No further questions, Your Honor.

9 THE COURT: Thank you.

10 Doctor, thank you for coming.

11 THE WITNESS: Yes. Absolutely.

12 THE COURT: We will let you go out and get in that  
13 nasty traffic.

14 (WHEREUPON, witness excused.)

15 THE COURT: All right. Any additional witnesses?

16 MR. KIDD: The State rests, Your Honor.

17 THE COURT: All right.

18 THE COURT: Mr. Foreman, ladies and gentlemen, 9:30  
19 in the morning suit?

20 Can we get hot coffee, Mr. Clerk, and some other  
21 refreshments? Make sure they get something in their --  
22 in the morning.

23 All right. We will start right at 9:30. It looks  
24 like we have a little problem this morning with parking,  
25 so you may want to leave just a tad earlier so we can

1 avoid that. I think if you put that juror sticker in  
2 your window and mash the button they will -- you can tell  
3 them you are a juror and they will come around and get  
4 you on up quicker. So if you have a problem let's do  
5 that.

6 I can't guarantee it, but I would anticipate that we  
7 will finish the testimony mid morning. And what we will  
8 do if that is the case then obviously what would be left  
9 is the arguments and charge. We will order lunch in,  
10 including for me as well so we don't have to have a whole  
11 lot of down time so you can deliberate while you are  
12 eating or be close to that point.

13 I am trying to work a little bit around the  
14 uncertainty of the storm that is brewing. I am not sure  
15 if it is going to get this far down. Some tracks say  
16 yes. Some say no. But we are trying to push it a little  
17 bit on that angle. So please don't think I am rushing  
18 everybody, but I've got that in mind as well.

19 Please have a wonderful evening. Once again don't  
20 deliberate. Don't talk about the case. Don't do an  
21 independent research. Thank you.

22 Everyone else remained seated.

23 (WHEREUPON, jury exits 10/9/8, 5:16 p.m.)

24 THE COURT: All right. We are going to start the  
25 trial at 9:30 in the morning. I would ask that the

1 lawyers and the defendant be here at 9:00 so we can do  
2 motions at 9:00. We can do my questing of your client  
3 about taking the witness stand and clean up any other  
4 things we need to do in this. And the jury will be ready  
5 at 9:30. Is that fair for everybody?

6 MR. KIDD: Yes, sir.

7 MR. CORVEY: Yes, Your Honor.

8 THE COURT: All right. Anything else for the record  
9 before we break then on behalf of the State?

10 MR. KIDD: Nothing from the State, Judge. If I  
11 could just get with the court reporter to verify all of  
12 our exhibits.

13 THE COURT REPORTER: (Nods head.)

14 THE COURT: She will be glad to.

15 MR. LIZZI: Nothing from the defense, Your Honor.

16 THE COURT: Thank you. Y'all have a pleasant  
17 evening.

18 (WHEREUPON, recess for the evening 10/9/2018, 5:18 p.m.)

19 (WHEREUPON, 10/10/18, resume trial 9:18 a.m.)

20 THE COURT: All right. Mr. Lizzi, any motions?

21 MR. LIZZI: Motion for a directed verdict, Your  
22 Honor. We believe they failed to prove the elements of  
23 murder, any evidence of intent, any evidence of malice.  
24 The record is void of any evidence whatsoever as to him  
25 intending to take her life and that there was any malice

1 or aforethought involved in the process.

2       They have proved that he shot the gun, the evidence  
3 being that on the tape that he accidentally discharged  
4 the gun. But the State has failed to prove that the  
5 crucial elements of the charge of murder have been met  
6 and therefore -- and as well as the charge of having a  
7 weapon in the commission of a violent crime and they  
8 failed to meet the murder, the threshold, and failed to  
9 show malice aforethought, and that they would fail upon  
10 the basis of the weapon in a violent crime.

11       MR. KIDD: Thank you, Your Honor. In viewing the  
12 evidence in the light most favorable to the State I think  
13 there is an abundance of evidence as to each element of  
14 murder.

15       Specifically, as Mr. Lizzi indicated, I don't think  
16 there is any question that the defendant is the one that  
17 discharged the firearm. And you can infer malice through  
18 the physical evidence on the scene.

19       We had witnesses testify as to the amount of trigger  
20 pull that would be -- distinct trigger pulls that would  
21 have caused the four shots to the victim's head.

22       There was evidence that she was lying in bed with  
23 her head on the pillow at the time that she was shot. I  
24 think that that is a multitude of evidence in which you  
25 can infer malice to support the charge of murder and

1   thereby simultaneously supporting the charge of  
2   possession of a weapon during the commission of a violent  
3   crime. Most certainly enough to submit it to a jury. So  
4   we respectfully request that the defense motion be  
5   denied.

6           THE COURT: Well, obviously at this stage of the  
7   game I am concerned about the existence of the evidence,  
8   not the weight of the evidence.

9           If the jury believes that the three shots behind the  
10   ear and one shot between the eyes or in the eye were not  
11   from an accident obviously it would support a verdict of  
12   murder, so I am going to -- it is a jury issue. I will  
13   respectfully deny your motion. Thank you.

14          MR. LIZZI: Thank you, Your Honor.

15          THE COURT: Have you discussed with your client his  
16   right to take the witness stand?

17          MR. LIZZI: I have, Your Honor.

18          THE COURT: What is his decision?

19          MR. LIZZI: He has indicated this morning that he  
20   does not wish to take the stand.

21          THE COURT: Okay.

22          Mr. Gule, if you would stand for me and raise your  
23   right hand.

24   (WHEREUPON, Mr. Gule was duly sworn.)

25          THE COURT: Obviously we have reached the stage of

1 this trial now where you can present your side of the  
2 story. Some people call it your defense.

3 MR. GULE: Right.

4 THE COURT: In doing that obviously you have the  
5 right to call witnesses to testify on your behalf about  
6 relevant matters. You can introduce relevant exhibits.  
7 And you have the right obviously to take the witness  
8 stand.

9 MR. GULE: Right.

10 THE COURT: If you do, obviously you will be subject  
11 to the same rules that everyone else is, ---

12 MR. GULE: Correct.

13 THE COURT: --- be cross-examined on all the  
14 relevant issues. And obviously the solicitor can ask  
15 some very probing questions involving this factual  
16 situation ---

17 MR. GULE: Correct.

18 THE COURT: --- as long as it is relevant.

19 Does he have a record by which he could be  
20 impeached?

21 MR. KIDD: None that I would impeach him with, no,  
22 sir.

23 THE COURT: All right. So you are going to be  
24 subject to pretty heavy cross-examination. On the other  
25 side of the coin under the South Carolina constitution

1 and the United States constitution you have the right, as  
2 we say, to remain silent.

3 MR. GULE: Correct.

4 THE COURT: You have no burden to prove anything.  
5 This burden of proof is on the State. So you don't have  
6 to prove anything.

7 MR. GULE: Correct.

8 THE COURT: You can exercise your right to remain  
9 silent. If you do that I will tell the jury, instruct  
10 the jury, charge the jury, that they cannot hold the fact  
11 that you did not testify against you in any manner.

12 And in fact I would instruct them that they couldn't  
13 even consider the fact that you didn't testify when they  
14 deliberate your guilt or innocence.

15 MR. GULE: Okay.

16 THE COURT: I would instruct the foreperson that if  
17 anybody brings that up they are to immediately stop and  
18 bring it to my attention. Because you have the absolute  
19 right to remain silent and nothing can be inferred from  
20 the fact that you did not testify.

21 Now do you understand your right to testify, and do  
22 you understand your right to remain silent?

23 MR. GULE: Yes, sir.

24 THE COURT: In the end you can discuss it with your  
25 lawyer and anyone else. But in the end it is your



1 decision.

2 MR. GULE: All right.

3 THE COURT: And I will need to know, number one, do  
4 you have any questions about it?

5 MR. GULE: No, sir.

6 THE COURT: Understand it?

7 MR. GULE: Yes, sir.

8 THE COURT: And had ample opportunity to discuss it  
9 with your lawyer?

10 MR. GULE: Yes, sir.

11 THE COURT: And you have decided not to testify?

12 MR. GULE: Correct.

13 THE COURT: By making that decision not to testify  
14 when it comes time for me to instruct the jury you will  
15 hear me give them that instruction about your failure to  
16 testify, it can't be used against you in any manner.

17 MR. GULE: Correct.

18 THE COURT: Fair enough?

19 MR. GULE: Yes, sir.

20 THE COURT: Any other questions?

21 MR. GULE: Will I get a chance to apologize to the  
22 family?

23 THE COURT: Not during the trial if you don't  
24 testify.

25 MR. GULE: Okay.

1           THE COURT: If you are found guilty obviously you  
2 will be able to apologize. And I assume if you are found  
3 not guilty if you wish to apologize you can.

4           MR. GULE: Okay.

5           THE COURT: Is that correct?

6           MR. LIZZI: Yes, Your Honor.

7           THE COURT: All right. Anything else we need to do  
8 before I bring the jury in?

9           MR. LIZZI: No, Your Honor. If I could just have  
10 two seconds with him.

11          THE COURT: How many witnesses do you have?

12          MR. LIZZI: Possibly two, but that is what I want to  
13 discuss with him.

14          THE COURT: Sure. And I noticed one young man left  
15 the courtroom. But make sure -- where are my bailiffs?  
16 Make sure he has got his shirt tail tucked in. And I  
17 don't do that for fashion purposes; I do that for  
18 security purposes.

19          So I guess he was a witness. I don't know what he  
20 is.

21          MR. LIZZI: Yes, Your Honor.

22          THE COURT: All right, sir. I am just going to sit  
23 right here. Do you need to go back there with him?

24          MR. LIZZI: Yes, Your Honor.

25 (WHEREUPON, break was had 10/10/18, 9:26 a.m.)

1 (WHEREUPON, resume 10/10/18, 9:32 a.m.)

2 MR. KIDD: Your Honor, and I want to make sure this  
3 is on the record. I have been told by my bosses to bring  
4 something up with regard to me calling the defense expert  
5 witness yesterday, Mr. Hanna ---

6 THE COURT: You didn't call him as an expert.

7 MR. KIDD: I hear you.

8 THE COURT: You called him as a fact witness.

9 MR. KIDD: I agree. And I don't think it is an  
10 issue, but just for an abundance of caution. I think  
11 there is case law that prevents me from calling expert  
12 witness that were retained by the defense without undue  
13 hardship under some State v. Jones.

14 I believe he was a fact witness. I believe it is  
15 not applicable. But I do want to make the court aware of  
16 it. And I don't want to ...

17 THE COURT: where to look?

18 MR. KIDD: It is Heading 01. It is also the first  
19 section of the discussion of the case.

20 THE COURT: Do you want to take a few minutes to  
21 look at it, as well as let me look at it?

22 (WHEREUPON, counselors confer.)

23 THE COURT: State v. Jones was tried at least three  
24 times, was it not? That was Judge Westbrook's case; Judge  
25 Jefferson tried it; Lexington?

1 MR. KIDD: I believe that is correct, Your Honor.

2 THE COURT: That was the footprint impression if I  
3 remember correctly.

4 MR. KIDD: That is correct.

5 THE COURT: All right.

6 (WHEREUPON, pause for review.)

7 (WHEREUPON, resume trial.)

8 THE COURT: All right. Mr. Lizzi, anything you want  
9 to tell me on this?

10 MR. LIZZI: Yes, Your Honor. At the time that the  
11 witness was called, Dale Hanna, the expert for the  
12 defense, we objected.

13 And basically -- basically the State did not set  
14 forth any compelling reason why they would have a  
15 substantial hardship to call that witness. And the State  
16 had its own witness. The fact that their witness did not  
17 testify as they hoped he would testify would not be a  
18 compelling witness -- compelling reason for the State.  
19 And such was not enumerated.

20 The fact that this witness's testimony was so  
21 crucial in the State's case as to the proof of the  
22 functioning of the weapon we would make a motion for a  
23 mistrial at this time, Your Honor.

24 MR. KIDD: A couple of points. First, I think we  
25 can distinguish this case from State v. Jones in a number

1 of ways. The first being that we did not elicit any  
2 opinion testimony whatsoever from the witness.

3 The second being that the exact same testimony was  
4 already in evidence through Detective Bailey who was  
5 present along with me and defense counsel at the firing  
6 range when the pistol was fired. So nothing that this  
7 witness testified about was protected or privileged in  
8 any way.

9 The testimony was already in through Detective  
10 Bailey, but just because his finger wasn't on the trigger  
11 I thought it more important to put in this witness.  
12 Purely a fact witness because he physically handled --  
13 and the chain of custody on a piece of evidence that is  
14 in this case.

15 THE COURT: Well, the question wouldn't be coming up  
16 but for the fact that the defense had engaged him to I  
17 guess conduct a test on the gun.

18 And in doing so sort of like in a civil case where  
19 you have got a products liability case where they do  
20 testing on the product, the defense lawyer is there, the  
21 plaintiff's lawyer is there, the clients were there, and  
22 the result of that test in almost every case is  
23 admissible because it is simply the result of the test.

24 It is not akin to that expert taking that gun by  
25 himself, doing certain things, rendering an opinion to

1 the defense counsel that he can either use or not use.

2 This is simply like a police officer or highway  
3 patrolman going to the scene and testifying where the  
4 gouge marks are, where the -- where the glass is, where  
5 the skid marks are, but not testifying about speed or  
6 causation. Simply what he saw.

7 This is a little different in that the witness was  
8 initially engaged by the defendant. But certainly did  
9 not offer any opinions and only testified about what he  
10 did at a test where everyone was present. So it is a  
11 little -- it is a little distinguishable there but ---

12 MR. KIDD: In addition, Your Honor, I do have very  
13 articulable and real undue hardship. Jamie Green, my  
14 expert, had collapsed lungs and was literally out of the  
15 office for three months prior to trial. I was unable to  
16 meet with him, talk with him, unable to run tests with  
17 him with the firearm.

18 His first day back at work was Monday of this week.  
19 So literally my expert with the gun was unable to be  
20 available to perform any additional testing that I would  
21 have liked to have conducted.

22 Because this other expert was engaged and because I  
23 was present and the firearm was tested and found to be in  
24 perfect functioning order I was not of the opinion that  
25 the functionality of the firearm was going to be in

1 question during this trial. And because it was then  
2 brought up I was put in a very difficult situation to  
3 support the functionality of a firearm which I thought  
4 was uncontroverted. So I do believe that I did face  
5 undue hardship in compelling this witness to testify.

6 Furthermore, I think the intent behind the case is  
7 to prevent me from subverting rules of discovery and from  
8 compelling reports and opinions from experts and making  
9 sure that we don't scoop up all of the available experts  
10 in a scenario. And that is just not the factual  
11 situation that we have in getting this witness to  
12 testify.

13 I don't believe it is denying the defendant of his  
14 right to effective counsel. This is merely a test firing  
15 the gun, that it was not opinion evidence, by a witness  
16 who was engaged by the defense but didn't testify about  
17 anything that wasn't done in everybody's presence.

18 And, furthermore, if we do feel like I have  
19 overstepped my bounds I would surely think a curative  
20 instruction at the most could -- could rectify the  
21 situation more so than ---

22 THE COURT: For the jury to disregard the testimony  
23 of that witness?

24 MR. KIDD: I mean I don't think that is appropriate.  
25 But I mean before a mistrial would be granted I would

1 certainly think that would be preferred.

2 MR. LIZZI: Your Honor, the fact that the prosecutor  
3 went at length inquiring as to witness's skills,  
4 knowledge, professional abilities, and went at length as  
5 to disguise almost the qualification of an expert, the  
6 same questioning that would go to an expert witness,  
7 knowing that this witness was retained as an expert, and  
8 then eliciting that testimony.

9 Further they -- they subpoenaed this witness a week  
10 before they knew their witness deficiencies and had him  
11 under subpoena and not listed on their witness list.  
12 And -- and basically surprised at trial that -- of  
13 calling him under subpoena to this court.

14 THE COURT: Anything else?

15 MR. LIZZI: Yes, sir, just except, Your Honor, that  
16 I believe that a curative instruction would not suffice  
17 especially when he has testified as to such a crucial  
18 crux in this case.

19 THE COURT: Well, one thing my analysis is that what  
20 he testified to is certainly not any invasion of the  
21 attorney-client or work-product situation -- I mean what  
22 he was doing is conducting a test that everybody was  
23 there to see. And he testified about that.

24 It is not like he went out there by himself and did  
25 some stuff and issued a report to you and then they are



1 trying to get into that report that was issued to you.  
2 Which is sort of what is being discussed in these cases.

3 It does give me some concern, however. And I  
4 applaud the State for bringing it to the court's  
5 attention this morning. And obviously whether or not I  
6 grant a mistrial is a huge decision in this case.

7 But these decisions cited here in State v. Jones  
8 talk about prosecutorial discovery of the expert's  
9 findings and opinions. And I don't see any case dealing  
10 with what we have here factually.

11 I think you have made a complete record. I am going  
12 to deny the motion for a mistrial and find that there has  
13 been no prosecutorial misconduct or that the way this  
14 witness was used does not violate the holdings in  
15 State v. Jones.

16 That is my decision. Obviously I may be wrong and  
17 they will -- five people in Columbia will tell us whether  
18 we are or not if we -- may not get to that point. I  
19 don't know.

20 MR. KIDD: Thank you, Your Honor.

21 THE COURT: All right. Bring the jury in, please.  
22 (WHEREUPON, jury enters 10/10/18, 9:49 a.m.)

23 THE COURT: Good morning, ladies and gentlemen. I  
24 know you waited a little bit longer than we anticipated.  
25 But we are down just to two witnesses. So we are going

1 to go ahead and complete the testimony. And then we will  
2 be in a position to do the final arguments and the  
3 charge.

4 So Mr. Lizzi, you may call your first witness.

5 MR. LIZZI: May it please the court. Antonio  
6 Drayton.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your name for the record  
9 and spell your last name, please.

10 THE WITNESS: Antonio Drayton. D-R-A-Y-T-O-N.

11 THE COURT: Mr. Drayton, normally I have to tell  
12 witnesses to speak up. But you come across strong. Back  
13 off a little bit just a tad.

14 THE WITNESS: Okay.

15 **DIRECT EXAMINATION BY MR. LIZZI OF ANTONIO DRAYTON:**

16 Q. Good morning, Mr. Drayton.

17 A. Good morning.

18 Q. Mr. Drayton, what kind of work do you do?

19 A. I operate heavy equipment down at the South Carolina  
20 State Ports Authority.

21 Q. Okay. And do you know Willie Gule?

22 A. Yes, sir.

23 Q. And did you know his girlfriend at the time ---

24 A. Yes, sir.

25 Q. --- Pam?

1 A. Yes, sir.

2 Q. And have you been to their house?

3 A. Yes, sir.

4 Q. Tell me what kind of things you went to their house  
5 for.

6 A. Just general things like sometimes we'd all get  
7 together and cook on the grill. Sometimes we'd play  
8 video games or I would go by and help him out in the  
9 yard. Just friendly things I'd, you know, stick around  
10 and do.

11 Q. How long have you known Willie?

12 A. I've known him for about five to six years.

13 Q. Okay. Where did you first meet him at?

14 A. I was working a job on the Old Naval Base. And we  
15 were both operating heavy equipment. And we worked -- we  
16 did a lot of work together. So we hung out very often  
17 after work.

18 Q. And so he invited you into his home?

19 A. Yes.

20 Q. Did you observe him and Pam's relationship when you  
21 were in the house?

22 A. Yes, sir.

23 Q. How many times do you think you saw them all  
24 together?

25 A. I would say maybe twice or three times out of the

1 week maybe.

2 Q. Okay. So you visited there fairly often?

3 A. Yes, sir.

4 Q. Okay. And then he -- who went down to the Port  
5 first, you or him?

6 A. We worked together on the Old Naval Base.

7 Q. Right.

8 A. I may have been their first on the Port.

9 Q. Okay. And tell me what you observed, what kind of  
10 relationship you saw between them.

11 A. It was always a good, happy, healthy from what I  
12 observed. Never seen any arguments or, you know,  
13 backlashing at each other and stuff like that. It was  
14 only more of a happy thing is what I observed.

15 Q. And did you see their child with them?

16 A. Yes, sir.

17 Q. And now are you married?

18 A. No, sir.

19 Q. And do you have children?

20 A. Yes, sir.

21 Q. And how many children do you have?

22 A. I have two girls.

23 Q. How did -- how do you think the child was in their  
24 little family unit?

25 A. Say again.

1 Q. How do you think their child was in their little  
2 family unit?

3 MR. KIDD: Objection, Judge. Relevance.

4 THE COURT: I am going to allow it.

5 A. It was -- it was a normal family. They did a lot of  
6 things together with the child, as far as I knew.

7 Q. And you said you went over and helped with the yard  
8 work and things?

9 A. Uh-huh.

10 Q. Did he keep a good yard?

11 A. Oh, yeah.

12 Q. And what kind of guy do you think of him when you  
13 think of Willie?

14 MR. KIDD: Objection.

15 A. He is a fairly fair person.

16 MR. KIDD: Objection.

17 THE COURT: Hold on. What is the objection? Hold  
18 on.

19 MR. KIDD: Impermissible character evidence.

20 THE COURT: I am going to allow that.

21 Q. Go ahead. You can answer.

22 A. He is a fair person. He gets along. He is a people  
23 person. We never had any altercations or disagreements.  
24 He is a good person in -- in my eyes he is a good person.  
25 You know, good people make mistakes as well.

1 Q. Thank you for coming. And answer any question the  
2 defense may have.

3 A. Okay.

4 Q. I mean the State.

5 THE COURT: Any questions?

6 MR. KIDD: May we approach.

7 (WHEREUPON, bench conference was had, 10/10/18, 9:57  
8 a.m.)

9 (WHEREUPON, break from conference.)

10 (WHEREUPON, resume bench conference 10/10/18, 10:02 a.m.)

11 THE COURT: Y'all bear with us just a second longer.

12 (WHEREUPON, break was had awaiting investigator.)

13 (WHEREUPON, bench conference resumed 10/10/18, 10:08  
14 a.m.)

15 THE COURT: Mr. Drayton, is your birth date  
16 [REDACTED], 1989?

17 MR. DRAYTON: Yes, sir.

18 **CROSS-EXAMINATION BY MR. KIDD OF ANTONIO DRAYTON:**

19 Q. Mr. Drayton, I am sorry for the delay. Just last  
20 year you were convicted of criminal domestic violence in  
21 the second degree; is that correct?

22 A. Say again.

23 Q. In 2017 you were convicted of criminal domestic  
24 violence in the second degree; is that correct?

25 A. Yes, sir.

1 Q. In 2014 you were convicted of burglary in the second  
2 degree; is that correct?

3 A. Yes, sir.

4 Q. 2013 you got another criminal domestic violence  
5 charge and assault and battery third-degree charge you  
6 were convicted of; is that correct?

7 A. Yes, sir.

8 MR. KIDD: Your Honor, no further questions for this  
9 witness.

10 **REDIRECT EXAMINATION BY MR. LIZZI OF ANTONIO DRAYTON:**

11 Q. Does any of that change your testimony or the fact  
12 that what you said was truthful?

13 A. No, sir, none of that changed any of my testimony.  
14 That is my past.

15 MR. LIZZI: Nothing further.

16 THE COURT: All right. You may step down.

17 Next witness.

18 MR. LIZZI: Leslie Snyder.

19 (WHEREUPON, the witness was duly sworn.)

20 THE CLERK: Please state your name and spell your  
21 last name for the record, please.

22 THE WITNESS: Leslie Snyder. S-N-Y-D-E-R.

23 MR. LIZZI: May it please the court.

24 **DIRECT EXAMINATION BY MR. LIZZI OF LESLIE SNYDER:**

25 Q. Good morning, Ms. Snyder.

1 A. Good morning.

2 Q. Ms. Snyder, where do you live?

3 A. At [REDACTED] -- my street address?

4 Q. Yes.

5 A. [REDACTED] in West Ashley.

6 Q. Okay. And how long have you lived there?

7 A. Eighteen years.

8 Q. And what kind of work did you -- do you do now?

9 A. Well, I am retired now. I refinish furniture.

10 Q. And do you do that out of your home?

11 A. Yes.

12 Q. And what kind of work did you do before?

13 A. I was a paralegal for a number of years. And I was

14 in Washington DC and owned a corporate gift basket

15 business for about ten years.

16 Q. And so you live on [REDACTED]?

17 A. Correct.

18 Q. And where is that in relations to the home that Ms.

19 Pamela Burgess and Mr. William Gule lived at?

20 A. Directly across the street.

21 Q. Okay. About -- at the time that Ms. Burgess died

22 about how long had they lived there?

23 A. Several years. People on our block tend to stay for

24 two or three years and then move on. Sometimes a little

25 bit longer.



1 Q. And during that time did you see the residence of  
2 their home very often; did you see Mr. Gule and Ms.  
3 Burgess?

4 A. Yes.

5 Q. And did you interact with them?

6 A. I frequently did with William. I didn't -- I would  
7 waive at Pamela, but we didn't speak much.

8 Q. When you interacted with William what did you  
9 observe; what type of person was he?

10 A. He was soft spoken, very respectful, seemed ---

11 MR. KIDD: Objection, Judge.

12 A. --- very ---

13 THE COURT: Hold on a second.

14 THE WITNESS: Pardon me?

15 MR. KIDD: Relevance. Character evidence.

16 THE COURT: I will allow it.

17 Go ahead.

18 Q. Go ahead. Was very patient with his young boy and a  
19 well-trained dog. Took really good care of the property.  
20 Did a lot of repairs there.

21 Q. Did you ever see any disturbances or problems over  
22 there when they were living there?

23 A. Never.

24 Q. And did you ever see the police coming over there?

25 A. Never. The last day I did.

1 Q. And up until that last day how often were you seeing  
2 Mr. Gule's car there?

3 A. Well, I usually parked in the back of my house. But  
4 when I was in the front I would see him several times a  
5 week.

6 Q. Okay. Did you ever observe anything out of the  
7 normal?

8 A. No. No, he spent a lot of time with his son and his  
9 dog in the yard, working in the yard. And we talked  
10 about different projects that he is working on there.

11 Q. Did you hear any unusual noises that day?

12 A. No.

13 Q. What is the only noise that you ever used to hear  
14 from over at their house?

15 A. Never heard any noise. The dog was really well  
16 behaved. Never left that property. I know that they had  
17 friends come over. I would see them sitting on the front  
18 porch talking. We live across the street from a park and  
19 I would see him going over with his son -- their son to  
20 the park.

21 Q. Thank you. And please answer any questions that the  
22 State may have.

23 THE COURT: Mr. Kidd.

24 **CROSS-EXAMINATION BY MR. KIDD OF LESLIE SNYDER:**

25 Q. Did you hear any vehicle alarms or anything like

1 that going off that night, the night before she ...?

2 A. Well, it happens -- on all three sides -- you know,  
3 car alarms will occasionally go off. I don't remember  
4 any specific.

5 Q. Do you remember speaking with the police about 9:30  
6 in the morning on August the 5th, 2015?

7 A. I do.

8 Q. Do you remember telling them at about one o'clock  
9 and about three o'clock in the morning car sensors going  
10 off?

11 A. I may have. I was just -- I was brought to the  
12 front of the house. My dog was barking and I opened the  
13 front door and there were reporters all over my yard,  
14 coroner's truck, police cars. And I was just kind of  
15 stunned by what was going on.

16 Q. Sure.

17 A. But I remember them asking me questions. But  
18 nothing that would have I think that -- think anything  
19 had gone on, anything had happened.

20 Q. But do you remember saying -- I mean do you remember  
21 that at all; do you have any recollection of that?

22 A. I didn't. No. It was just kind of a shocking  
23 morning for me. I don't ---

24 Q. So if you had said that to them you think you were  
25 mistaken or do you think that ---

1 A. No, it might have. Because there were a couple of  
2 cars on our street where in the middle of the night the  
3 alarms would go off. And in fact someone at one of the  
4 other houses it happened on a regular basis and I said to  
5 the owner of the car can -- is there anything you can do  
6 to get it fixed. And he say I am trying.

7 Q. How far from their residence did you reside?

8 A. Well, directly across the street.

9 Q. Directly across the street?

10 A. Yeah.

11 Q. So just ---

12 A. It is a very narrow two-lane street. And my house  
13 faced theirs. They were in a duplex, and I faced their  
14 house.

15 Q. Now that night do you know if the defendant was over  
16 at the house that night?

17 A. I do not know. It was -- I don't go out at night  
18 much.

19 MR. KIDD: I have no further questions.

20 MR. LIZZI: Nothing further, Your Honor.

21 THE COURT: You may step down. Next witness.

22 MR. LIZZI: Defense rests.

23 THE COURT: Mr. Foreman, ladies and gentlemen, that  
24 concludes the defendant presentation. Anything in reply  
25 by the State?

1 MR. KIDD: No, Your Honor.

2 THE COURT: Ladies and gentlemen, that concludes all  
3 of the testimony in the trial of the case. We are now at  
4 the stage of the game, stage of the case, where final  
5 arguments will be made and then I will instruct or charge  
6 you on the law.

7 I need about ten minutes so everybody can stretch  
8 their legs. And then we will come back. What time is  
9 it, ten o'clock?

10 THE CLERK: 10:18.

11 THE COURT: I suspect by the time we argue and  
12 charge it will be a little after 11:00 before you get the  
13 case. I am going to go ahead and order you some -- I  
14 understand y'all have placed an order. So let's get it  
15 here so you can have it while you deliberate. Is that  
16 fair? Chinese?

17 Y'all step back in the jury room. Let me spend a  
18 few minutes with the lawyers and then we will get started  
19 back.

20 (WHEREUPON, jury exits courtroom 10/10/18, 10:21 a.m.)

21 THE COURT: Any motions by the defendant?

22 MR. LIZZI: Renew my motion, prior motion.

23 THE COURT: All right, so based on the same  
24 reasoning as before. I will send it to the jury.

25 All right. As far as jury charges any particular

1 request that you want? I am going to charge murder,  
2 possession of a weapon during the commission of a violent  
3 crime. Two separate indictments. Two separate verdicts.  
4 I will charge in addition to my normal charges,  
5 expert witness charge, failure of the defendant to  
6 testify, criminal intent, record of a witness for  
7 impeachment purposes, accidents. And anything else y'all  
8 want besides presumption of innocence, reasonable doubt,  
9 credibility of witnesses, duty of judge and jury;  
10 anything by the State?

11 MR. KIDD: No, Your Honor.

12 THE COURT: By the defendant?

13 MR. LIZZI: Your Honor, we would request a charge of  
14 involuntary manslaughter.

15 THE COURT: Involuntary?

16 What say the State?

17 MR. KIDD: I don't believe there to be any evidence  
18 on the record of involuntary for sure.

19 THE COURT: I don't see where there is any record of  
20 any evidence of that. I mean it is either strictly the  
21 defense of accident or -- and then they have got to  
22 decide if it is not an accident whether or not it is with  
23 malice aforethought. And it seems to me it is all or  
24 none.

25 MR. LIZZI: We would also ask for a charge of

1 voluntary manslaughter, Your Honor.

2 THE COURT: The State's position?

3 MR. KIDD: Additionally I don't believe there is any  
4 evidence on the record, especially heat of passion or  
5 losing his cool or any evidence of a fight.

6 The only evidence in the record is the 911 call in  
7 which the defendant said we got into a tussle and I  
8 accidentally shot her. That is the only evidence in the  
9 record that could ever be construed -- and I don't think  
10 that rises to a level to warrant a voluntary manslaughter  
11 charge.

12 MR. LIZZI: And, Your Honor, I believe there is  
13 evidence as to the State -- the State putting on the  
14 testimony as to the fresh bruising, the State putting on  
15 the testimony of just prior to the action of the fighting  
16 in the relationship.

17 I think the volatile relationship is one of the  
18 factors that can be taken into account. And there is  
19 testimony by two of their witnesses that involves a  
20 relationship between the parties, coupled with the  
21 bruising, coupled with my client on 911 tape saying that  
22 there was a tussle or a struggle prior to her being shot.

23 I think that that would be a question for the jury  
24 as to those facts and the charge would be warranted.

25 THE COURT: What say the State?

1           MR. KIDD: Judge, as I indicated, I don't think --  
2 you know, I realize it is a low bar to charge. You know,  
3 it is an any evidence standard. But, you know, voluntary  
4 manslaughter is a pretty specific crime. It is a heat of  
5 passion, losing one's cool. There is no evidence that he  
6 lost his cool or was in a fight to the extent that he was  
7 hit or he was injured.

8           You know, the only injury on him is a miniscule  
9 scratch on his hand. I don't believe there is sufficient  
10 evidence in the record to warrant the charge of voluntary  
11 manslaughter.

12          THE COURT: All right. I find from my review of the  
13 record and the evidence presented that there has been no  
14 evidence that this death resulted in sudden heat of  
15 passion with any type of legal provocation.

16          I think it is either a murder case or the defense of  
17 accident will apply. And I so rule.

18          Anything else, gentlemen?

19          MR. KIDD: None from the State.

20          MR. LIZZI: Nothing from the defendant, Your Honor.

21          THE COURT: All right. Let's take a few minutes so  
22 you can stretch your legs, use the restroom.

23          We will come back -- I require the State to open in  
24 full followed by the defendant reply as to the defendant.

25          Let me see y'all back here just a second before you



1 stretch your legs. We will take about a ten-minute  
2 break.

3 (WHEREUPON, break was had 10/10/18, 10:26 a.m.)

4 (WHEREUPON, resume 10/10/18, 10:35 a.m.)

5 THE COURT: All right. Anything for the record  
6 before we bring the jury in for the final arguments?

7 MR. KIDD: Nothing from State, Judge.

8 MR. LIZZI: Nothing from the defense, Your Honor.

9 (WHEREUPON, jury enters courtroom 10/10/18, 10:37 a.m.)

10 THE COURT: All right. Ladies and gentlemen of the  
11 jury panel, we are now going to hear the final arguments.  
12 As I have told you, the final arguments like opening  
13 statements it is not evidence in the case.

14 Obviously we have heard all of the evidence from  
15 which you will make your decision. The lawyers will be  
16 arguing that evidence in the light most favorable to  
17 their position, but their argument is not evidence. You  
18 have already heard the evidence.

19 The way that works is now the State because they  
20 have the burden of proof will go first. They will open  
21 in full followed by the defendant. And then the State is  
22 allowed to reply to the defendant's argument.

23 Once their arguments have been completed then I will  
24 charge or instruct you on the propositions of law that  
25 deal with this case. And then we will be in a position

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1 to start your deliberation. So please pay close  
2 attention.

3 Mr. Solicitor.

4 MR. KIDD: Thank you, Your Honor. May it please the  
5 court.

6 **CLOSING BY MR. KIDD:**

7 Ladies and gentlemen, this is my opportunity to give  
8 you my closing summation of the case. When I am finished  
9 you will hear from Mr. Lizzi and then I will have one  
10 more opportunity to address you in reply.

11 But as I told you in my opening statement the issue  
12 before you is relatively narrow. The question that you  
13 have is is the shooting of the mother of your child while  
14 she lays in bed, four times in the head, is that murder.

15 And as ridiculous as that question sounds I mean  
16 that is the question that you have in front of you, is  
17 that murder. And when we come to this courtroom we don't  
18 leave our common sense at the door.

19 You know, there is quote by Voltaire that I think is  
20 specifically applicable. It says to the living we owe  
21 respect, to the dead we owe only the truth. And that's  
22 what this process is. You know, we show respect to the  
23 families. Of both sides. We show respect to the  
24 defendant, the court, to the process. That is what this  
25 is, it is a process.

1 But to Pamela Burgess we owe a true verdict. We owe  
2 the truth in determining what happened. And in search  
3 for that truth we have to look back at what we know, what  
4 we know in this case to be true.

5 What do we know about her relationship with the  
6 defendant? We know it is a toxic relationship. You  
7 heard from Trish -- Trisha. And you heard from Lisa.  
8 You heard about their relationship. You heard about it  
9 in Pam's own words through that Facebook conversation.  
10 You heard about it through her seeing bruises on her  
11 neck, on her arms. You've heard threats. You know the  
12 toxic nature of their relationship.

13 And the defendant is textbook case of an abusive  
14 relation- -- of domestic violence. You know, the  
15 defendant is the type of man who looks in the mirror and  
16 sees himself much better than he is and so he tears down  
17 the people around him to build himself up.

18 We all know people like that, that tear down the  
19 others around him. Called the mother of his child fat  
20 and ugly, and a bad girlfriend. Mental, physical,  
21 emotional abuse. And we have evidence of that.

22 You know, and when Trish testified -- you know, when  
23 she was interviewed by the police she didn't even know  
24 her sister had been killed. So when Detective Bailey  
25 asked her those questions about their relationship the

CLOSING BY MR. KIDD

1 first time on the morning that her sister was found, she  
2 didn't even know anything had happened. She had no  
3 reason to lie.

4 It is a textbook case of abuse. Isolating from her  
5 friends. Controlling, manipulative. And it escalates  
6 over time. And Pam was empowering herself. Through the  
7 help of her friends, of her family, she was getting  
8 stronger. She was just in a financial position to gain  
9 independence. Had a new job. She was empowering  
10 herself. And she was breaking free.

11 And as I told you in my opening statement, abuse is  
12 about power and control. And he was losing it. He was  
13 losing his grip. The girl that he put down every day who  
14 he insulted, now she is walking away from him. Who does  
15 she think she is walking away from him. The fragility of  
16 his ego is what got us here. Who does she think she is  
17 leaving him.

18 When the reality is she was an amazing mother. You  
19 saw the pictures inside of her house. Her life was  
20 devoted to that child. She worked hard. She was the  
21 breadwinner. That was her house.

22 His reality was very altered. He wasn't man enough  
23 to stay in a relationship, and he was too much of a  
24 coward to walk away.

25 And what about the physical evidence. Because that

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1 is important. Because in any of these situation, in any  
2 of these cases, we don't have a living witness who can  
3 tell us what happened inside of that bedroom; so we have  
4 to rely on what the physical evidence shows us. Because  
5 that is what tells you what took place.

6 How do we know that this is murder? How do we know  
7 that Pamela was lying in bed when he executed her?

8 Well, you have plenty of photos. And I know it is  
9 hard to look at sometimes. And I am sorry we have to  
10 show those to you. But what you will see from the blood  
11 splatter on the side of that fan, the height of that  
12 blood splatter is at a horizontal level with where her  
13 head was on that pillow. She is either asleep or  
14 watching TV when she is killed. TV remote right there on  
15 top of the blanket.

16 You know which shot is first because it is the one  
17 that goes through the eye because it goes through the  
18 glasses. The other three shots go inside of the head.  
19 If you look at the glasses, the arm of the glasses, it  
20 would have otherwise have been over her ear. It is not  
21 damaged.

22 So the first shot goes through her eye, left eye,  
23 out the back of the right head. That is what gives you  
24 the splatter on the fan.

25 The next three shots, as her head rotates over,

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1 through her temple out behind her ear into the pillow  
2 where two of them are recovered. The third one through  
3 the mattress pad and falls out as investigators are  
4 pulling back searching for in the blankets.

5       Straight down. Straight down. Imagine what that's  
6 like. And the pathologist distance we are talking six,  
7 eighteen inches, maybe up to a couple of feet. But we  
8 are talking point blank range. Straight down.

9       And the other thing you know is from the cartridge  
10 casings. Where were they recovered? On the floor back  
11 against the wall, right? And then two of them on the  
12 sort of dresser, credenza, whatever it is next to the  
13 beside table.

14       Cartridge casings eject to the right. Where does  
15 that put the shooter? On the right side of the bed right  
16 where the water bottle was, where his DNA was. Shell  
17 casings hitting the wall. The last three straight down.

18       You know, they want to talk about an accident.  
19 Six-and-a-half pound trigger pull for each shot. You  
20 don't hold the trigger down and shoot four times.  
21 Six-and-a-half pounds. One, two, three, four.

22       And you don't leave your personal experience at the  
23 door here. If any of you have any experience with  
24 firearms you will know that a pattern like the three  
25 shots here, that close together, is not rapid fire.

1           When you shoot a pistol there is recoil. There is  
2 kick. If it is bang, bang, bang, you are not getting  
3 that type of pattern. It is not going to happen. That  
4 is three distinct shots.

5           Accident? What happens when you accidentally  
6 discharge a firearm? You have an oh-moment. Accident?  
7 Not four shots.

8           Now the other reason that you know which projectiles  
9 are which, when the pathologist gets the partial  
10 projectile from the top exit wound and the rest of that  
11 projectile is recovered from the top of the bed the three  
12 full projectiles are the two from inside of the pillow  
13 and the one that had come out from underneath the  
14 mattress pad. So that is the other way you can determine  
15 which projectiles belong to which shot.

16           You know, her bruising. I mean she was roughed up  
17 too. Maybe not right then. Maybe the night before and  
18 then she retreated to her bedroom. And he slept on the  
19 couch. Where you saw that blanket and the pillow and the  
20 couch downstairs and stewed on it all night. How dare  
21 she.

22           And then he retrieves his loaded firearm and  
23 interjecting that into an otherwise toxic situation.  
24 That alone is malice. Just bringing the firearm into the  
25 residence is malice alone.

1           Stews on it all night. Get his firearm and goes in  
2 there in the morning and kills her. Unsuspecting. How  
3 do we know unsuspecting? Do you see all of the stippling  
4 on her face that the doctor testified about? Was there  
5 any on her hands, any on her arms? Was she in any sort  
6 of defensive posture where that would have happened? No.

7           The lack of evidence is just as important as the  
8 presence of it. If she were fighting over that gun or  
9 anything like that, there would be signs of it. There's  
10 none.

11           There is not a drop of the blood anywhere else in  
12 that house. Look at the way her head is positioned on  
13 the pillow. Look at the way she is lying in bed.

14           And you heard Jamie Green from SLED. It is like  
15 three-quarters of a gallon of milk for each trigger pull.

16           You know, we saw her bruising. We didn't spend a  
17 lot of time on the photographs of the defendant. You  
18 will have them back there. There is a miniscule scratch  
19 right here (pointing) on his hand. Nothing else.  
20 Nothing else.

21           There was no fight going on. And even if there were  
22 would it matter? If you point a loaded firearm at  
23 somebody you are responsible for what happens. That is  
24 malice.

25           Can you bring up the computer real quick.



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1 (WHEREUPON, the clerk complied.)

2 It is not just a conscious intent. Unconcern.  
3 Reckless disregard for someone's safety is malice. And  
4 that is exactly what pointing a loaded firearm at someone  
5 is.

6 Ladies and gentlemen, the question in front of you  
7 is narrow. The answer is remarkably simple. Look at the  
8 evidence. Honor the families. Show them respect.  
9 Respect the process. Follow the law that judge charges  
10 you on what murder is. And do your duty. And call it  
11 what it is. Because this is a heinous crime and a  
12 senseless murder. And he has extinguished a beautiful  
13 life from this earth, all because of his ego. And this  
14 is the cycle of domestic violence. This is what happens  
15 when it goes unchecked.

16 And this is what he needs to be held accountable  
17 for, for murder, for what it is. When you shoot somebody  
18 four times in the head while they are lying in bed it is  
19 murder. That is the question in front of you, and that  
20 is the verdict I ask you to bring back.

21 MR. LIZZI: May it please the court.

22 **CLOSING BY MR. LIZZI:**

23 Ladies and gentlemen, I thank you for sitting  
24 through this. These things aren't easy. Looking at  
25 pictures of this kind of things aren't easy.

CLOSING BY MR. LIZZI

1           But when I sit here and I listened to the prosecutor  
2 it -- something dawned on me. You know, it is what I  
3 said when we first started, there's only two people in  
4 the house and there's only one person now alive that  
5 knows what happened. But the prosecution wants you to  
6 believe that he knows what happened based on the evidence  
7 that he contends jumps to a lot of conclusions.

8           He jumps to the conclusion that my client slept on  
9 the couch because there is a blanket and a pillow. He  
10 doesn't look at any of the other reasons that somebody  
11 could be watching TV and having a blanket and a pillow.  
12 He just jumps to that conclusion.

13           I really wish that you all would have the ability to  
14 clearly see the scene that was there when they first got  
15 there except for this sweeping glimpse that when the  
16 officer went in and then he retreated.

17           No other officer's body cams were put in. No other  
18 evidence of what was going on in that room while they  
19 waited almost about -- almost two-and-a-half hours before  
20 the pictures were taken.

21           You will see in the body cam that there's several  
22 officers in the room and left in the room. You will see  
23 that the EMS comes in and attends to the body and moves  
24 things.

25           And then the police tuck it all back in to try to

CLOSING BY MR. LIZZI

1 make the scene look like she was tucked into the bed.

2       The one thing we do know pretty sure, that she was  
3 awake. She had her glasses on. When she was shot her  
4 glasses were on. You saw the sunglasses themselves. You  
5 will have that back there.

6       But you heard the coroner talk -- the medical  
7 examiner talk about the way that the - I forget the exact  
8 term she used - but the absence of the stippling by her  
9 eye shows that the glasses were on and the glasses were  
10 broken. And one was on one side, and one was on the  
11 other.

12       Things were moved. Shell casings got moved. Things  
13 fell off the bed. But then they want you to believe that  
14 like going in and throwing everything in the room on the  
15 floor that is how it is. We don't know exactly how it  
16 is.

17       And that was their job. That was -- the lead  
18 inspector -- the lead person in that investigation didn't  
19 get there until 10:30, eleven o'clock.

20       They bring you only one other person who was there.  
21 One other -- the one other video of what was there except  
22 for the pictures that were then taken at that time.

23       Their evidence on blood splatter they want you to  
24 focus on this blood splatter. But this wasn't blood  
25 splatter on a wall. It wasn't on a fixed object. It was

CLOSING BY MR. LIZZI

1 on a movable object. And there was things moved.

2 There was a bullet casing that appeared -- that  
3 wasn't picked up at the time. There is the other bullet  
4 casing that is sitting straight up. We don't know how  
5 they were at the time.

6 But you will have all of the pictures, and you will  
7 have all of that. And observe the other things around  
8 the fan, the way it sits, and the lack of blood splatter  
9 by -- by -- on those items such as the extension cord  
10 plug.

11 So we don't know. The prosecutor doesn't know. The  
12 medical examiner told you she couldn't tell you what shot  
13 was fired first.

14 But he comes here and wants you to now believe that  
15 he knows, he was in the room, what was fired first. We  
16 don't know. We don't know how she was -- how she was  
17 standing.

18 The 911 tapes. My client takes his child to his  
19 father's. Places the child in a place of safety and then  
20 goes to call 911 and turn himself in. He cooperated. He  
21 didn't wash up. He didn't try to hide any evidence.

22 You heard, he didn't have any blood on his arms from  
23 this close-range shot that they -- you know, she told you  
24 it could be 36 inches. But we can't really tell because  
25 we don't have a test firing. That is something that the

CLOSING BY MR. LIZZI

1 State could have done. These are things that the State  
2 could have helped you with the evidence to help you to  
3 presen- -- to deliberate with.

4 It is their duty. It is not his duty. When we come  
5 here we know that as every defendant sits in a courtroom  
6 they are cloaked with innocence.

7 The State has for the citizens of this state the  
8 duty to go out and find and present every bit of evidence  
9 that they can, test the things that they can.

10 Their expert tells you that it is a mechanical  
11 device. Two of the safeties he talked about are  
12 interlinked with the -- with the piece that was the  
13 replaced with a ghost part or an off-brand off-market  
14 part. So he wasn't really sure.

15 Now I was disturbed when I heard what you were just  
16 told that bringing a firearm into your house meant; a  
17 person who is a concealed weapons holder, that bringing a  
18 gun into the house in itself presumes malice.

19 I feel sorry for all of the concealed weapons  
20 holders in the state that just the fact that they carry a  
21 gun with them with their license and go into a house that  
22 we are going to presume if something happens with that  
23 gun that there was malice. That is a pretty big jump.  
24 That is a pretty scary jump.

25 Now the victim was six foot. She is bigger than my

CLOSING BY MR. LIZZI

1 client. You heard that they had this on-again, off-  
2 again. Her one friend shows you just 48 hours before  
3 that they are co-parenting, you know, they are not  
4 getting along the best but she is pretty much letting him  
5 come over and visit the child and come over there.

6 Her sister wants you to hear both ways. She wanted  
7 you to hear about this tumultuous relationship, and they  
8 want you to believe that he has this power struggle  
9 because she ended the relationship. But her sister then  
10 tells you she loved him and wanted him back.

11 Well, if she loved him and wanted him back why would  
12 that trip off him having this power about her ending a  
13 relationship. It didn't make any sense. It just didn't  
14 come across with making any sense.

15 Or she tells us that she wanted her family and she  
16 loved her family, and then trying to tell you that he is  
17 classic domestic violence person who she is ending a  
18 relationship and he acted out.

19 He has no history of domestic violence. He works at  
20 the Port. His friend came in. He saw them together.  
21 The neighbor didn't hear any disturbances over there. He  
22 is a nice fellow. It doesn't make any sense.

23 Unfortunately any time anybody is deceased it is  
24 hard to make any sense out of it. It is really really  
25 hard. It -- and, you know, it doesn't bring anything

CLOSING BY MR. LIZZI

1 back. And unfortunately we have a child that is  
2 sitting -- that is the hardest victim of all.

3 The judge will tell you the law. The judge will  
4 tell you the different areas and the different charges  
5 which you will take back. And you will take his  
6 instructions.

7 And I believe if you look at all of the evidence, if  
8 you take the time and you look at the photos and you  
9 think about, you know, why is she all tucked in like this  
10 when we saw on the video they pulled everything back but  
11 now they have a pillow over her and they have her all  
12 tucked in.

13 And that is how they want us to believe it was.  
14 They want you to believe she was asleep when we know she  
15 was wearing her glasses.

16 I ask you just to use your common sense. Look at  
17 the evidence. And murder is a very very serious charge.  
18 And there's very specific things that you need to find,  
19 as the judge will instruct, to get to that level. And I  
20 ask for you to have a fair verdict.

21 Thank you.

22 THE COURT: Mr. Kidd, any reply?

23 MR. KIDD: Briefly.

24 **REPLY BY MR. KIDD:**

25 Relationships are hard. Being a parent is hard.

1 Feelings are involved, right. I mean it is trying on  
2 everyone doing those tasks. Especially a two-, three-  
3 year-old, or terrible two's, three's. Stressful, okay.

4 There's relationships that end, divorces, custody  
5 battles that happen every day. Interjecting a loaded  
6 firearm into this situation is what makes it different.

7 Now the defense counsel argued that she was bigger  
8 than him.

9 If you would turn the computer back on, please.

10 Not that it matters much, but --

11 (WHEREUPON, attempts to turn computer on.)

12 It doesn't matter. You will see the picture. You  
13 have the picture from their living room that shows them  
14 standing next to each other. You can judge for yourself  
15 about size.

16 You know, is she awake, is she asleep, is she awake;  
17 you are right, we don't know. Would she be the first  
18 person to fall asleep in her glasses? No. Was she lying  
19 there watching TV? Maybe.

20 You are right, we don't know for sure. There's a  
21 lot of things we don't know for sure. But there's a lot  
22 of things we do know for sure too. We do know that he  
23 shot her four times. We do know the trajectory and the  
24 angles. We do know what the stippling tells us. We do  
25 know what the lack of injuries to her hands means.



REPLY BY MR. KIDD

1           And he talks about two-and-a-half hours before we  
2 came in. What about the two-and-a-half hours he waited  
3 before he called 911? What about those two hours?

4           What about the fact of he didn't hide any evidence?  
5 Where is her cell phone? What is he covering up there?  
6 I think it is pretty commonsensical, right; he doesn't  
7 want you to know what we learned from Trish; he doesn't  
8 want you to know what we learned from Lisa about the  
9 intricate details of their relationship. So he take her  
10 phone.

11           That is the two-and-a-half hours that matters, after  
12 you put four bullets in the mother of your child's head.  
13 You know, you judge for yourself. You have seen the body  
14 cam of us going in, whether or not evidence was moved or  
15 not. It is preposterous.

16           And the reason you don't get blood spatter from the  
17 three bullets that went into one side and into the pillow  
18 is because the head is against the pillow. You are not  
19 going to get blood spatter exiting those wounds because  
20 the pillow stops it. That's why it comes from the other  
21 one.

22           And you know which one is first because the glasses  
23 aren't broken on the arm. That is stuff the pathologist  
24 didn't have because she only looked at the body and  
25 combined her testimony with what we know at the scene so

REPLY BY MR. KIDD

1 you can make logical conclusions from the evidence. That  
2 is what we do here, so you can determine what happened.

3 But does it matter? No. None of this really  
4 matters. The only thing that matters is that he shot her  
5 four times in the head while she is lying in bed. There  
6 is nothing else that matters. That is all you need to  
7 know. That is murder. And I ask you to return a verdict  
8 as such.

9 THE COURT: All right. Mr. Foreman, ladies and  
10 gentlemen, my charge may be 12, 15 minutes. Is everybody  
11 okay; do you want a bathroom break before we start? Are  
12 we good? Madam court reporter, are we good?

13 THE COURT REPORTER: Yes, thank you.

14 THE COURT: What I normally do as we go around the  
15 State trying cases, in criminal cases particularly, the  
16 first part of the charge deals with all criminal cases,  
17 all criminal law. So let's go through that first and  
18 then I will go to specifically the two charges and the  
19 two indictments that we are here on today.

20 Let me first of all remind you of the fact that the  
21 defendant has been indicted and the indictment charges  
22 him with the offense of murder in one and possession of a  
23 weapon during the commission of a violent crime in the  
24 second indictment.

25 The fact that he has been indicted, arrested,

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1 charged, is not evidence in the case and cannot be  
2 considered by you as evidence of guilt in the case nor  
3 does it create any presumption or inference of guilt.

4       The indictments are simply the formal written  
5 instrument which contains the charges against the  
6 defendant. It is the formal way this case comes into the  
7 courtroom.

8       In this case we have two separate and distinct  
9 indictments; murder, possession of a weapon during  
10 commission of a violent crime. So you have to decide  
11 each one of them separate and apart from the other. And  
12 I will explain a little bit about that as we get towards  
13 the end.

14       THE COURT: To these two indictments the defendant  
15 has pled not guilty. And a plea of not guilty obviously  
16 under our law puts the burden on the State to prove the  
17 defendant guilty to you beyond a reasonable doubt.

18       A person charged with committing a criminal offense  
19 is never required to prove himself innocent. I charge  
20 you that it is an important constitutional rule of law  
21 that a defendant in a criminal trial no matter how  
22 serious the charges may be will always be presumed to be  
23 innocent of the crimes for which he was indicted unless  
24 his guilt has been proven to you by the State beyond a  
25 reasonable doubt.

1           The presumption of innocence does not begin -- does  
2 not end when you begin your deliberations, but it stays  
3 with the defendant throughout the trial until you reach a  
4 decision satisfying you of that guilt beyond a reasonable  
5 doubt.

6           The presumption of innocence is not a mere legal  
7 theory. It is not just a legal phrase. It is a  
8 substantial constitutional right to which every defendant  
9 is entitled unless you the jury are satisfied from the  
10 evidence the defendant's guilt beyond a reasonable doubt.

11           What is reasonable doubt? It is defined a couple of  
12 ways by our appellate courts. One definition is a  
13 reasonable doubt is the kind of doubt that would cause a  
14 reasonable person to hesitate to act. The kind of doubt  
15 that would cause a reasonable person to hesitate to act.

16           It also been described as this: The State has the  
17 burden of proving the defendant guilty beyond a  
18 reasonable doubt. We can sort of demonstrate that. If  
19 this were a civil case where they were suing for monetary  
20 compensation for damages in a wreck or a medical  
21 malpractice case or a breach of contract, in those cases  
22 the parties come in on an equal footing and for the  
23 plaintiff to prevail he has to prove his case by the  
24 preponderance or greater weight of the evidence which  
25 simply means he has to move the scales of justice, if

## JURY CHARGE

1 that were an illustration, ever so slightly in his favor.

2       However, in a criminal case the burden of proof is  
3 greater. Because the defendant is presumed to be  
4 innocent under the Constitution the scales are tipped in  
5 his favor (motioning), and for the State to prove his  
6 guilt to you beyond a reasonable doubt the scales have to  
7 tip in this manner (motioning).

8       So the burden of proof is greater in a criminal case  
9 than in a civil case. Proof beyond a beyond a reasonable  
10 doubt is proof that leaves you firmly convinced of the  
11 defendant's guilt.

12       There are very few things that we know with absolute  
13 certainty. And in criminal cases the law does not  
14 require proof that overcomes every possible doubt.

15       If based on your consideration of the evidence you  
16 are firmly convinced that the defendant is guilty of the  
17 crimes charged then you must find the defendant guilty.

18       If on the other hand you think there is a real  
19 possibility that the defendant is not guilty you must  
20 give the defendant the benefit of the doubt and find him  
21 not guilty.

22       During the trial of this case you and I have had  
23 different duties to perform. I explained to you when we  
24 selected the jury that my position as the trial judge  
25 makes me the judge of the law so I instruct you on the

1 law. You have to accept the law as I give it to you.

2 My other responsibility is to rule on the  
3 admissibility of the evidence. They have to ask  
4 questions pursuant to the rules. Those are my two main  
5 responsibilities.

6 Your job, much more important than mine, you are the  
7 judges of the facts in the case. You have to judge the  
8 credibility of the witnesses and determine what facts you  
9 deem to be true, apply it to the law as I give it to you,  
10 and determine whether or not the State has met their  
11 burden of proof of proving the defendant guilty beyond a  
12 reasonable doubt.

13 So having said that, if an any time during the trial  
14 of this case you have looked up here and I have smiled,  
15 frowned, raised my eyebrows, yawned, stretched, whatever,  
16 and you think I have had some opinion about the facts,  
17 disregard that. I cannot have an opinion about the  
18 facts. My position does not allow me. I try cases all  
19 over the state and I just cannot. The judges don't.  
20 That is your job.

21 So don't infer anything from anything that I may  
22 have done up here that would think you -- I have an  
23 opinion about the facts. That is your job.

24 You are the judges of the facts. You are the  
25 finders of the facts. And by being the judges of the

## JURY CHARGE

1 facts obviously you have to determine the credibility of  
2 the witnesses who have testified in this case.

3 Credibility simply means believability. It becomes  
4 your duty as jurors to analyze and evaluate the evidence  
5 and determine which evidence convinces you of its truth.  
6 And once you determine what the true facts, as I told you  
7 earlier, you apply those true facts to the law as I give  
8 it to you to make a determination as to whether or not  
9 the State has met its burden of proving the defendant  
10 guilty beyond a reasonable doubt.

11 In determining the believability or the credibility  
12 of the witnesses who has testified in the case you may  
13 believe one witness over several, several witnesses over  
14 one. You can believe a part of what a witness says and  
15 disbelieve the other. You can disregard everything a  
16 witness said. You can believe everything a witness says.

17 You may consider whether any witness has exhibited  
18 to you any interest, bias, prejudice, or other motive.  
19 You can also consider the appearance and manner of a  
20 witness while on the witness stand.

21 You have come a long way in life. You have dealt  
22 with husbands, wives, children, friends, family,  
23 employees, employers. You know how to judge when  
24 somebody is telling the truth. Use that good common  
25 sense in determining the credibility of the witnesses who

1 have testified in this case to determine what the true  
2 facts are. And as I said, apply it to the law and make a  
3 decision as to whether the State has proven its case to  
4 you beyond a reasonable doubt.

5 We had a couple of witnesses who I qualified as  
6 experts. Perhaps more than a couple. Our rules of  
7 evidence ordinarily do not permit a witness to testify as  
8 to opinions or conclusions. There is an exception to  
9 that rule which is known as the expert witness rule.

10 A witness who by education and experience has become  
11 an expert in some art, science, profession, or calling  
12 may state an opinion as to any relevant and material  
13 matter which he claims to be an expert in; and they also  
14 state the reasons therefore.

15 You should consider any expert opinion received into  
16 evidence in this case like any other evidence. Give it  
17 the weight if any you think it deserves.

18 If you decide that the opinion of an expert is not  
19 based on sufficient education and experience or you  
20 conclude the reasons given in support of the opinion are  
21 not sound or that the opinion is outweighed by other  
22 evidence, you can disregard the expert's opinion  
23 entirely.

24 An expert witness's testimony is to be given no  
25 greater weight than that of any other witness simply



## JURY CHARGE

1 because I have qualified him as an expert. Further, you  
2 are not required to accept an expert's opinion even  
3 though it is not contradicted.

4       There is an important constitutional --  
5 constitutional provision that a defendant has a right to  
6 remain silent. I instruct you and emphasize that the  
7 fact that the defendant did not testify in this case is  
8 not a factor to be considered by you in any way in your  
9 deliberations and in your consideration of the guilt or  
10 the innocence of the defendant. It must not be  
11 considered by you in any manner whatsoever.

12       The defendant has the constitutional right, both  
13 state and federal, to remain silent. And the assertion  
14 of this right must not be considered by you in your  
15 deliberations.

16       I repeat, under your oath you are to draw no  
17 conclusion whatsoever from the fact that the defendant in  
18 this case did not testify.

19       The fact that he did not testify should not be given  
20 any -- should not be discussed at all in the jury room.  
21 As I have said, the burden is on the State of South  
22 Carolina to prove his guilt to you beyond a reasonable  
23 doubt. And that burden remains on the State to prove his  
24 guilt beyond a reasonable doubt. He has nothing to  
25 prove. He has the right to remain silent.

1           In order to establish criminal liability criminal  
2 intent is required. Criminal intent must be proven by  
3 the State beyond a reasonable doubt.

4           Criminal intent is always a matter that must be  
5 determined by the jury from the circumstances surrounding  
6 the situation. There is no way to prove intent to a  
7 mathematical certain. There is no way medical science  
8 can dissect a person's brain and determine what the  
9 person had in mind.

10          So the law says that criminal intent may be inferred  
11 from the circumstances shown to have existed at the time  
12 of the event. Criminal intent is a mental state, a  
13 conscious wrongdoing.

14          Criminal intent can arise from an action or a  
15 failure to act. It may also arise from negligence,  
16 recklessness, or an indifference to duty or to  
17 consequences that is considered by the law to be the  
18 equivalent of criminal intent.

19          We had one witness who testified in the case that  
20 had a past criminal record. A person who has a past  
21 criminal record is competent to testify during a trial.  
22 A past record does not affect the ability of the witness  
23 to testify. The past record may only be considered by  
24 you if at all in determining the believability or the  
25 credibility of the witness you testified with the record.

## JURY CHARGE

1           You are the sole judges of the facts, and the  
2 believability of any and all of the witnesses is your  
3 responsibility.

4           All right. Those are common criminal principles  
5 that we charge in all cases.

6           Let's turn now to the indictments here in this case.  
7 In the first indictment the defendant is charged with  
8 murder. In order to prove murder the State must prove  
9 beyond a reasonable doubt that the defendant killed  
10 another person with malice aforethought. Killed another  
11 person with malice aforethought.

12           Our law defines malice is defined as hatred, ill  
13 will, or hostility towards another person. It is the  
14 intentional doing of a wrongful act without just cause or  
15 excuse and with an intent to inflict injury or under the  
16 circumstances that the law will infer an evil intent. So  
17 malice is hatred, ill will, hostility towards another  
18 person, the intentional doing of a wrongful act without  
19 just cause or excuse.

20           Malice aforethought does not require that malice  
21 exists for any particular time before the act is  
22 committed, but malice must exist in the mind of the  
23 defendant just before and at the time that the act is  
24 committed. Therefore there must be a combination of the  
25 previous evil intent and the act.

1 Malice aforethought may be express or inferred. The  
2 terms express and inferred do not mean different kinds of  
3 malice but merely the manner in which malice may be shown  
4 to exist. That is either by direct evidence or the  
5 inference from the facts and circumstances which are  
6 proven.

7 If you go outside and get wet and see it was  
8 raining, like you probably will today, that is pretty  
9 much expressly that it is raining.

10 If you go outside and it is cloudy and mud puddles  
11 are everywhere and the rain is on the street and it is  
12 not raining you can infer that it has rained.

13 So that is sort of the difference. One is direct  
14 evidence of it, and one you infer from the circumstances  
15 surrounding it.

16 Express malice is shown when a person speaks words  
17 which express hatred or ill will for another or when the  
18 person prepared beforehand do to these acts which was  
19 later accomplished.

20 Malice may be inferred from conduct showing a total  
21 disregard for human life. Inferred malice may also arise  
22 when the deed is done with a deadly weapon.

23 If facts are proven beyond a reasonable doubt  
24 sufficient to raise an inference of malice to your  
25 satisfaction this inference would be simply an

## JURY CHARGE

1 evidentiary fact to be considered by you along with the  
2 other evidence in the case and you may give it the weight  
3 you decide it should receive.

4       So that is the legal definition of murder, of taking  
5 a life, killing of someone with malice aforethought. I  
6 have defined to you what malice means; and I have defined  
7 to you how malice can be shown, either express, or by  
8 inference, inferred malice.

9       The other charges that the victim is indicted for,  
10 possession of a weapon during commission of a violent  
11 crime. Obviously if you find the State has failed to  
12 prove him guilty beyond a reasonable doubt of murder you  
13 would not consider possession of a weapon during the  
14 commission of a violent crime.

15       If you find him guilty of murder then to prove  
16 possession of a weapon during the commission of a violent  
17 crime the State has to prove to you beyond a reasonable  
18 doubt that he had in his possession a weapon - a pistol  
19 is defined as a weapon - during the commission of a  
20 violent crime. And murder is statutorily defined as a  
21 violent crime.

22       So if you find him not guilty you would not consider  
23 that at all. If you find him guilty of murder then you  
24 would make the determination on that other charge.

25       Now, Mr. Foreman, ladies and gentlemen of the jury,

1 you will have a verdict form in the jury room. It is a  
2 very simple form. You obviously decide the murder case  
3 first. We find the defendant not guilty, we find the  
4 defendant guilty; whichever one it is.

5 If you decide the State has -- if you make your  
6 decision the State has proven his guilt to you beyond a  
7 reasonable doubt obviously it will be guilty. If not,  
8 not guilty.

9 Your verdict has to be unanimous. All 12 have to  
10 agree. Twelve jurors.

11 Obviously you don't have any friends to reward,  
12 enemies to punish. You are charged with making a careful  
13 and deliberate analysis of the evidence that has been  
14 presented, careful and deliberate analysis of the  
15 credibility of the witnesses, a careful and a deliberate  
16 analysis of what the true facts are. Apply those facts  
17 as I have said to the law as I have given it to you and  
18 make a determination as to whether or not the State has  
19 proven its case to you beyond a reasonable doubt.

20 Once you have made that decision obviously you sign  
21 the verdict form. You fill it out. Knock on the door.  
22 The bailiff will come in and receive the verdict. We  
23 will get you back into the courtroom. The verdict will  
24 be published.

25 Mr. Foreman, often times during the deliberation you

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1 will have a question or some members of the jury panel  
2 will have a question.

3       The protocol is this, on whatever that question may  
4 be write it out on -- I believe we have some notepads in  
5 there. Write it out. Knock on the door. Give it to the  
6 bailiff. He will send it out here to me. I will share  
7 it with the lawyers.

8       Sometimes I can answer it. Sometimes I can't. If I  
9 can answer it I will answer it. If I can't I will tell  
10 you that that is something I can't answer.

11       So if you have any questions just write them out. I  
12 am going to send you back to your jury room in just a  
13 second. I am going to ask you please do not start the  
14 deliberations. I have to go over with the lawyers if I  
15 left anything out. And I have. Accident. I need to  
16 tell you about accident.

17       But anyway, I will do that in just a second. And  
18 then I will ask them if I have left anything else out.  
19 And then we will send all of the exhibits back to the  
20 jury room and the verdict forms and then you can start  
21 your deliberations.

22       I have been told by the clerk that the lunch that  
23 y'all ordered should be here around twelve o'clock. When  
24 that comes -- I can't let you go outside and eat. You  
25 have got to stay together once you start deliberating.

1 You can handle that however you want to. Y'all can  
2 deliberate while you eat. You want to take a break while  
3 you eat. That is up to y'all. I don't have any problem  
4 on how you do that.

5 And last, the defendant has raised the defense of  
6 accident. An act may be excused on the ground of  
7 accident if it is shown that the act was unintentional,  
8 that the defendant was acting lawfully, and that the  
9 reasonable -- and that reasonable care was used by the  
10 defendant. And in this particular case in use of the --  
11 in handling the weapon. So that is what an accident is.

12 All right. I am going to let you go back to your  
13 jury room. Don't start deliberating until we send  
14 everything back. Everybody else remain seated.  
15 (WHEREUPON, jury exits 10/10/18, 11:30 a.m.)

16 THE COURT: Are there any additions to the charge,  
17 deletions, objections, or any other requests by the  
18 State?

19 MR. KIDD: No, sir.

20 THE COURT: By the defendant?

21 MR. LIZZI: None, Your Honor.

22 THE COURT: And you are protected on your  
23 request ---

24 MR. LIZZI: Except for my ---

25 THE COURT: --- for the lesser included charges.



1 MR. LIZZI: Except for the lesser included.

2 THE COURT: And you have already argued that. You  
3 are protected on that.

4 All right. Gentlemen, would y'all please forward  
5 and review the exhibits with the clerk.

6 (WHEREUPON, break was had to review exhibits.)

7 THE COURT: Let the record reflect that both the  
8 State and defense have reviewed all of the exhibits and  
9 all are in order and accounted for. Likewise they  
10 reviewed the verdict form without any objection. Is that  
11 correct, on behalf of the State?

12 MR. KIDD: It is, Your Honor.

13 MR. LIZZI: It is, Your Honor.

14 THE COURT: All right. Tell them they can start  
15 their deliberations. You have separated the alternates?

16 THE BAILIFF: Yes, sir.

17 THE COURT: All right. We are going to stand at  
18 ease.

19 Y'all don't get far. And they may have questions.  
20 I need y'all here for any questions. If you do step away  
21 please let us know where you are.

22 (WHEREUPON, break was had 10/10/2018, 11:41 a.m.,  
23 awaiting verdict.)

24 (WHEREUPON, resume 10/10/2018, 12:11 p.m.)

25 THE COURT: Is the State ready to receive the

1 verdict?

2 MR. KIDD: We are, Judge.

3 MR. LIZZI: The defendant?

4 MR. LIZZI: Yes, Your Honor.

5 THE COURT: For those in attendance I commend  
6 everyone for their behavior Monday, Tuesday and today.  
7 You have been an excellent audience. This is a trying,  
8 difficult situation for everyone involved. I know it is.

9 I am not sure what the verdict it. Whatever it is I  
10 do not allow any outward display of emotions, untoward  
11 conduct, crying out.

12 So if you cannot control your emotions I am going to  
13 ask that you leave now. If I have any behavior that is  
14 unacceptable I have law enforcement all over the  
15 courtroom as we do in all of these types of cases. You  
16 will be subject to being held in contempt of court.  
17 Please don't make us have to go through that exercise.  
18 So if anyone cannot control their emotions I am asking  
19 that you leave now. I will not tolerate any untoward  
20 behavior.

21 All right. Bring the two alternates in who did not  
22 sit with the jury. Put them in these two chairs here and  
23 then bring my jury in.

24 (WHEREUPON, jury enters courtroom 10/10/18, 12:14 a.m.)

25 THE COURT: Mr. Foreman, have y'all reached a

State vs. William Thomas Gule, Jr.

1 decision in the case?

2 JURY FOREMAN: Yes, sir.

3 THE COURT: If you would hand it to the bailiff.  
4 Mr. Bailiff, pass it up to me, please.

5 (WHEREUPON, bailiff complied.)

6 THE CLERK: The State of South Carolina versus  
7 William Thomas Gule, Case Number 2016-GS-10-241. We the  
8 jury find the defendant in this case, William Thomas  
9 Gule, Jr., to be guilty of murder. Signed by the  
10 foreperson. Dated October 10th.

11 Case Number 2016-GS-10-242. We the jury find the  
12 defendant in this case, William Thomas Gule, Jr., to be  
13 guilty of possession of a weapon during the commission of  
14 a violent crime. Signed the foreperson. Dated October  
15 10th.

16 THE COURT: Anything in addition for the jury by the  
17 defendant?

18 MR. LIZZI: I would ask the court to poll the jury.

19 THE COURT: Mr. Clerk, would you poll the jury.

20 What that simply means, Mr. Foreman and ladies and  
21 gentlemen, that the clerk will ask you is this your  
22 verdict and is it still your verdict.

23 THE CLERK: Ladies and gentlemen, I am going to ask  
24 you each two questions, if this your verdict and is this  
25 still your verdict. Please answer each question

1 appropriately. Also please stand when I call your name.  
2 April Baxter, Juror Number 13. Is this your  
3 verdict?  
4 THE JUROR: Yes.  
5 THE CLERK: Is it still your verdict?  
6 THE JUROR: Yes.  
7 THE COURT: Thank you. You may be seated.  
8 THE CLERK: Juror Number 155. Is this your verdict?  
9 THE JUROR: Yes.  
10 THE CLERK: Is it still your verdict?  
11 THE JUROR: Yes.  
12 THE CLERK: Juror 235. Is this your verdict?  
13 THE JUROR: Yes.  
14 THE CLERK: Is it still your verdict?  
15 THE JUROR: Yes.  
16 THE CLERK: Juror 63. Is this your verdict?  
17 THE JUROR: Yes.  
18 THE CLERK: Is it still your verdict?  
19 THE JUROR: Yes.  
20 THE CLERK: Juror Number 266. Is this your verdict?  
21 THE JUROR: Yes.  
22 THE CLERK: Is it still your verdict?  
23 THE JUROR: Yes.  
24 THE CLERK: Juror 262. Is this your verdict?  
25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?  
2 THE JUROR: Yes.  
3 THE CLERK: Juror Number 135. Is this your verdict?  
4 THE JUROR: Yes.  
5 THE CLERK: Is it still your verdict?  
6 THE JUROR: Yes.  
7 THE CLERK: Juror Number 24. Is this your verdict?  
8 THE JUROR: Yes.  
9 THE CLERK: Is it still your verdict?  
10 THE JUROR: Yes.  
11 THE CLERK: Juror Number 157. Is this your verdict?  
12 THE JUROR: Yes.  
13 THE CLERK: Is it still your verdict?  
14 THE JUROR: Yes.  
15 THE CLERK: Juror Number 198. Is this your verdict?  
16 THE JUROR: Yes.  
17 THE CLERK: Is it still your verdict?  
18 THE JUROR: Yes.  
19 THE CLERK: Juror Number 300. Is this your verdict?  
20 THE JUROR: Yes.  
21 THE CLERK: Is it still your verdict?  
22 THE JUROR: Yes.  
23 THE CLERK: Juror Number 64. Is this your verdict?  
24 THE JUROR: Yes.  
25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes.

2 THE COURT: All jurors have been polled. All have  
3 answered in the affirmative.

4 Are you ready to impose sentence?

5 MR. LIZZI: Yes, Your Honor.

6 THE COURT: If you will get the sentence sheet to  
7 him.

8 Mr. Foreman, ladies and gentlemen, and my  
9 alternates, jury duty sometimes is not a difficult task.  
10 Sometimes you have to listen to some very difficult  
11 situations. This obviously is one of those.

12 I can't thank y'all enough. Y'all have paid  
13 excellent attention, wonderful attention. And I  
14 appreciate your service.

15 What we have left to do is I have to impose a  
16 sentence upon the defendant. We will do that within the  
17 next 10 or 15 minutes. We are going to do it right now.  
18 It will take about 10 or 15 minutes. You are welcome to  
19 stay and watch that process. You are welcome to leave.

20 My understanding on the food was there was a mess  
21 up.

22 THE CLERK: It should be here.

23 THE COURT: Is she here?

24 THE CLERK: It should be here. We had to back up  
25 and punt. They have ordered some pizza for you. So if

1 you want to wait on your pizza that is fine. If you  
2 don't I am sure it will be used up here by somebody.

3 So if you would like to stay with me, I welcome you  
4 to. If you would like to leave I am going to give you  
5 this opportunity now.

6 All right. If you will pass up the sentence sheets,  
7 please.

8 (WHEREUPON, bailiff complied.)

9 THE COURT: He has to sign the sentence. You have  
10 to remove the cuffs so he can sign these.

11 (WHEREUPON, break was had for signing of sentence sheet.)

12 THE COURT: All right. Mr. Solicitor, obviously I  
13 have heard all of the facts and recitation of those is  
14 not necessary. Does the defendant have a prior record?

15 MR. KIDD: Judge, he has a minimal prior record out  
16 of Virginia. 2007 alluding police and a 2009 public  
17 intox.

18 THE COURT: And the defendant's age, please?

19 MR. KIDD: He is I believe 35.

20 THE COURT: Thirty-five?

21 MR. LIZZI: Thirty-one, Your Honor.

22 MR. KIDD: Thirty-one. Excuse me.

23 THE COURT: All right. Anything that the victims  
24 would like to say?

25 MR. KIDD: I know that the victim's sister and the

1 victim's mother would like to address the court, Your  
2 Honor.

3 THE COURT: All right. I will do that in just a few  
4 minutes.

5 THE COURT: Mr. Lizzi.

6 MR. LIZZI: May it please the court. These are very  
7 troubling cases when we deal with two people who have  
8 volatile relations and they end up in a tragic outcome.

9 While in jail I have handed up some of the  
10 completions of things that my client has completed. He  
11 has become baptized. He has been in mental health  
12 programs. He has been in betterment programs and doing  
13 productive things while he is in jail. Trying to address  
14 some of the shortfalls that he has and as well as to try  
15 to become a better person.

16 He doesn't have a real criminal record. He is a  
17 good dad. His child as you can see was an important part  
18 of his life.

19 There is nothing that will take care of the pain  
20 that the family has. But I ask that the court give him a  
21 sentence that will allow him to come back and become a  
22 productive member of society at some point in his life.

23 Understanding that the minimum sentence is on this  
24 and would ask that the court impose those sentences as  
25 allowed by law.



1           And while he was actually in the jail, Your Honor,  
2 he actually helped rescue a law-enforcement person in the  
3 jail in a traumatic situation.

4           He is trying to better himself, Your Honor. He is  
5 sorry for everything that has happened.

6           THE COURT: Sir, anything you would like to say?

7           MR. GULE: Yes, sir. I would like to apologize  
8 to -- I would like to apologize to the victim's family  
9 and say I am sorry. I love y'all. I miss y'all. And I  
10 forgive you.

11           I would like to apologize to my family as well. And  
12 I apologize to my mother. And I miss y'all as well. And  
13 everything will be all right. It's in God's hands.

14           THE COURT: Thank you. You may be seated.

15           MR. GULE: Yes, sir.

16           THE COURT: Anyone from the victim's family?

17           MR. KIDD: Yes, Your Honor. Trish Pye, P-Y-E.

18           THE COURT: Ms. Pye.

19           MS. PYE: Good afternoon, Your Honor. On August the  
20 5th, 2015, my life was shattered by one very selfish act.  
21 Such a selfish act with what seems no remorse at all.

22           I have watched you, William, at all the hearings.  
23 The stoic look upon your face that you have done no  
24 wrong, and you have no remorse.

25           You, William Gule, you were wrong. You were wrong

1 for the abuse before you killed Pamela. You were wrong  
2 for the belittling things you said to her. You were  
3 wrong for the times you shoved her around. And you were  
4 most certainly wrong for the gunshots you put in her  
5 head.

6 And to think you shot her in her head and her son  
7 was present in the house and you did it as if it was no  
8 big deal. She was in her bed asleep. She didn't even  
9 have a chance to defend herself.

10 And then you took her son and you left her body  
11 lifeless in that house. You waited three hours after you  
12 shot her to call the police.

13 After those three hours the best lie you could  
14 fabricate was this was an accident. If it was an  
15 accident you would have called immediately 911. That is  
16 what people during accidents, they call for help.

17 I saw you that morning. And now I am plagued with  
18 that vision of you. And I will never get rid of it. You  
19 were leaning against the doorway smoking a cigarette so  
20 casually and calm. Even minutes before you killed my  
21 sister or minutes after you delivered that fatal gunshot  
22 wound.

23 I was so angry with Pamela for allowing you back in  
24 her life after all that you put her through. She had  
25 been on a walk the night before, and we talked about out.

1 And as she finally started to break away from your clutch  
2 and she told me how she had finally stood up to you and  
3 told you just to stop your crap and just get along with  
4 her for your son. She said she wanted nothing else to do  
5 with you, for you to go with the girl you told her you  
6 had found.

7 I heard you that day on the Greenway when we were on  
8 the speakerphone. You did tell her if you couldn't have  
9 her then nobody else would. I guess that is really one  
10 of the only honest things you have said.

11 Pamela was smart and very thoughtful. I guess the  
12 one thing she couldn't figure out was how to get out from  
13 underneath your influence.

14 Love is blind, and as seeing -- and her seeing  
15 through it was many things. All she couldn't see was  
16 your evil. She loved you. As much as I pointed out your  
17 vicious acts she would still defend you. She would say  
18 that I was just hating on you and seeing too much into  
19 things, that I was being too protective. And she would  
20 get mad at me.

21 You caused numerous arguments between my sister and  
22 me. If I -- you showed up drunk she would let you in  
23 because she loved you enough not to allow you to drive in  
24 that condition.

25 You cheated on her. You broke into her house. You

State vs. William Thomas Gule, Jr.

1 pushed and shoved her around. And she forgave you time  
2 and time again. She gave you everything she had to  
3 offer. And you took the one thing she didn't. Her life.

4 You took my best friend. You took my sister. You  
5 took my go-to person for everything. And that is  
6 something I will never get back. Every day I still think  
7 of this and I ask how could you do something so evil.

8 Pamela was strong-headed. She was a good go-to  
9 person. She always had answers for problems and she  
10 could help find solutions.

11 Your selfish act not only took a life, but you took  
12 a mother away from a son, a son she loved so much. You  
13 took my sister. You took a daughter from my mother and  
14 father. You took a bright star away with no right at  
15 all. She will never hear her son say mom I love you.

16 She will never get to kiss a boo boo when it is  
17 needed. I will never get to go on a walk with her again.  
18 We will never see her again. And our last memory isn't  
19 simply that she just passed away, it is that you murdered  
20 her.

21 MR. KIDD: The victim's mother, Ms. Mary Newton.

22 MS. NEWTON: Your Honor, I thank you for this  
23 opportunity. I am Pam's mother. And I am speaking on my  
24 behalf and on behalf of their son, **Child**.

25 First, God says I have to forgive William. And I

1 struggled and I prayed. And I said Jesus forgive him,  
2 William. I forgive you. I reached deep into my soul to  
3 find that forgiveness. But it is there.

4 But you have made an impression on our family that  
5 will be there forever. You have destroyed it.

6 The facts of this case were proven beyond a  
7 reasonable doubt and a verdict was rendered guilty. I  
8 thank the jury for their service. Words cannot express  
9 the pain and anguish our family and friends have endured  
10 since Pam was murdered.

11 The defendant's decision to take the life of a human  
12 being with no regard for the effect it may have on others  
13 is unimaginable. The loss of my daughter is beyond  
14 words. And the effect had a definite impact on the death  
15 of her father. He could not bear her loss. Truman  
16 slipped into a coma on August the 5th, 2017, two years  
17 from the date of Pam's murder.

18 The loss of a mother is unimaginable. **Child** has  
19 lost his mom. Can you imagine what it is like to be two  
20 years old and your mom disappears from your life?

21 Well, let me give you a little bit of insight.  
22 Nightmares. Many times of just holding him as he is  
23 crying wanting his mom. He loved his mom so much.

24 Then comes the days when he tried to make sense of  
25 why he is different, why has no mom and dad, why he has

1 to live this way.

2 There will be no more birthday parties, no more  
3 backyard gatherings, no more holiday celebrations for us  
4 with Pam. And you know what really hurts, William, is we  
5 invited you into our house for these. We invited you to  
6 come into our home and share with us.

7 The laughter, hugs, guidance, advice, sense of  
8 security, and those opportunities to say I love are gone  
9 forever.

10 Your Honor, as the mother of Pam and on **Child**'s  
11 behalf I request that you give the maximum penalty to  
12 this defendant for the crime which he has imposed.

13 On behalf -- on the behalf of the family of Pamela  
14 Michelle Burgess I want to express to the solicitors, our  
15 appreciation to the jury and to all the court our  
16 appreciation. Thank you.

17 THE COURT: Anyone else?

18 MR. KIDD: That is all from the family, Your Honor.

19 THE COURT: Mr. Lizzi, please have Mr. Gule stand.  
20 Does someone want to speak?

21 MR. LIZZI: His father I think wants to speak.

22 THE COURT: You may. Would you like to speak up,  
23 sir?

24 FATHER OF DEFENDANT: No.

25 SHABRINA: My name is Shabrina. I have been friends

1 with William for about five or six years. Me being here  
2 today, it's really shocking. I honestly never thought  
3 that this would be a situation that I would be in,  
4 knowing him. Because every time I have needed somebody  
5 he has been there.

6 I have been in a relationship that didn't go so  
7 well; and he was someone that I could call that, you  
8 know, was there for me when the person that I loved  
9 wasn't there for me.

10 We never had that -- it never was a sexual  
11 relationship or nothing ever. But that was somebody that  
12 I just -- I just couldn't believe that I actually had  
13 somebody as a friend that didn't, you know, want to be  
14 with me for my body.

15 He respected me. He was always there for me. Every  
16 time I was in trouble he was always someone I can call.  
17 He was a good person. And I honestly -- every time I  
18 thought about him even when I see somebody I tell them I  
19 always thought he was a church boy. Like I never -- I  
20 just never seen any of this happening.

21 To the family I am very sorry that you guys, you  
22 know, have to go through this. I really am.

23 To the Gule family I am sorry that you guys have to  
24 go through this. Like this is really hard.

25 And I just -- I just hope everyone in the room can

1 get healing, everyone can move forward, everyone can find  
2 forgiveness. It is very sad for both families as well as  
3 for **Child**.

4 You know, I don't know how it is not to have my  
5 mother; but I know how it is not to have my father. And  
6 I do pray that -- I just pray that everyone can move  
7 forward with their lives and everything can heal.

8 And this is a big shock to everyone.

9 THE COURT: Anyone else?

10 MOTHER OF DEFENDANT: I am his mom. He is the only  
11 son I have. I am sorry this happened. I apologize to  
12 the family. I didn't think it would lead to this.

13 But I will ask the judge, the court, to allow me to  
14 give him a hug before they take him away.

15 THE COURT: I will when they -- let me finish the  
16 sentence and I will allow you to give him a hug.

17 MOTHER OF DEFENDANT: Okay. Thank you.

18 THE COURT: You are welcome.

19 MS. WANDA GULE: Can I say something, please?

20 THE COURT: Yes, ma'am.

21 MS. WANDA GULE: I am Wanda Gule, William's big  
22 sister. And I just wanted to say that, you know, I am  
23 sorry that this happened. Michelle was a part of our  
24 family. You know, she would come up to DC, Maryland,  
25 spend holidays with us.



1           And this is a mistake. It is just something that  
2 happened that cannot be reversed, and I am very very  
3 sorry that it happened.

4           But, you know, just consider my nephew and the life  
5 that he has to live. We have not seen him since this  
6 happened. We have had no connections with very close  
7 family. And it is something that has been strained and  
8 very difficult for our family as well. Not a day goes by  
9 that -- we struggle with this. And we miss my nephew.  
10 We miss my brother.

11           And this is just something that really has  
12 snowballed and spun out of control. And it is a  
13 nightmare that I wish one day that I can wake up and it  
14 would be erased and Pam would be here.

15           I want to thank everyone for their services today.  
16 And again apologize to the family.

17           THE COURT: Ma'am, unfortunately we cannot erase it  
18 and make it undone. And to ensure that we all have a  
19 peaceful and orderly and safe society we must all abide  
20 and comply with the rule of law.

21 SENTENCE:

22           Mr. Gule, you chose in this particular situation not  
23 to comply with the rule of law; and as a result a young  
24 life, a mother, was violently ended at your hands. A  
25 tragic loss, as your lawyer says, for all. For the

1 victim's family, for your family; but most importantly  
2 for your son. He is the huge loser in all of this.

3 The law and society demands justice. And the  
4 legislature gives judges in a murder case somewhat of a  
5 discretion in sentencing someone. I have to sentence you  
6 by law to a minimum of 30 years. I have the discretion  
7 to sentence you for the balance of your natural life. So  
8 there is a wide discretion in there.

9 The victim's family asked me to sentence you to the  
10 balance of your natural life. I have been on the bench  
11 15 years, practiced for 30 years. And obviously I have  
12 seen as many bad things as you can possible see.

13 Your lawyer asked for the minimum sentence. The  
14 family asked for the maximum sentence. I don't think in  
15 this situation that the minimum sentence is appropriate.  
16 I also don't think perhaps the maximum sentence is  
17 appropriate.

18 So exercising my discretion the sentence of this  
19 court is that you be committed to the State Department of  
20 Corrections for a period of 40 years. You will be given  
21 credit for your time served to date.

22 As to the possession of a weapon with the commission  
23 of a violent crime -- during the commission of a violent  
24 crime that is a five-year sentence to run concurrently.  
25 Good luck to you.

1           Gentlemen, would you allow mom to get a short hug on  
2 the way out. Everybody else remain seated until the  
3 defendant is removed from the courtroom.

4 (WHEREUPON, hug for mom by defendant.)

5           THE COURT: At this time I am going to ask the  
6 defendant's family if you would please exit the courtroom  
7 first. The victim's family please remain seated.

8 (WHEREUPON, everyone complied.)

9           THE COURT: Mr. Bailiff, let the jury go back to  
10 their rooms and get whatever they need.

11           And thank y'all very much.

12           I would ask security assuming you feel like it -- I  
13 am not saying anything is going to happen, but just when  
14 you feel like it is appropriate let the victim's family  
15 leave.

16           Thank you.

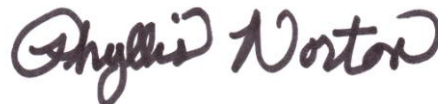
17 (WHEREUPON, concluded trial 10/10/18, 12:41 p.m.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

## CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 8 - 10, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: June 13, 2019

*Certified Transcript Provided For: Dayne Phillips*  
*Certification Reference #2019-0613*

ACE/0307633  
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER  
2015-13056

ARREST WARRANT NUMBER  
2015A1010203390

DATE OF ARREST

08/05/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEE - 8 2016

VERDICT

Guilty

Foreperson of Petit Jury

Date:

10/10/18

DOCKET NO. 2016-GS-10-00241

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
FEBRUARY TERM 2016

THE STATE

VS.

WILLIAM THOMAS GULE, JR  
B/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010  
CDR Code: 0116

RECEIVED  
OCT 17 2018  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

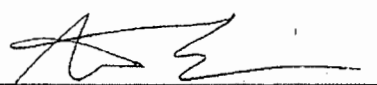
INDICTMENT

At a Court of General Sessions, convened February 2016, the Grand Jurors of Charleston County present upon their oath:

**MURDER**

That in Charleston County, South Carolina on or about August 5, 2015, the defendant, William Thomas Gule, Jr., with malice aforethought, did kill and murder Pamela Burgess by means of a gunshot, and Pamela Burgess did die in Charleston County as a proximate result thereof on or about August 5, 2015; in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ANDREW EVANS  
ASSISTANT SOLICITOR

ACE/0307633  
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2015-13056

ARREST WARRANT NUMBER

2015A1010203391

DATE OF ARREST

08/05/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

FEB-8 2016

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

10/10/18

DOCKET NO. 2016-GS-10-00242

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

THE STATE

VS.

WILLIAM THOMAS GULE, JR

B/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING  
THE COMMISSION OF A VIOLENT  
CRIME

SC Code: § 16-23-0490  
CDR Code: 0549

RECEIVED  
OCT 17 2018  
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

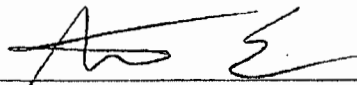
INDICTMENT

At a Court of General Sessions, convened February 2016, the Grand Jurors of Charleston County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME**

That in Charleston County, South Carolina, on or about August 5, 2015, the Defendant, William Thomas Gule Jr, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ANDREW EVANS  
ASSISTANT SOLICITOR



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

421

COUNTY OF CHARLESTON

STATE VS.

WILLIAM THOMAS GULE, JR

AKA:

Race: Black/African AmericanSex: M

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_

SID# SC02212805\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: MurderIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)The charge is: ☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Steven Th... 76671  
Culver Kidd, Assistant Solicitor SC Bar #W. Thomas Gule, Jr.  
DefendantCh... 64325  
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,  
for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which  
are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic  
Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso (Public Def/Probation) \$500 \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment) \$40/ca \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75☐ Ordered PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

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SC Court of Appeals

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: \_\_\_\_\_

Court Reporter: Phyllis NortonPresiding Judge: MB Early IIIJudge Code: 2136Sentence Date: Oct 10, 2018

COUNTY OF CHARLESTON

STATE VS.

WILLIAM THOMAS GULE, JR

AKA:

Race: Black/African AmericanSex: M

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_

SID# SC02212805\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Possession Of A Weapon During The Commission Of A Violent CrimeIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)The charge is: ☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

[Signature] 76671  
Culver Kidd, Assistant Solicitor SC Bar #[Signature]  
Defendant[Signature] 64325  
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16-65-10-241☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED ☐☐ Set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_

\$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%)

\$ \_\_\_\_\_

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ \_\_\_\_\_

§56-5-2995 (DUI Assessment)

\$12

\$ \_\_\_\_\_

§56-1-286 (DUI Breath Test)

\$25

\$ \_\_\_\_\_

Proviso: (Public Def/Probation)

\$500

\$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ \_\_\_\_\_

§50-21-114 (BUI Breath Test Fee)

\$50

\$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ \_\_\_\_\_

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk: \_\_\_\_\_

Court Reporter: Phyllis NortonPresiding Judge: [Signature]Judge Code: 2136Sentence Date: Oct 10, 2018

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 8, 2020

  
Dayne Phillips  
PRICE BENOWITZ LLP  
1614 Taylor Street, Ste. D.  
Columbia, SC 29201  
(803) 807-0234  
Attorney for Appellant

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**May 08 2020**

**SC Court of Appeals**