

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

Sep 24 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NICHOLAS BENJAMIN CHHITH-BERRY,

APPELLANT

APPELLATE CASE NO. 2019-000352

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
5 vs.) 2014-GS-32-03244
6 Nicholas B. Chhith-Berry) 2014-GS-32-03245
7 Defendant.)

8

9 December 12th-15th, 2016
10 Lexington, South Carolina

11

12 B E F O R E:

13 The Honorable Eugene C. Griffith, Jr., Judge; and a Jury

14

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

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17 Alton H. Eargle, Jr., Assistant Solicitor

18 On behalf of the State of South Carolina

19 H. Wayne Floyd, Esquire

20 On behalf of the Defendant

21

22 Stacy S. Johnson
23 Circuit Court Reporter

24

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1 (The following proceedings were held on December 12,
2 2016, beginning at 10:20 AM.)

3 THE COURT: All right. Mr. Graham, call the case.

4 MR. GRAHAM: Thank you, Your Honor.

5 The State calls Indictment 2014-GS-32-3244, the
6 State versus Nicholas Benjamin Chhith-Berry, indicted for
7 murder; Indictment 2014-GS-32-3245, an indictment for
8 possession of a weapon during a violent crime.

9 THE COURT: Thank you, sir.

10 All right. Ladies and gentlemen, the State's called
11 its first case for trial. Deputy Solicitor Shawn Graham
12 is the one who presented the indictments to the Court.
13 And I'm gonna tell you certain things and this is when my
14 questions are gonna be a little more directed as to do
15 you know anything about the case, heard anything about it,
16 do you know any of the potential witnesses, and if any of
17 those are affirmative, you know, I know someone, well,
18 would that relationship with whomever, would it create an
19 issue for you not being able to be fair and impartial?

20 Because you can know people and still be a good
21 listener and be fair and impartial. What I'm hoping to
22 end up with is fourteen jurors to hear the case that will
23 be good listeners and don't have any idea or haven't
24 heard a thing about the case until they walked into court
25 within the last minute, and so that's what I'm looking

1 MR. GRAHAM: Please present Ms. Parson.

2 THE CLERK: What say for the defense?

3 MR. FLOYD: Present Ms. Parson.

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

5 That's Alternate 1, Your Honor.

6 120, Christopher Kozma.

7 (Whereupon, Christopher Kozma, a white male, comes
8 forward.)

9 THE CLERK: What say for the State?

10 MR. GRAHAM: Please present the juror.

11 THE CLERK: What say for the defense?

12 MR. FLOYD: Present Mr. Kozma.

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

14 That's Alternate Number 2, Your Honor.

15 THE COURT: All right.

16 Any matters of law that the Court needs to take up
17 regarding the selection process employed and/or the
18 composition of the jury from the State or the defence?

19 MR. GRAHAM: Not from the State, Your Honor.

20 MR. FLOYD: Not from the defense, Your Honor.

21 THE COURT: All right.

22 All right, folks. Not for you-all. I'm gonna have
23 a different comment for you-all.

24 Any member -- I'm sorry. You-all have your juror
25 information cards, which has the Clerk of Court's phone

1 number. Out of an abundance of caution, I'm gonna ask
2 you-all to call in tonight and listen to the instructions.
3 The instructions are likely to be please call in tomorrow
4 night after six. Continue to follow the instructions of
5 that recording until you're excused for the week, all
6 right? Everybody got that number?

7 Now do me a favor. Don't call early. Ms. Frick is
8 generally up here in court with me and she's the only
9 one that will know what's up for tomorrow after I tell
10 her. If you call early, there will be some nice lady
11 downstairs that will say, you know, they're up on the
12 fourth floor and I have no idea and then you're there
13 stuck with not getting an answer. So don't call early
14 because there won't be an early answer. Wait until after
15 6:00 and just call and listen, okay?

16 You-all are free to go so long as you call. Thank
17 you-all for coming and thank you for your patience and
18 for the happy birthday wishes.

19 (Whereupon, the jury panel was excused at 10:59 AM.)

20 (Proceedings held at the bench; not reported.)

21 THE COURT: All right, folks. I'm gonna call you-all
22 -- you-all are gonna have to call in also, but I'm gonna
23 tell you this, a couple of pre-trial instructions. I've
24 got some preliminary matters that I need to take up. I've
25 also got some other matters that are not related to this

1 case that are impacting my time this afternoon and I don't
2 know how long that's gonna take and whether I'm gonna be
3 ready to start tomorrow morning at 9:30 or not. So since
4 I don't know, I can't tell you yet. Now if I get more
5 done this afternoon than anticipated, then we can start
6 in the morning.

7 So for simplification, I'll say -- Mr. Floyd, is it
8 okay if I refer to this case as the Berry jury case? Is
9 that okay?

10 MR. FLOYD: That's correct.

11 THE COURT: I'm dropping his -- the hyphenation.

12 You-all are the Berry jury for purposes of Ms. Frick
13 on the message, okay? So when you-all call in, you-all
14 listen for members of the Berry jury, please come in at
15 whatever time she says because it will probably be her
16 voice, Ms. Frick's, okay?

17 Now do you-all have those cards, the pink cards like
18 this? Okay. That's the number you call.

19 Now this is important also. I told you that
20 everything you need to decide this case you'll get here
21 in the courtroom and for that reason I am going to caution
22 and instruct you do not go on the Internet, don't go back
23 and research the old issues of the State paper, don't call
24 your barber and ask him what he heard about it. Don't do
25 any independent research because that would be unfair to

1 both sides.

2 I use this as an example. I was trying a case much
3 like this in Laurens County and I picked the jury and
4 excused them and had something else to do in the afternoon,
5 and the newspaper was real involved with the afternoon
6 thing. And the paper in Laurens comes out every Wednesday,
7 and on Wednesday morning it came out the Judge Addy was
8 holding court and he ruled this way or that way or some
9 other way. It turns out my name's Judge Griffith and I'm
10 the one that ruled and the newspaper had the wrong judge
11 in the courtroom because they didn't bother to come. They
12 called somebody in the courthouse and said what's going
13 on; well, the judge threw out so and so or dismissed this,
14 and Judge Addy got blamed. He wasn't even there.

15 So my point is sometimes there's bad information out
16 there. There's no need for you-all to go chasing down
17 bad information. You've got to come in and get what's
18 really the testimony and evidence under oath with a court
19 reporter and a judge and people ready to present it to
20 you so you get better information.

21 Also don't put this on -- I've got some young jurors
22 in here. Don't go on Facebook, don't go on Twitter,
23 don't go on any social media sites and say I'm on the
24 jury. I may start another one and Judge Hayes may get a
25 jury. You don't need to invite a conversation because I

1 don't want you talking about the case not only with your
2 family and friends, but with anyone, including each other,
3 until you hear the case. It will be highly unfair for
4 you-all to start talking about the case when you don't
5 know anything about it.

6 So as we hear the case -- because I'm gonna be like
7 you-all. I'm gonna be listening for the first time, I've
8 not heard it before. We're both gonna hear it together;
9 you-all as the jury, me as the judge. We'll take it as
10 it's presented to us. But in order for you to make a fair
11 decision, you've got to wait for all of the witnesses and
12 the evidence to be presented. Not the first two, not the
13 first three, not the last five. You never know who's
14 gonna be the most important witness because we hear them
15 when we hear them, all right?

16 And sometimes the State's required, if it's a
17 lengthier case and they've got to bring in somebody
18 that's not gonna be subpoenaed or required to come in
19 until Wednesday morning maybe, I don't know, and so you
20 won't hear that witness until they're required to be here.
21 Other witnesses they get on a schedule. What I'm saying
22 is we can't discuss the case. You-all can't discuss the
23 case even with one another until you get all of the
24 testimony.

25 So don't tell anybody you're on jury service. If

1 they ask, say Judge Griffith says don't talk about the
2 case and just leave it like that. That's what I want
3 you-all to do. What you-all will need, you-all will get
4 here. Everything else is not relevant. I don't want
5 anyone trying to influence you about what happened in
6 this case except these folks while they're in this
7 courtroom because then we've got a record of it, we've
8 got a judge supervising it. It's much more fair to both
9 sides to do it that way, all right? Now if anyone tries
10 to communicate with you on the case, let Mr. Dan know
11 when you get here, all right.

12 Now what I'm gonna do is I'm gonna excuse you for
13 the day to call in tonight after six. He's gonna show
14 you where the jury room is because when you-all report
15 back, you'll go straight to the jury room. It's right
16 back in this corner. It's hard to understand it, but the
17 courtroom is actually not situated the way you think in
18 the building. It's actually 180 degrees opposite.

19 Anyway, thank you-all for your patience. I'm gonna
20 excuse you for the day, call in after six and we'll let
21 you know what time to come in tomorrow, okay?

22 All right, Mr. Dan. They're all yours.

23 BAILIFF: You-all follow me, please.

24 (Whereupon, the jury is excused for the day at
25 11:05 AM.)

1 THE COURT: Let's take a few minutes also while they
2 see the jury room. Let's take about fifteen minutes, all
3 right?

4 (Recess taken at 11:05 AM.)

5 (Back on the record at 11:23 AM.)

6 BAILIFF: All rise. Court is now in session. The
7 Honorable Eugene C. Griffith, Jr., presiding.

8 THE COURT: All right. We're gonna start with some
9 pre-trial stuff. I'm aware there are a couple of Jackson
10 v. Denno issues, some statements. And so, Solicitor, if
11 you-all have agreed on the order in which to call those,
12 I'm gonna go with you-all's order. Just call the first
13 witness.

14 MR. GRAHAM: The State calls Chris Hall.

15 (Whereupon, Christopher A. Hall was duly sworn by
16 the Clerk of Court.)

17 THE CLERK: Once you're seated, state your full name,
18 spelling your last, please.

19 THE WITNESS: My name is Christopher A. Hall, H-A-L-L.

20 CHRISTOPHER A. HALL,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION (In-Camera)

23 BY MR. GRAHAM:

24 Q. Mr. Hall, where are you employed?

25 A. I am employed with Lexington County EMS.

1 Q. And how long have you been -- what do you do for
2 Lexington County EMS?

3 A. I'm a paramedic with that agency.

4 Q. How long have you been a paramedic or an EMT?

5 A. I have been an EMT since 2001.

6 Q. May 19, 2014, did you have a call for service at
7 [REDACTED] 6 Dogwood Road in Pine Ridge, South Carolina?

8 A. Yes, sir.

9 Q. Can you tell me what you observed when you got
10 on-scene?

11 A. When I got on-scene, I saw two gentlemen on the ground
12 or sitting down on the driveway in front of a vehicle with
13 their hands cuffed behind them and then a distraught female
14 walking around only wearing a bikini and another gentleman
15 on the front porch not moving.

16 Q. Was one of the individuals that you saw in handcuffs
17 the Defendant, Nicholas Berry?

18 A. Yes, sir.

19 Q. And did you treat Mr. Berry?

20 A. Yes, sir.

21 Q. Can you tell me about your assessment of him?

22 A. I did what's called a SAMPLE history; signs and
23 symptoms, allergies, medications, past pertinent history,
24 last oral intake and "E" is for events, and I went through
25 that assessment process to ask him what was going on, how

1 is he feeling, how did he get hurt or if he was hurt, and
2 I did that. I noticed that he did have blood on him, that
3 he did have blood around his mouth and that he -- dried
4 blood around his mouth and that he had blood on his hands.

5 Q. When you did that, what physical injuries did you see
6 on him?

7 A. The only physical injuries I was able to find were on
8 his hands in between the index finger and thumbs and some
9 abrasions, maybe some cuts on -- near the palms or wrists.

10 Q. What did you find between his thumbs and forefingers?
11 Do you have a copy of your report with you?

12 A. I left it over at my desk -- I mean, seat where I was
13 seating -- sitting. I do apologize.

14 Q. (Handing.)

15 A. Okay. Let's see. I wrote down patient's complaining
16 of one-fourth inch laceration to the base of his left pinky
17 finger and one-inch laceration to the base of his right
18 pinky finger. I have to recant that the cuts were between
19 the index and the thumbs. I'm sorry.

20 Q. So the only injuries you observed were two
21 lacerations; one on the left pinky and one on the right
22 pinky?

23 A. Yes, sir.

24 Q. Anything else on his body anywhere that you noticed?

25 A. Just dried blood.

1 Q. Do you know where that blood came from?

2 A. No, sir.

3 Q. In the -- you referred to something called SAMPLE.
4 What is that?

5 A. It is a mnemonic that everyone in the medical field
6 uses to assess a patient, a patient that can actually
7 talk to you, and you use those questions to figure out
8 much like any investigator does to what went on and what's
9 happening.

10 Q. Can you take us through that?

11 A. As I said, SAMPLE. "S" stands for signs and
12 symptoms, what can I see, what is going on with the
13 patient, if they're able to tell me what is causing the
14 injury or illness. "A" stands for allergies; is the
15 person allergic to any drugs or foods or substances.
16 "M" stands for medications; is the patient taking any
17 type of medications, whether they're prescribed or not
18 prescribed. "P" stands for past pertinent history; what
19 their medical history is that could be pertinent to what
20 is going on at that time. "L" stands for last time that
21 they ate or drank anything, whether it's normal food or
22 just liquids or even alcohol. "E" is the events; what
23 caused this person to either be sick or injured. It
24 allows us to get an idea of what's going on so we can
25 treat them better and then when we get to the hospital

1 let them know what's going on so that anything that's
2 going on cannot be made worse by the treatment that's
3 gonna be going on.

4 Q. During your conversations with Mr. Berry when you
5 were going through the SAMPLE, was he able to understand
6 your questions?

7 A. Yes, he was. I -- yes, he was. Initially Mr. Berry
8 would not give us truthful answers, would not tell us his
9 -- his real name. He would sometimes not give a truthful
10 answer about how he got injured or even if he was injured.

11 Q. In addition to your conversations with him, what
12 physical observations did you have about his demeanor at
13 the time?

14 A. He was very -- the best word I can use is antsy. He
15 -- he just wanted to go. He -- he kept wanting to not
16 really get away from us, but he just didn't want to sit
17 still.

18 Q. From your physical observations, did you have any
19 reason to believe that he had been drinking alcohol?

20 A. Because there was a strong smell of alcohol about
21 him, there was a high suspicion of him drinking alcohol,
22 and the first two times that he was asked he said no and
23 then he finally admitted that he did have alcohol later on
24 once we told him we're not the police, this is something
25 medically we have to know.

1 Q. Okay. Did he tell you how much that he had to drink
2 or how much he claimed to have drank?

3 A. Mr. Berry, he -- I wrote down in my paperwork that he
4 admitted to drinking five shots. I cannot remember what
5 he said -- what type of shots he took of alcohol and he
6 says a few drinks of liquor.

7 Q. How about -- did you ask about the use of either
8 prescription drugs or nonprescription drugs?

9 A. I asked about any illegal substances or medications
10 that he is supposed to take or any medications that --
11 that is not his but he did take and --

12 Q. How did that conversation go?

13 A. Initially he denied and then he finally admitted to
14 smoking marijuana and taking a bar and a half of Xanax
15 and he admitted that the Xanax was not his, it was not
16 prescribed to him.

17 Q. Did he tell you when he took the Xanax?

18 A. I did not notate that down, but at the time -- I
19 can't remember if I asked that question of when he took it.

20 Q. So as to your physical observations, can you tell me
21 besides the odor of alcohol was there anything else about
22 the way he was behaving other than what he said that gave
23 you suspicions that he had either been drinking alcohol or
24 taking Xanax or some other drug?

25 A. Like I said, he was very jittery, he was very --

1 wanting to get away from the situation. He was anxious.

2 I just can't think of the word -- the correct words to

3 explain what I was seeing at this time.

4 Q. Did he understand your questions and your conversation
5 with him?

6 A. Yes.

7 Q. At some point either -- did he tell you a story about
8 what he claimed happened?

9 A. Yes, sir.

10 Q. And how did that conversation come about?

11 A. During -- during the timeframe that we were asked --
12 during the timeframe that we were with him, we had to ask
13 him multiple times, you know, what's going on. We can see
14 you're injured, we know something happened on this scene,
15 we just need to know what happened so we can understand how
16 to help you better, and he finally admitted to making --
17 where I notate in my paperwork --

18 Q. Let me interrupt you for a second. You said you had
19 to ask him multiple times what happened. Do you remember
20 how many times that was?

21 A. At least three times.

22 Q. Okay. So before he gave you this -- this story that
23 you noted in your report, do you remember what his
24 responses were the first two or three times?

25 A. Unfortunately, I did not write -- notate them down and

1 I can only barely remember him stating one of the times
2 that he didn't remember how he got hurt and then another
3 time he said it happened so fast I don't know what
4 happened, hence, I assumed those were not exactly correct
5 or truthful. I did not notate those down.

6 Q. So one time you asked him, he said he didn't remember.
7 The second time you asked him, he said it happened so fast
8 I don't know what happened?

9 A. Yes, sir.

10 Q. And then you asked again and he gave you the story
11 that you documented in your report?

12 A. Yes, sir.

13 Q. What was the story that you documented in your report
14 that Mr. Berry told you?

15 A. Mr. Berry stated, that nigger just attacked me and my
16 brother. He stated he started whaling on us with a knife.
17 That's how my fingers got stabbed. I was trying to help
18 my bro. That's -- that's the way it is. You protect
19 your family.

20 Q. And I think up above there you have another sentence
21 in your report as well, don't you? It starts with the
22 patient stated.

23 A. The patient stated that he was trying to protect his
24 brother from being attacked by another person.

25 Q. Did you force him to make any of those statements to

1 you?

2 A. No, sir.

3 Q. He was under custody at the time though?

4 A. His hands were cuffed. I can only assume he was under
5 -- he was in custody.

6 Q. Did you threaten him or did you hear anybody threaten
7 him in your presence to get him to talk?

8 A. No, sir.

9 Q. Did you hear anybody promise him anything in your
10 presence?

11 A. No, sir.

12 Q. So to the best of your knowledge, he understood the
13 conversation with you and spoke to you free and voluntary?

14 A. Yes, sir.

15 MR. GRAHAM: Thank you, Mr. Hall. Please answer any
16 questions Mr. Floyd has.

17 CROSS-EXAMINATION (In-Camera)

18 BY MR. FLOYD:

19 Q. Mr. Hall, when you arrived there, Mr. Berry was
20 handcuffed behind his back?

21 A. Yes, sir.

22 Q. Did you inform him of any rights he had when speaking
23 to you?

24 A. That's not part of my purview, sir. I'm not an
25 officer, a law officer.

1 Q. And was Mr. Austol Youmans with you that night?

2 A. Yes, sir.

3 Q. Is he not a Cayce Police Department employee?

4 A. Yes, sir, he is.

5 Q. He's a law enforcement officer; is he not?

6 A. Yes, sir.

7 Q. And so was he present and privy to the conversation?

8 A. Yes, sir.

9 Q. Did he advise Mr. Berry of his rights?

10 A. At that time, Mr. Youmans was not acting as a law
11 officer, he was not wearing his badge out where we could
12 see it, he was not dressed as a law officer. He was with
13 us as an EMT student. He was going through EMT class and
14 in that aspect he was acting as a medical personnel.

15 Q. Well, he did not resign from the Cayce Police
16 Department to ride with you, did he?

17 A. As far as I know, no, sir.

18 Q. In fact, he's still a police officer with the Cayce
19 Police Department; is he not?

20 A. Yes, sir.

21 Q. And as far as that goes, on that night he was a
22 policeman with the Cayce Police Department even though he
23 was riding with you as an EMT; is that right?

24 A. True, sir.

25 MR. FLOYD: Thank you. No further questions, Your

1 Honor.

2 REDIRECT EXAMINATION (In-Camera)

3 BY MR. GRAHAM:

4 Q. Mr. Hall, what you're talking -- what we've talked
5 about today, these are the questions in your interaction
6 with Mr. Berry, right?

7 A. Yes, sir.

8 Q. Mr. Youmans, although he was a -- you weren't in
9 Cayce, you were in Pine Ridge, right?

10 A. Yes, sir.

11 Q. He was not wearing his Cayce uniform, didn't have his
12 gun and belt on?

13 A. No, sir.

14 Q. He was an EMT student in training doing ride-alongs;
15 is that correct?

16 A. That's the only type of uniform he had on. He had
17 what was -- not prescribed, but what was told to him by
18 his instructor what to wear, which was black pants, black
19 shirt and black shoes.

20 Q. The questions you asked or that Youmans asked or
21 anybody else on-scene for your part, for what you
22 testified to today, it had to do with medical treatment
23 and diagnosis, correct?

24 A. Yes, sir.

25 MR. GRAHAM: Thank you.

1 THE COURT: Mr. Floyd, anything else?

2 MR. FLOYD: Nothing further, Your Honor.

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

4 (Witness excused.)

5 MR. GRAHAM: Your Honor, Mr. Hall and, I believe,
6 Mr. Bernard, who's also with Lexington County EMS, are
7 still under subpoena, but I don't think we need them here
8 anymore today, so is it all right if they leave? Unless
9 Mr. Floyd wants them here.

10 THE COURT: Okay. As long as you can get them back
11 when you need them.

12 Are you okay with that, Mr. Floyd?

13 MR. FLOYD: That's okay with me, Judge.

14 THE COURT: All right. They can go.

15 Okay, Mr. Eargle.

16 MR. EARGLE: The State calls Detective Sam Smith.

17 (Whereupon, Samuel Stewart Smith was duly sworn by
18 the Clerk of Court.)

19 THE CLERK: Once you're stated, state your full name;
20 spelling your last.

21 THE WITNESS: My name is Samuel Stewart Smith. Smith
22 is spell S-M-I-T-H.

23 SAMUEL STEWART SMITH,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION (In-Camera)

1 BY MR. EARGLE:

2 Q. Mr. Smith, where are you employed?

3 A. Currently with the Lexington County Sheriff's
4 Department.

5 Q. And what are your job duties there?

6 A. Currently a detective in the major crimes division.

7 Q. How long have you worked for the sheriff's department?

8 A. Five years as of October 31st.

9 Q. Let me take you back to May the 19th of 2014. Do you
10 recall what your job duties were on that date?

11 A. Yes, sir. I was a patrol officer.

12 Q. What area of Lexington County?

13 A. The South Ridge Patrol Division; Gaston, Swansea,
14 Pelion, Pine Ridge, South Congaree, Dixiana and Horses
15 Neck.

16 Q. And on that particular date, do you recall receiving
17 a call for service on Dogwood Drive in the Pine Ridge
18 section?

19 A. Yes, sir. I was dispatched to an assisting other
20 agency call.

21 Q. And can you describe what happened when you arrived at
22 the scene?

23 A. When I arrived on-scene, I observed two men. It
24 appeared they were speaking with other officers. At that
25 time, I was instructed to secure the area with crime scene

1 tape. Once that was done, I then escorted a female to the
2 rear end of the residence, one of the bedrooms, because
3 there was a lot of commotion, a lot of emotion on the
4 scene.

5 Q. At the scene that night, did you have the opportunity
6 to observe one or two or more males in handcuffs?

7 A. Yes, sir. I observed two and I had the most contact
8 with the Defendant.

9 Q. You motioned to the Defendant, that would be Nicholas
10 Berry?

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

12 Q. And what was your contact with Mr. Berry?

13 A. After securing the area and after secluding the
14 female -- one of the females that appeared to be extremely
15 distraught, I was told that I was to secure Mr. Berry, who
16 was in the back of an EMS truck, and I was to follow him to
17 the hospital for security purposes.

18 Q. During your interaction with Mr. Berry, did you at any
19 point in time read him his Miranda rights?

20 A. Yes, sir, I did.

21 Q. Did he appear to understand them?

22 A. Yes, sir, he did.

23 Q. Once he was secured, did you ask him any questions?

24 A. Only the one as to whether or not he understood his
25 rights.

1 Q. What was his demeanor like that you observed?

2 A. When I observed him, he appeared to be extremely calm.
3 Not necessarily docile, but his behavior didn't seem to fit
4 the situation at hand.

5 Q. Did he appear to understand the rights that you read
6 him?

7 A. Yes, sir, he did.

8 Q. Did he have any questions for you?

9 A. No, sir, he did not.

10 Q. Did you stay on-scene the entire time?

11 A. No, sir, I did not. Once it was decided that he
12 needed to be transported for medical attention, I escorted
13 him off to the hospital and I never returned back to the
14 scene.

15 Q. You say you escorted the Defendant, Nick Berry, to the
16 hospital?

17 A. Yes, sir.

18 Q. What hospital was that?

19 A. The Lexington Medical Center.

20 Q. Was he riding with you?

21 A. No, sir, he was in the EMS truck and I was following
22 behind.

23 Q. Okay. Do you recall what happened once you arrived
24 and Nick Berry arrived at Lexington County Medical Center?

25 A. He was given attention by medical personnel. I sat

1 outside the room, pretty much had my back towards him the
2 whole time unless he required anything. I remember at one
3 point I got him a Gatorade and for the most part just
4 pretty much acted as a security officer.

5 Q. Did you -- did he ask you for a Gatorade?

6 A. No, sir, he did not.

7 Q. You voluntarily gave it?

8 A. Yes, sir. I was thirsty and I figured while I was
9 going I'd get him as well.

10 Q. And while you were sitting there, you said you didn't
11 ask him any questions?

12 A. No, sir, I did not.

13 Q. Did you hear him make any statements?

14 A. He did make one comment while I was there. It was
15 something to the effect of he was fighting my brother, I
16 was defending my brother, I came up behind him, and that
17 was about -- that was it.

18 Q. Would you repeat that, please? I apologize.

19 A. He made a comment to the effect of he was fighting my
20 brother, I was defending my brother, I came up behind him,
21 and that was it, and at that point he began asking me if
22 he had any charges and I told him investigators would be
23 responding to speak with him regarding the incident.

24 Q. So he wasn't responding to any questions you asked
25 him about what happened, he voluntarily stated that?

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

2 MR. EARGLE: I beg the Court's indulgence. Please
3 answer any questions Mr. Floyd may have.

4 THE WITNESS: Yes, sir.

5 CROSS-EXAMINATION (In-Camera)

6 BY MR. FLOYD:

7 Q. Detective Smith, just a couple of questions.

8 A. Yes, sir.

9 Q. The last statement you just mentioned to us, was that
10 at the hospital or in the EMS?

11 A. It was at the hospital.

12 Q. How long had he been in the hospital at that time?

13 A. I couldn't -- I couldn't give you an exact amount,
14 sir. I'm not entirely sure.

15 Q. Okay. And when you gave him his rights, was that when
16 he was in the EMS van?

17 A. Yes, sir. He was in the back of the EMS truck. He
18 was in the ambulance.

19 Q. And you didn't find him to be antsy at that time?

20 A. I did not, no, sir.

21 Q. Do you know whether or not he had been given any
22 medication by EMS?

23 A. No, sir. I'm unaware of if he had been given any
24 prescription medication -- any medication of any kind.

25 MR. FLOYD: Thank you. No further questions.

1 THE COURT: All right. You can step down.

2 THE WITNESS: Thank you, sir.

3 (Witness excused.)

4 THE COURT: All right.

5 MR. GRAHAM: Referring to another statement at a
6 different time, the State calls Allen Gleaton.

7 (Whereupon, Allen Everette Gleaton, Jr., was duly
8 sworn by the Clerk of Court.)

9 THE CLERK: Once you're seated, state your full name;
10 spelling your last.

11 THE WITNESS: Allen Everette Gleaton, Jr.,
12 G-L-E-A-T-O-N.

13 ALLEN EVERETTE GLEATON, JR.,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION (In-Camera)

16 BY MR. GRAHAM:

17 Q. Mr. Gleaton, where are you currently employed?

18 A. I am currently the deputy commander for a recruiting
19 and retention battalion for the South Carolina Army
20 National Guard.

21 Q. How long have you been with the National Guard?

22 A. Since December of 2000.

23 Q. How long have you been in law enforcement?

24 A. I started June of 2000.

25 Q. June -- May 19, 2014, where were you employed and in

1 what capacity?

2 A. The Pine Ridge Police Department.

3 Q. As a patrol officer?

4 A. Yes.

5 Q. Did you respond to a call for service at ■ 6 Dogwood
6 in Pine Ridge?

7 A. I did.

8 Q. When you got on-scene, what did you see?

9 A. When I came on-scene, I saw two gentlemen entering a
10 vehicle trying to leave, I initiated my blue lights and
11 stopped that vehicle from leaving. I also saw a female
12 in a bikini walking around in the front yard.

13 Q. Did you do -- was that handled like a felony car stop?

14 A. It was.

15 Q. And what is that?

16 A. When we receive information that something extremely
17 dangerous is going on. Prior to me getting on-scene, I had
18 received information from dispatch that gunshots had been
19 fired.

20 Q. When you got on -- describe how you removed or how
21 Adam Berry and Nick Berry came out of the Tahoe when you
22 stopped them?

23 A. Sure. When I exited my vehicle, I didn't initially
24 draw my weapon, but very shortly after they -- the driver,
25 Adam Berry, got out immediately and complied with my

1 commends. Nick Berry got out as well. I was telling them
2 to get out of the vehicle and get down in front of their
3 vehicle in the driveway.

4 Q. Would you describe the behavior and the demeanor of
5 the driver, Adam Berry, and the passenger, Nick Berry.

6 A. Sure. Adam was compliant immediately, got out of the
7 vehicle, went to the front of that vehicle and got down
8 facedown on his chest. Nick Berry got out slow and started
9 to walk beside the vehicle. There's a ditch right beside
10 the driveway. He went down into the ditch, fell down, got
11 up, started walking towards the driveway, but did not
12 comply with my commands.

13 Q. At some point when you were ordering Nick Berry to the
14 ground, what, if anything, did he say to you?

15 A. Well, first of all, Adam Berry kept telling him to get
16 down on the ground and obey, you know, trying to get him to
17 comply with my commands, and he made the comment of if you
18 don't do it, he's just gonna shoot you because I had my
19 weapon drawn at this time and --

20 MR. FLOYD: Your Honor, just a matter of law. I
21 know it's in front of you so it's not that significant at
22 this point. I just don't want it to be a waiver. I would,
23 of course, object to anything said by Adam Berry since he's
24 no longer here to testify. I just don't want it to be a
25 waiver.

1 THE COURT: Okay. Fair enough.

2 MR. GRAHAM: We would just say on the hearsay issue
3 that it goes to what his response is because that's what
4 the next question is to put it in context.

5 BY MR. GRAHAM:

6 Q. When Adam Berry said that, what did Nick Berry say?

7 A. He told -- he yelled out that I could shoot him and
8 he had his arms out in a very confrontational way.

9 Q. Eventually did he comply and get on the ground?

10 A. He did.

11 Q. And were both Adam and Nick Berry handcuffed?

12 A. They were.

13 Q. Did you question him in any way?

14 A. No.

15 MR. GRAHAM: Thank you, Mr. Gleaton. Please answer
16 any questions Mr. Floyd has.

17 CROSS-EXAMINATION (In-Camera)

18 BY MR. FLOYD:

19 Q. So, Mr. Gleaton, the only thing that Mr. Berry -- you
20 say that Mr. Berry said to you was that you could shoot
21 him?

22 A. That is correct.

23 Q. And when he held his hands out, did he have any weapon
24 or anything on him?

25 A. Not that I could tell, no.

1 Q. And that's it as far as of your interaction with
2 Mr. Berry?

3 A. That is correct.

4 MR. FLOYD: Thank you. No further questions.

5 MR. GRAHAM: Nothing else, Your Honor.

6 THE COURT: All right. Mr. Gleaton, you may step
7 down.

8 (Witness excused.)

9 MR. GRAHAM: Todd Garrick.

10 (Whereupon, Brian Todd Garrick was duly sworn by the
11 Clerk of Court.)

12 THE CLERK: Once you're seated, state your full name;
13 spelling your last, please.

14 THE WITNESS: Brian Todd Garrick. Garrick is spelled
15 G-A-R-R-I-C-K.

16 BRIAN TODD GARRICK,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION (In-Camera)

19 BY MR. GRAHAM:

20 Q. Investigator Garrick, where are you employed?

21 A. I'm employed with the Lexington County Sheriff's
22 Department.

23 Q. How long have you been in law enforcement?

24 A. I started my career in 1990.

25 Q. What's your current job title?

1 A. I'm a detective in the North Region handling property
2 crimes.

3 Q. Back in May of 2014, were you a detective at
4 headquarters in major crimes?

5 A. I was.

6 Q. And how did you become involved with the Pine Ridge
7 case that occurred that we're here on today?

8 A. My team was on call that night and my sergeant,
9 Sergeant Lint, called and advised me to report to Dogwood
10 Lane in regard to an indent.

11 Q. And when you got on-scene, what did you see?

12 A. By that point, a lot of the officers were already
13 there. I think crime scene was already there. I mainly
14 just helped out at the scene as best I could.

15 Q. Did you come in contact with Nick Berry on the scene
16 on Dogwood Road in Pine Ridge?

17 A. I did not. They had already been taken to the
18 hospital.

19 Q. At some point were you tasked to assist Lieutenant
20 Bramlett from the Pine Ridge Police Department?

21 A. I was.

22 Q. And what were you asked to go do?

23 A. I was asked to go to Lexington Medical Center with
24 Lieutenant Bramlett to interview two suspects that they had
25 there.

1 Q. And did you come in contact with Nick Berry and Adam
2 Berry at that time?

3 A. I did.

4 Q. Who -- so your first contact with Nicholas Berry was
5 where?

6 A. At the Lexington Medical Center.

7 Q. And who was with you when you made contact with Nick
8 Berry?

9 A. Lieutenant Bramlett with Pine Ridge.

10 Q. And did you have an opportunity -- you and Lieutenant
11 Bramlett have an opportunity to meet and interview the
12 Defendant, Nick Berry?

13 A. We did.

14 Q. Okay. And was that interview recorded?

15 A. It was.

16 Q. Let me show you a disk and ask if you recognize --
17 two disks and ask if you recognize these?

18 A. I do.

19 Q. And how do you recognize them?

20 A. My initials are there on both of them.

21 Q. And have you had an opportunity to listen to these?

22 A. I have.

23 Q. And do they fairly and accurately depict the interview
24 that you and Lieutenant Bramlett -- or the interviews you
25 and Lieutenant Bramlett had with Nicholas Berry?

1 A. They do.

2 MR. GRAHAM: Your Honor, for purposes of this hearing
3 the State would mark this -- I don't know if it's a State's
4 exhibit at this time or a Court's exhibit.

5 THE COURT: Let's call it a Court's exhibit now. Is
6 that okay?

7 MR. FLOYD: Yes.

8 MR. GRAHAM: There's two disks, Your Honor.

9 THE COURT: If we want to convert it later, will
10 there be any problem, Stacy?

11 THE COURT REPORTER: No, that's fine. It's a Court's
12 exhibit now.

13 THE COURT: All right. Court's Exhibit 1 and 2 or is
14 it just gonna be one with two disks?

15 MR. GRAHAM: However you want to do it.

16 THE COURT: All right. Let's call it one envelope,
17 Court's Exhibit 1, with two disks in it.

18 (Court's Exhibit Number 1 was marked for
19 identification.)

20 BY MR. GRAHAM:

21 Q. And you've listened to that?

22 A. I have.

23 Q. Approximately -- do you remember the time that you
24 arrived at the hospital?

25 A. Honestly, I don't. It was late, but I do not know

1 exactly what time I arrived there.

2 Q. Can you describe your observations of Nick Berry as
3 far as his physical appearance, how he acted and how he
4 interacted with you?

5 A. He was calm. I did notice that he had some wounds on
6 his hands that had been taken care of by the medical staff.
7 He was sitting on a hospital bed. I believe he was
8 handcuffed to the bed and that he was calm. I mean ...

9 Q. Did -- he was in custody, correct?

10 A. He was.

11 Q. Did you or Detective -- Lieutenant Bramlett advise
12 Mr. Berry of his rights?

13 A. Lieutenant Bramlett did.

14 Q. And you were present --

15 A. I was.

16 Q. -- when that happened? Do you know how he did that?

17 A. I believe he had a card like I carry that had the
18 Miranda rights on them. I think he brought those out and
19 read them.

20 Q. And that's actually on the audiotape, correct?

21 A. Yes, sir.

22 Q. Okay. The rights that were read to Mr. Berry, did he
23 appear to understand his rights?

24 A. He did.

25 Q. Any question he understood his rights?

1 A. Not in my mind, no, sir.

2 Q. Did you or Lieutenant Bramlett threaten him in any
3 way?

4 A. No, sir.

5 Q. Did you or Lieutenant Bramlett make him any promises?

6 A. No, sir.

7 Q. You actually had two interviews. The two disks is
8 one interview and then you left the room and you and
9 Lieutenant Bramlett went and interviewed Adam Berry for
10 a short period of time and then came back?

11 A. Correct.

12 Q. Do you roughly know the time period of how long it
13 was between the two interviews with Mr. Berry -- with
14 Mr. Nick Berry?

15 A. I can't remember exactly. I think the interview with
16 Adam lasted approximately thirty to forty-five minutes, but
17 I'm not quite sure.

18 Q. The first time that you interviewed Nick Berry, do you
19 remember approximately how long that interview lasted?

20 A. I want to say it was about an hour or a little more.

21 Q. So an hour with Nick Berry, thirty to forty-five
22 minutes with Adam Berry, and then you went back to talk
23 with Nick Berry again?

24 A. Correct.

25 Q. Do you remember how long the second interview with

1 Mr. Berry was?

2 A. I don't think it was as long. I think it may be
3 forty-five minutes to an hour maybe.

4 Q. Can you describe using your observation; smell, sight,
5 hearing, seeing, what you observed about the behavior, the
6 demeanor, of Mr. Nick Berry during that time period?

7 A. Like I said, he was calm. He didn't raise his voice,
8 didn't seem agitated. I did not smell anything on him that
9 told me that he may be under the influence of anything.

10 Q. Was there anything about his behavior that made you
11 think that he was under the influence of either alcohol or
12 drugs?

13 A. No, sir.

14 Q. And as far as the statements, the statements
15 themselves are all recorded on that disk?

16 A. They are.

17 MR. GRAHAM: I think, Your Honor, that's all we need
18 to do for the purpose of the hearing at this time with this
19 witness.

20 THE COURT: All right. Mr. Floyd?

21 CROSS-EXAMINATION (In-Camera)

22 BY MR. FLOYD:

23 Q. Detective Garrick, everything is recorded in your
24 confrontation with Mr. Berry; is that right?

25 A. Yes, sir.

1 Q. In fact, the advice of rights is also on that
2 recording; is it not?

3 A. Yes, sir.

4 Q. Would you agree with me, if you remember now, when
5 Mr. Bramlett -- Officer Bramlett give him his rights, he
6 did not tell him the part of his rights about he could
7 exercise the rights at any time and stop answering? Do you
8 remember if he gave him that fourth prong of his rights?

9 A. I -- I'd have to listen. I don't recall that right
10 now.

11 Q. The recording would show that?

12 A. Yes, sir.

13 Q. Now Mr. Berry had already been treated for his
14 wounds --

15 A. Correct.

16 Q. -- when you-all saw him?

17 A. That's correct.

18 Q. And did you notice how he had stitches in his hands?

19 A. Yes, sir.

20 Q. Do you know what kind of medications the Lexington
21 Medical Center staff gave him when they were sewing him
22 up with those stitches?

23 A. No, sir. I wasn't told and I didn't ask.

24 Q. Would you agree with me that it was most likely that
25 he would have been given some type of painkiller?

1 MR. GRAHAM: Objection. Speculation.

2 THE COURT: If he knows.

3 A. I can assume. I can't --

4 Q. I understand. There was a little bit of break between
5 the first interview and the second interview and when you
6 came back for the second interview, isn't it true that
7 Mr. Berry was sound asleep?

8 A. I believe he had -- he was sleep.

9 Q. You-all had to wake him up --

10 A. Yes, sir.

11 Q. -- to have the second interview? And there was no
12 advice of rights at that time, was there?

13 A. I -- I can't recall. I'd have to listen to the tape
14 again.

15 MR. FLOYD: Thank you. No further questions.

16 THE COURT: All right. You can step down.

17 (Witness excused.)

18 MR. EARGLE: The State calls Lieutenant Doug
19 Bramlett.

20 (Whereupon, Charles Douglas Bramlett, III, was duly
21 sworn by the Clerk of the Court.)

22 THE CLERK: Once you're seated, state your full name;
23 spelling your last, please.

24 THE WITNESS: Charles Douglas Bramlett, III.

25 B-R-A-M-L-E-T-T.

1 CHARLES DOUGLAS BRAMLETT, III,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION (In-Camera)

4 BY MR. EARGLE:

5 Q. Lieutenant Bramlett, where are you employed now?

6 A. I'm currently employed with the Cayce Police
7 Department.

8 Q. And what are your job duties there?

9 A. I'm a patrol officer right now.

10 Q. How long have you been in law enforcement?

11 A. I was a military police officer for eight years and
12 then I'm coming up on ten years in the civilian world.

13 Q. Let me take you back to May the 19th of 2014. Where
14 were you employed at that time?

15 A. I was employed as a patrol lieutenant with the Town of
16 Pine Ridge.

17 Q. And as a patrol lieutenant for Pine Ridge, what were
18 your duties?

19 A. I normally -- typically during the day I would do a
20 lot of patrol functions, you know, taking calls. I was
21 also responsible for handling investigation of cases that
22 occurred in the town, as well as, you know, managerial-type
23 duties, overseeing the other officers that we had, the
24 part-time officers.

25 Q. Now on at that particular date, did you respond to a

1 call at ■ 4 Dogwood Drive?

2 A. I did. Officer Gleaton called me and asked me to
3 respond in.

4 Q. And once you got on the scene, what occurred?

5 A. For the most part, there were a lot of Lexington
6 County deputies because they were on duty and I was at the
7 house. There were a lot of Lexington County deputies that
8 had already responded in setting up the crime scene. At
9 that point, Nick Berry was already in the ambulance and
10 Adam Berry was sitting on the ground in the driveway. The
11 scene was secured by Lexington County and crime scene --
12 major crimes detectives were already there. Because of the
13 nature of the way Pine Ridge is, we don't have a 24-hour
14 police department. Lexington County supplements that when
15 we're not on duty, so they could have taken the entire
16 case, but they asked me since it is your jurisdiction,
17 since you're here, do you want to work the case, and I said
18 yes, and I said, however, I would like your assistance in
19 the case, and so that's how we both worked it together.

20 Q. That night did you have an opportunity to speak with
21 the Defendant, Nicholas Berry?

22 A. I did.

23 Q. Where did that occur?

24 A. Once I met with some of the officers on-scene, they
25 advised that they were securing the crime scene, they were

1 obtaining search warrants and things of that nature. Todd
2 Garrick and I then went to the hospital -- or I met him at
3 the hospital and that's where we met with Nicholas and Adam
4 Berry.

5 Q. That would have been Lexington Medical Center, the
6 hospital?

7 A. Yes.

8 Q. Can you describe Nicholas Berry's appearance to you
9 when you first met him at the hospital?

10 A. His appearance, he was in a tank top and I believe
11 cargo shorts. There was blood on him. There was dried
12 blood on his face. I mean, he was cooperative. He talked
13 with us. He agreed to talk with us. I mean, he wasn't
14 confrontational. Like I said, he was open and willing to
15 discuss it with me or talk with me.

16 Q. Did you initiate with him a dialog in which you gave
17 him what's known as his Miranda rights?

18 A. Yes, sir. I initially went in and I, you know,
19 introduced myself to him, advised him I would be recording
20 our conversation. I had a little digital recorder that I
21 then sat down on the tray table that they put across you at
22 the hospital, sat it down on that, and then I advised him
23 of his rights immediately following that. I always do the
24 advice of rights on the recording.

25 Q. And you said you advised him of his rights. Do you

1 recall did you do it verbally, did you use a card? How did
2 you advise him?

3 A. I advised him verbally, but I used a card I had at
4 Pine Ridge. It was a standard card that I was issued when
5 I was there.

6 Q. Did he appear to you based on your experience to
7 understand those rights?

8 A. He did.

9 Q. Did he freely and voluntarily waive those rights?

10 A. Yes, sir. He even made some comment about wanting
11 to go ahead and do that now rather than me having to come
12 back out and meet with him again.

13 Q. Did he, in your opinion, do it normally and
14 voluntarily, intelligently?

15 A. I do believe so. Yes, sir.

16 Q. Let me show you what's been marked as Court's Exhibit
17 Number 1.

18 MR. EARGLE: Your Honor, may I take these out?

19 THE COURT: Sure.

20 BY MR. EARGLE:

21 Q. There are two disks in Court's Exhibit 1. Do you
22 recognize that disk?

23 A. Yes, sir, I do.

24 Q. And what do you recognize that as?

25 A. This is the first interview we did with Nick Berry,

1 and I recognize it because after listening to and verifying
2 the accuracy of the audio, I initialled the disk to show
3 that I had reviewed it.

4 Q. All right. And how about that disk?

5 A. This is the follow-up second interview with Nicholas.
6 Again, I listened to it, reviewed it, and then initialled
7 it.

8 Q. What you listened to on those two disks, do they
9 fairly and accurately depict your and Detective Garrick's
10 interview of Nicholas Berry?

11 A. Yes, sir.

12 Q. At the time of the interview, was Mr. Berry in
13 custody?

14 A. He was detained, yes, sir, as part of the
15 investigation.

16 Q. And he spoke to you freely and voluntarily?

17 A. Yes, sir, I do believe so.

18 MR. EARGLE: I beg the Court's indulgence.

19 BY MR. EARGLE:

20 Q. And that he also knowingly and intelligently spoke to
21 you and Detective Garrick?

22 A. He did. Yes, sir.

23 Q. Did you threaten him in any way?

24 A. No, sir.

25 Q. Did you promise him anything?

1 A. No, sir.

2 MR. EARGLE: That's all the questions I have. Please
3 answer any questions Mr. Floyd may have for you.

4 THE WITNESS: How are you doing, Mr. Floyd?

5 MR. FLOYD: Good. How about you, Detective Bramlett?

6 THE WITNESS: Good.

7 CROSS-EXAMINATION (In-Camera)

8 BY MR. FLOYD:

9 Q. Good to see you. Just a couple of questions.

10 A. Yes, sir.

11 Q. The advice of rights that you gave him, that would be
12 on the tape; would it not?

13 A. Yes, sir.

14 Q. And it would show whether or not that fourth prong was
15 given about stopping at any time?

16 A. Yes, sir. I read what was on the card, you know.

17 Q. Now did you observe any evidence of alcohol intake?

18 A. I mean, you know, typically if somebody was drinking,
19 you would think they'd be a little bit slower, and he was
20 a little bit slower to respond. A lot of times I found
21 that that was more of him trying to think of stuff and as
22 time went on he admitted to lying and admitted to that
23 timeframe of being a lot of him trying to make up the lie,
24 so.

25 Q. But now the -- he had obviously been worked on already

1 by the personnel?

2 A. Yes, sir.

3 Q. You saw the stitches in his hand and things like that?

4 A. Yes, sir.

5 Q. Do you know what medications the hospital gave him?

6 A. I don't, sir, but I actually just almost sliced off
7 my thumb about six months ago and I know from my experience
8 there, everything was local, local injections. There
9 wasn't any pain medications administered to me, it was just
10 all local anesthesia to numb it.

11 Q. But do you know what they gave him?

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

13 Q. Now the other thing is when you were advising him of
14 his rights and you mentioned to him that a lawyer would be
15 appointed, he mentioned something to you about that, didn't
16 he?

17 A. He asked about the cost of a public defender. I think
18 he said doesn't it cost like \$50 or something like that and
19 I said I wasn't sure. He never asked for one, he just
20 mentioned what the cost was.

21 Q. I got you. But you said that one would be appointed
22 for him and he said well, doesn't it cost me \$50 or
23 something to that effect?

24 A. Something like that, yes, sir.

25 MR. FLOYD: Thank you. No further questions.

1 THE COURT: Okay. You can step down.

2 (Witness excused.)

3 MR. GRAHAM: Your Honor, these are all the officers
4 that -- people we have except for there is a lay witness
5 who is Austol Youmans, who is the trainee -- the Cayce
6 officer that you heard reference to that was a trainee as
7 an EMT that night. He's unavailable today. He'll be back
8 tomorrow, so we'll just handle his Jackson v. Denno at the
9 appropriate time, but as far what we have today, that's
10 what the State has to offer.

11 THE COURT: Okay. Mr. Floyd, do you want to put
12 anything up before I go listen to it?

13 MR. FLOYD: Give me just a moment, if you would.

14 THE COURT: All right.

15 MR. FLOYD: We have nothing at this time.

16 THE COURT: All right. Would it be appropriate for
17 the Court to go listen to the two recordings? It's 12:15
18 now. You said the recordings were an hour and a half or
19 thereabouts?

20 MR. GRAHAM: Correct, Your Honor.

21 MR. FLOYD: That's okay with us, Your Honor.

22 THE COURT: Do you want to stand down until 2:00?

23 MR. GRAHAM: (Nods head.)

24 THE COURT: That will give me a few minutes. I can
25 eat and listen.

1 All right. We'll stand at ease until 2:00.

2 MR. FLOYD: Thank you, Your Honor.

3 THE COURT: Okay. See you-all at 2:00.

4 (Whereupon, a luncheon recess was taken.)

5 (Back on the record at 3:01 PM.)

6 BAILIFF: All rise. Court is now in session.

7 THE COURT: Be seated.

8 I'll be candid with you. I couldn't listen to it all
9 in one run, I had to take a break or two, but I did listen
10 to it all.

11 All right. Have we heard all the testimony regarding
12 the voluntariness and the advisement of rights? Mr. Floyd,
13 what have you to say from there?

14 Here's Court's Exhibit 1.

15 MR. FLOYD: Your Honor, it would be our position that
16 none of the statements would be admissible. To begin with,
17 the advisement of rights is insufficient in that it failed
18 to include the last prong of the Miranda rights, which
19 would be telling Mr. Berry that he had a right at any time
20 to exercise those rights and he could stop his -- stop, you
21 know, his cooperation at any time, and I don't believe that
22 was included in the Miranda warning.

23 THE COURT: I listened to that and heard that not
24 mentioned. You're correct, that was not said to him. It
25 seemed like they got distracted and went down a -- do you

1 want to talk to us, are you okay with talking to us now,
2 like right now, yeah, right now, we're all here, let's talk
3 now or something, a conversation kind of like that, and
4 they did not discuss you can stop any time. That wasn't
5 discussed. I'll agree with you.

6 MR. FLOYD: Secondly, I think it was clear there was
7 plenty of evidence that Mr. Berry had consumed alcohol and
8 consumed Xanax, a bar and a half of Xanax, plus he had been
9 treated by the Lexington Medical Center staff. Now we
10 don't know exactly what medications he was given by the
11 staff and by EMS, so we would suggest also that the
12 substances that he was under the influence from would also
13 render the statements involuntary and inadmissible.

14 Thirdly, when they had a dialog about his right to an
15 attorney, he was told that if he didn't want an attorney --
16 if he wanted an attorney, one would be appointed for him.
17 When he responded to that by well, a public defender I
18 understand costs \$50, I think he was asking them how do I
19 get a lawyer or public defender appointed to me if the
20 public defender costs \$50, but they never responded
21 adequately to that.

22 THE COURT: I think the response was I don't know
23 that rule.

24 MR. FLOYD: Right. That's the way they --

25 THE COURT: He didn't give him advice. He said I

1 don't know that rule or not. There was no information
2 provided --

3 MR. FLOYD: I agree.

4 THE COURT: -- is what I heard.

5 MR. FLOYD: For all those reasons, Your Honor, we
6 would move that both of these statements should be
7 suppressed. And, Your Honor, if we get to their admission,
8 there are some redactions I would like to argue next for
9 the statements. Right now just under admissibility, we'll
10 rest on those arguments.

11 THE COURT: All right. Mr. Graham, let's hear from
12 you.

13 MR. GRAHAM: Your Honor, I think the rights that were
14 given were adequate. I think that if we need to recall Sam
15 Smith, he also gave rights in the back of the patrol car --
16 I mean, in the EMS ambulance prior to transport if there's
17 any question of whether the rights were sufficient, and all
18 rights were given. I know he gave his off the card and
19 read the entire card he said and he acknowledged that. So
20 even if there's an absence later of Mr. Berry interrupting
21 them and then not finishing it, looking at the totality of
22 the circumstances we're trying to look at the preponderance
23 of the evidence, so any evidence about drug use has come
24 through the testimony here. Mr. Berry could have got up
25 and offered anything he wanted and he didn't. People from

1 the hospital could have been called. The evidence is, is
2 what people saw, what they heard. To invoke for a lawyer,
3 you have to make a clear indication and say you want a
4 lawyer. Asking a question about how you obtain one is not
5 the same as saying I want one right now, it has to be a
6 clear indication, and he didn't meet that.

7 I think that he understood his rights. I think it was
8 knowing and intelligent, I think it was free and voluntary.
9 I know at this point Your Honor has to make the decision on
10 both of those elements. The State honestly doesn't know
11 whether we plan on using these in our case in chief or
12 whether they would be used for cross-examination of the
13 Defendant. And so, of course, depending on how you rule
14 on that, you know, if you ruled that the waiver wasn't
15 knowing and intelligent, there was no coercion, it was free
16 and voluntary, we could still use it on cross-examination
17 if the Defendant testifies.

18 THE COURT: What's the caselaw say on the Miranda
19 warning that -- leaving out the fourth part? What does
20 it say? I was listening to it thinking I needed to tell
21 Jacob to look it up so I can read it. Do you-all have any
22 caselaw on that?

23 MR. GRAHAM: No, sir, I don't. I didn't -- when I
24 listened to it, I didn't catch it. I thought the rights
25 were read.

1 THE COURT: Yeah, I mean, it was read to the end and
2 then they had the conversation about the lawyer and then
3 it didn't -- he just didn't go into that one portion of
4 what I believe the Miranda warnings are; is you can invoke
5 these rights at any time and stop talking to us or
6 something along those lines. That one phraseology was not
7 mentioned to him. And I wrote down about what time it was.
8 You can go back and listen to it, if you'd like, so we can
9 put it on the record.

10 MR. GRAHAM: And I guess then if we need to into that,
11 Your Honor, then I would say that we'd recall Sam Smith, if
12 we could, because he's gonna say that he read his whole
13 card. So even if it wasn't given then, he was given his
14 rights earlier before transport, which would have been a
15 short period of time before he was --

16 THE COURT: What do you think, Mr. Floyd? Do you have
17 any law on that, on that fourth portion of the Miranda not
18 being read? But, you know, if the State recalls Smith and
19 it's there --

20 MR. FLOYD: I agree. I have not researched that point
21 recently, Your Honor. My understanding is there was some
22 earlier caselaw which kind of said what's the totality of
23 the circumstances, did the person kind of believe, you
24 know, whether or not he had that or not, then there was
25 the case that said you really need that fourth prong and

1 I think that's kind of been the standard and a lot of the
2 agencies have recalled their Miranda warning cards and
3 added that fourth prong at some point in time. I know that
4 Officer Bramlett said he was reading off his Pine Ridge
5 card. I'm not sure whether -- we didn't have him produce
6 it, so I don't know whether it had them on there or not.
7 Some of them used to not have it on there. Most of them
8 have it on there now. I think the general consensus of
9 the caselaw is that the better practice is to have that
10 on there and most of them do have it on there.

11 Your Honor, there's one other issue, too, as far as
12 that goes, too. There was a substantial break between
13 the first questioning of Mr. Berry and then the second
14 questioning of Mr. Berry during which time he went to
15 sleep, and I think you saw how they had to wake him up and
16 shake him to get him woke up. My argument would be that
17 was a sufficient break in the situation that would require
18 an additional Miranda warning once they began questioning
19 him again, which they did not provide.

20 THE COURT: Mr. Graham, call that officer back up
21 here and we'll put that on the record and see what he did.

22 MR. GRAHAM: He's not in the courthouse, Your Honor,
23 but I believe he is on duty, so we should be able to get
24 him back over here.

25 THE COURT: Okay.

1 MR. GRAHAM: What we could do in the meantime, Your
2 Honor, is move on to Mr. Sulier, who I believe is in the
3 courthouse, which Mr. Floyd wanted to go into that.

4 THE COURT: Okay.

5 MR. GRAHAM: And then if we need to, we can also go
6 do some research and give you a brief on it if we need to.

7 THE COURT: Okay. My gut tells me just from what I've
8 heard is that Mr. Berry understood his rights, he seemed to
9 understand what was going on and seemed to be comfortable
10 talking with the officers who were interrogating him
11 certainly during the first interview. And he was very,
12 very sleepy. It seemed to me they woke him up a couple of
13 times at the beginning of the second interview, so that
14 second interview gives me a little more concern because he
15 wasn't alert and they couldn't -- and I couldn't tell
16 whether he was. The second half of the interview, yes, of
17 the second interview, so the last fifteen minutes he was
18 much more alert. In the first fifteen minutes, maybe not,
19 so that gives me some concern. But the first interview
20 with the Miranda warnings given, it seems to me that
21 Mr. Berry was aware of his right to counsel and his right
22 to remain silent and his right to answer questions and if
23 he wanted to talk to them, and did. So that's kind of
24 where it's sitting right now.

25 Get the officer here and let's go on forward with

1 Mr. Sulier and whatever issue that is, Mr. Floyd.

2 MR. FLOYD: Thank you, Your Honor.

3 Of course, to us it's not an issue. We've had him
4 subpoenaed as a witness. It's the State who wants to
5 prevent me from calling him.

6 THE COURT: Okay. What's the --

7 MR. GRAHAM: Well, I mean, my understanding is he's
8 got hearsay of a person who's not here in court and I don't
9 know any exception that makes it admissible. He did the
10 transport order because I did oppose him testifying. It's
11 not admissible, it's not relevant. We can deal with it at
12 a later time if Your Honor wants to.

13 MR. FLOYD: It's up to Your Honor. We have him
14 subpoenaed and we have an order of transport issued because
15 we plan to call him in our case. The State does not feel
16 like we can call him or that what we could get from him
17 would be admissible. Whether you want to hear that now or
18 later, but regardless we brought him here before the trial.

19 THE COURT: Let's go ahead and hear a little bit of it
20 now. Let's present it in-camera. That way we'll kind of
21 have an idea of what will be coming later. I think that
22 would be an efficient use of this afternoon's time. At least
23 that's my thinking.

24 MR. FLOYD: Thank you, Your Honor. That's okay with
25 us.

1 THE COURT: So assuming you may call him, let's
2 present his testimony for the Court to hear, kind of a
3 motion in limine by the State, but they object to it under
4 different grounds.

5 MR. FLOYD: Thank you, Your Honor. We're having him
6 brought in now.

7 THE COURT: Okay.

8 Jacob says he's found a case maybe on this. State
9 versus Boyle. He's gonna go print it up for us.

10 (Whereupon, Michael Sulier, was duly sworn by the
11 Clerk of Court.)

12 THE CLERK: Once you're seated, I need you to state
13 your full name; spelling your last.

14 THE WITNESS: Michael Sulier, S-U-L-I-E-R.

15 THE COURT: All right, Mr. Floyd. You may profer his
16 testimony.

17 MICHAEL SULIER,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION (In-Camera)

20 BY MR. FLOYD:

21 Q. Mr. Sulier, my name's Wayne Floyd. I represent
22 Mr. Nick Berry. Mr. Sulier, did you kill Adam Berry?

23 A. Yes, I did.

24 Q. And do you recall when you did it or approximately
25 what time?

1 A. March 4th.

2 Q. Okay. Now after -- what's your relationship with
3 Mr. Jamie Galloway?

4 A. My very best friend and I call him my brother
5 because I pretty much grew up with him and lived in the
6 same household with him since I was fifteen years old.

7 Q. Okay. Did you-all also share a baby momma?

8 A. Yeah, Leanna. My -- my daughter's mom is his son's
9 mom.

10 Q. Okay. So kind of like family?

11 A. Uh-huh.

12 Q. And can you tell us why you killed him?

13 A. Well, I mean there's a lot of emotional stuff involved
14 and we got in an altercation when he gave me a ride because
15 he kept wanting to talk about the crime and all this and
16 that and I told him to shut up and he kept wanting to talk
17 about it and I snapped.

18 Q. And was the only reason you were up with him because
19 of his involvement with the death of Jamie Galloway?

20 A. Do what now?

21 Q. Was the only reason that you happened to be with him
22 at that time his involvement in the --

23 A. No, I was at a hotel that he was staying at and I
24 needed a ride.

25 Q. Did you know him before then?

1 A. Yes.

2 Q. Did you call Jamie Galloway's mother and tell her that
3 you were there at the motel with Adam?

4 A. I mean, what does this have to do with -- with --
5 this with all that? My case has nothing to do with Nick
6 Berry's case, Wayne Floyd. To be quite frank, I was in
7 prison whenever Nick was -- whenever Nick and Adam, all
8 that took place. I don't even know why you brought me up
9 here, to be honest with you, you know what I'm saying?
10 I'm not here to testify against him and I'm not here to
11 testify for him. I have nothing to say about any of that.
12 You-all sort that out. My case has nothing to do with his.

13 Q. Isn't it true that the reason that you got up with
14 Adam Berry that day --

15 A. My case is over with. Quit -- quit -- quit
16 questioning me about my case, mine and Adam Berry's case,
17 because that has nothing to do with Nick Berry's case.

18 Q. I'm gonna show you something and ask you if you can
19 identify it.

20 A. Yeah, I wrote that.

21 Q. Do you write this letter?

22 A. I wrote that to -- to the solicitor, to Suzanne
23 Mayes.

24 MR. FLOYD: Your Honor, I'd like to have this marked
25 as a Court's exhibit.

1 THE COURT: That will be Court's Exhibit Number 2.

2 (Court's Exhibit Number 2 was marked for
3 identification.)

4 THE WITNESS: For the record, I --

5 THE COURT REPORTER: Just a minute, please.

6 THE COURT: She can't -- she can't do that while
7 you're --

8 All right. Now.

9 THE WITNESS: For the record, I -- I don't know why
10 I've been subpoenaed to this courtroom. I have -- you
11 know, I was incarcerated in the Department of Corrections
12 whenever the whole Adam and Nick Berry case transpired
13 with my brother. My -- my case is totally separate from
14 his. I should not be questioned about my case on Nick
15 Berry's case, okay? I'm -- I'm not gonna testify against
16 Nick regardless of any situation because it's not in my
17 blood to testify against anybody in the state of South
18 Carolina or in the world regardless of what their crime is
19 and wasn't pertaining to me.

20 BY MR. FLOYD:

21 Q. Okay. Mr. Sulier, I'm gonna refer you to page 3 of
22 the letter.

23 MR. FLOYD: And, Your Honor, right at the -- I had it
24 highlighted for you, but I guess I'll put the highlighted
25 one up here.

1 BY MR. FLOYD:

2 Q. At the bottom -- the bottom second line -- third line
3 up from the bottom, it begins after, can you read that
4 sentence to us?

5 A. After he admitted to stabbing Jamie along with Nick
6 Berry.

7 What does that have to do with anything, Wayne Floyd?

8 Q. Okay. So --

9 THE COURT: Hold on one minute. Quit asking him
10 questions, okay? He's gonna ask you questions, you give
11 answers. Don't question him while he's -- he's advocating
12 for his client, okay, and he's got to present what he's got
13 to present. You asking him questions is not part of the
14 way that works.

15 All right.

16 BY MR. FLOYD:

17 Q. Okay. So you're saying Adam admitted to stabbing
18 Jamie along with Nick?

19 A. Yes. After -- after -- after Nick initially started
20 the -- initiated the murder, initiated the stabbing, after
21 my brother fell over, Adam said that he admits -- that he
22 admitting to getting up and kicking my brother in the face
23 after my brother was laying on the ground bleeding and
24 helped him -- Nick finish stabbing Jamie.

25 Q. Okay.

1 A. But Nick -- I mean, it's -- it's all in the paperwork.
2 I don't know why you-all have me here, you know what I'm
3 saying?

4 Q. Okay. So you wrote that? Did you write that?

5 A. I've done told you a hundred times. Yes, I wrote it.
6 It was notarized and all by me, okay? Notarized, signed,
7 all that.

8 Q. And was it the truth?

9 A. I just swore on the stand and I'm right here.

10 Q. Okay.

11 A. What else -- what else is there to say?

12 Q. Mr. Sulier, before you left the motel with Nick --

13 A. I never left the motel with Nick. Nick was
14 incarcerated.

15 Q. I'm sorry. Before you left the motel with Adam, did
16 you call Jamie's mother?

17 A. I'm not answering no more questions that pertain to
18 my -- my case. That -- that has nothing to do with Nick.
19 That has nothing to do with Nick's case. What -- what
20 phone calls transpired -- that transpired on my case has
21 absolutely nothing to do with Nick. Nick was incarcerated.
22 Nick was nowhere in the picture, so, therefore, all those
23 questions that you're asking me about what transpired at
24 the hotel, all that, that was between me, my case, Adam,
25 and everything else. That had nothing to do with Nick.

1 Q. I understand the way you feel. I'm not gonna argue
2 with you about it, okay? I just have questions for you.

3 Now before you left the motel with Adam, did you call
4 Jamie's mother?

5 A. That has nothing to do with this case.

6 MR. FLOYD: Your Honor, I'd ask that he be directed
7 to answer.

8 THE COURT: His case is over with, right?

9 THE DEFENDANT: My case is over with, Your Honor.
10 That has nothing to do with my case, sir.

11 THE COURT: I'm asking the status of the case. Is
12 that right?

13 THE WITNESS: I'm sentenced to life -- life in prison.

14 THE COURT: Okay. Hang on. I want to ask -- you
15 don't need to be talking. Who's he represented by?

16 MR. GRAHAM: My understanding is after his plea he
17 filed an appeal, the appeal was dismissed, and he has not
18 yet filed a PCR, but he's still within his time period to
19 file a PCR.

20 THE COURT: Okay. Mr. Chehoski, you were about to
21 stand up. Did you -- did you help him at his plea?

22 MR. CHEHOSKI: I was -- I represented him at his
23 plea, Your Honor.

24 THE COURT: All right. Have you counseled him before
25 this testimony today?

1 MR. CHEHOSKI: I spoke with him, yes, sir.

2 THE COURT: Okay. And for the record, that's Jason
3 Chehoski, who represents to the Court that he represented
4 Mr. Sulier at his plea.

5 MR. CHEHOSKI: Yes, sir.

6 THE COURT: All right. Ms. Mayes, who was
7 prosecuting, is in the courtroom, too, for the record.

8 All right. You-all come up over here. I want to ask
9 a few questions.

10 (Proceedings held at the bench; not reported.)

11 THE COURT: All right. Mr. Sulier, when Mr. Floyd
12 asks you a question, I'm gonna ask that you respond to it
13 as best you can.

14 BY MR. FLOYD:

15 Q. Mr. Sulier, after you saw Adam was at the motel, did
16 you call Jamie's mother before you left with him?

17 A. Yeah, I called -- when I got to the hotel and seen he
18 was there, yeah, I did call her.

19 Q. That's all I needed to ask you about that.

20 Now isn't the reason that you got up with Jamie was
21 to revenge --

22 A. Jamie's dead.

23 Q. Was the reason you got up with Adam was to revenge
24 Jamie's death?

25 A. No.

1 Q. You had no --

2 A. I -- I did not know Adam was even at that hotel. My
3 cousin was living at that hotel, working for that hotel. I
4 showed up over there to hang out with my cousin.

5 Q. And once you saw that Adam was at the motel, did you
6 make an effort to get up with him that morning?

7 A. No. I was walking my cousin's dogs around the hotel.
8 He called me over there. Adam called me over there while I
9 was walking the dogs. If -- if you have the video from
10 that hotel, you can see that.

11 Q. Did you ask Adam to go to McDonald's to get you-all
12 some food?

13 A. Adam went to McDonald's and got him and his
14 girlfriend, the stepchild, and me some food, yes.

15 Q. And you asked him to do that, didn't you?

16 A. I paid for it.

17 Q. I understand, but you asked him to do that for you,
18 run that errand for you?

19 A. I asked him since he was going that way if he would
20 pick me up something to eat, yeah.

21 Q. And then didn't you ask Adam to take you somewhere?

22 A. Yeah, I asked him to take me to Gaston to pick up some
23 money.

24 Q. And isn't the reason that you asked him to take you to
25 Gaston was to get him alone and then kill him in revenge

1 for Jamie's death?

2 A. No. I had a GPS ankle monitor on. If I -- if I
3 really truly went to go kill him, I would not have a GPS
4 ankle monitor on.

5 Q. So you're saying that -- you're testifying that
6 Jamie's death had nothing to do with Adam's death?

7 A. I mean, it -- it transpired into that, yes. It
8 transpired into that, but, no, I did not set out to
9 revengefully kill Adam. It turned into that after he kept
10 on going on stating things of the case to me and I asked
11 him to shut up and I snapped and, yes, I ended up killing
12 him.

13 Q. And you --

14 A. But -- I mean, you know, once again, I'm not sure what
15 my case has anything to do with what Nick has going on. My
16 -- my case is over and done with. I -- I took my plea, you
17 know what I'm saying? I took my plea for a life sentence,
18 okay?

19 Q. I understand.

20 A. I manned up for whatever I did. So what does my case
21 have to do with his case?

22 Q. Well, the question is what this case had to do with
23 Adam's death.

24 A. This case -- if -- if you know what I'm saying, this
25 case here would still be going on if Adam never died, so

1 what -- what does this case have to -- what does my case
2 have to do with this case? It ain't -- it all boils down
3 to Nick stabbed my brother and killed -- and stabbed my
4 brother and paralyzed my brother. I don't know if he was
5 dead. I know he was paralyzed. That's why he was --
6 that's why he fell over, okay? My -- my brother was
7 stabbed because he was in a fistfight with Adam. He was
8 stabbed from behind. He was not stabbed coming from --
9 from the front. My brother was stabbed from the back
10 while he was fist-fighting with Adam, so, therefore, I
11 don't know why you have me up here to -- asking me
12 questions about my case whenever Nick's case has nothing
13 to do with my case.

14 Q. And you also --

15 A. Nick -- Nick -- Nick -- Nick and Adam killed my
16 brother two years ago, two and -- two years and eight
17 months ago, something like that, two years and seven
18 months, okay? Adam -- Adam died last year. My brother was
19 dead a whole year and some change before Adam even passed
20 away, so I'm -- the question I'm asking you, why are you
21 questioning me about my case when my case is over and done
22 with?

23 Q. Well, it's my job to ask the questions, not yours,
24 Mr. Sulier.

25 Now I have other questions for you. In fact, didn't

1 you try to get people to kill Nick?

2 A. Negative.

3 Q. You never tried to get people in jail to kill Nick?

4 A. Negative. Negative.

5 Q. And you never planned to kill Adam?

6 A. Negative.

7 Q. Didn't you swear to kill Adam and Nick once you got
8 out of your prison sentence?

9 A. I -- no, I said that while I was in prison, but, I
10 mean, that's -- that's -- that's angry words.

11 Q. Okay. And when did you get out of prison?

12 A. I got out of prison -- I was transported from
13 Turbeville back to Lexington County in September 2014, I
14 made bond November -- November something. I came home in
15 November of 2014.

16 Q. November of 2014?

17 A. Uh-huh.

18 Q. And then you killed Adam in March of 2015?

19 A. Yeah, plenty -- plenty of time in there. If it was
20 planned for me to do it, I had plenty of time to make all
21 kind of plans, not go with a GPS ankle monitor on my leg,
22 Wayne Floyd. Come on, man.

23 Q. Well, you couldn't get out of prison without a GPS
24 monitor, could you?

25 A. Yes, I could have. I did not -- my GPS was part of

1 my bond stipulation. I could have -- I could have sat in
2 there and waited on a different bond, but I wanted out
3 then. That's why I bonded out.

4 Q. Okay.

5 A. My ankle monitor had nothing to do with what I was in
6 prison for.

7 Q. And when you were in prison, you do admit that you
8 threatened to kill him in revenge?

9 A. Yeah, I mean, that's -- that's -- that's no secret.
10 That's been -- been told.

11 Q. A lot of people know that?

12 A. That's -- I mean, that's angry words, but if -- if I
13 really had set forth -- I mean, he's -- he's been all
14 around. He was all around, you know what I'm saying?
15 There was plenty of opportunity -- plenty of opportunity
16 for me to cut the GPS off to where -- you know what I'm
17 saying? That's all irrelevant. My case has nothing to do
18 with what Nick has going on. I'm not here to defend Nick,
19 I'm not here to go against Nick, you know what I'm saying?
20 Whatever happened, happened. I'm not here to help Nick,
21 I'm not here to go against him. I'm -- it's just not in me
22 to testify against anybody.

23 Q. In fact, didn't you put a contract out on Nick?

24 A. No. Where did you get this from? Where's -- where's
25 this bogus information you're coming -- you know, you're at

1 me talking about I put a hit on somebody? If -- if I put a
2 hit on somebody, where -- where would I get the money to
3 put a hit on somebody?

4 Q. I guess it comes from other people that you told and
5 asked to do it.

6 A. Okay. Well, apparently he's still living, isn't he?
7 So apparently there was no hit put on him.

8 Q. Well, he's been in jail now.

9 A. I mean, people get killed in jail every day, Wayne
10 Floyd.

11 Q. In fact --

12 A. Since I've been in McCormick Correctional
13 Institutional, there's been two people murdered, six people
14 stabbed and -- come on, Wayne Floyd.

15 Q. In fact, the other people that you asked to kill him
16 were other inmates at the jail, weren't they?

17 A. That -- that sounds all nice and dandy. Do you have
18 proof? Do you have proof of that?

19 Q. Mr. Sulier --

20 A. This -- this sounds like a whole bunch of bogus --
21 bogusness to me. You're sitting here trying to say that I
22 -- I contracted hits on him in county. That's crazy. Me
23 and this man -- me and Nicholas Berry spoke to each other
24 multiple times down the wing whenever I was housed on
25 A-Wing. We spoke to each other multiple times. I told him

1 it's -- you know what I'm saying? I have nothing to say to
2 him and I don't wish no harm to him, but it is what it is.

3 Q. In fact, you told him about how his brother suffered
4 as you killed him, didn't you?

5 A. No, I never said that. I told him his brother felt
6 no pain. How could you suffer if you're instantly killed?

7 Q. That's what you told him, that he had -- he felt no
8 pain because he was instantly killed, right? Is that what
9 you told him? You yelled that out. In fact, a lot of
10 people heard that, didn't they? Is that true, Mr. Sulier?

11 A. What -- what did I just tell you?

12 Q. Did you say it?

13 A. What did I just tell you? If -- if I just professed
14 out of my mouth on this microphone to you that I told him
15 his brother felt no pain, then apparently I said -- did not
16 say what you said that I said, which was that his brother
17 suffered. No, I did not say that.

18 Q. Okay. You said he felt no pain when you killed him?

19 A. How many more times are you gonna say that? It's done
20 been said on the record.

21 MR. FLOYD: Thank you. I have no further questions,
22 Mr. Sulier.

23 THE COURT: Have you-all got any, Mr. Graham? Hang
24 on, Dude. Hang on.

25 Mr. Graham, do you have any questions?

1 MR. GRAHAM: Yes, Your Honor.

2 THE COURT: All right.

3 CROSS-EXAMINATION (In-Camera)

4 BY MR. GRAHAM:

5 Q. Mr. Sulier, my name is Shawn Graham. I'm a prosecutor
6 prosecuting Nick Berry for the murder of Jamie Galloway.
7 The reason you're here today has to do with what you say
8 Adam told you and the circumstances surrounding that.
9 That's why Mr. Floyd had you brought here today. Do you
10 understand that?

11 A. I don't understand why they brought me here in the
12 first place honestly.

13 Q. It has to do with what you say Adam told you before
14 you killed him and whether that's admissible in this case
15 or not. That's why you're here. So we need to talk about
16 the circumstances around there and that's why Mr. Floyd
17 was going into those questions.

18 What I understand -- can you repeat your testimony of
19 what you said on direct with Mr. Floyd about what Adam told
20 you?

21 A. About what?

22 Q. About what happened with Jamie.

23 A. That Adam said that once -- that him and -- him and
24 my brother was fighting. My brother had knocked his teeth
25 out. They were -- my brother was on top of him. He don't

1 -- he don't know when or how or whatever, but he said that
2 Nick had come up and started stabbing Jamie and Jamie fell
3 over, okay? He even showed me a scar on his hand where his
4 hand was cut.

5 Q. Who cut -- did he say how his hand got cut?

6 A. He said that while Nick was -- while Nick was doing
7 whatever he was doing, stabbing Jamie's back, he got
8 stabbed in his hand.

9 Q. He got stabbed by Jamie -- I mean, by Nick?

10 A. By Nick with -- in the hand, okay? He says once my
11 brother fell over, he had got up and started kicking my
12 brother in the face, and he started stabbing Jamie also.

13 Q. Did he say what he stabbed Jamie with?

14 A. No, he never stated what he stabbed -- I told him to
15 shut up, I don't care about it, I don't want to hear about
16 it.

17 Q. Did he say how many times he stabbed Jamie?

18 A. He never -- never stated how many times he stabbed
19 Jamie, but, you know what I'm saying, he -- he did not
20 initiate the stabbing. The -- the stabbing was initiated
21 by Nick while my brother was on top of him, while my
22 brother was on top of Adam.

23 Q. So Jamie hit Adam, knocked his tooth out?

24 A. Jamie was mounted on top of Adam.

25 Q. In other words, Adam was on his back on the ground,

1 he's on top --

2 A. Adam's on top, Jamie's on his knees --

3 Q. And that's when Nick comes up and stabs --

4 A. -- and started stabbing Jamie in the back.

5 Q. Did he say how many times he stabbed?

6 A. He never stated how many times. He just said that
7 once Jamie fell over that he got up and started kicking
8 him in the face and he -- he started helping him stab.

9 Q. You mentioned paralyzed. Did Adam say anything about
10 paralyzed?

11 A. No, I -- that's just what my family told me, that he
12 was paralyzed. Adam never -- my family told me that my
13 brother was paralyzed from the stabbings before he died.

14 Q. Did Adam tell you whether Jamie was able to do
15 anything once --

16 A. No, Jamie --

17 Q. Once Nick started stabbing, was he able to do anything
18 to defend himself?

19 A. He said that once Jamie fell over, then he got up and
20 started kicking my brother in the face. My brother never
21 put up or restrained, you know what I'm a saying? After
22 my brother fell over, then he got up and started kicking
23 him in the face and went to stab him -- helped Nick stab
24 him.

25 Q. Did he say what he used or what Nick used to stab him?

1 A. He never stated any -- any weapon. I told him to shut
2 up, I don't want to hear about it, but he wouldn't stop
3 talking to me about it.

4 Q. Why did he talk to you about it? Did you ask
5 questions or he just told you that?

6 A. Because he -- we were talking about what I was on my
7 ankle monitor for and how I just bonded out of jail and
8 just come home from prison and he was like -- and I asked
9 him how he got out on bond.

10 Q. When you had this conversation, did he know that you
11 were friends -- good friends with Jamie?

12 A. I mean, he had to have known. He -- Adam's known me
13 and been friends with my wife for years.

14 Q. Have you told other people different stories or is
15 this the only story you've ever told anybody?

16 A. I haven't told anybody about what Adam said to me. I
17 haven't told my family, anybody. It's -- it's irrelevant.

18 Q. So I think one of the people that I understand that
19 says that you said something to him, Tommy Embree, when he
20 said that you said Adam told you at gunpoint that he wasn't
21 involved; that's not true?

22 A. No.

23 Q. And Joshua Cody Young --

24 A. William Embree is who you're talking about?

25 Q. Yes.

1 A. He's jumped on multiple people's case in Lexington
2 County talking about a whole bunch of bogus stuff. I've
3 never spoke to William Embree about my case.

4 Q. Joshua Cody Young?

5 A. Joshua Young, the same thing. He jumped on my case
6 and jumped on many other people's cases trying to get out
7 of his charges.

8 Q. So --

9 A. The same thing. I never spoke to either one of them.
10 Both of them come up with bogus stories.

11 Q. Did you tell Kathy Polk earlier in the day that you
12 had a bullet for Adam?

13 A. No, I never told her that. She -- she made that up
14 herself trying to -- trying to keep from going to jail or
15 whatever. I did speak to her, yes, and I did ask her what
16 she wanted me to do. She told me to leave him alone, okay?
17 I laughed and hung up the phone because --

18 Q. Did you tell Zach Culley that you were gonna kill Adam
19 -- try to kill Adam?

20 A. No.

21 Q. Did you tell Jessica Spillman?

22 A. No. That's my cousin and his girlfriend. They --
23 they all freaked out and they wrote whatever they wanted to
24 write because they're scared of going to jail. They all
25 wrote statements on me on bogus stuff that I never even

1 said or whatever because I -- I read in his statement --
2 Zachary Culley's statement where he said that I -- I said
3 people on death row would get whatever they want for their
4 last meal, I just want McDonald's. That's crazy, you know
5 what I'm saying? The solicitor, Suzanne Mayes, told the
6 judge at my sentencing that I -- that I stated out of my
7 mouth that I -- that I would take a life sentence in
8 exchange for the death penalty. That never come from my
9 mouth. That's something Dylan Roof said, you know what I'm
10 saying? I never said that. That's crazy. I mean, there's
11 -- there's a bunch of stuff that's been stated in my case
12 that -- that I never stated and that was being said that I
13 said that I never even stated to anybody.

14 Q. So any of these people's names I've mentioned, if they
15 say you said something different, they're lying?

16 A. Culley -- I mean, Joshua Cody Young, William Embree,
17 Zachary Culley, all those wrote bogus statements against me
18 saying this and that. Yes, it sounds believable, but at
19 the end of the day I never professed any of that out of my
20 mouth.

21 Q. What you've testified to today that Adam told you,
22 that was before you had a gun on him before you threatened
23 to kill him?

24 A. Yeah, that was all while we were riding and smoking
25 and I told him to shut up and I turned the music up.

1 Q. Do you have anything else to describe about what
2 happened?

3 A. I do not.

4 Q. Not that you remember?

5 A. (Shakes head.)

6 MR. GRAHAM: Thank you, Mr. Sulier.

7 THE COURT: Anything else, Mr. Floyd?

8 MR. FLOYD: Just a couple of questions.

9 THE COURT: All right.

10 REDIRECT EXAMINATION (In-Camera)

11 BY MR. FLOYD:

12 Q. Mr. Sulier, do you still have your statement? Do you
13 still have your statement up there?

14 THE COURT: (Hanging.)

15 Q. I refer you down to the bottom of page 3 again, and
16 it reads, after he admitted to stabbing Jamie along with
17 Nick Berry, we got into a big, heated and very hostile
18 argument, and it goes on to say then you got your pistol
19 and shot him.

20 Now nowhere in this letter -- this letter is six pages
21 long. Nowhere in that letter do you say that he said that
22 he kicked -- that Adam admitted kicking Jamie in the mouth.

23 A. Okay. Once again, that has nothing to do with -- with
24 this case, you understand? Me -- me not stating this in
25 there -- because there's a lot of stuff that I haven't

1 stated and I'm not going to state, you know what I'm
2 saying? There's a lot of stuff on my case that I could
3 have stated myself, but I'm not gonna state it because it's
4 not in me to testify against anybody or say anything.

5 Q. You also say right before that, do you not, I started
6 questioning him about Jamie's murder?

7 A. I don't know. Honestly -- honestly, some of this
8 don't even have truth to it honestly. The parts where my
9 co-defendants and stuff don't -- you know what I'm saying?
10 I mean, all this don't even have truth to it, but I'm not
11 gonna tell the truth on that part, you know what I'm
12 saying? I mean, all of this is irrelevant what you're
13 asking me. You -- you need to be on trial for Nick, not
14 me. I really have no further -- I'm not answering no more
15 questions to you. I have nothing else to state on the
16 stand.

17 Q. Okay. Do you -- do you not say also up above that,
18 that when you were at the motel you called Kathy Polk,
19 Jamie's mother?

20 A. Are you-all ready to take me back to the Department
21 of Corrections? I've a life sentence to go do. I have
22 nothing else to state to his lawyer or this Court.

23 THE COURT: You've got to answer his questions.

24 THE WITNESS: Are you gonna give me a contempt to go
25 along with my life sentence? I have nothing else to say

1 to him, Your Honor. I have nothing else to say to this
2 Court.

3 THE COURT: Why don't you want to answer that
4 question?

5 THE DEFENDANT: I don't want to answer any more of
6 his questions period. I'm not here to defend Nick, I'm
7 not here to go against him. I'm not -- it's not in me to
8 testify against anybody. I have nothing else to say
9 period, Your Honor. I have a life sentence to go do.

10 THE COURT: Hasn't he already answered that question?

11 MR. FLOYD: Well, he answered it differently than what
12 his letter said.

13 THE COURT: Okay. Well, he admitted earlier in his
14 testimony that he called Jamie's momma when he was with --

15 THE DEFENDANT: I've already -- I admitted that.

16 THE COURT: All right. Ask your next question.

17 MR. FLOYD: No further questions, Your Honor.

18 THE COURT: Okay. Now you can step down.

19 MR. GRAHAM: Your Honor, I have a few questions --
20 two questions quickly?

21 THE COURT: All right. Hang on. Hang on, Mr. Sulier.
22 Mr. Graham's got a -- two questions for you. I thought he
23 was done.

24 MR. GRAHAM: Thank you.

25 RECROSS EXAMINATION (In-Camera)

1 BY MR. GRAHAM:

2 Q. One of the reasons you wrote this letter was to try to
3 get a voluntary manslaughter?

4 A. One of the reasons that I wrote that, yes, because I
5 was -- I was told that if I wrote a letter claiming blame,
6 then I might be able to get a forty-year cap.

7 Q. And some of the things that you've written in here are
8 not true?

9 A. I mean, there's -- there's many things that I did not
10 even mention on my co-defendants or anyone.

11 MR. GRAHAM: Thank you, Mr. Sulier.

12 (Witness excused.)

13 THE COURT: All right. Let's stand down for a couple
14 of minutes. Let me go answer this call and I'll be right
15 back out here.

16 (Recess taken at 3:45 PM.)

17 (Back on the record 3:51 PM.)

18 BAILIFF: All rise. Court will now come to order.

19 THE COURT: All right, Wayne Floyd. What you got?

20 MR. FLOYD: Your Honor, it's our position we should
21 be allowed to call Mr. Sulier to testify in the case in
22 chief, I think, for two reasons. One, it goes to show why
23 we do not have Adam Berry here to testify because he would
24 be our chief witness, our exculpatory witness, and, number
25 two, also it goes to show that according to Mr. Sulier Adam

1 Berry also stabbed Jamie Galloway and, therefore, it may
2 well have not have been the stab that was made by Nick
3 Berry was the killing blow.

4 So for those two reasons we feel like we should be
5 allowed to bring Mr. Sulier in front of the jury.

6 THE COURT: All right, Mr. Graham.

7 MR. GRAHAM: Why Adam is not here has nothing to do
8 with what happened on that day. Yes, he was killed. To
9 try to bring to a jury why and how is just trying to bring
10 a bunch of prejudicial information that's not relevant. I
11 mean, that would be the only purpose of it. I agree that
12 there should be some instruction from the Court that Adam
13 Berry is deceased and is unavailable to testify. I think
14 the jury has a right to know that, but I don't know how far
15 we go down that road. Mr. Sulier is saying that he didn't
16 do it out of revenge, he didn't do it to stop from Adam
17 Berry from coming and testifying. Now if he'd said that,
18 maybe that would be a different issue, but he didn't say
19 that. His -- he has told many people many different
20 stories, so I don't know whether credibility is even an
21 issue for Your Honor, but even if you --

22 THE COURT: All right. Hang on. This is the call
23 I'm waiting on. I'll tell you-all about what happened
24 and what good luck I've been having.

25 (Recess taken at 3:54 PM.)

1 (Back on the record at 4:00 PM.)

2 THE COURT: All right. Mr. Graham, you were still
3 arguing with me -- not arguing, arguing to me about
4 Mr. Sulier and I think you last left on evaluating
5 credibility --

6 MR. GRAHAM: We did.

7 THE COURT: -- and I have great concerns over the
8 credibility of this gentleman.

9 MR. GRAHAM: I know that of the two witnesses who
10 were gonna testify, none of them are gonna say what he
11 said, none of them are gonna say -- the only thing, I
12 think, that we'll hear from either Kayla Bass or Haley
13 Stone is that Adam kicked -- excuse me -- yeah, that Adam
14 kicked Jamie in the head while he was down, but nobody's
15 gonna describe any knifing or any type of punching motions
16 as far as I remember from their testimony. But besides all
17 of that, it's hearsay, and I don't know of any exception
18 that gets it in. He said that he didn't do it to stop Adam
19 from testifying, so I don't know -- I mean, it has to fall
20 into a hearsay exception for it to be admissible. It's an
21 out of court statement offered for the truth of the matter
22 asserted.

23 THE COURT: All right. Mr. Floyd, how does it not --
24 how is it not hearsay?

25 MR. FLOYD: Your Honor, it's admissible under Rule

1 804(b)(3), and it's a statement against interest, and
2 that's an exception to the hearsay rule. So if you admit
3 to killing somebody, that's definitely a statement against
4 interest, and it would be admissible. So we think it
5 clearly avoids the hearsay exception or the hearsay --

6 THE COURT: So you plan on calling -- or you
7 anticipate trying to call him during your portion of the
8 case. Mr. Graham's not dancing with him at all I don't
9 believe.

10 MR. FLOYD: That's right, Your Honor, and we plan to
11 call him -- and I guess we need some kind of -- if you're
12 not gonna allow us to call him, we need to let SCDC know,
13 and if you're gonna allow us to call him, we need let them
14 know that also.

15 THE COURT: Do you-all think there's gonna be any
16 problem with me thinking about it overnight? I'm gonna
17 take it under advisement. That's a really interesting
18 question. I'm not gonna rule quite yet. I've never heard
19 anything quite like that.

20 MR. FLOYD: Well, I agree, Your Honor. Another thing
21 I think, Your Honor, I don't think we can adequately
22 address the issue of the absence of Adam Berry other than
23 through something like that. A mere statement that Adam
24 Berry is dead, I just -- that just doesn't provide the jury
25 any kind of insight into what's going on. I think the jury

1 needs to know that the reason he's dead is because of this
2 man who's says he's like Jamie's brother has killed him
3 and that -- and that deprives us of our right to call him
4 as a witness. That's gonna go -- that's gonna become
5 important down the road when we get to the question of
6 jury instructions and adverse inferences that may be drawn,
7 and so -- so I think we definitely need to get that
8 information to them.

9 THE COURT: Now was Jamie -- I'm sorry, Jamie's the
10 victim. Was Adam charged?

11 MR. GRAHAM: Accessory after the fact.

12 THE COURT: Okay. And you-all told me that in
13 chambers. I forgot that.

14 Okay. I'm gonna take that under advisement tonight.
15 I've got to think about that.

16 MR. GRAHAM: If I could just add -- and there's
17 probably some research we can do, Your Honor, but a
18 statement against interest, him saying I killed Adam, is
19 a statement against his interest. Him saying what Adam
20 said is not a statement against Michael Sulier's interest.
21 It doesn't fall under a hearsay exception, Your Honor.

22 THE COURT: All right. Have you-all seen this case
23 that Jacob found? Is it on point? Did you-all study this
24 case?

25 MR. GRAHAM: Yes, Your Honor. In fact, I believe

1 there's a newer case, State versus Boyle, which says the
2 same thing.

3 THE COURT: Okay.

4 All right. My initial feeling was that Miranda was
5 adequately provided to him and now we're gonna get the
6 testimony of the police officer to make the record
7 complete?

8 MR. GRAHAM: Yes, Your Honor.

9 THE COURT: Call him. Call -- I don't remember his
10 name.

11 MR. EARGLE: The State re-calls Detective Sam Smith.

12 THE CLERK: He's still under oath, Your Honor?

13 THE COURT: He's still under oath.

14 SAMUEL STEWART SMITH,
15 having been previously sworn, testified as follows:

16 REDIRECT EXAMINATION (In-Camera)

17 BY MR. EARGLE:

18 Q. Detective Smith, I need to ask you a few questions
19 for clarification.

20 A. Yes, sir.

21 Q. On the night of May 19th of 2014 when you informed the
22 Defendant, Nick Berry, of his Miranda warnings, would you
23 demonstrate exactly how you did it?

24 A. Yes, sir. I keep a South Carolina Fraternal Order of
25 Police card behind my prox card, which is always on my

1 person, and it reads as follows: You have the right to
2 remain silent. Anything that you -- anything that you say
3 can and will be used against you in court. You have the
4 right to an attorney and to have an attorney present during
5 questioning. If you cannot afford an attorney, an attorney
6 will be provided at no cost. You can decide at any time to
7 exercise these rights and not answer any questions or make
8 any statements.

9 And then I ask the following question: Do you
10 understand each of these rights as I have explained to you.

11 Q. And when you asked that question, what was Mr. Berry's
12 response?

13 A. He nodded his head and said yes in an up and down
14 motion.

15 Q. Was there any doubt in your mind he understood those
16 rights?

17 A. No, sir.

18 MR. EARGLE: Thank you. Answer any questions
19 Mr. Floyd may have.

20 RE CROSS EXAMINATION (In-Camera)

21 BY MR. FLOYD:

22 Q. Mr. Smith, in your opinion had Nick Berry consumed
23 any alcoholic beverage that evening?

24 A. I didn't get close enough to him to detect any odor,
25 but he could have been under the influence of any unknown

1 substance.

2 Q. So you weren't close enough to observe any of that?

3 A. Not close enough. I was -- he was down on the gurney
4 being attended to by medical personnel and I was standing
5 on the top step of the side entrance to the ambulance kind
6 of looking over his left shoulder and he was looking up and
7 left over at me.

8 Q. And he was being worked on at the time?

9 A. They were securing him and, you know, making sure that
10 his injuries were being tended to prior to his transport.

11 Q. So his attention was directed to the EMS personnel?

12 A. They were working on him, but while I was explaining
13 it to him he was looking up over his left shoulder and
14 making eye contact with me.

15 Q. And you're sure that he was paying attention to you
16 and not the EMS people?

17 A. I believe that he was paying attention to me.

18 Q. Yeah, but you're not sure of that? You need to be
19 sure now.

20 A. I believe he was paying attention to me.

21 Q. And you weren't close enough to smell any alcohol?

22 A. No, sir, I was not.

23 Q. And you weren't close enough to observe whether or not
24 he was under the influence of any alcohol or drugs?

25 A. Based on his calm demeanor, he could have been under

1 the influence of an unknown substance as I previously
2 testified.

3 Q. And could his -- could that unknown substance have
4 interfered with his ability to understand what you were
5 asking?

6 A. He believed -- I understand -- I believe he understood
7 everything that I was asking him at the time based on the
8 situation that I was given.

9 Q. But, again, you don't know whether he was under the
10 influence of any substance?

11 A. No, sir, I'm not aware.

12 Q. And had he been under the influence of any substance,
13 could that have impacted his ability to understand what you
14 were asking him?

15 A. If he was under the influence of any unknown
16 substance, it's possible.

17 MR. FLOYD: Thank you. No further questions.

18 THE COURT: Okay. You can step down.

19 (Witness excused.)

20 THE COURT: All right. I think my ruling is that
21 based upon the Miranda warnings given by both detectives
22 in close proximity to his interview, which was recorded,
23 the original hour and two minute one that's part of
24 Court's Exhibit 1, I believe that's Disk 1, that Mr. Berry,
25 he waived Miranda and spoke with police notwithstanding

1 that the second gentleman, the police officer who
2 interviewed him, did not say words to the effect that you
3 can stop answering questions any time you like, he did not
4 say that, but all things considered Mr. Berry understood
5 his rights and freely waived them and talked to the police
6 and was giving an interview.

7 The second, after they talked to Adam Berry, there
8 was some delay in time, I'm not sure how much because I've
9 not heard testimony as to how much time was delayed, but
10 there's no question that the first, I don't know, ten or
11 twelve minutes of that second interview that Mr. Berry on
12 trial here, not the brother, was sleepy or very much groggy
13 because I could hear it in the responses and so I'm kind
14 of considering maybe redacting that earlier portion until
15 there was conversation between the interrogating officer
16 and him -- or both of them, you seem alert now, we've both
17 been up along time, you know, you need to answer this
18 question because you've not been straightforward with us,
19 somewhere along in that twelve minute period, it seems to
20 clear up to me he wakes up because he realizes the
21 questioning is going on and so I'm inclined to redact that
22 earlier sleepy portion.

23 Or if you-all want to play it all and wade through
24 it, that's up to you. But I wrote those numbers down when
25 I was listening to it, but the first -- the first of the

1 disk I wrote in that -- to my listening to it, he sounded
2 very drowsy and he claimed to be half asleep and then there
3 was banter back and forth about, you know, you need to wake
4 up and be alert and we've been up a long time, too, I'm
5 comfortable from that point forward he was alert enough
6 and understood what was going on to be responsive to the
7 questions. You-all may have to figure that out. I'm kind
8 of inclined to redact that first ten minutes or so of the
9 second interview, not the latter half of it.

10 MR. GRAHAM: Would the first half -- under your
11 ruling, is the first half still free and voluntary that we
12 could cross-examine on the first half?

13 THE COURT: The first hour?

14 MR. GRAHAM: No, no. In the second -- in the second
15 disk, the part you're talking about redacting and taking
16 out, from what I under understand from your -- what your
17 thoughts are at the moment, the second half of it you would
18 allow in our case in chief if we chose to introduce it?

19 THE COURT: Yes. Yes.

20 MR. GRAHAM: My question is for the part that you're
21 talking about redacting, is that still free and voluntary,
22 not a product of coercion or force by the police such that
23 he if testifies I can still cross-examine him on the first
24 twelve minutes? Because that's a different --

25 THE COURT: Yeah, that's a different issue and I think

1 you would be allowed if he said something contrary to it,
2 but you-all heard -- you-all know much more about the case
3 than I do, there were several versions of what happened in
4 there, so I think there's ample places to say the story was
5 consistent and inconsistent within itself.

6 I'm not gonna comment on the facts in front of the
7 jury, but there was a little bit of memory lapse or
8 something. It was very visible to me.

9 All right. Mr. Floyd, have you got any questions
10 about what I'm kind of inclined to do?

11 MR. FLOYD: No, Your Honor, except two things. One,
12 in the first statement, which I know you agree is
13 admissible --

14 THE COURT: The hour and two minute one, the longer
15 one.

16 MR. FLOYD: -- the first hour, we would move to redact
17 -- there's a portion of that statement where he was asked
18 whether he had ever been in trouble with the law before and
19 he stated he had two shoplifting charges.

20 THE COURT: I remember him saying that.

21 MR. FLOYD: And we would move to redact that portion
22 of the --

23 THE COURT: That shouldn't be hard to do. I think
24 that would be fair. That was very limited. That's only a
25 couple of questions about that prior involvement.

1 MR. FLOYD: There's also a part in there about a gun
2 and there's no gun involved in this case.

3 THE COURT: There was two guns. There was the airsoft
4 gun and then the sawed off .22 gun that had tape on the end
5 of the barrel. I've never heard of a sawed off .22, but
6 that's what was said.

7 MR. FLOYD: Well, I mean, those were found on the
8 premises, but they were not involved in the incident
9 itself, so we would move --

10 THE COURT: That's kind of what I gathered is from
11 what -- as I listened, the guns were around and people
12 maybe gave the police statements about guns, but the guns
13 weren't part and parcel of this incident that took place.

14 MR. FLOYD: That's correct.

15 THE COURT: From my understanding there were three
16 guns. It seems like he talked about a Glock .45 also, so
17 a .22, a sawed off, a Glock, and then an airsoft that
18 looked like a .9. Am I about right on that?

19 MR. GRAHAM: Yes, sir. There was an airsoft and then
20 there was a .22 in the bag and then there was a .380 on the
21 kitchen counter.

22 THE COURT: Do you-all really want that in or --

23 MR. GRAHAM: I want -- I mean, I don't -- we haven't
24 made a final decision about what we're offering. I surely
25 want to be able to cross-examine him on having a different

1 story.

2 THE COURT: Okay.

3 MR. GRAHAM: So, I mean, if he's talking about a gun
4 and it's free and voluntary, then I get -- if he testifies
5 and doesn't talk about a gun or does, then I would be able
6 to cross-examine him on the fact that he mentioned it
7 before.

8 THE COURT: All right. So what's your suggestion,
9 Mr. Floyd? Is it to redact the portion about the guns?
10 Because I'm inclined to leave them in there because it's
11 -- it's not a part of this case, but it's a part of his
12 statement, I guess.

13 MR. FLOYD: Well, only because they asked him about
14 them.

15 MR. GRAHAM: Maybe I misunderstood. There's two
16 different mentions of guns. There's one in the second
17 interview where he actually says that Jamie Galloway put a
18 gun to his head. That's what I thought we were talking
19 about. I think Mr. Floyd is talking about the first
20 interview when the police are asking him about the .22 in
21 his bag that he admits is his.

22 THE COURT: And he put it in a garage or an
23 outbuilding or something along those lines and then there
24 was an airsoft gun somewhere else involved that looked like
25 a .9 is what he said.

1 MR. GRAHAM: That one, Your Honor, we would say is
2 relevant to the case. There's Facebook posts from the
3 Defendant on his phone. I don't want to get the dates
4 wrong. Some of them were on the 12th and the majority are
5 on the 19th, which is the day of the incident. Earlier in
6 the week, he's asking for a burner, which is a throwaway
7 gun, that he's looking for one, they're asking him why, he
8 says basically, to summarize it, that he needs to use it
9 on Jamie Galloway. So it's implied malice -- or express
10 malice on that, a threat to kill Jamie Galloway. On the
11 19th he's looking for .22 bullets from probably nine or ten
12 people. There's a shortage of .22 rounds at that time, so
13 he can't find any. And one of those people, he says why do
14 you need .22 rounds, he says I need .22 rounds for Jamie
15 Galloway, so that's part of our malice. For him to admit
16 in the interview that it's his gun is important to go to
17 the malice of this case.

18 THE COURT: Okay.

19 MR. FLOYD: Well, there was no gun used in this case,
20 Judge. I think it's irrelevant. It was strictly a knife.

21 THE COURT: Yeah. I mean, as I understood the
22 statement, the brother was in the house with the girls and
23 Galloway shows up maybe to surprise the boys and then some
24 fuzzing ensued and then the incident happens.

25 I think the statement was voluntary and whatever he

1 said about the gun is free game even though it wasn't used
2 as -- he just -- I think that's gonna go -- I don't envy
3 you-all trying this case. I'm inclined to leave that in
4 the statement if it's used. I just don't -- I do agree
5 with you it's clear that it was a knife wound -- from what
6 I know thus far, it was a knife wound only. From whose --
7 where it came from is a question of fact, but the story
8 about the guns I'm kind of inclined to leave those alone
9 and leave them in the questioning because the police did
10 bring it up. They knew the body had been stabbed, too, so
11 I don't know why they did that, but that's not for me to
12 determine as to why they pursued the investigation like
13 they did.

14 MR. FLOYD: Well, it seems to me like the State there
15 is arguing the reverse of what they're arguing with Sulier
16 because Sulier admits that he expressed desire to revenge
17 Jamie Galloway's murder and they don't want us to get into
18 that, and that's the motive for his killing Adam Berry, and
19 yet they want to use this as motive for him killing Jamie
20 Galloway.

21 THE COURT: I didn't know there was bad blood between
22 Galloway and the Berry brothers. I missed that somehow.

23 MR. FLOYD: Well, that's what they're trying to argue
24 by saying here that he was looking for ammunition, so they
25 wanted to get that out, and that supposedly he wanted to do

1 something to Jamie Galloway. There was an incident a short
2 time before this where Jamie Galloway struck Nick Berry in
3 the face and I guess they were trying to make something out
4 of that.

5 THE COURT: All right. Let's see. Since you-all are
6 going first, when we get there, if you're gonna use the
7 interview, then I'll have more of a flavor of the case by
8 then and it will help me decide where it's going, but right
9 now I'm gonna consider this a motion in limine, your
10 request for the redaction of the references to the guns,
11 both of them in the first interview, we're gonna sit on
12 that until we get it at trial and then we'll address it,
13 okay? Is that fair enough?

14 MR. GRAHAM: Yes, sir.

15 THE COURT: Okay. What else have we got?

16 MR. GRAHAM: Just your rulings on the other people who
17 testified. Chris Hall, the EMT paramedic.

18 THE COURT: He didn't say a whole lot, Mr. Hall. I
19 thought that --

20 MR. GRAHAM: He was in custody, but he wasn't being
21 interrogated is basically what he'd have to say and that
22 anything he said was in response to medical treatment
23 questions. So there was no -- no Miranda was given and
24 didn't need to be given.

25 THE COURT: What do you say on that, Mr. Floyd,

1 because basically the EMT said that he was a little bit
2 antsy or jittery and admitted to drinking some alcohol, a
3 few drinks of liquor and maybe shots and he admitted it
4 several times, but to this gentleman first, a bar and a
5 half of Xanax and maybe he'd said he smoked marijuana, and
6 that's -- and then the statements were the man attacked me
7 and my brother and starting whaling on us with a knife and
8 I was trying to protect my brother from an attack. That
9 was the three statements. That's what you're looking for?

10 MR. GRAHAM: That and when he first asked it was that
11 Mr. Berry didn't remember, he asked him again and he said
12 it happened so fast I don't know what happened, and then
13 the third story was what you just said, Your Honor.

14 THE COURT: Uh-huh. And the words were a little more
15 graphic than that. I editorialized it a little bit.

16 All right, Mr. Floyd, what you do think?

17 MR. FLOYD: Your Honor, it's kind of an interesting
18 legal issue because I think the presence of Mr. Youmans,
19 who is a Cayce police officer, riding along with them and
20 being present for this interview would perhaps require
21 Miranda warnings even though EMS personnel may not normally
22 be required to give those warnings. I think if they're
23 gonna have a policeman ride with them, then I think that
24 they have to comply with law enforcement regardless.

25 THE COURT: But he was riding as a trainee for an

1 EMT and he was in black clothes and displayed no law
2 enforcement identification or badging or anything of that
3 sort and did not have a gun.

4 MR. FLOYD: That's correct.

5 MR. GRAHAM: Your Honor, for the record, he's the
6 one that we also have statements for Jackson v. Denno with
7 him. He was just unavailable today. He'll be back in
8 town tomorrow, so we would actually hear from him tomorrow
9 morning.

10 THE COURT: All right. Let's hear from him, but I'm
11 kind of inclined to let these three statements come in.

12 All right. What about Mr. Sam Smith? The statement
13 made to him in the ambulance was he was fighting with my
14 brother and I was trying to help my brother.

15 MR. FLOYD: We have no problem with that statement,
16 Judge.

17 THE COURT: All right. So the statement made to Sam
18 Smith we're good with and clear.

19 And then --

20 MR. GRAHAM: Allen Gleaton, the responding officer,
21 when Nick said go ahead and shoot me.

22 THE COURT: And what was that in -- he was not
23 compliant.

24 MR. GRAHAM: He was -- he ordered him to the ground
25 and he said go ahead and shoot me.

1 THE COURT: All right. So how does that help or hurt
2 the case?

3 MR. GRAHAM: I don't -- it's just -- it is what it is,
4 Your Honor. I think it goes to -- I mean, he's not saying
5 I did something in self-defense. His first response was go
6 ahead and shoot me, which --

7 THE COURT: It seems like they talk about that in the
8 interview also, about they were getting in the car or
9 getting out of the car and he got out and complied with
10 what the officer asked him to do because he didn't want to
11 -- the police were there or something. He kind of danced
12 around it a little bit. And certainly he wouldn't be
13 subject to Miranda when he's coming up on the scene trying
14 to secure the area or secure the people. I'll allow that
15 statement, too. That can help you or hurt you, each of
16 you. I can see how that can be used both ways.

17 All right. So we're gonna get Mr. Youmans tomorrow
18 morning?

19 MR. GRAHAM: Correct, Your Honor.

20 THE COURT: Okay.

21 All right. Now what -- what have we left to do
22 before we get the jury involved?

23 MR. FLOYD: Your Honor, we have a castle doctrine
24 defense and it's our position the case should be dismissed
25 and he should be granted immunity because he was acting in

1 compliance with 16-440(C) -- 16-11-440(C).

2 THE COURT: Are we ready to go with that right now?

3 MR. GRAHAM: Yes, Your Honor.

4 THE COURT: All right. Lets go forward with this --
5 what's that statute? 16-440?

6 MR. FLOYD: 16-11-440(C) would be the appropriate
7 subsection and the case on point, State v. Jones, which I
8 can pass up to the Court.

9 THE COURT: All right. Mr. Floyd, is the purpose of
10 this statutory defense more or less a motion for the Court
11 to declare that there's evidence that -- you're gonna call
12 the witnesses?

13 MR. FLOYD: Yes, sir.

14 THE COURT: All right. Call them.

15 MR. FLOYD: Thank you, Your Honor.

16 We call Mr. Nick Berry, Your Honor.

17 THE COURT: All right.

18 (Whereupon, Nicholas Chhith-Berry was duly sworn by
19 the Clerk of Court.)

20 THE CLERK: Once you're seated, state your full name;
21 spelling your last.

22 THE WITNESS: Nicholas Chhith-Berry, C-H-H-I-T-H
23 hyphen B-E-R-R-Y.

24 NICHOLAS CHHITH-BERRY,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION (In-Camera)

2 BY MR. FLOYD:

3 Q. And, Nick, how old are you now?

4 A. I am nineteen.

5 Q. And when this incident occurred back in 2014, how old
6 were you?

7 A. I was seventeen.

8 Q. And at that time how tall were you?

9 A. Probably about five-three, maybe close to five-four.

10 Q. And how much did you weigh?

11 A. Approximately like 115 pounds.

12 Q. Now you're much larger than that now, aren't you?

13 A. Yes, sir.

14 Q. How much do you weigh now?

15 A. About 150.

16 Q. And where have you been for the last two years?

17 A. In Lexington County Detention Center.

18 Q. And how have you put on so much weight?

19 A. I've been working out and -- eating and working out.

20 Q. And no question back then when this incident occurred
21 you were between 110 and 115 pounds; is that correct?

22 A. Yes, sir.

23 Q. Now do you know Jamie Galloway?

24 A. Yes, sir.

25 Q. And how long had you known him before this incident

1 occurred?

2 A. Maybe a month.

3 Q. Now how large was Jamie Galloway?

4 A. He was, you know, probably close to 200 pounds, if
5 not more.

6 Q. A lot larger than you; is that correct?

7 A. Yeah, basically double my size.

8 Q. Now who is Adam Berry?

9 A. That is my brother.

10 Q. And is Adam your older or your younger brother?

11 A. He's my older brother, like -- he's my older brother.

12 Q. How old would he have been back then in 2014?

13 A. About twenty-two, twenty-one.

14 Q. And is he taller than you?

15 A. Yes, sir.

16 Q. How much taller than you is he?

17 A. Probably about three inches taller, four inches
18 taller.

19 Q. Did he weigh more than you?

20 A. Not much. Maybe 130 pounds at the most.

21 Q. Okay. So he was a lot smaller than Mr. Galloway also;
22 is that correct?

23 A. Yes, sir.

24 Q. Now on this night in question -- first of all, tell me
25 this. How close were you to your brother?

1 A. Me and him was really close. Like he was basically
2 like my father figure because, I mean, my father wasn't
3 exactly there all the time, he was just, you know,
4 financially there. My brother taught me, you know, morals
5 and everything he taught me really. You know, it was -- it
6 was few days I was without him.

7 Q. Did you look up to him?

8 A. Oh, yes. Definitely.

9 Q. Now do you recall this night when Jamie Galloway died?

10 A. Yes, sir.

11 Q. Where were you-all?

12 A. We was at Kaysha Fontenot's house.

13 Q. And how did you happen to be there?

14 A. Well, my brother's girlfriend at the time, Kayla Bass,
15 she wanted to go over there. We originally was trying to
16 go and play pool at Grady's, but she kept arguing with him
17 and so she ended up persuading my brother to go there and
18 they asked me if I wanted to go and I was like well -- I
19 mean, I don't like leaving without my brother, so, you
20 know, I went with them.

21 Q. Okay. So were you -- where did you-all go?

22 A. We went to Kaysha's -- Kaysha's house.

23 Q. And were you a guest there at Kaysha's house?

24 A. Yes, sir.

25 Q. So you were lawfully on her premises; is that correct?

1 A. Yes.

2 MR. GRAHAM: Objection. Leading.

3 THE COURT: All right. Sustained as to leading.

4 BY MR. FLOYD:

5 Q. Okay. Were you invited to be there?

6 A. Yes, sir.

7 Q. And what time did you get there?

8 A. Probably around maybe 8:00.

9 Q. And what were you-all doing there?

10 A. We was -- at first when we got there, we was just
11 hanging out, you know, having a good time drinking a little
12 bit and they started filling up the pools for the kids, but
13 they -- I don't know, the kids never ended up playing.

14 Q. Who was present at the house when you were there?

15 A. It was me, Kaysha -- it was me, Kaysha Fontenot,
16 Kayla Bass and Adam Berry -- and, oh, Haley Stone.

17 Q. Okay. Were there some children there also?

18 A. Yes, sir.

19 Q. Those were the four adults?

20 A. Yes, sir.

21 Q. Okay. Now how long were you there before Jamie
22 Galloway arrived?

23 A. Maybe an hour.

24 Q. Now did you know Jamie Galloway was coming?

25 A. No, sir.

1 Q. And so how did you-all know when he arrived?

2 A. Whenever he popped up at the place.

3 Q. Where were you at that time?

4 A. I believe I may have been inside.

5 Q. And when he showed up, tell me what you-all first did.

6 A. When he showed up, he came -- he came to the door and
7 he went in and so me and my brother went outside to smoke a
8 cigarette, you know, and I think that's whenever they came
9 outside my brother and him started arguing.

10 Q. How did you feel about Jamie Galloway?

11 A. I mean, I didn't have bad feelings against him. I was
12 just scared of him.

13 Q. Why were you scared of him?

14 A. Because whenever he tried to, you know, beat me up the
15 first time whenever we had an altercation.

16 Q. Was there anything else about him that made you scared
17 of him?

18 A. Well, I know he's had, you know, a few attempted
19 murders.

20 Q. Was he out on bond right now on those murders?

21 A. Yes, sir.

22 Q. And so for those reasons -- all those reasons, were
23 you afraid of him?

24 A. Yes, sir.

25 Q. Plus was he a lot bigger than you?

1 A. Oh, yes. Definitely.

2 Q. All right. So tell me what happened after that.

3 A. Well, Jamie and my brother was arguing. Somehow they
4 was in the yard and -- well, first Kayla, Kaysha and this
5 girl, Katie, they was all fighting for some reason and I
6 grabbed one of the girls and told them to stop fighting
7 and then after that, you know, they stopped fighting and
8 there ended up being an argument between Adam and Kayla or
9 somebody and then, I guess, Kayla did something and Adam
10 might have said like -- or not -- I don't know what exactly
11 transpired right there because I don't quite remember, but
12 I know Jamie took his shirt off and swung at my brother.

13 Q. Okay. Now let me back up a minute because you might
14 have confused the Court. You mentioned some other girl
15 named -- another named Katie.

16 A. Yes, sir.

17 Q. How did Katie arrive on the scene?

18 A. Oh, she drove Jamie Galloway over there.

19 Q. Okay. All right. Now so at some point in time then
20 there was something going on between Jamie and your brother
21 Adam?

22 A. Yes, sir.

23 Q. So tell me what you saw there.

24 A. Well, then whenever the argument -- you know, after
25 Jamie took his shirt off and swung at my brother, he kept

1 swinging on -- swinging on my brother, swinging on my
2 brother, my brother fell and he got up and, you know, was
3 backing up, you know, trying to get away from him and
4 somehow he managed to get up on top of the -- on the porch
5 and then that's when my brother, you know, fell on the
6 ground because he kind of was trapped, you know, in that
7 corner and whenever my -- whenever he was hitting my
8 brother while he was on the ground, that's when I, you
9 know, came and stabbed him one time in the shoulder blade.

10 Q. Okay. So Jamie was beating on your brother?

11 A. Yes, sir.

12 Q. He had him down on the ground?

13 A. Yes, sir.

14 Q. And so tell us what you did.

15 A. I stabbed Jamie Galloway one time in the shoulder
16 blade.

17 Q. And then what happened?

18 A. Then that's when my brother got up and after that
19 it's just kind of a blur.

20 Q. Do you know what happened from there forward?

21 A. Not exactly. I just know after that my brother was
22 hitting him.

23 Q. Do you recall whether you stabbed him anymore?

24 A. I don't recall stabbing him but only one time.

25 Q. Do you remember whether you did or not?

1 A. Only one time.

2 Q. Why did you get into the mix?

3 A. Because my brother was getting beat really badly,
4 there was, you know, blood leaking from his face and, I
5 mean, I could tell my brother was trying to, you know, get
6 away from him because he kept backing up and backing up and
7 I guess, you know, that's whenever, you know, Jamie was
8 just -- he got trapped on the porch and, you know, Jamie
9 beat my brother down.

10 Q. Were you trying to defend your brother?

11 A. Yes, sir.

12 Q. And was that the reason that you intervened in the
13 fight?

14 A. Yes, sir.

15 Q. Did you have any intentions of killing Jamie?

16 A. No, sir.

17 Q. And the only reason you got in the fight was to defend
18 your brother?

19 A. Yes, sir.

20 Q. Now from the time Jamie arrived on the scene until the
21 time when the fight occurs --

22 A. Yes, sir.

23 Q. -- was there anything illegal going on?

24 A. Well, at the time, I mean, I didn't think he was
25 supposed to be there.

1 Q. I understand that. Were you doing anything illegal
2 at the time? From the time Jamie got there until the time
3 the fight occurred, did you do anything against the law?

4 A. No, sir.

5 MR. FLOYD: Your Honor, if you could give me just a
6 moment.

7 THE COURT: Okay.

8 BY MR. FLOYD:

9 Q. Were you afraid of Jamie Galloway?

10 A. Yes, sir.

11 Q. You told us why?

12 A. Yes, sir.

13 Q. Will you tell the Court again why you were afraid of
14 him?

15 A. I was afraid of Jamie Galloway because he beat me up
16 one time before.

17 Q. And was he bigger than you?

18 A. Much bigger.

19 Q. And what did you know of his reputation for violence?

20 A. I knew he -- you know, he shot two people.

21 Q. Did you know he was out on bond for two counts of
22 attempted murder?

23 A. Yes, sir.

24 Q. In fact, he was on an ankle monitor, wasn't he?

25 A. Yes, sir.

1 Q. Now did you have anything to do with the fight --
2 this fight starting between Jamie and your brother?

3 A. No, sir.

4 Q. Did you believe that your brother Adam was in danger
5 of losing his life or great bodily injury?

6 A. Yes, sir.

7 MR. GRAHAM: Objection. Leading.

8 THE COURT: Rephrase that.

9 BY MR. FLOYD:

10 Q. What did you believe might happen to your brother if
11 you did not intervene?

12 A. I really thought my brother was gonna get beat to
13 death because there was a lot of blood coming out of his
14 face.

15 Q. Do you believe that you had to do what you did to save
16 Adam from getting killed?

17 MR. GRAHAM: Objection. Leading.

18 THE COURT: I'll let him answer that.

19 A. Yes, sir. I just knew he had -- he was known to have
20 guns and shoot people. That's -- I didn't know that for a
21 fact about whether he had or anything.

22 Q. Did you have any other way of stopping that fight?

23 A. No, sir.

24 Q. And did you do just what you thought was necessary to
25 stop the fight?

1 A. Yes, sir.

2 Q. And that was because you were trying to save your
3 brother?

4 A. Yes, sir. All I wanted him to do was just stop
5 hitting my brother.

6 MR. FLOYD: Thank you. I have no further questions
7 Your Honor.

8 CROSS-EXAMINATION (In-Camera)

9 BY MR. GRAHAM:

10 Q. Who invited you to -- Kaysha didn't invite you to her
11 house, did she?

12 A. She did, sir.

13 Q. Kaysha is the one who invited you?

14 A. Yes, sir.

15 Q. She said Nick, come on over?

16 A. She invited me, my brother and Kayla Bass.

17 Q. Now, in fact, she invited your brother and Kayla;
18 isn't that true?

19 A. I don't recall that, sir.

20 Q. Did she ever -- I'm asking you, did she ever tell you
21 that you could come over that day?

22 A. Yes, sir.

23 Q. When?

24 A. She -- whenever -- because my brother and Kayla told
25 her that I was with them.

1 Q. Isn't is it true that you knew that Jamie was coming
2 over?

3 A. I promise I didn't know that.

4 Q. So you deny that Kayla or Kaysha said ten or
5 fifteen minutes before Jamie showed up that Jamie was on
6 his way to see his son Kolby?

7 A. I don't recall that.

8 Q. And that you cussed and got upset and mad?

9 A. I don't recall that.

10 Q. You don't recall it or it didn't happen?

11 A. I honestly don't remember that.

12 Q. It could have happened?

13 A. I mean, I don't know. I was very intoxicated. I
14 really --

15 Q. Well, I thought you weren't doing anything illegal.
16 So were you drinking?

17 A. I was drinking, you know, before everything happened.

18 Q. All right. How much did you have to drink?

19 A. Probably about five shots and, you know, a few drinks.

20 Q. Were you taking drugs?

21 A. I took one and a half bars of Xanax.

22 Q. How much?

23 A. One and a half bars of Xanax.

24 Q. One and a half bars of Xanax. Do you have a
25 prescription for that?

1 A. No, sir.

2 Q. The attempted murder charge on Jamie, you had heard
3 about that from who?

4 A. He used to --

5 Q. I'm sorry?

6 A. He used to brag about it.

7 Q. If you can pull the mic a little closer to you. I'm
8 having trouble hearing you.

9 A. He used to brag about it.

10 Q. Okay. The truth is, is that he was attacked or jumped
11 by several guys and he pulled out a gun to defend himself
12 and that's why he shot; isn't that right?

13 A. I don't believe so. I mean --

14 Q. Isn't that the story that you heard though?

15 A. He -- he told -- you know, he was saying that he
16 wasn't really getting jumped, he was just -- he just wanted
17 to shoot someone and that's why he originally went back and
18 came back with his gun.

19 Q. Right. But didn't he say that the reason he pulled
20 the trigger and shot those people was because they were
21 beating him down?

22 A. Really he wasn't, you know, getting beat like that I
23 don't believe. He shot them because, I mean --

24 Q. Well, you weren't there, right? Or were you there?

25 A. No, sir.

1 Q. Okay. So didn't he tell you that he shot the people
2 who were beating on him?

3 A. He told me he shot them.

4 Q. Because they were beating on him?

5 A. He didn't say that part. He just said he shot them.

6 Q. Okay. May 11, 2014, Mother's Day, do you remember
7 showing up at Kathy Polk's house?

8 A. Yes, we arrived at Kathy Polk's house.

9 Q. And that was Jamie's mom, right?

10 A. I don't believe so.

11 Q. You were riding with your brother Adam and he was
12 driving the car --

13 A. Yes, sir.

14 Q. -- and Kayla was in the front and the three of you
15 were going to over to get J.G. from Kathy?

16 A. Yes, sir.

17 Q. You were all drunk and high, correct?

18 A. At that time I don't believe I was on any drugs.

19 Q. Your brother was?

20 A. My brother was?

21 Q. I'm asking you, was your brother?

22 A. Maybe Xanax.

23 Q. Okay. Xanax, too. And Jamie came out and confronted
24 Adam and Kayla about not taking his son while you-all were
25 high and driving around with him, correct?

1 A. I don't recall the argument. I don't remember what
2 the argument was over.

3 Q. You don't remember what the argument was over?

4 A. No, sir.

5 Q. You don't deny that that's what the argument was, you
6 just don't remember it?

7 A. Yeah, I honestly don't remember the argument.

8 Q. Did something that Jamie said make you feel that he
9 disrespected Adam during that argument?

10 A. He spit in my brother's face.

11 Q. He spit in your brother's face?

12 A. Yes, sir.

13 Q. Did your brother do anything? Did he fight?

14 A. No, my brother kind of just like rolled his window up
15 and I got out and I told Jamie to chill out, man, we're not
16 trying to have any problems, we're just trying to come and
17 leave, and that's whenever he beat me up.

18 Q. So why did you get out of the car? Because you wanted
19 to confront Jamie and stick up for Adam?

20 A. Because I didn't want him to hit my brother, you know,
21 pull my brother out of the car or anything because we had
22 the kids in the car.

23 Q. Well, but your brother rolled up the window so he was
24 safe inside.

25 A. Yeah, but, I mean, he could have still easily broke

1 the glass.

2 Q. You went out to protect your brother?

3 A. Yes, sir.

4 Q. Okay. All five-three and 113 pounds of you who knew
5 that Jamie Galloway had shot people, you weren't scared
6 that day to stand up to Jamie Galloway?

7 A. I just wanted to tell him not to hit my brother, but I
8 didn't think he was gonna hit me because I didn't think he
9 would hit people smaller than him.

10 Q. My question was, you weren't afraid to stand up to
11 him, correct?

12 A. I mean, of course, I was scared, but --

13 Q. But did you it?

14 A. -- I still did it, yeah.

15 Q. You stood up to him?

16 A. Yeah, but I was still scared.

17 Q. And you pulled a knife on him?

18 A. Yeah, because I was scared for my life.

19 Q. You pulled a knife on him?

20 A. I told him -- I told him to back up and I backed up,
21 too, because I didn't want him to try to kill me.

22 Q. My question is, did you pull a knife on him?

23 A. Yes, sir.

24 Q. Okay. You went out to stick up for your brother
25 knowing that Jamie Galloway had attempted murder charges on

1 him and you pulled a knife on Jamie, correct?

2 A. Yes, sir.

3 Q. You didn't call the law?

4 A. No, sir.

5 Q. You could have though, couldn't you?

6 A. Honestly, at that second I couldn't because he was
7 beating me up.

8 Q. Well, he hit you one time, right?

9 A. No, he hit me multiple times.

10 Q. He hit you multiple times?

11 A. Yes, sir.

12 Q. How many times did he hit you?

13 A. I don't honestly remember how many times. I know he
14 hit me a few times and then I hit -- went to the ground and
15 he started kicking me.

16 Q. Were you knocked unconscious?

17 A. No, sir.

18 Q. Did you have any broken bones?

19 A. No, sir.

20 Q. Did you go to the hospital?

21 A. No, sir.

22 Q. Did you call the police and report him for beating you
23 up?

24 A. Kayla Bass called the officers.

25 Q. I'm sorry?

1 A. I said Kayla Bass called the officers.

2 Q. Kayla Bass. But you told -- actually you told Kayla
3 to not call and you said in front of everybody that you'd
4 take care of it yourself, right?

5 A. I don't recall saying that.

6 Q. And, in fact, you told Kathy Polk later that you were
7 gonna get her son. You came to -- well, let me see for a
8 second. I don't want to jump ahead.

9 All right. So you pulled a knife on Jamie and
10 Ms. Polk got in between you and Jamie and told you to put
11 the knife away and go, right?

12 A. I honestly don't remember, you know, anything else.

13 Q. It could have happened, you're not sure?

14 A. I just remember getting back into the truck and we
15 left after that situation.

16 Q. Do you remember going back to her house with Kayla,
17 Kathy Polk's house, a couple days later to drop J.G.
18 off? Do you remember that?

19 A. No, sir.

20 Q. And that you came in and you were very nervous when
21 Ms. Kathy Polk said to you not to worry because Jamie was
22 not there. Do you remember that?

23 A. No, sir.

24 Q. And then she says that you said you don't need to --
25 I'm sorry. She said you don't need to worry, Jamie's not

1 here. Do you remember telling her you don't have to worry
2 about Jamie, I've got him?

3 A. I don't remember that, sir.

4 Q. Do you deny it or you just don't remember?

5 A. I deny it. I mean, I -- I don't think I'd say
6 something like that.

7 Q. Tonya Griffin, do you know who that is?

8 A. Not off the top of my head.

9 Q. You don't? Kayla's mom.

10 A. Oh, yes, sir.

11 Q. Do you remember after the incident where Jamie hit you
12 and you pulled a knife on him, do you remember going over
13 to Tonya's house? And that's where you came in and you
14 were talking about Jamie and what happened and wanting to
15 kill Jamie and she told you to call the cops and you told
16 her that you didn't need to call the cops? Do you remember
17 that?

18 A. I don't recall that.

19 Q. Do you remember telling her that you didn't need to
20 call the cops because you were gonna handle it yourself and
21 then you said, quote, to her I hope you have no feelings
22 for Jamie because he won't be breathing.

23 A. I don't recall that, sir.

24 Q. Is that I don't recall because you were high on Xanax
25 or you didn't say it?

1 A. I don't -- I didn't say it.

2 Q. So you said it or don't remember or you're denying it?

3 A. I'm denying it.

4 Q. Okay. Facebook messages early in the week. So after
5 that, that was on the 11th, Mother's Day was on the 11th,
6 the next day you're going out looking for a burner on
7 Facebook. Do you remember doing that? A burner is a
8 throw-down gun, right?

9 A. I have no idea. I don't really remember asking for
10 guns.

11 Q. May 19th you had a Facebook conversation with Justin
12 Moore. You know Justin, right?

13 A. Yes, sir.

14 Q. And you're asking him if he's got any .22 rounds. Do
15 you remember that?

16 A. I remember asking for .22 rounds.

17 Q. And you said -- do you remember telling him I'm just
18 trying to get them fronted to me so I can get something
19 solved and pay after shit happens, you know? Do you
20 remember telling him that?

21 A. I don't remember, but --

22 Q. Do you remember him telling you that you don't need a
23 gun to solve your problems? Do you remember that?

24 A. No, sir.

25 Q. Do you remember him asking you about problems with

1 other people and you came back and said no, I'm talking
2 about Jamie Galloway, that you had problems with Jamie
3 Galloway and that that's why you were looking for .22
4 rounds? Do you remember that conversation?

5 A. I mean, I know I was scared of him, I mean, but I
6 never intended to ever kill anybody.

7 Q. Do you remember telling him that Jamie Galloway
8 snucked you when you were talking to your brother?

9 A. Yeah, I remember telling him that. I don't remember
10 telling him that, but I remember he snuffed me.

11 Q. And that was on 5-19 at 6:00 PM, so that was the night
12 that Jamie was killed, right? That you killed Jamie?

13 A. Yes, sir.

14 Q. Tommy Waters. Do you remember Tommy Waters?

15 A. Yes, sir.

16 Q. He's a friend of yours, too, right?

17 A. Yes, sir.

18 Q. Do you remember a Facebook conversation with him
19 asking about a gun?

20 A. No, sir.

21 Q. And him saying you didn't need a gun?

22 A. I mean, I don't remember that conversation.

23 Q. And you told him you needed it to deal with Jamie
24 Galloway?

25 A. I honestly don't remember that conversation.

1 Q. The truth is, you weren't scared of Jamie Galloway,
2 you had stood up to him and you were looking for a gun to
3 kill him, weren't you?

4 A. I mean, I went to Kaysha's house a bunch of times.
5 I mean, I didn't know whether he would show up or not, but
6 -- I mean, I was scared of him. I was trying to stay away
7 from those guys.

8 Q. Well, when he showed up, did you leave?

9 A. Showed up where?

10 Q. When Jamie showed up at Kaysha's house, did you leave?

11 A. I couldn't leave.

12 Q. Why not?

13 A. I didn't have no car. I didn't have a license at the
14 time.

15 Q. You could have walked away.

16 A. Actually I did have a license, but I couldn't drive.
17 I mean, it wasn't my car and plus I didn't know how to get
18 back to where I was going.

19 Q. Your brother never let you drive his car?

20 A. I mean, he didn't really let me drive his truck. Plus
21 even if he let me drive it, it would have to be subject to
22 his consent and he never gave me any consent to drive it.

23 Q. You could have walked away.

24 A. I mean, when I --

25 Q. You weren't so scared of Jamie Galloway that you

1 decided to leave, did you?

2 A. I didn't know where to go. I didn't --

3 Q. You could have walked down the road, couldn't you?

4 A. I mean, everything just happened so fast. I mean, my
5 brother was getting beat up and stuff. I mean --

6 Q. How long was Jamie there before he and your brother
7 got into a fight?

8 A. It wasn't long because as soon as he got there, there
9 was like arguments started between, you know, Kayla and
10 Kaysha and the girl that drove him over and that's -- it
11 wasn't long.

12 Q. Do you remember Jamie coming to say that he wasn't
13 there to fight, that he just wanted to talk with Kaysha?

14 A. I mean --

15 Q. Do you remember him saying that; yes or no?

16 A. I don't remember, but, I mean, he could have said
17 that.

18 Q. Do you remember him saying that he wasn't there to
19 fight?

20 A. I don't remember that.

21 Q. You do not remember that. Do you remember him trying
22 to talk with Kaysha?

23 A. I mean, yeah. Yes, sir.

24 Q. When he came there, did he come immediately and start
25 a fight with your brother or you?

1 A. No, it was --

2 Q. He went to go talk with Kaysha, didn't he?

3 A. I believe so. Yes, sir.

4 Q. And Kayla tried to stop that conversation from
5 happening?

6 A. I have no idea to that point.

7 Q. Your brother tried to stop that conversation from
8 happening?

9 A. I don't understand why my brother would do that
10 though.

11 Q. You tried to stop that conversation from happening?

12 A. I don't understand why I'd do that either. I don't
13 recall that, sir.

14 Q. Katie Leavitt, who drove Jamie there, got into a
15 verbal argument or a physical fight with Kayla. Which one
16 was it?

17 A. She got in a physical fight with her.

18 Q. And then Kaysha joined in?

19 A. Yes, sir.

20 Q. And then Jamie went over to pull Kaysha off?

21 A. Yes, sir, and that's the same time --

22 Q. Is that right?

23 A. Yes, sir, and that's the same time I pulled Kayla off.

24 Q. You pulled Kayla off?

25 A. Yes, sir.

1 Q. And which of the girls got punched during that? Who
2 did you punch? Which girl did you punch?

3 A. I never punched any girl.

4 Q. You never punched any of the girls?

5 A. No, sir.

6 Q. Did your brother pull any of the girls off?

7 A. I don't remember that. I don't know.

8 Q. So what's your story about how the fight started
9 between your brother and Jamie?

10 A. I don't remember what words was said, but they was
11 saying -- they was -- they was arguing about something and
12 I remember he took his shirt off and he said I will go to
13 jail tonight.

14 Q. He said what?

15 A. He said I will go to jail tonight and he started
16 swinging at my brother and that's when that whole situation
17 happened. My brother was backing up and --

18 Q. So you don't know if your brother started the fight or
19 not?

20 A. I mean, my brother's not usually the one to pick
21 fights, but --

22 Q. I understand that. You didn't see what happened. You
23 don't know who threw the first punch, do you?

24 A. No, but I know Jamie threw the first punch.

25 Q. You do know Jamie threw the first punch?

1 A. Yes, sir.

2 Q. Where is this -- where are they at this time, in the
3 driveway?

4 A. Yeah, originally it started in the driveway.

5 Q. In the driveway?

6 A. Yes, sir.

7 Q. Okay. So Jamie says I'm not here to fight, but I'll
8 go to jail tonight if I need to? Does that sound familiar?

9 A. Yes, sir.

10 Q. Okay. Do you know why Jamie struck your brother?

11 A. Probably because Kayla enticed him to or something or
12 just probably trying to tell him not to hit a girl and --

13 Q. Is it possible that your brother said something to him
14 that you didn't hear that caused Jamie to hit him?

15 A. I don't believe so.

16 Q. How far away were you?

17 A. I wasn't far really. Like how me and her are right
18 now.

19 Q. So how close were you to Jamie at that time?

20 A. Not really that far. It wasn't that far.

21 Q. This is at the driveway, right?

22 A. Yes, sir.

23 Q. Near the walkway to the house?

24 A. I believe so. Yes, sir.

25 Q. So how many times -- so Jamie hit your brother once in

1 the face, correct?

2 A. He hit -- he hit him multiple times.

3 Q. How many times?

4 A. I didn't count that, sir.

5 Q. More than two?

6 A. More than two, yes, sir.

7 Q. More than three?

8 A. It was a lot. I don't know how many it was. It just
9 happened really fast.

10 Q. Well, I'm trying to get an idea what multiple means.
11 Was it twenty?

12 A. I mean, it could be four or five, six. I mean, it was
13 definitely more than four.

14 Q. So Jamie hit your brother four, five, six times?

15 A. It could have been more than that.

16 Q. It could have been more?

17 A. Yes, sir.

18 Q. All in the face?

19 A. He was hitting him all over the face. Yes, sir.

20 Q. All over the face?

21 A. Face and head.

22 Q. Did he have any weapons?

23 A. I -- I have no idea, sir.

24 Q. You didn't see any weapons?

25 A. I mean, not at the time, no, sir.

1 Q. Your brother fought as well, he threw punches?

2 A. I mean, he was backing up more than anything trying
3 to really get away from him because Jamie was beating him.
4 He was really beating him up, so.

5 Q. So how far away is it from the driveway to the porch,
6 the steps to the porch?

7 A. It's -- I mean, it's not really -- it's a distance,
8 but it's not far. It's not really that far.

9 Q. Twenty, thirty feet?

10 A. I honestly don't know. I can't measure it.

11 Q. Your brother didn't raise a hand to Jamie; is that
12 your testimony?

13 A. He was trying to block him like this.

14 Q. He didn't punch Jamie in any way himself?

15 A. After Jamie went on the ground, he did.

16 Q. After Jamie went on the ground?

17 A. He started striking him.

18 Q. So it's your testimony that from the driveway along
19 the sidewalk all the way to the porch, twenty or thirty
20 feet, whatever that distance is, Jamie Galloway beat your
21 brother and your brother backed up all that way not once
22 hitting Jamie?

23 A. I mean, he could have hit one time, but I'm not -- my
24 brother was trying to get away from him because my brother
25 would have never kept backing up.

1 Q. And you just stood there and watched?

2 A. Yeah, because I didn't know what to do.

3 Q. Your brother -- in your story your brother is getting
4 beat, not even throwing punches, he's not fighting, he's
5 getting beat. It's not fighting, it's a beating, right?

6 A. I mean, Jamie Galloway was beating my brother. There
7 was blood coming all over his face.

8 Q. Okay. It wasn't a fight. Would you agree with me
9 that it wasn't a fight?

10 A. I mean, there was -- there was a fight, but --

11 Q. Well, if your brother's not throwing any punches, it's
12 not a fight, is it? That's a beating. Do you understand
13 the difference?

14 A. Yes, sir.

15 Q. So was it a beating or was it a fight?

16 A. I mean --

17 Q. Which one?

18 A. -- I guess you could say it was a fight, but I'm
19 telling you my brother probably struck him -- tried to
20 strike him one time, but he was mainly trying to back up
21 and he kept rushing on him and pushed him or hit him.

22 Q. Do you remember Jamie either hitting your brother or
23 pushing your brother down to the ground and walking past
24 him and Jamie is going up into the house?

25 A. I don't recall that.

1 Q. Do you remember that happening or you don't know?

2 A. I don't remember that happening, sir.

3 Q. So in your story, how did Jamie and your brother end
4 up on the porch?

5 A. My brother was backing up and then somehow they got on
6 the porch and my brother was still backing up and he was in
7 the corner.

8 Q. Let me interrupt you for a second. So Jamie is
9 beating him from the driveway across the sidewalk and your
10 brother's backing up the stairs to get up on the porch and
11 Jamie just keeps following him and beating on him? Is that
12 your story?

13 A. Yeah, Jamie kept continuing to hit my brother and my
14 brother was trying to get as far as possible from him
15 and --

16 Q. Your brother backed up on the porch to get away from
17 Jamie. That's your story?

18 A. I mean, he probably -- he probably didn't back up all
19 the way up, but he -- he didn't -- maybe not back up like
20 literally, but he got on the porch because he was trying to
21 get away from Jamie.

22 Q. He was running away from Jamie?

23 A. Yes, sir.

24 Q. Why didn't he go in the house?

25 A. I have no idea.

1 Q. Why didn't you call the police?

2 A. Because everything was happening so fast, I just
3 honestly --

4 Q. Why didn't you jump in while they were out in the yard
5 and help your brother?

6 A. He was big. I was scared of him.

7 Q. So your story is that your brother is trying to get
8 away from Jamie, the fight goes up -- or the beating goes
9 up onto the porch and then your brother gets trapped in the
10 corner of the porch?

11 A. I mean, yes, sir. He was -- he got trapped in the
12 corner of the porch. I mean, not exactly trapped, but
13 that's when my brother was -- Jamie was on top of my
14 brother.

15 Q. So your brother is down on the ground on the porch on
16 his back and Jamie's straddling him and punching him in the
17 face?

18 A. Yeah, he was beating him.

19 Q. So how many times total do you think Jamie Galloway
20 hit your brother?

21 A. There's no telling.

22 Q. Well, I'm asking you. You were there. Tell me how
23 many times.

24 A. I don't know how many it was. I can't count. It was
25 just repeatedly.

1 Q. Twenty, thirty?

2 A. A lot. I mean --

3 Q. Twenty times? You think he hit him twenty times?

4 A. It could be a possibility, but, I mean --

5 Q. What kind of injuries did you see on your brother?

6 A. My brother's face was bleeding blood. I seen a lot
7 of blood coming out of my brother's face.

8 Q. Did he have a broken nose?

9 A. I fractured my nose, yes, sir.

10 Q. He lost a tooth I think, didn't he?

11 A. Yeah. Yes, sir.

12 Q. Okay. Where did you go to get the knife?

13 A. It was in my pocket.

14 Q. It was in your pocket?

15 A. Yes, sir.

16 Q. Where had you gotten that knife?

17 A. It was from like a Wal-Mart or an AutoZone or
18 something.

19 Q. Sportsman's Warehouse?

20 A. I don't recall getting it from Sportsman's Warehouse.

21 Q. Did you shoplift it?

22 A. It could be a possibility.

23 Q. You have how many convictions for shoplifting?

24 A. Two.

25 Q. Two. And you also have a conviction for giving false

1 information to police?

2 A. Yes, sir.

3 MR. FLOYD: Your Honor, of course we object to that
4 testimony, Your Honor.

5 THE COURT: Right. This is a hearing, not the trial.
6 I understand.

7 BY MR. GRAHAM:

8 Q. So your testimony is your brother's down on the
9 ground, Jamie Galloway is pounding away on him, there's
10 blood all over your brother's face. Is your brother
11 fighting back anymore or he is getting beat?

12 A. At that point he's really trying to protect himself,
13 he's trying to ball up like, but he's getting beat.

14 Q. And you didn't call the police because why?

15 A. I mean, everything was transpiring so fast I didn't
16 know what to do. I'd never been in a situation like that
17 before.

18 Q. Was your brother saying anything? Was he calling for
19 help?

20 A. I mean, he was pushing away from him trying to get
21 away from him like.

22 Q. Did your brother say jump in and help me?

23 A. I took that as him backing up and pushing him away as
24 help.

25 Q. Well, he was backing away all across from the driveway

1 to the porch, but you didn't jump in until up on the porch,
2 so I'm asking you did he ever ask you to jump in and help
3 him?

4 A. No, sir, but I was hoping he would stop, you know, by
5 the time he got up there, but he just kept hitting him and
6 then my brother got trapped and my brother -- I figured my
7 brother would have ran somewhere else, but he got trapped
8 on the porch --

9 Q. He got trapped on the porch.

10 A. -- and he wasn't able really to defend himself
11 anymore, so that's why I helped him.

12 Q. Was your brother still -- he was still conscious? He
13 had his hands up defending himself you said?

14 A. Yeah, he was trying to protect his face.

15 Q. Trying to block the punches?

16 A. (Nods head.)

17 Q. Did he ever -- did he ever say stop? Did he ever ask
18 Jamie to stop?

19 A. I told -- I told Jamie to stop hitting my brother. I
20 told him to stop like multiple times.

21 Q. Your brother has fought and gotten in fights before,
22 right?

23 A. Yes, sir, but --

24 Q. How many fights has your brother been in?

25 A. I don't -- I have no idea.

1 Q. How many do you know of?

2 A. Only that one with Jamie because me and my brother
3 never talked about fighting. I never really asked him
4 about it.

5 Q. So this is -- the only fight you know your brother's
6 ever been in was this one with Jamie that night?

7 A. Yes, sir. That's the only one I've witnessed, too.

8 Q. What about him talking to you?

9 A. He's never told me.

10 Q. He never told you he'd been in a fight?

11 A. No, sir.

12 Q. So what was gonna happen if you didn't do something?
13 When you went to help, did you grab his arm?

14 A. I mean, I thought --

15 Q. Why didn't you grab -- let me ask you a question.
16 Why didn't you grab his arm and try to pull him off your
17 brother?

18 A. He was a big guy. He was a violent person. I knew,
19 you know, he liked to smoke meth a lot and stuff and, you
20 know, when people get on that stuff they tend to get real
21 wild and have more strength than normal and, I mean, I was
22 scared he was gonna kill me.

23 Q. Did you try to pull him off?

24 A. No, sir, but I told him stop hitting my brother, stop
25 hitting my brother.

1 Q. What did you really think was gonna happen if you
2 didn't do anything? Jamie just would have knocked him out
3 and it would have been over, right?

4 A. I honestly didn't think Jamie was gonna stop. I was
5 -- I was scared he was gonna beat my brother to death. I
6 know you can get punched in the wrong place and it can kill
7 you.

8 Q. You can get stabbed in the wrong place and die, too,
9 can't you?

10 A. Yes, sir.

11 Q. So EMS comes up on the -- well, let's see. The police
12 officers come on the scene. Your story is that you killed
13 Jamie Galloway in self-defense of your brother, right?

14 A. Yes, sir.

15 Q. Jamie never attacked you, right?

16 A. No, sir.

17 Q. Your brother?

18 A. Yes, sir.

19 Q. And then you had to do this to protect your brother's
20 life, correct?

21 A. Yes, sir.

22 Q. So I assume the first thing you did after -- well,
23 let's talk about it. You said you stabbed Jamie one
24 time --

25 A. Yes, sir.

1 Q. -- with the knife that you got out of your pocket?

2 A. Yes, sir.

3 Q. What did you do with the knife after you stabbed him?

4 A. I just remember it -- the last time I remember seeing
5 it is when it fell out of my hand because when I stabbed
6 him in the shoulder blade, it cut my hand.

7 Q. Did you stab him with your right hand or your left
8 hand?

9 A. It was my right hand.

10 Q. Okay. So you stabbed Jamie Galloway one time with
11 your right hand. Would that have been one of the ones up
12 in the head or the neck?

13 A. I believe I stabbed him in the shoulder blade.

14 Q. In the middle of the back on the shoulder?

15 A. On the shoulder blade.

16 Q. And did you cut yourself that time?

17 A. Yes, sir, like with the blade.

18 Q. So your right pinky -- let me show you a photograph
19 and ask you if you recognize that?

20 A. Yes, sir.

21 Q. I don't know whether I need to offer this in evidence
22 just for the hearing.

23 So you ended up cutting your left pinky and had to
24 have -- or your right hand pinky and had to have stitches
25 and you're saying that's from the one time that you stabbed

1 Jamie Galloway?

2 A. Yes, sir.

3 Q. Okay. You stab him one time and then he collapses
4 off to the side?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. (Nods head.)

8 Q. All right. He didn't move anymore? He was paralyzed;
9 is that right?

10 A. No, he didn't -- like he was still moving.

11 Q. Okay. So did he get around and turn and start
12 fighting you?

13 A. What happened was I stabbed him and whenever I did
14 that I guess he jumped like that because it hurt, you know,
15 and he jumped, like flinched from it, and that's when my
16 brother got out, you know, and then I started punching him
17 and that's when my brother was striking him, too.

18 Q. All right. So you stabbed Jamie one time, you cut
19 your hand, your right hand. You dropped the knife?

20 A. Yes, sir.

21 Q. Jamie gets off your brother, Adam comes out towards
22 you, so now you two have Jamie trapped in the corner,
23 right?

24 A. Yes, my brother went around me and --

25 Q. Right, so behind you. If I understand right, if this

1 is the porch right here where we're looking at, you're you,
2 I'm your brother, I'm over here, Jamie's over there, Jamie
3 can't get out because we've got -- behind us is where you
4 get out, correct?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. So that's when you and your brother try to get away?

9 A. Yeah, it just --

10 Q. I think what you said was that's when you and your
11 brother start hitting Jamie, right?

12 A. That's when my brother started hitting him.

13 Q. So you could have left at that time, couldn't you?

14 A. It happened real fast. I mean, I was scared he was
15 gonna get up and kill me.

16 Q. You and your brother could have left at that time.
17 You were not trapped in a corner. You had stabbed Jamie
18 and he wasn't hitting you anymore. You and your brother
19 were hitting him, correct?

20 A. At that time, yes, sir.

21 Q. And Jamie didn't have a weapon. Did you still have
22 the knife in your hand?

23 A. No, sir.

24 Q. Jamie's down on the ground, isn't he?

25 A. Yes, sir.

1 Q. So it's your sorry that -- Jamie Galloway was stabbed
2 twenty-five times. Twenty-four of them were in the --
3 twenty-three were in the back, one was in the side of the
4 head and one was in the shoulder. Who stabbed him all
5 those places?

6 A. I have no idea. I don't really --

7 Q. I'm sorry?

8 A. I said I don't have any idea who stabbed him the other
9 times.

10 Q. Where was the knife? After you stabbed him the first
11 time, where was the knife?

12 A. I don't remember. I just -- I mean, I know I stabbed
13 him one time and my hand got cut, yes.

14 THE COURT: For the purpose of the castle doctrine
15 hearing, how much further have we got to go?

16 MR. GRAHAM: Not a whole lot, Your Honor.

17 THE COURT: Okay. Go ahead.

18 BY MR. GRAHAM:

19 Q. You only struck him one time with the knife is your
20 story, correct?

21 A. That's what I remember. Yes, sir.

22 Q. And you're not testify that Adam picked up the knife
23 and stabbed him. You're just saying you don't know?

24 A. No, it's a possibility that he could have.

25 Q. You didn't see him though. You're not here to testify

1 that you saw your brother pick up the knife and stab him.
2 Is that right or wrong? Are you blaming your brother or
3 not?

4 A. I mean, I don't really exactly remember. Like I don't
5 -- it just happened really fast. The last time I remember
6 seeing the knife is when, you know, I stabbed him one time
7 and just really everything was just blur.

8 Q. How do you know you didn't stab him twenty-five times?
9 Is that a possibility, too?

10 A. I mean, it would have been kind of hard because my
11 hand was cut.

12 Q. Well, yeah, your right hand was, but let's look at
13 your left hand. You also had a cut on your left hand, too,
14 right?

15 A. Yes, sir.

16 Q. And that also came from when you drove the knife into
17 Jamie and your hand slipped off, didn't it?

18 A. I think that came before the incident happened.

19 Q. Before Jamie showed up?

20 A. No, no, no.

21 Q. No. While Jamie's there?

22 A. Yes, sir.

23 Q. The same knife?

24 A. Yes, sir.

25 Q. So you cut yourself with that knife?

1 A. It -- I guess, but I honestly don't know how that hand
2 got cut.

3 Q. Your brother had a cut on his hand. Do you remember
4 that?

5 A. Yes, sir.

6 Q. And this wound on top of his hand, did you do that to
7 him?

8 A. I mean, I honestly don't know. It was --

9 Q. Could you have done that to him?

10 A. I mean, I could have.

11 Q. When you stabbed Jamie just one time in the shoulder,
12 do you think that's when you did this or you don't know?

13 A. I don't know.

14 Q. I'm gonna show you another photograph. Is that your
15 brother?

16 A. Yes, sir.

17 Q. Okay. Show me all the injuries -- this was taken of
18 him at the hospital. Show me all the injuries on his face
19 from that beating where he had twenty punches from Jamie
20 Galloway.

21 A. His lips and his face is busted open, he's got black
22 eyes and the side of his nose is bruised up.

23 Q. So Officer Gleaton shows up, the first officer on the
24 scene. You didn't call 9-1-1, right? After you got up --
25 you and your brother were done doing whatever you did to

1 Jaime when he was down on the ground, you didn't call 9-1-1
2 and report a crime, did you?

3 A. No, sir. Everything just really happened fast.

4 Q. I understand. You had a phone and you could have
5 called though and you didn't, correct?

6 A. No, sir, I didn't.

7 Q. You didn't call for help for Jamie either and you
8 knew he was hurt because you could see blood everywhere,
9 right?

10 A. Yes, sir.

11 Q. Because you wanted Jamie dead?

12 A. That wasn't the idea, sir.

13 Q. Officer Gleaton came on the scene, the first officer,
14 and he was telling you to get down on the ground. You
15 weren't compliant with him, were you?

16 A. I was out of it. I was in shock. A lot just happened
17 and I was --

18 Q. Did you shout out to him it's self-defense, it's
19 self-defense?

20 A. I don't recall that.

21 Q. Do you remember telling him go ahead and shoot me?

22 A. I mean, at that point I don't remember anything from
23 then on because I was really in shock.

24 Q. Well, how do you remember what happened that night if
25 you don't remember?

1 A. Following up to that time whenever, you know, I
2 initially, you know, stabbed him one time.

3 Q. Well, right. You're remembering the things that you
4 want to remember. My question to you is you're saying
5 that it was all going too fast and you don't remember the
6 officer when he came on-scene?

7 A. I was in shock. I mean, I don't really remember much.

8 Q. Do you remember talking to the EMS people and they
9 were asking you about how you got your injuries on the
10 hand? He asked multiple times and you said you didn't
11 remember. Do you remember telling him that you didn't
12 remember what happened?

13 A. I mean, I don't really remember much after I got --
14 you know, after the incident happened.

15 Q. Okay. Do you remember telling them that you didn't
16 remember what happened when they asked you about cuts on
17 your hand and what happened to you?

18 A. No, sir.

19 THE COURT: That's kind of a circular question. If
20 he doesn't remember what was going on and he says he
21 doesn't remember then, that's consistent with him not
22 remembering right now.

23 BY MR. GRAHAM:

24 Q. You didn't tell them that you cut your hand when you
25 stabbed Jamie Galloway, did you?

1 A. I don't remember saying anything to them. At that
2 time I'm in shock.

3 Q. Do you remember telling the EMS person that you were
4 trying to protect your brother from being attacked? Not
5 being beaten, but being attacked.

6 A. Like I said, I don't remember. I don't remember
7 anything being said. I don't remember anything once --
8 after the incident happened. Something real tragic
9 happened and --

10 Q. Jamie Galloway did not throw a punch at you that
11 night, did he?

12 A. No, sir.

13 Q. Okay. So do you remember whether you told the EMS
14 person that he attacked me and my brother?

15 A. Like I say, I don't remember anything I said to him.

16 Q. Do you remember telling the EMS person that Jamie
17 Galloway attacked you with a knife?

18 A. I don't remember, sir.

19 Q. Do you remember Sam Smith, the officer that was up
20 here in the suit, black hair? Do you remember him from the
21 hospital?

22 A. I don't remember speaking to him, but I remember
23 seeing him on the stand just now.

24 Q. Okay. Do you remember telling him -- do you remember
25 him reading your rights to you?

1 A. I don't remember anything from there forward.

2 Q. Okay. Do you remember telling him that he was
3 fighting my brother and I came up from behind him?

4 A. I don't remember anything I said to him.

5 Q. You would agree with me that once you stabbed Jamie
6 one time that you didn't need to stab him anymore, your
7 brother didn't need to stab him anymore, you didn't need
8 to punch him anymore, you didn't need to kick him anymore
9 because he wasn't punching or hitting you-all? Would you
10 agree with that?

11 A. I mean, that was -- I was scared he was gonna beat me
12 whenever he got up and I know -- I knew he had done some
13 stuff like that and, I mean, I didn't know if he ever had
14 a gun whenever he came with Kaysha -- I mean, Katie or,
15 you know, what was going on with Katie as far as anything,
16 I don't know. Like I said, everything happened so fast.
17 I mean, I know she left, but I didn't know if she would
18 come back and then he'd get a gun out of there and start
19 shooting us.

20 Q. All right. So you're saying that you continued to
21 attack Jamie Galloway because Katie Leavitt might come
22 back and she might bring a gun to this incident; is that
23 correct?

24 A. I mean, she had -- she had to come back to come pick
25 him up, so I didn't know. You know, at that point I was

1 scared of him and I didn't know really exactly what to do.

2 It was --

3 Q. You had him trapped in a corner and you told me, I
4 think, that he was not fighting you-all anymore; isn't
5 that correct?

6 A. When he flinched off of it, he was still moving.

7 Q. He was still moving, I agree, but he wasn't fighting
8 you; isn't that true?

9 A. No, sir.

10 Q. I'm sorry?

11 A. No, sir.

12 Q. No, sir?

13 A. He wasn't fighting.

14 Q. He was not fighting you?

15 A. No.

16 Q. And so when Jamie Galloway was not fighting you
17 after you stabbed him one time, then you and your brother
18 continued to beat Jamie Galloway and somehow Jamie Galloway
19 got stabbed -- Jamie Galloway's trapped in a corner and
20 you-all could have backed up, you could have gone away
21 because the threat was over at that time, wasn't it?

22 A. I mean, it doesn't -- it still doesn't, you know,
23 defeat the fact that I was scared of him, you know. I
24 mean, he's beaten me up before and he's known to be violent
25 and shoot people. I mean, I was scared.

1 Q. You didn't see a gun, did you?

2 A. No, but I knew he normally carried a gun.

3 THE COURT: All right. I --

4 MR. GRAHAM: The only thing, Your Honor, is --

5 THE COURT: I've got a real clear idea of what was
6 going on.

7 MR. GRAHAM: All right. We can continue to cross on
8 all the statements that he gave that's recorded, but it's
9 recorded and you've heard it, so I don't think we need to
10 go any further at this point.

11 THE COURT: I mean, the burden is on the defense to
12 prove they're entitled to this immunity.

13 Mr. Floyd, anything else from you-all?

14 MR. FLOYD: Just a couple of questions, Your Honor --

15 THE COURT: All right.

16 MR. FLOYD: -- just so I can clarify a couple of
17 things.

18 REDIRECT EXAMINATION (In-Camera)

19 BY MR. FLOYD:

20 Q. Nick, just to clarify, the time that you went over to
21 his mother's house and he hit you --

22 A. Yes, sir.

23 Q. -- did you stab him with a knife on that occasion?

24 A. No, sir.

25 Q. And he beat you to the ground on that occasion?

1 A. Yes, sir.

2 Q. And did -- why did you pull the knife out?

3 A. Because I was scared he was gonna try to --

4 Q. Did that just stop the fight?

5 A. Yes, sir.

6 Q. Did you try to stab him or anything like that?

7 A. No, sir.

8 Q. Okay. Now on this night in question, I know the
9 judge has never seen this location, when you're talking
10 about Jamie and Nick -- Jamie and Adam getting into a
11 fight, how close to them were you when the fight started?

12 A. Uh --

13 Q. All right. Let me ask you. Closer than me and you
14 or not?

15 A. Probably about our distance now.

16 Q. About this distance?

17 A. Yes, sir.

18 Q. And how far were they from the porch?

19 A. I mean, it wasn't really that far. It was just --
20 you know, it was probably like at the beginning of the
21 walkway.

22 Q. Okay. So how far would that be? Would it be further
23 from the porch than where you and me are?

24 A. Just a little bit to the podium.

25 Q. To the podium. Okay. So they get in a fight and the

1 fight proceeds from there to the porch; is that correct?

2 A. Yes, sir.

3 Q. And -- and Jamie is beating up Adam; is that correct?

4 A. Yes, sir.

5 Q. And by the time they get to the porch, Adam is just

6 backing away trying to protect himself?

7 A. Yes, sir.

8 Q. Now they end up up the steps and on the porch; is that

9 correct?

10 A. Yes, sir.

11 Q. And is Nick still beating Adam at that point?

12 A. Jamie was still beating Adam at that point.

13 Q. I mean, Jamie was still beating Adam at that point?

14 A. Yes, sir.

15 Q. And is that when you got involved?

16 A. Yes, sir.

17 Q. Now at that point in the fight, where was Adam?

18 A. On the ground.

19 Q. Where was Jamie?

20 A. On top of Adam.

21 Q. Okay. Striking him?

22 A. Yes, sir.

23 Q. Okay. You jump in and you use your knife and you stab

24 Jamie; is that correct?

25 A. Yes, sir.

1 Q. Now do you remember what happened from there?

2 A. No, sir.

3 Q. Now Jamie was stabbed a bunch of times is what they
4 all say; is that correct?

5 A. Yes, sir.

6 Q. Do you know how many of them you stabbed him?

7 A. I mean, I just remember stabbing him one time and
8 then, you know, a lot just transpired after that.

9 I don't know what happened. I don't quite remember it.

10 Q. All right. So you were in shock after that?

11 A. Yes, sir.

12 Q. Now was Jamie continuing to fight?

13 A. I mean, he was still moving. He was -- he could have
14 got up and still fought.

15 Q. Okay. And the reason you felt you needed to use a
16 weapon was because you were afraid of him?

17 MR. GRAHAM: Objection. Leading.

18 A. Yes. He was double my size.

19 THE COURT: Yeah. Okay. Sustained.

20 BY MR. FLOYD:

21 Q. And did you know of his violent reputation?

22 A. Yes, sir.

23 Q. And did you basically strike him until he stopped?

24 MR. GRAHAM: Objection. Leading.

25 THE COURT: That's leading.

1 MR. FLOYD: Okay.

2 BY MR. FLOYD:

3 Q. When did you stop striking him?

4 A. Until Jamie stopped hitting my brother.

5 MR. FLOYD: Thank you. I have no further questions.

6 THE COURT: All right. Step down.

7 (Witness excused.)

8 THE COURT: Here's where I have a problem with the
9 immunity question. His testimony was consistent up until
10 he took the one blow against Jamie and then it's very
11 vague and his memory is very, very, very vague from that
12 point forward and it seems to me that the proof doesn't
13 get clear by a preponderance of the evidence that he
14 needed to continue to defend his brother; that if he was
15 clearer, and it wasn't at that point, he was consistently
16 not clear about what happened from the first blow to after
17 that. His memory got worse on every issue. I don't
18 believe that the -- that would entitle him. I would
19 think that he failed to meet his burden of proof of
20 proving he would be entitled to immunity because he only
21 has recollection of one blow that he took to assist his
22 brother if that's the case.

23 So I don't think he's entitled to immunity under
24 that statute. It's just -- the proof fails because it's
25 unclear from that point forward as to what happened and

1 who knew what, who struck the next blow. I have a very
2 unclear picture. I think that makes it a factual question
3 and I think immunity is -- he's not entitled to immunity
4 under that statute that you're claiming, Mr. Floyd.

5 MR. FLOYD: Well, of course, Your Honor, it's our
6 position that the question is whether -- when he struck
7 that first blow whether he was acting in accordance with
8 the protections of the statute and the fact that he has no
9 memory of what happened from then should not affect whether
10 or not he had the right to intervene and strike the -- the
11 blow he did and he admits to striking.

12 So we don't -- we would argue that whether or not he
13 remembers whether he continued to stab him or let someone
14 else stab him is irrelevant to his particular defense under
15 the castle doctrine because the question is whether he was
16 without fault in bringing on the difficulty. I think
17 that's been covered. Whether he believed he was in
18 imminent danger or his brother was, and I think he covered
19 that. Whether a reasonably prudent man would entertain the
20 same belief, and I think that's clear from the difference
21 in the sizes, the fact that he knew about Mr. Galloway's
22 violent nature, that he would -- that one man would strike
23 a fatal blow to save himself or someone else, and I think
24 that's what he did. Now whether or not he continued to
25 strike him or whether someone else struck him, the question

1 is whether they had the right to, and I think that's
2 covered -- all those points are covered in our testimony
3 and under State v. Jones I think it's clear that he would
4 be entitled to the defense -- immunity defense under the
5 statute.

6 THE COURT: All right. I understand your argument.
7 I just don't agree with it. I think that under the statute
8 it requires you to prove more past the initial blow and
9 I've not heard anything about what happened after that.
10 It gets very vague after that, so I'm gonna decline to
11 grant immunity under that statutory section, which is the
12 subsection -- is it (D) or (C)?

13 MR. FLOYD: (C), Your Honor.

14 THE COURT: Subsection C.

15 All right. Not related to this case, Ms. Frick is
16 asking about the jury. I'm gonna tell everybody to call in
17 tomorrow night. What about our jury, when do we want them
18 here?

19 MR. GRAHAM: I think -- the only other thing that I
20 know that we have that I would like to get a ruling on is
21 I understand if Mr. Berry testifies that he can talk about
22 his knowledge about Jamie Galloway and the attempted murder
23 charge and all that kind of stuff, but I would like a
24 motion in limine about Wayne Floyd being able to ask every
25 other person about it because, one thing, it doesn't

1 matter, I don't believe that's appropriate, so I wanted to
2 go ahead and have that out there because I don't want -- I
3 don't want him to start throwing questions out there
4 because I can't un-ring that bell once he starts it.

5 THE COURT: And what issue now? The other people know
6 what?

7 MR. GRAHAM: If he puts up any -- any witness that the
8 State calls and he says isn't it true that Jamie Galloway
9 was out on bond on attempted murder charges, it doesn't --
10 it's not relevant unless he testifies that he knows it. I
11 don't think it's appropriate for -- I'm asking for a motion
12 in limine that if he wants to ask that question that he
13 needs to do it outside the presence of the jury because I
14 can't un-ring that bell and I don't think it's an
15 appropriate question for any of the witnesses.

16 THE COURT: All right. Now that see seems to be a
17 reasonable request, so if a witness gets called and you're
18 gonna ask that question, let's take up a matter of law and
19 proffer it and then we'll decide whether or not it's
20 appropriate then. That's not a bad --

21 MR. FLOYD: Well, Your Honor, if that's the way you
22 want to do it, but we certainly think it's probative
23 because one question is, you know, whether his belief is
24 reasonable and if everybody in the community has the same
25 belief, it certainly makes his belief that the man's a

1 violent man reasonable.

2 THE COURT: Okay. Well, when we get to that point,
3 whether it's the second witness, third witness, whichever
4 witness, when you get ready to do it let's take up that
5 outside the presence of the jury and we'll see how it goes.
6 I'm telling you-all in limine motions are easy, but it's so
7 much easier when you get the flavor of the case and the
8 facts are coming and the questions and answers are going.

9 MR. GRAHAM: The only thing else, Your Honor, that I
10 know is Youmans, the Jackson v. Denno on Youmans. Other
11 than that, the State's ready to go. We can go and then
12 take a break and do the Jackson v. Denno and then if it
13 works keep going from there or we can do it and have the
14 jury come in a few minutes later. Whatever Your Honor
15 wants to do.

16 THE COURT: He's gonna be relatively short, isn't he,
17 Youmans?

18 MR. GRAHAM: Yes, sir.

19 THE COURT: Let's take that up on a break and get the
20 jury in here at 9:30. How does that sound? Does that
21 sound okay to you-all?

22 MR. GRAHAM: Yes, sir.

23 THE COURT: All right. Mr. Floyd, does it suit you?

24 MR. FLOYD: 9:30? That's fine with us, Your Honor.

25 THE COURT: All right. Ms. Frick, did you hear that?

1 THE CLERK: Yes, sir. I'm doing it right now.

2 THE COURT: The jury panel is to call back, but the
3 Berry jury, what I told them I would call them, needs to
4 report to the jury room by 9:30.

5 THE CLERK: Yes, sir.

6 THE COURT: All right. We covered some ground this
7 afternoon, folks. I'm glad I listened to some of that
8 recording during lunch or I'd still be back there listening
9 to it.

10 All right. Anything else before we adjourn?

11 MR. GRAHAM: Not from the State.

12 THE COURT: Okay. I'll see you-all in the morning.

13 (Whereupon, the proceedings were concluded for
14 December 12, 2016, at 5:33 PM.)

15 (The following proceedings were held January 13,
16 2016, beginning at 9:35 AM.)

17 THE COURT: Are you-all ready to go.

18 MR. GRAHAM: Three quick things before the jury comes
19 in. You were -- we were asked to do redactions on the
20 interrogation with law enforcement, and the copies are a
21 Court's exhibit right now, so do we have permission to take
22 them out and do the redactions?

23 THE COURT: Yeah.

24 MR. GRAHAM: Secondly, Your Honor, we're having to
25 substitute witnesses, so you need to re-pole the jury as

1 far as keeper of the records from the County.

2 THE COURT: You're talking about Ms. Rogers?

3 MR. GRAHAM: Yes. She's at home. It will be Carey
4 Wangness. She's the business custodian.

5 MR. FLOYD: That's unnecessary, Judge.

6 MR. GRAHAM: We're fine.

7 THE COURT: Okay.

8 MR. GRAHAM: We had made a motion in limine regarding
9 any testimony being offered or any questions being asked
10 regarding the murder of Adam Berry by Mr. Floyd and
11 obviously we're going to start calling witnesses, so -- so
12 I would ask the Court if he plans on asking those questions
13 on cross-examination that he notify the Court and we have a
14 discussion outside the presence of the jury.

15 THE COURT: Okay. We'll do that.

16 MR. FLOYD: I think you decided that yesterday.

17 THE COURT: Yeah, and we stopped then.

18 All right. One of the jurors, I'm not sure which one,
19 it doesn't matter, anyway spoke to Mr. Mills and says that
20 he was a little bit reluctant to tell me yesterday that he
21 couldn't read and write. I don't believe that's a
22 disqualification; read, write, understand, speak the
23 English language is what you have to have to be a juror,
24 so I'm not gonna address it. I think he was looking at it
25 as he didn't realize and he may be a little reluctant, so

1 if you want to know who it is and discuss it any further,
2 but I'm not inclined to excuse him because he don't read
3 and write very well.

4 MR. GRAHAM: The State doesn't have any position.

5 THE COURT: Mr. Floyd?

6 MR. FLOYD: That makes sense.

7 THE COURT: If he makes any other inquiry, I'll put
8 something on the record with him.

9 All right. Bring in the jury.

10 (Whereupon, the jury enters the courtroom at 9:36 AM.)

11 THE COURT: All right, folks. Good morning. We're
12 ready to get to work. I told you yesterday that we'd let
13 you know and I thank you-all for being prompt and getting
14 here on time in spite of the rain. It was kind of a rainy
15 drive in here for me. It took about ten minutes longer
16 than it normally does.

17 In any event, it's now the opportunity for the case
18 to get going, so what happens first is that each side is
19 given the opportunity to give some opening remarks and kind
20 of give you a preview of what they're gonna show. In a
21 criminal case, the State always goes first because they
22 have the burden of proof. As I told you before, the
23 indictments that were handed up to the Court that I read
24 parts of, those are just the allegations from the State to
25 any person accused of a crime of what to be prepared to

1 come into court to defend themselves. A person accused
2 doesn't have to prove or disprove anything. They can
3 remain silent. It's been my observation generally that
4 people in most trials wait and see as the trial goes to
5 decide what they're gonna put up. Many times they don't
6 know until the case gets going as to what they're gonna
7 do, but they don't have any responsibility to disprove
8 anything or to testify or anything of that sort, so
9 whatever Mr. Berry and Mr. Floyd decide, that's up to them.
10 The State goes first and they give their opening comments
11 first and they call their witnesses first, and that's how
12 it goes.

13 Now I'm gonna instruct you each time that we take a
14 break don't begin discussing the case. You-all are welcome
15 to take notes. I see some of you-all have notepads, and
16 that's good. You're not required to, it's optional. What
17 I ask you to do is just be good listeners. The lawyers
18 will try to keep things moving.

19 Now normally the early witnesses are generally longer
20 than the later witnesses. Sometimes that changes. What I
21 try to do is take breaks in between the witnesses. Now
22 there may be an opportunity in there where one side or the
23 other says Judge, I have a matter of law; Judge, I have an
24 objection I'd like to be heard further on. I use this
25 example later on. You know in sports, whether it be

1 basketball, baseball or football, they play runs and they
2 video it and then they go back and review the call, was it
3 a good catch or was there a dropped ball or inbounds, out
4 of bounds, and all that sort of stuff. Well, in a
5 courtroom it's kind of the opposite. If we get to a spot
6 and they can't ask the question without asking the
7 question, if you think about it, there's a question coming
8 and the answer once you give it, is it proper or not or
9 allowed or not, and if it's not allowed, once it's asked
10 it's hard to forget it because then you're like what in the
11 world, why is that not allowed. Well, so as not to, I
12 guess, have to do this case again because if I screw it up,
13 it's a mistrial and the case goes again with another jury.
14 There's no reason for that and the way you get around it is
15 if one side or the other says Judge, I have a matter of
16 law, I object or something along those lines, then I excuse
17 you-all and put you-all in the back. It's kind of like I
18 get a preview of the question, allowed or not allowed for
19 whatever reason, and sometimes the lawyers want to be heard
20 further on the rules. You know, Judge, this is Rule 403
21 and this is not relevant or not probative and it's too
22 prejudicial and all this sort of stuff and the other side
23 will say something similar and I've got to make rulings on
24 the law based upon my understanding and education and
25 experience, and I'm gonna try to do that as best I can, but

1 when I'm doing that job I don't need you-all in here, so I
2 excuse you. So it's not like we're trying to hide anything
3 from you or not let you see anything, but some things
4 aren't allowed because of the court rules and the court
5 rules are the court rules and we've got to follow them. So
6 if that happens and I excuse you, you-all will get a break.
7 Those are good times to take breaks, too, so that's why I'm
8 telling you that.

9 Now you-all are gonna be the judges of the facts.
10 There's certain questions of fact that you-all are gonna
11 get to answer. I'm the judge of the law, you-all are the
12 judge of the facts. When you-all go to you-all's jury room
13 to deliberate, I won't be in there listening to you-all
14 discuss it. So when I'm doing my job, I don't need you
15 listening and when you-all do you-all's job, I won't be
16 listening, but we're working together. I've got this half
17 to do, you-all have got that half to do, and you-all's job
18 is very important, so that's why you've got to be attentive
19 listeners.

20 All right. Those are my preliminary instructions.
21 I'm gonna ask you-all to stand and let Ms. Frick place you
22 under oath as a group.

23 THE CLERK: Raise your right hand, please.

24 (Whereupon, the jury was duly sworn by the Clerk of
25 Court.)

1 THE COURT: All right, Mr. Eargle.

2 MR. EARGLE: Yes, sir. Thank you, Your Honor. May it
3 please the Court?

4 THE COURT: Yes, sir.

5 MR. EARGLE: Mr. Floyd. Nick Berry wanted Jamie
6 Galloway dead. I want to thank you-all for being here.
7 It's been said that outside of military service during
8 wartime jury service is one of the most important jobs
9 Americans have to perform, and we appreciate that. This is
10 an extremely important case. We ask for your undivided
11 attention.

12 I'm Al Eargle. I'm an assistant solicitor in
13 Lexington County and assisting Deputy Solicitor Shawn
14 Graham prosecute this case. We, as prosecutors, seek
15 justice. Mr. Floyd is a criminal defense attorney, a very
16 learned criminal defense attorney, and he represents his
17 client, Nick Berry, and his job is to zealously represent
18 his client.

19 Mr. Berry has been charged and indicted for murder.
20 Murder basically being the unlawful killing by one person
21 of another with malice aforethought, an evil heart, with
22 evil intent. Accompanying that is also the charge of
23 possession of a weapon during the commission of that crime.

24 Ladies and gentleman, this case occurred on May 19,
25 2014, in the Pine Ridge section of Lexington County. If

1 you're unfamiliar with Pine Ridge, if you go out here on
2 Number 1, go down Number 1 all the way to I-26, turn right
3 on I-26 and go down -- if you're familiar with South
4 Congaree, Pine Ridge is a small town that sits, I believe,
5 a little bit northeast of South Congaree. And specifically
6 it occurred at ■ 4 Dogwood Drive.

7 And on that particular date and time there was a
8 gathering at the home of Kaysha Fontenot and the people
9 present at that home initially was Kaysha Fontenot, Kayla
10 Bass, Haley Stone, Nick Berry and his brother, Adam Berry,
11 along with some children, smaller children, of the
12 individuals that were there.

13 At some point in time, Jamie Galloway was invited over
14 to that location and you will learn that Jamie had a child
15 with the individual who lived at ■ 4 Dogwood, Kaysha
16 Fontenot. He had a child with her. Jamie shows up over
17 there. There was another girl who took Jamie Galloway over
18 there. Her name is Katie Leavitt. And sometime during the
19 course of when Jamie Galloway was there a fistfight ensued
20 between Jamie Galloway and Adam Berry. A fistfight.

21 We're gonna put up different witnesses to give you
22 their testimony as to what all occurred during the time
23 that everyone was there, what went on, what arguments
24 ensued, what led up to that fistfight between Adam Berry
25 and Jamie Galloway. Nothing more, nothing less.

1 And at some point during that fistfight Nick Berry
2 pulls out a knife and comes from behind on Jamie Galloway,
3 who's fighting his brother Adam, comes from behind and
4 stabs Jamie Galloway. And you're gonna hear that Jamie
5 Galloway was not stabbed just one time. He was not stabbed
6 two times or three times or five times or ten times or
7 fifteen times or twenty times, but that Jamie Galloway
8 sustained twenty-five stab wounds, twenty-five stab wounds,
9 and as a proximate cause of those stab wounds Jamie
10 Galloway died. A stab wound to his upper left shoulder,
11 a stab wound right behind his right ear, and the other
12 twenty-three stab wounds were to his back. Nick Berry came
13 from behind Jamie Galloway and stabbed him. Nick Berry
14 wanted Jamie Galloway dead, Nick Berry carried out his
15 mission.

16 Thank you.

17 THE COURT: Mr. Floyd.

18 MR. FLOYD: Thank you, Your Honor. Mr. Eargle.

19 Ladies and gentlemen of the jury, this young man is
20 Nicholas Chhith-Berry. Nicholas Chhith-Berry. He's the
21 man about whom you're gonna make one of the most important
22 decisions you're ever gonna make about anybody because
23 you're gonna decide sometime this week whether or not Nick
24 should be branded a criminal, a murderer. A decision that
25 will impact him for the rest of his life.

1 Now if you've never served on a criminal jury before,
2 you almost have to set aside human nature because you may
3 have in your mind and in your heart a thought that because
4 Nick Berry was arrested for this crime, which he was,
5 because he was carried to jail for this crime, which he
6 was, because he sits now before you to be judged for this
7 crime, which he does, you may have the thought that Nick
8 Berry must be guilty. Well, if you've got that kind of
9 thoughts, you've got to erase them because the judge has
10 just told you the law, and he'll tell it to you again, and
11 what the law says is that Nick Berry has the same rights
12 each and every one of us has. One of those most important
13 rights has been called -- what we call the right of
14 presumption of innocence. So when you look at Nick Berry
15 seated there, you must say in your heart and in your mind
16 Nick Berry is innocent and Nick Berry remains innocent
17 unless and until the State proves his guilt to each one of
18 your satisfactions beyond a reasonable doubt.

19 Now we ask you to pay close attention as you hear the
20 evidence in this case because what you're gonna hear is
21 Nick Berry, a 17-year-old kid, and that's what he was when
22 this happened, who weighed less than 115 pounds, was
23 witnessing his older brother, who he worshipped, getting
24 beaten up, badly beaten up, a tooth knocked out of his
25 mouth, blood pouring from his face, and he acted in defense

1 of that brother he loved, and that's why we're all here
2 today, because he acted in defense of the brother that he
3 loved.

4 This is a most important time in the life of Nicholas
5 Chhith-Berry, and we appreciate your close attention to the
6 evidence in this case. We think if you'll do that you'll
7 conclude when this is all over with that the only
8 appropriate verdict is one of not guilty by reason of
9 defense of others.

10 We thank you for your attention and look forward to
11 speaking to you again in what we call the closing argument
12 in this case. My name is Wayne Floyd and I practice law
13 out of West Columbia and I represent Nick. And seated at
14 the table, of course, with me is Michelle Wash, who is my
15 paralegal, and we very much appreciate your presence here.

16 You see, the police can arrest you, a prosecutor can
17 prosecute you, but you can't be convicted unless twelve
18 members of the community unanimously agree that the
19 evidence proves that guilt beyond a reasonable doubt. So
20 you have the most important role in this whole proceeding
21 and we appreciate your attention to the matter.

22 Thank you very much.

23 THE COURT: All right, Mr. Eargle.

24 MR. EARGLE: Thank you, Your Honor.

25 The State calls Katie Leavitt.

1 you're seated, ma'am, state your full name; spelling your
2 last, please.

3 THE WITNESS: Katie McKenzie Leavitt, L-E-A-V-I-T-T.

4 KATIE MCKENZIE LEAVITT,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. EARGLE:

8 Q. Good morning, Ms. Leavitt.

9 A. Good morning.

10 Q. Ms. Leavitt, would you introduce yourself to the jury.
11 Tell them where you live.

12 A. As of right now?

13 Q. Yes, ma'am.

14 A. In Gaston, Blackville. [REDACTED] Blackville Road.

15 Q. And are you employed?

16 A. No, sir.

17 Q. Do you know a gentleman by the name of Jamie Galloway?

18 A. Yes, sir.

19 Q. How long have you known Jamie Galloway?

20 A. Since I was fifteen.

21 Q. Let me take you to May 19, 2014. Did you have the
22 occasion on that date, if you recall, to see Jamie
23 Galloway?

24 A. Yes, sir.

25 Q. And what is your recollection of your interaction with

1 Jamie Galloway?

2 A. He was one of my good friends.

3 Q. And on that date of May the 19th of 2014, was he in
4 your presence or were you in his presence?

5 A. Yes, sir.

6 Q. Where were you-all when you saw each other?

7 A. His sister's.

8 Q. What were you-all doing?

9 A. Just hanging out like we always did. At that time,
10 we had actually stayed all together.

11 Q. At his sister's house?

12 A. Yes, sir.

13 Q. And did you, if you recall, give Jamie a ride
14 anywhere?

15 A. Yes, sir.

16 Q. And where did you give him a ride?

17 A. To his baby momma Kaysha's.

18 Q. And do you know where that was?

19 A. Actually that was the first time I had ever been
20 there. I didn't know exactly where she lived or anything.

21 Q. But you do know that the house you took him to was
22 Kaysha's house?

23 A. Yes, sir.

24 Q. Was that in the Pine Ridge section of Lexington
25 County?

1 A. Yes, sir.

2 Q. And can you tell the jury when you and Jamie arrived
3 at Kaysha's house what happened?

4 A. Well, as soon as we went to pull in, I saw Adam's
5 truck. Well, I looked at Jamie and I said it looks like
6 Adam and Kayla are here, we can leave.

7 Q. Let me stop you there. When you say Adam's truck, do
8 you know Adam's last name?

9 A. Berry.

10 Q. And when you say Kayla, who is Kayla?

11 A. Kayla Bass.

12 Q. Okay.

13 A. And I said it looks like Kayla and Adam are here. I
14 said do you want to leave and he said no, it will only be a
15 minute.

16 Q. Do you know why Jamie wanted to go over to Kaysha's?

17 A. To see his son.

18 Q. His son, do you know his name?

19 A. Kolby.

20 Q. And do you know -- or did you know how old Kolby was
21 at that time?

22 A. He was just about a year old.

23 Q. And you recognized the vehicle that was in the
24 driveway as being that of Adam Berry's?

25 A. Yes, sir.

1 Q. And what did Jamie do or say when you brought that to
2 his attention?

3 A. He --

4 MR. FLOYD: Your Honor, I object. That's hearsay.

5 THE COURT: Sustained as to hearsay. Rephrase that.

6 BY MR. EARGLE:

7 Q. Once you and Jamie arrived, what did Jamie do?

8 A. Jamie got out of the car and went to walk up to the
9 front door.

10 Q. And what did you observe?

11 A. I observed through the front window of the house -- I
12 -- I've never stepped foot in the house, I could see a guy
13 -- well, a shadow, like it was still or whatever, walk
14 through what I know now as the living room and kitchen
15 through a doorway and completely disappear.

16 Q. Where were you during this time?

17 A. I was in the driveway in my car.

18 Q. Did you get out of your car?

19 A. No, not until the end.

20 Q. And what did Jamie do?

21 A. Jamie walked into the house, stood by the front door
22 for about two, three seconds and walked back out.

23 Q. And what did you observe next?

24 A. Kaysha followed behind him and thought that my '04
25 Honda was a '06 Mazda, black Mazda.

1 Q. Whose car were you driving?

2 A. I was driving my car.

3 Q. So you observed Jamie walking out with Kaysha
4 following him?

5 A. Yes, sir.

6 Q. What else did you observe?

7 A. I observed them trying to talk and his other baby
8 momma, Kayla Bass, come out the door yelling and raising
9 heck.

10 Q. Where were they? Were they on the porch of the house,
11 were they in the yard, were they near the driveway? Where
12 were they?

13 A. They were in the driveway to the left of the house.

14 Q. Behind or in front of your car?

15 A. In front.

16 Q. So you've got Jamie, you've got Kaysha and you've got
17 Kayla Bass, who I believe you said was the mother of
18 Jamie's other child; is that correct?

19 A. Yes, sir. His oldest.

20 Q. And what happened next?

21 A. Adam came up behind him -- behind her and Jamie just
22 kept saying he wanted to talk to his baby momma.

23 MR. FLOYD: Your Honor, I object to the hearsay.

24 THE COURT: Yeah, don't --

25 MR. EARGLE: Just tell --

1 THE COURT: Tell her how she should answer the
2 question, Mr. Eargle.

3 MR. EARGLE: I'm sorry, Judge, I didn't --

4 THE COURT: Tell her how to answer -- not how to
5 answer, but tell her what she can't say. Explain that to
6 her.

7 BY MR. EARGLE:

8 Q. Please tell the jury what you observed, not what Jamie
9 said, okay?

10 A. Okay. I observed that he was trying to have a
11 conversation and Kayla Bass kept getting into his face.

12 Q. How was she trying to get into his face?

13 A. She was trying to provoke him, like push him and hit
14 him.

15 Q. And did you observe how Jamie responded to that?

16 A. Yes, he -- he didn't -- the only thing he really did
17 was take his hat off and throw it on the ground in anger.

18 Q. And what happened next?

19 A. Then they stayed over there for a while. Kayla was
20 all in Jamie's face and Adam went to get Kayla away from
21 him as he picked her up from her back side and she
22 proceeded to try to kick Jamie.

23 Q. Kayla did?

24 A. Yes, sir.

25 Q. So you have Adam Berry coming up behind Kayla Bass

1 pulling her away from Jamie?

2 A. Yes, sir.

3 Q. What happened next?

4 A. Next Kayla and Adam walked to the front, like to the
5 front porch area, and then at -- right after that Jamie and
6 Kaysha followed.

7 Q. They followed?

8 A. To the front to where they got Kolby.

9 Q. Okay. And you were in this car -- your car at this
10 time?

11 A. Yes, sir.

12 Q. What happened next?

13 A. After that, Kolby came outside and Jamie was holding
14 Kolby in his hands and Kayla, who had been trying to start
15 with me --

16 Q. Now what do you mean start with you?

17 A. She was calling me names and just saying some really
18 rude things.

19 Q. Now where were you at that time?

20 A. In my car.

21 Q. And you could hear her?

22 A. Yes, sir.

23 Q. Was she talking to you?

24 A. Kind of, but -- like about me, but to me.

25 Q. Do you recall what she was saying?

1 A. Yes, sir. She called me a dope whore and a dope head.

2 Q. And what did you do?

3 A. I -- I let it go for a little bit and she kept calling
4 me names and finally I got out and I told her I wasn't no
5 dope head and she said some things, so I walked to the
6 front of my car and threw my hands up.

7 Q. What happened next?

8 A. Kaysha blind-sided me, kind of dragged me down by my
9 hair.

10 Q. When you say blindsided, what do you mean by that?

11 A. Like I was standing in the front of my car and I
12 couldn't see her out of my peripheral, so it was just
13 like ...

14 Q. Did she make physical contact with you?

15 A. Yes, sir.

16 Q. What happened then?

17 A. We went to the ground where she rolled on top of me
18 and I had her by her arms and she was scratching my arms
19 trying to get to my face and I was just holding her and I
20 told her -- told Jamie to come get her off of me, that I
21 was not gonna hit her.

22 Q. What did Jamie do?

23 A. Jamie comes to get Kaysha off the top of me.

24 Q. Did he?

25 A. Yes.

1 Q. What did you do after that?

2 A. Well, after that, Kayla jumped on top of Jamie and
3 then on top of Kayla, it was Adam, so I'm at the bottom of
4 this people pile.

5 Q. So if I'm understanding you correctly, you're at the
6 bottom of the pile --

7 A. (Nods head.)

8 Q. -- and on top of you were Kayla Bass --

9 A. (Nods head.)

10 Q. -- Jamie Galloway --

11 A. (Nods head.)

12 Q. -- Kaysha Fontenot, Adam Berry?

13 A. No, sir. It was me, Kaysha, Jamie, Kayla, Adam.

14 Q. Do you know where Nick Berry was at this time?

15 A. No, sir.

16 Q. What did you do next or what do you recall happening
17 next?

18 A. I went to jump into my car, picked my flip-flops up,
19 threw them into the passenger seat, shut my door. Kayla
20 comes up to my driver's side window and punches it.

21 Q. Did she break it?

22 A. No, sir.

23 Q. What did you do?

24 A. I rolled the window down and like I done told her
25 that's what she -- that's what she does.

1 Q. What did you do next?

2 A. Then I proceeded to put my car in reverse and leave.

3 Q. What, if anything, did you observe as you were
4 leaving?

5 A. Well, as soon as I left, I was going up Dogwood
6 towards Fish Hatchery and I remember looking in my rear
7 view mirror as soon as I pulled out and saw Adam and Kayla
8 Bass.

9 Q. Where were they?

10 A. They were on the other side of the ditch in the front
11 yard in the road.

12 Q. And what, if anything, were they doing?

13 A. Kayla was standing out there with her hands up like
14 she wanted me to come back to fight her and Adam stood
15 about two feet behind her.

16 MR. EARGLE: Thank you, Ms. Leavitt. Please answer
17 any questions Mr. Floyd may have.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q. Ms. Leavitt, you never saw Nick Berry that night?

21 A. I -- I seen him for one quick second on the front
22 porch.

23 Q. But he wasn't involved in all this drama that was
24 going on with you and the girls and --

25 A. No.

1 MR. FLOYD: Your Honor, may we approach a moment?

2 THE COURT: Sure.

3 (Proceedings held at the bench; not reported.)

4 THE COURT: All right. Folks, I need to put something
5 on the record real quick, so you-all step into the jury
6 room and I'll have you back out here in just a few minutes.
7 So you-all step in there.

8 (Whereupon, the jury retires to the jury room at
9 10:10 AM.)

10 THE COURT: All right. Let's proffer this testimony
11 and then hear the reasoning to allow or reasoning to
12 disallow.

13 MR. FLOYD: Okay.

14 EXAMINATION (In-Camera)

15 BY MR. FLOYD:

16 Q. Ms. Leavitt, you've known Mr. -- you knew Mr. Galloway
17 since you were fifteen years of age?

18 A. Yes, sir.

19 Q. And were you familiar with his reputation for
20 violence?

21 A. No, sir.

22 Q. Were you aware that he was out on bond for two counts
23 of attempted murder?

24 A. Yes, sir, I did.

25 MR. FLOYD: Thank you, Your Honor. I'd like to put

1 that in front of the jury.

2 THE COURT: All right. Mr. Eargle, what do you think?
3 Or, I'm sorry, either one. Mr. Graham or Mr. Eargle.

4 MR. GRAHAM: Your Honor, I don't know the -- so I
5 guess we're gonna be under 405, talking about specific
6 incidents?

7 MR. FLOYD: Yeah, 405(b), Your Honor.

8 MR. GRAHAM: State versus Day, Your Honor, says in
9 murder prosecutions of one pleading self-defense against an
10 attack by a deceased, evidence of other specific instances
11 of violence on the part of the deceased are not admissible
12 unless they were directed against the defendant or against
13 others that were so closely connected at the point in time
14 or occasion with the homicide to reasonably indicate the
15 state of mind of the deceased or to produce a reasonable
16 apprehension of great bodily harm. So until he knows
17 about it -- I mean, he has to testify that he knew about
18 it. It doesn't matter under 405. The first part is
19 whether Ms. Leavitt knew about it or not, and I can pass
20 the case up.

21 Other than that, the only thing is if it's so relevant
22 in point of time or occasion and related that it's stating
23 the state of mind. I mean, he's basically saying that
24 because -- I mean, I think the argument has to be that
25 because Mr. Galloway four months earlier -- you'd have to

1 go into the facts and she has to know the facts, not the
2 charges. She's not a fact witness to that case. The fact
3 that it was an attempted murder doesn't explain the facts
4 of the case, he wasn't convicted of it, and none of those
5 witnesses are here. All she knows is that Jamie Galloway
6 was out on bond on an attempted murder charge. That
7 doesn't say the state of mind of Jamie Galloway at the time
8 of this night four months later and it doesn't say he has
9 knowledge of it. It's just not admissible at this point,
10 but the way it could possibly be admissible is if the
11 Defendant testifies or there's another argument for later
12 on if Mr. Floyd wants to call the people from the incident
13 themselves to go into it, but right here -- that's why the
14 State wanted this motion, Your Honor, and I can pass this
15 case up and Your Honor can read it.

16 MR. FLOYD: Your Honor, this is not a case of
17 something happening years earlier. This is something
18 that's recent. As he just said, four months earlier he had
19 two counts of attempted murder charges. It's known in the
20 community and that's what I'm trying to show. It's known
21 in the community and, therefore, it would be known to
22 Mr. Berry.

23 MR. GRAHAM: The State versus Day case, Your Honor,
24 which the cite is 341 South Carolina 410, the Supreme
25 Court, they let the information in, but it was a witness

1 to the actual event, it's a person who said somebody put
2 a gun to my head because they thought I was being
3 deceived -- I was deceiving the defendant, which was the
4 same defense that the defendant on trial was using; that
5 I knew about that event and I was worried about that event
6 because I knew that if he thought I was deceiving him, he
7 would shoot me. So this is -- it's not relevant. It
8 doesn't come in.

9 THE COURT: Let me ask you this, Mr. Floyd. How do
10 we get to this allegation of the charges, the attempted
11 murder charges, two counts? That's not specific conduct,
12 that's an allegation of the conduct, right?

13 MR. GRAHAM: (Nods head.)

14 MR. FLOYD: I guess the charge itself is an
15 allegation.

16 THE COURT: Uh-huh. I mean, just with that --
17 just her knowledge of him having two indictments for
18 attempted murder, I don't know if that in and of itself
19 is a specific instance of conduct, it's an accusation of
20 conduct.

21 MR. FLOYD: Well, Your Honor, it would go also to a
22 reputation for violence also under 405(b), so I think if
23 it's known in the community, it goes both ways. It's both
24 specific conduct and --

25 THE COURT: Didn't she answer that in the negative?

1 MR. FLOYD: Pardon?

2 THE COURT: Didn't she answer that in the negative?

3 MR. FLOYD: Well, she -- she knew of the charges --

4 THE COURT: Right.

5 MR. FLOYD: -- so I think the charges themselves
6 would be reputation evidence.

7 MR. GRAHAM: And if I can, Your Honor -- and I don't
8 know what Ms. Leavitt knows. I'm assuming she probably
9 talked to Jamie about those charges and she probably knows
10 Jamie's version, so if she was specifically asked -- I
11 mean, she hasn't been asked what his reputation is for
12 peacefulness or violence. If he wants to ask that
13 question, I guess he can see what her response is.

14 THE COURT: Well, I thought is first question was
15 are you aware of his reputation for violence and she said
16 no.

17 MR. GRAHAM: Okay. We're good on that then.

18 THE COURT: That was the first question. Then the
19 second question was were you aware he was -- had pending
20 charges of two counts of attempted murder and she said
21 yes, and that's where we stopped.

22 MR. GRAHAM: I think the question though are you
23 aware of his reputation for peacefulness and violence
24 is allowable and relevant. I don't think the specific
25 conduct comes in with any witness who didn't see it and

1 then I think it's a question then that the Court needs
2 to consider.

3 THE COURT: All right. I'm gonna allow Mr. Floyd to
4 ask that first question and if she answers in the negative,
5 then that ends it there. Another witness, a different
6 answer, then my response to the next question may be
7 different, but I don't think it's a proper question for
8 you to ask her are you aware he had two pending charges
9 of attempted murder.

10 MR. FLOYD: Thank you, Your Honor.

11 THE COURT: So the first question's good, the second
12 question, no.

13 MR. FLOYD: Okay.

14 THE COURT: All right. Does anybody need a quick
15 break or not? Because we've been in here about forty-five,
16 forty-eight minutes. I can step off real quick. I'd
17 like to use the restroom, so you-all take just a real
18 quick one.

19 All right. I'll be back in here in five or
20 six minutes. I won't be gone long.

21 (Recess taken at 10:17 AM.)

22 (Back on the record at 10:24 AM.)

23 BAILIFF: All rise. Court will now come to order.

24 THE COURT: All right. Are you ready to go?

25 MR. GRAHAM: Yes, sir.

1 THE COURT: All right. Bring them in, please.

2 (Whereupon, the jury returns to the courtroom at
3 10:25 AM.)

4 THE COURT: All right. We'll continue, Mr. Floyd.

5 MR. FLOYD: Thank you, Your Honor.

6 CONTINUED CROSS-EXAMINATION

7 BY MR. FLOYD:

8 Q. Ms. Leavitt --

9 A. Yes, sir.

10 Q. -- in 2015, were you convicted of reckless homicide?

11 A. Yes, sir.

12 MR. FLOYD: Thank you. No further questions.

13 THE COURT: Anything on redirect?

14 MR. EARGLE: No, sir, Your Honor.

15 THE COURT: You may step down.

16 (Witness excused.)

17 THE COURT: Go ahead.

18 MR. EARGLE: The State calls Carey Reinberg.

19 (Whereupon, Carey Reinberg was duly sworn by the
20 Clerk of Court.)

21 THE CLERK: Once you're seated, state your full name;
22 spelling your last, please.

23 THE WITNESS: My name is Carey Reinberg,
24 R-E-I-N-B-E-R-G.

25 CAREY REINBERG,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. EARGLE:

4 Q. Ms. Reinberg, where do you work?

5 A. Lexington County 9-1-1.

6 Q. And how long have you worked there?

7 A. Twenty years.

8 Q. And what are your job duties?

9 A. I'm responsible for the 9-1-1 technology.

10 Q. And also as part of your job functions there, do you
11 also act as custodian of records?

12 A. Yes.

13 Q. And, specifically, have you had an opportunity to
14 review or listen -- to review a CAD report and also listen
15 to a 9-1-1 call from 5-19 of 2014?

16 A. Yes, I have.

17 Q. Can you explain to the jury when a 9-1-1 call comes in
18 how that process works in terms of the call being recorded.
19 Is it recorded?

20 A. All 9-1-1 calls are recorded.

21 Q. And you listened to a recording of the 9-1-1 call from
22 5-19-2014; is that correct?

23 A. Yes.

24 Q. And do you recall approximately what time that call
25 came in?

1 A. 9:06.

2 Q. 9:06 AM or PM?

3 A. PM.

4 Q. PM. And these calls are recorded in the regular
5 course of business; is that correct?

6 A. Yes, they are.

7 Q. Let me hand you --

8 (State's Exhibit Number 1 was marked for
9 identification.)

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

11 THE COURT: Sure.

12 BY MR. EARGLE:

13 Q. I'm gonna hand you what's been marked State's Exhibit
14 Number 1. Do you recognize that?

15 A. Yes.

16 Q. What is that?

17 A. That's the recording of the 9-1-1 call with my
18 initials.

19 Q. And does it truly and accurately reflect the 9-1-1
20 call that was made on 5-19 of 2014 --

21 A. Yes, it does.

22 Q. -- at approximately 9:06 PM?

23 A. Yes.

24 Mr. EARGLE: Your Honor, the State moves to enter
25 this into evidence at this time.

1 THE COURT: Any objection, Mr. Floyd?

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: With no objection.

4 (State's Exhibit Number 1, a 9-1-1 call, was admitted
5 into evidence.)

6 MR. EARGLE: That's all I have for Ms. Reinberg.

7 Please answer any questions Mr. Floyd may have.

8 MR. FLOYD: No questions, Your Honor.

9 THE COURT: You're done. Thank you, ma'am.

10 (Witness excused.)

11 MR. EARGLE: The State calls Kaysha Fontenot.

12 THE CLERK: Once you're seated, state your full name;
13 spelling your last, please.

14 THE WITNESS: My name is Kaysha Nicole Fontenot. Last
15 name, F-O-N-T-E-N-O-T.

16 KAYSHA NICOLE FONTENOT,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. EARGLE:

20 Q. Thank you, Kaysha. Kaysha, where do you live?

21 A. [REDACTED] 4 Dogwood Road.

22 Q. And where's that located?

23 A. West Columbia.

24 Q. Is there a particular area in West Columbia?

25 A. It's Pine Ridge.

1 Q. And what county is that in?

2 A. Lexington.

3 Q. Let me take you to May the 19th of 2014.

4 A. (Nods head.)

5 Q. Can you tell the jury what you were doing that
6 afternoon?

7 A. The morning of May 19th, I was at my mother's house.
8 My car was broke down and I didn't have a way home. I
9 called several people to give me a ride. I called Jamie
10 for a ride, I called my friend BJ for a ride, and I
11 couldn't get them to come. So Kayla had been texting me
12 that day asking what I was doing, I finally let her come
13 give me a ride. I --

14 Q. Let me interrupt you here. Where was your mother's
15 home located?

16 A. It's in Swansea, South Carolina.

17 Q. And I believe you testified -- you said that you made
18 -- or contact was made with Kayla?

19 A. Yes.

20 Q. Is that Kayla Bass?

21 A. Yes.

22 Q. And did she agree to give you a ride?

23 A. She said do you want us to come help you and I said
24 if it's just you, that's fine, and she said it will be
25 just me and Adam, and I said okay.

1 Q. And who is Adam?

2 A. That was her boyfriend, Adam Berry.

3 Q. And did she and Adam come and give you a ride?

4 A. No, it was her, Adam and Nick Berry.

5 Q. She, Adam and Nick Berry --

6 A. Yes.

7 Q. -- gave you a ride from your mother's house to where?

8 A. To my house, [REDACTED] 4 Dogwood Road.

9 Q. Okay. Do you recall approximately what time you-all

10 arrived there?

11 A. I'm not for sure. I think it was afternoon.

12 Q. Midafternoon?

13 A. 2:00, 3:00 PM.

14 Q. And once you-all arrived at your home at [REDACTED] 4 Dogwood

15 Drive, what did you-all do?

16 A. Well, Kayla was upset. I started handing her shots,

17 I started drinking shots, and we kind of just started

18 drinking.

19 Q. Shots of what?

20 A. Shots of rum.

21 Q. And when you say we started drinking, who was

22 drinking?

23 A. It was me and Kayla because they had left.

24 Q. They being?

25 A. Nick and Adam had left.

1 Q. Do you know how they left?

2 A. They left in Adam's truck because they said they were
3 going to get yaps.

4 Q. They were going to get yaps?

5 A. Yaps. And I asked them what are those and they said
6 Xanax.

7 Q. Did they, in fact, do that?

8 A. Yes.

9 Q. How long were they gone; do you recall?

10 A. It was at least an hour.

11 Q. And did they return?

12 A. Yes.

13 Q. And once they returned, do you recall what happened?

14 A. Kayla wanted for Adam's other -- Adam's other baby's
15 mother to come because she wanted to get along with her, I
16 guess they hadn't been getting along, and she wanted them
17 to make up and get along, so she called her over.

18 Q. And who is she?

19 A. Haley Stone.

20 Q. Haley Stone. Kayla -- I'm sorry, Kaysha, I'm going to
21 show you a printout.

22 MR. EARGLE: We'll mark this as State's 2, please.

23 (State's Exhibit Number 2 was marked for
24 identification.)

25 MR. EARGLE: Your Honor, may I have the witness to

1 step down?

2 THE COURT: Sure.

3 BY MR. EARGLE:

4 Q. Kaysha, I'm gonna show you what's been marked State's
5 Exhibit 2. Have you had an opportunity to look at this?

6 A. Yes.

7 Q. Do you recognize the individuals on this poster
8 board?

9 A. Yes.

10 Q. And could you tell the jury who they are and their
11 relationships with one another? If you would, stand over
12 here so they can all see it.

13 A. Jamie is related to me because I have a son by him.
14 He's also related to Kayla. They have a son together.
15 Kayla was dating Adam Berry. Haley Stone has children by
16 Adam Berry. And Nick Berry is the brother of Adam Berry.

17 Q. And at some point in time were all of these people
18 at your home on 5-19?

19 A. Yes.

20 MR. EARGLE: Your Honor, the State's moves to enter
21 State's 2 in evidence.

22 THE COURT: Any objection to State's 2?

23 MR. FLOYD: No objection, Your Honor.

24 THE COURT: State's 2 is in.

25 MR. EARGLE: Thank you, Your Honor.

1 (State's Exhibit Number 2, a family tree diagram, was
2 admitted into evidence.)

3 BY MR. EARGLE:

4 Q. So you said that Adam and Nick left and went to get
5 yaps?

6 A. Yes.

7 Q. And they returned?

8 A. Yes.

9 Q. And then Kayla Bass wanted to invite Haley Stone, who
10 was the mother of Adam's two children, over to your house;
11 is that correct?

12 A. Yes.

13 Q. Did she, in fact, do that?

14 A. Yes.

15 Q. Did Haley Stone come?

16 A. Yes.

17 Q. Was Haley Stone by herself?

18 A. Yes. I can't remember. She might have had her kids.
19 I can't remember.

20 Q. What was going on at your house during this time
21 between you and Kayla and Adam and Nick?

22 A. I'm not really sure what they were doing. I was
23 mostly on the phone with Jamie on the porch most of the
24 time.

25 Q. You were on the phone with Jamie Galloway?

1 A. Yes.

2 Q. And what were you on the phone with Jamie Galloway
3 for?

4 A. We were kind of having an argument about some girl on
5 Facebook. We had that kind of relationship. I was upset
6 about a girl.

7 Q. Okay. And at some point in time during your phone
8 interactions with Jamie Galloway, did you invite Jamie over
9 to your house?

10 A. Yes.

11 Q. Did he come over?

12 A. Yes.

13 Q. Did you tell Jamie that Adam Berry was at your house?

14 A. No.

15 Q. Did you tell him that Nick Berry was at your house?

16 A. No.

17 Q. Did you tell him that Haley and Kayla were at your
18 house?

19 A. No.

20 Q. You just invited Jamie over?

21 A. Well, we were arguing. I said it in a sarcastic way,
22 like come over if you want to come over, but ...

23 Q. Was Jamie welcome at your house?

24 A. Yes.

25 Q. Sometimes, part-time?

1 A. He had an open invitation. He could always come to my
2 house.

3 Q. Had you-all previously lived together?

4 A. Yes.

5 Q. Where?

6 A. At that residence.

7 Q. Do you remember when Jamie arrived at your house?

8 A. Yes.

9 Q. Can you tell the jury your recollection of what
10 happened once Jamie arrived?

11 A. When Jamie arrived, he arrived with Katie Leavitt.
12 They parked the car at the end of the driveway. Kayla and
13 I were on the porch when they showed up. Jamie got out of
14 the car.

15 Q. Was it just you and Kayla?

16 A. I'm not sure. I don't know if the boys were on the
17 porch or not. I'm not sure where they were.

18 Q. Okay.

19 A. Kayla said something to me in my ear, and I do not
20 remember what it was, but whatever it was made me feel like
21 I needed to go get into a physical altercation with Katie,
22 which I did.

23 Q. Where was Katie?

24 A. Katie was getting out of her car at the end of the
25 driveway.

1 Q. And you don't recall what Kayla Bass told you that
2 infuriated to you to point that you went to engage in a
3 physical altercation --

4 A. No.

5 Q. -- with Katie?

6 A. No, I can't remember.

7 Q. Do you recall where Jamie was when you did that?

8 A. I don't know where Jamie was at all right then. I was
9 getting into that altercation with Katie and I have no idea
10 where he was at.

11 Q. How about the other people there, do you know where
12 they were?

13 A. No.

14 Q. What happened once you got into a physical altercation
15 with Katie?

16 A. What happened after?

17 Q. Yes.

18 A. She drove away and Adam came out of nowhere and
19 punched me in my jaw while I was standing in my front yard
20 for no reason. I don't know why to this day. And I turned
21 around and said what's wrong with you, why are you trying
22 to fight me now, too, and then Kayla runs over to me in
23 defense of Adam and drags me across my concrete sidewalk on
24 my back by my feet almost all the way to the steps.

25 Q. So Kayla got into a physical confrontation with you?

1 A. Yes.

2 Q. At this point in time, Katie Leavitt, was she there or
3 had she left?

4 A. She was gone.

5 Q. What happened after Kayla dragged you by your feet
6 across your driveway?

7 A. I got up and I ran inside as Jamie was coming outside
8 and I said Adam hit me and I went inside and I locked the
9 doors to check on my children and then take a minute to
10 myself because I had just gotten into all of that with
11 those people.

12 Q. So Jamie was inside when you went inside?

13 A. Yes.

14 Q. And you told Jamie that Adam had hit you?

15 A. Yes.

16 Q. Did Jamie stay inside or did he go outside?

17 A. He was going outside. He was still on his way outside
18 and I was on my way inside.

19 Q. And what you did you do after you said you locked the
20 doors?

21 A. I looked at my children in their rooms to make sure
22 they were in bed, I went into my room and I sat on the edge
23 of my bed just to give me self a break to breathe for a
24 second and calm down.

25 Q. What happened then?

1 A. And then about three to five minutes later, I guess, I
2 just thought maybe I should go check on things outside, so
3 I got up and I opened the front door and Jamie is laying on
4 the porch, face up, with blood everywhere and everyone else
5 is running around my yard and I --

6 Q. When you say everyone else, who do you see running
7 around your yard?

8 A. I don't -- well, I don't see anybody, I just see
9 bodies running around because it had gotten dark by then
10 and my porch light was on and past my porch I couldn't see
11 in the darkness and I saw all these people running around,
12 and I heard Kayla screaming out over and over Nick stabbed
13 Jamie, Nick stabbed Jamie.

14 Q. And what did you do?

15 A. So I turn around, I run into my living room, I grab my
16 phone and call 9-1-1. I stand up and I turn around and
17 there is Nick standing in my doorway at the threshold
18 staring at me with a crazed, scary, frightening look in his
19 face, and my eyes did not leave his eyes. I stared at him
20 and I told him to get out of here because he was scaring me
21 and finally he ran away.

22 Q. After that, what did you do?

23 A. I went outside to Jamie and I talked to the 9-1-1
24 operator and I tried --

25 Q. Stop there. How did you talk to the 9-1-1 operator?

1 A. How did I talk? Well, I -- what do you mean?

2 Q. Did they call you?

3 A. Oh, no. I called. I called 9-1-1.

4 Q. You called 9-1-1?

5 A. And that's when I was inside still. I had just got my
6 phone.

7 Q. Okay.

8 MR. EARGLE: May I approach, Your Honor?

9 THE COURT: Uh-huh. You may.

10 BY MR. EARGLE:

11 Q. Kaysha, I'm gonna hand you what's been introduced as
12 State's Evidence 1. Do you recognize that?

13 A. Yes.

14 Q. And how do you recognize that?

15 A. Because I listened to it and I verified that it was me
16 on the call.

17 Q. And how did you verify it?

18 A. I initialled it.

19 Q. Those are your initials, KF?

20 A. Yes.

21 Q. Does it truly and accurately reflect the 9-1-1
22 conversation you had on 5-19 of 2014?

23 A. Yes, sir.

24 MR. EARGLE: Your Honor, at this time we'd like to
25 publish this for the jury.

1 THE COURT: Any objection to publishing it?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: All right. You may publish.

4 MR. EARGLE: Thank you, Your Honor.

5 (Whereupon, State's Exhibit Number 1, the 9-1-1 call,
6 was published to the jury.)

7 BY MR. EARGLE:

8 Q. Kaysha, when you went out on that front porch and
9 attempted CPR on Jamie Galloway, do you recall where his
10 body was located?

11 A. It was in the corner of my porch farthest away from my
12 door, from my front door. His head was in the corner of
13 the rails and his body was feet towards my front door.

14 Q. Okay.

15 (Proceedings held at the bench; not reported.)

16 (State's Exhibit Number 3 was marked for
17 identification.)

18 BY MR. EARGLE:

19 Q. Kaysha, I'm gonna show you what's been marked State's
20 Exhibit 3. Do you recognize that photo?

21 A. Yes.

22 Q. And --

23 MR. EARGLE: I beg the Court's indulgence.

24 (Whereupon, State's Exhibit Number 3 was remarked and
25 replaced.)

1 BY MR. EARGLE:

2 Q. Kaysha State's Exhibit 3, do you recognize that?

3 A. Yes, sir.

4 Q. Can you stand up --

5 MR. EARGLE: With the Court's permission to stand
6 before the jury and describe the photo, Your Honor?

7 THE COURT: Sure, she can.

8 BY MR. EARGLE:

9 Q. Can you describe what this photo is and what you see
10 there?

11 A. That's my front steps, my front door, and that's
12 Jamie.

13 THE COURT: Mr. Eargle, she needs to speak up a
14 little. I can hear her voice, but I can't hear a word
15 she's saying.

16 THE WITNESS: It's -- it's my front steps, my front
17 door and my porch, and I see Jamie there.

18 BY MR. EARGLE:

19 Q. Is that where he was that night when you came out and
20 tried CPR?

21 A. He was more over this way to the left.

22 Q. Okay. But he was lying there on your porch?

23 A. That way, yes.

24 MR. EARGLE: The State would move to introduce
25 State's Exhibit 3 into evidence, Your Honor.

1 THE COURT: State's 3?

2 MR. FLOYD: No objection.

3 THE COURT: No objection.

4 (State's Exhibit Number 3, a photograph, was admitted
5 into evidence.)

6 MR. EARGLE: Publish it to the jury?

7 THE COURT: Okay.

8 (Whereupon, the witness returns to the witness stand.)

9 MR. EARGLE: Ms. Fontenot, I have no more questions
10 at this time. Please answer any Mr. Floyd may have.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q. Ms. Fontenot, did you have approximately ten shots of
14 liquor that day?

15 A. Yes.

16 Q. And from what time to what time? Like when did you
17 have your first one and when did you have your last one?

18 A. I would say two to five.

19 Q. From two to five?

20 A. (Nods head.)

21 Q. And did Jamie bring a gun to the house that night?

22 A. No.

23 Q. He didn't bring a gun to the house that night?

24 A. No.

25 Q. Was there a gun in your bedroom?

1 A. Yes.

2 Q. He didn't bring it there?

3 A. No.

4 Q. Where did it come from?

5 A. A friend of mine.

6 MR. EARGLE: Your Honor, may we approach a moment?

7 THE COURT: Yes, sir.

8 (Proceedings held at the bench; not reported.)

9 THE COURT: All right. I need to put something on
10 the record, but I have got a question for you. When we
11 take this break, you-all discuss this in the jury room.
12 The Clerk of Court asked me since there's such rainy
13 weather do you-all want her to order lunch or do you-all
14 want an hour? We'll probably take a break for a little
15 more than an hour. Do you-all want to leave and just deal
16 with the weather and be out of the courthouse for about
17 an hour or so? Or if you want lunch brought in for you,
18 Ms. Frick is willing to do that.

19 So you-all take a break and step in the jury room,
20 don't discuss the case, and let me know the answer to
21 that. If you do, we need to go ahead and order it now
22 and give us some lead time to get it here or if you-all
23 want to depart, so you-all just tell me yes or no on
24 lunch. If no, then that means I'm gonna excuse you for
25 an hour and fifteen minutes or so and you-all can go to

1 lunch wherever you want. You don't have to go together,
2 okay? You're not required to eat together, but if we
3 bring it in, you're gonna be eating together, okay?

4 So you-all step in the jury room and let Mr. Mills
5 know your decision on that.

6 (Whereupon, the jury retires to the jury room at
7 11:09 AM.)

8 THE COURT: All right. Go ahead, Mr. Floyd.

9 MR. FLOYD: Thank you, Your Honor.

10 EXAMINATION (In-Camera)

11 BY MR. FLOYD:

12 Q. Ms. Fontenot, were you present at the East Room bar
13 on the night Jamie got charged with attempted murder?

14 A. Yes.

15 Q. And were you out in the parking lot when the shootings
16 occurred?

17 A. Yes.

18 Q. And did Jamie have a gun on him that night?

19 A. Yes.

20 Q. And did Jamie shoot that gun?

21 A. Yes.

22 Q. And as a result of that shooting, was he charged with
23 two counts of attempted murder?

24 A. I don't know.

25 Q. He never told you he got charged?

1 A. No.

2 Q. Did he get arrested that night?

3 A. I don't know.

4 Q. Did you see him after that?

5 A. Did I see him ever --

6 Q. Yeah.

7 A. -- after that? Ever again?

8 Q. Uh-huh.

9 A. Yes.

10 Q. And did he have an ankle monitor on?

11 A. Yes.

12 Q. Did you ask him what that was all about?

13 A. I did not ask him. I assumed that it was because of
14 that.

15 Q. Because of the attempted murder charge?

16 A. Yes.

17 Q. So you knew about the attempted murder charge?

18 A. Yes.

19 Q. In fact, you gave statements to the Richland County
20 deputies about it, didn't you?

21 A. Yes.

22 Q. So you knew he was charged with attempted murder?

23 A. I didn't know what the charge was gonna be that night.

24 Q. Did you later find out what it was?

25 A. Yes.

1 Q. And did you find out it was attempted murder?

2 A. Yes.

3 Q. Did you tell any of your friends about it?

4 A. No.

5 Q. So nobody -- none of your other friends knew about the
6 attempted murder?

7 A. No.

8 Q. Haley didn't know?

9 A. I'm not sure.

10 MR. FLOYD: Thank you. I have no other questions on
11 that point, Your Honor.

12 THE COURT: All right. Mr. Eargle?

13 MR. EARGLE: May I ask her some questions about it,
14 Judge?

15 THE COURT: Sure.

16 EXAMINATION (In-Camera)

17 BY MR. EARGLE:

18 Q. Kaysha, you were at the East Room, correct?

19 A. Yes.

20 Q. And you gave a statement to Richland County law
21 enforcement concerning the incident, right?

22 A. Yes.

23 Q. Did you see an altercation in the parking lot
24 involving Jamie?

25 A. No.

1 Q. Did you see Jamie shoot a gun?

2 A. No.

3 Q. Kaysha, after this incident at the East Room, did you
4 have an occasion to see Jamie?

5 A. Did I have an occasion to see him?

6 Q. Yes, shortly after the incident at the East Room.

7 A. No.

8 Q. When was the next time you saw him?

9 A. I would say weeks, a couple of weeks.

10 MR. EARGLE: Thank you.

11 EXAMINATION (In-Camera)

12 BY MR. FLOYD:

13 Q. Ms. Fontenot, just a few minutes ago when I asked you
14 whether you saw him shoot his gun, I thought you said yes.

15 A. No.

16 Q. Did you hear him shoot his gun?

17 A. Did I hear it? Yes. I did not see it.

18 Q. But you heard him shoot his gun?

19 A. I heard a gun shoot.

20 Q. And he had a gun?

21 A. And he had a gun.

22 Q. And how did you know he had a gun?

23 A. Because he ended up shooting people.

24 MR. FLOYD: Okay. Thank you. No further questions.

25 THE COURT: All right, Mr. Graham. Let me hear you.

1 MR. GRAHAM: Legal argument, Your Honor?

2 THE COURT: Yes.

3 MR. GRAHAM: She heard gunshots. She doesn't know
 4 what happened, she wasn't an eyewitness to the event. She
 5 can't speak to the specific incident. It doesn't meet --
 6 I mean, it doesn't meet what I was telling you in State
 7 versus Day. She can't tell you what happened. She doesn't
 8 know whether it was in self-defense, she didn't see the
 9 shooting. She heard Jamie -- she heard a gunshot and she
 10 found out later from other people that Jamie was in trouble
 11 for doing it. Jamie never even told her he shot anybody,
 12 so everything is hearsay to her. She can't talk about --
 13 I mean, the whole purpose of this under 405 is a specific
 14 incident and conduct that goes to Jamie -- I mean, from
 15 the defense side, Jamie Galloway's willingness to start a
 16 fight, his aggressiveness. Her witness of what she saw or
 17 heard that night doesn't speak to that. She doesn't know
 18 whether Jamie Galloway -- because Jamie's Galloway's story
 19 is that he was defending himself and he got jumped and
 20 attacked. The fact that he gets arrested later is not
 21 relevant to a specific incidence of conduct. The fact that
 22 he is wearing an ankle monitor and out on bond doesn't go
 23 to a specific incidence of conduct. The conduct is what
 24 happened. She wasn't a witness to it and she can't testify
 25 to it.

1 THE COURT: Can I see that case?

2 MR. GRAHAM: (Handing.)

3 THE COURT: All right, Mr. Floyd. Let me hear from
4 you.

5 MR. FLOYD: Your Honor, we must have been hearing
6 different testimony. I think she testified that she knew
7 he had a gun, that he shot somebody with a gun, so that's
8 -- I don't see what the big issue is. We can prove
9 character violence by either specific acts of conduct or
10 reputation. That's Rule 405(b). I mean, the rule's clear
11 on that point. This happened some -- several months before
12 this incident in question, so time-wise it's appropriate.
13 Shooting somebody is certainly something that's violent in
14 nature. So we don't see where there's any issue with it at
15 all.

16 THE COURT: I want to read this case real quick, so
17 let's stand at ease for a minute.

18 Have you heard from the jury what they want to do,
19 Ms. Frick, about lunch?

20 THE CLERK: They want to go out.

21 THE COURT: All right. I'm gonna step off the bench
22 real quick and read this case.

23 (Recess taken at 11:17 AM.)

24 (Back on the record at 11:29 AM.)

25 BAILIFF: All rise. Be seated.

1 THE COURT: These cases seem to contradict one
2 another quite a bit. It's not as clear as I'd hoped,
3 I'll be honest with you.

4 MR. GRAHAM: The cases I saw, Your Honor, where it
5 let it in it looked like it was an eyewitness -- I mean,
6 it was actually the victim of the other event.

7 THE COURT: Yeah, that first case where the gun was
8 used, the victim was the witness who testified later.

9 MR. GRAHAM: Right. Yes, Your Honor. He had a gun
10 pointed to his head and he was -- it had to do with
11 deceiving the decedent victim and the defendant on trial
12 -- the testimony was very similar because in that situation
13 I think there was allegations that there might be people
14 in the back of the car or something like that with the
15 decedent as well.

16 THE COURT: Sorry, Stacy. We've got a lot going on
17 behind you.

18 All right. Now go ahead.

19 MR. GRAHAM: The factual situation was very similar
20 in that case where it was allowed in because the person
21 who got up and said it was the victim of the crime. The
22 victim of the crime said that the decedent put a gun to my
23 head threaten to kill me because I was deceiving him, which
24 was the same defense that the defendant was using saying
25 that -- I believe a gun was pulled and I was deceiving --

1 or I was afraid he was deceiving me about drug money, and
2 people in the back, if I remember correctly. So it was
3 basically the decedent's actions would be similar because
4 the situations were similar, but -- does that make sense?

5 THE COURT: Yeah.

6 MR. GRAHAM: And it was a specific victim of the
7 crime. At her testimony at best, she heard gunshots, she
8 knows that Jamie got in trouble for it. She doesn't know
9 the details and for it to imply that, that's a specific
10 instance of conduct where Jamie was an aggressor and Jamie
11 shot somebody. I don't see how that -- that comes in here
12 because that doesn't -- he can get up and testify that he
13 knew Jamie had been arrested because that's what he heard
14 on the streets, and whatever he said he heard, whether
15 it's true or not because that's what he heard, and so
16 that's the effect on him. But just the fact that -- right
17 now the only question I think that Mr. Floyd is trying to
18 get out under 404 and 405 is that Jamie's reputation is as
19 a violent person and she doesn't have knowledge of that
20 event for it to come in under the specific instance of
21 conduct under 405 is the way those cases read. She wasn't
22 a witness to it, she heard it, but she doesn't know the
23 facts. Jamie told other people that he was attacked and
24 his defense if he would have gone to trial was he was
25 attacked. He had marks all over his face. He was beat

1 up. He pulled the gun to defend himself.

2 THE COURT: I understand your position.

3 All right. Let me hear from Mr. Floyd a minute.

4 MR. FLOYD: Your Honor, I think she is witness. She
5 was there. She heard it. She knew he had a gun, so she
6 meets the qualification of being a witness. It is a
7 specific instance of violent conduct and I think that's
8 allowed under 405(b) and as far as that goes it becomes
9 important because if the Defendant has a belief in the
10 violence and in his violent nature, then -- I think
11 there's some requirement that it be a reasonable belief
12 and I think that if we have other instances of conduct,
13 then that leads credence to his belief being reasonable
14 that Jamie Galloway was a violent man to be afraid of.

15 THE COURT: All right. I agree with you he's got
16 to put that in to get the belief he has in his mind. I
17 don't think that this conduct that she was nearby when
18 the conduct took place is firsthand knowledge by her of
19 his acts of violence. If you want to call them that, and
20 for that reason I will not allow that line of questioning
21 of her.

22 Mr. Berry may have a different ability to have
23 knowledge of the gentleman's -- the deceased's prior acts
24 and reputation. And she was not asked was she aware of
25 his reputation in the community for violence. She was not

1 asked that question.

2 MR. FLOYD: I would ask her that, Judge.

3 THE COURT: Okay. Are you going to?

4 MR. FLOYD: Yes, sir.

5 THE COURT: All right. Let's proffer that and hear
6 it.

7 EXAMINATION (In-Camera)

8 BY MR. FLOYD:

9 Q. Ms. Fontenot, are you aware of Jamie Galloway's
10 reputation for violence in the community?

11 A. No.

12 MR. FLOYD: Thank you.

13 THE COURT: All right. Bring the jury back in.

14 So I would not allow that line of questioning with
15 her.

16 (Whereupon, the jury returns to the courtroom at
17 11:36 AM.)

18 THE COURT: All right, Mr. Floyd.

19 MR. FLOYD: No further questions, Your Honor.

20 THE COURT: All right. You may step down, ma'am.

21 (Witness excused.)

22 MR. GRAHAM: The State calls Allen Gleaton.

23 (Whereupon, Allen Everette Gleaton, Jr., was duly
24 sworn by the Clerk of Court.)

25 THE CLERK: Once you're seated, state your full name;

1 spelling your last, please.

2 THE WITNESS: Allen Everette Gleaton, Jr.

3 G-L-E-A-T-O-N.

4 ALLEN EVERETTE GLEATON, JR.,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. Mr. Gleaton, where are you currently employed?

9 A. I'm employed by the South Carolina Army National
10 Guard.

11 Q. What do you do there?

12 A. I'm the deputy commander for recruiting and retention
13 battalion for the state.

14 Q. And how long have you been with the Guard?

15 A. With the Guard, since December of 2000.

16 Q. Have you also been in law enforcement?

17 A. I have.

18 Q. How many years as a sworn law enforcement officer do
19 you have?

20 A. Fourteen years.

21 Q. Back in 2014 in May, on the 19th, where were you
22 employed?

23 A. By the Pine Ridge Police Department.

24 Q. And what did you do for Pine Ridge?

25 A. I was a patrol officer.

1 Q. And did you respond to a call for service at

2 ■ 4 Dogwood Road, West Columbia?

3 A. I did.

4 Q. And is that in Pine Ridge?

5 A. It is.

6 Q. And is that in Lexington County?

7 A. It is.

8 Q. Let me show you a map and ask if you recognize that?

9 A. I do.

10 Q. Does that fairly and accurately depict the location of

11 ■ 4 Dogwood Road and the surrounding roads in the area?

12 A. Yes.

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

15 MR. FLOYD: No objection.

16 THE COURT: State's 4?

17 THE COURT REPORTER: Yes, it will be.

18 THE COURT: All right. State's 4 is admitted without
19 objection.

20 MR. FLOYD: No objection.

21 THE COURT: Okay.

22 (State's Exhibit Number 4, a map, was marked and
23 admitted into evidence.)

24 BY MR. GRAHAM:

25 Q. Mr. Gleaton, can you just in general terms explain to

1 the jury where Dogwood is in relation to the major roads
2 around there?

3 A. Sure. Pine Ridge and Fish Hatchery Road intersects.
4 There's the school on one side of Pine Ridge on the South
5 Congaree side so to speak of Fish Hatchery Road, the
6 Circle K. Pine Ridge runs all the way up to 321. Along
7 there is the South Carolina Emergency Management Center
8 and the 43rd CST, which is a Natural Guard armory, right
9 there on the left-hand side. If you're on Fish Hatchery
10 Road going towards Dogwood, you would be going towards
11 Gaston.

12 Q. Can you describe how you came upon the scene, where
13 you were coming from, how you got there, what you saw when
14 you arrived on the scene?

15 A. Sure. I was doing my patrols on Pine Ridge Drive
16 near the 43rd CST probably a quarter mile up of road when
17 I received notification from dispatch of a disturbance on
18 Dogwood. I immediately turned back around coming back down
19 Pine Ridge towards Fish Hatchery Road and made a left on
20 Fish Hatchery Road with my blue lights on to get through
21 that intersection because it was a red light and made a
22 left onto Fish Hatchery, went about -- I believe it's about
23 a quarter mile down on the right-hand side, maybe a little
24 further, and made a right on Dogwood. The numbering of the
25 mailboxes on Dogwood is not the greatest in the whole wide

1 world, so I was looking for the address that was given me,
2 the 400 block of Dogwood, and I was looking for some kind
3 of visual evidence of where this disturbance might be. I
4 ended up going all the way almost to the end of Dogwood,
5 turned around and received another notification of a
6 possible other address, turned around, stopped at that
7 address, saw a vehicle coming out. I believe it was a
8 white pick-up truck.

9 Q. Let me interrupt you and ask a question. Did you
10 have your lights and sirens on as you approached?

11 A. Initially when I first started, but when I started
12 going down the road and I was looking, I did not have my
13 siren on.

14 Q. Did you have a recording device on your patrol car?

15 A. I did.

16 Q. Let me show you an exhibit and ask if you -- did you
17 have your video on?

18 A. I did.

19 Q. Let me show you a disk and ask if you recognize that?

20 A. I do. That is the in-car video from my car.

21 Q. And this is a clip of you coming up on the scene?

22 A. Yes.

23 MR. GRAHAM: Your Honor, the State would offer this
24 into evidence at this time.

25 MR. FLOYD: No objection.

1 THE COURT: No objection. It will be State's 5?

2 MR. GRAHAM: Yes, Your Honor.

3 (State's Exhibit Number 5, an in-car video, was
4 marked and admitted into evidence.)

5 MR. GRAHAM: Permission to publish, Your Honor?

6 THE COURT: Yes, sir.

7 (Whereupon, State's Exhibit Number 5 was played.)

8 BY MR. GRAHAM:

9 Q. So what are we seeing right now?

10 A. This is me approaching the -- the scene where
11 Mr. Galloway and Ms. -- I can't remember her last name.
12 This is where I came up on the scene where I was called to
13 the disturbance.

14 Q. Okay. The vehicle there, was it -- what was it doing
15 when you arrived on-scene?

16 A. When I started coming up with the blue lights, I
17 noticed that they were trying to leave the scene.

18 Q. Okay. At this point when you come out of your car,
19 were there any other officers or it is just you?

20 A. It was myself only.

21 Q. You're drawing your gun at this point?

22 A. Yes.

23 Q. Why are you drawing your gun?

24 A. Prior to me arriving on the scene, I received a
25 second notification from dispatch that shots had been

1 fired at the scene.

2 Q. Do you know how many people you were looking for?

3 A. I had no -- no idea.

4 Q. How many people were in this vehicle?

5 A. Two that I saw.

6 Q. Ultimately did you determine who was the driver and
7 who was the passenger?

8 A. Yes.

9 Q. Okay. Do you remember their names?

10 A. The driver was Adam Berry and the passenger was Nick
11 Berry.

12 Q. Nick Berry, the Defendant in this case?

13 A. Yes.

14 MR. GRAHAM: All right. Go ahead.

15 (Whereupon, State's Exhibit Number 5 was continued.)

16 BY MR. GRAHAM:

17 Q. All right. So what did we see that video? Tell the
18 jury what happened.

19 A. I ordered both the driver and the passenger to get
20 out of the vehicle and to go to the front of the vehicle
21 facedown on the pavement. Adam Berry, the driver, complied
22 immediately, put his hands up in the air, went and got
23 down on the ground facedown. Nick Berry got out, stumbled
24 into the ditch that was adjacent to the driveway, and when
25 he went up onto the driveway, he turned towards me. I kept

1 a safe distance from him and at that time he was agitated,
2 jumpy, noncompliant.

3 Q. What, if anything, did Nick Berry say to you at that
4 time when he was being noncompliant and not following
5 orders to get down on the ground?

6 A. He told me I could go ahead and shoot him.

7 Q. Did you -- you didn't need to though, did you?

8 A. No, sir.

9 Q. Ultimately did he comply with your order at gunpoint
10 to get down on the ground?

11 A. He did.

12 Q. And were both he and Adam Berry eventually placed into
13 handcuffs?

14 A. They were.

15 Q. Let me show you some photographs and ask if you
16 recognize these photographs?

17 A. This is the shirt Adam Berry was wearing the night
18 that I had him get down in front of the vehicle and this
19 is the shirt that Nick Berry was wearing the same night.

20 MR. GRAHAM: Your Honor, there are four photos and
21 the State would offer all four photos into evidence at
22 this time.

23 THE COURT: Any objection, Mr. Floyd?

24 MR. FLOYD: I have no objection. Let me know which
25 are which so I can write them down.

1 MR. GRAHAM: I'm sorry?

2 MR. FLOYD: Just let me know which is which so I can
3 write them down.

4 MR. GRAHAM: Yes. I'll let you know when she's done.

5 THE COURT: State's Exhibits 6 through 9 are admitted
6 without objection.

7 (State's Exhibit Numbers 6 through 9, photographs,
8 were marked and admitted into evidence.)

9 THE COURT: They're photographs of some clothing that
10 the gentlemen had on; is that correct?

11 MR. GRAHAM: That's correct. 6 and 7 is the front and
12 back of a shirt that Then-Officer Gleaton identified with
13 Nick Berry wearing and 8 and 9 were identified with Adam
14 Berry.

15 BY MR. GRAHAM:

16 Q. After they were taken into custody, did EMS respond?

17 A. They did.

18 Q. And did they check on both Adam and Nick Berry?

19 A. Yes, sir.

20 Q. And in part of their treatment, were their shirts cut
21 off of them?

22 A. Yes, sir.

23 Q. Your Honor, permission to -- what did you notice about
24 their shirts or about their appearance?

25 A. When I arrived on the scene, I could tell that they

1 had blood on them.

2 MR. GRAHAM: Your Honor, if I could have him step down
3 briefly?

4 THE COURT: Sure.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 BY MR. GRAHAM:

8 Q. So referring to State's 6 and 7, who was wearing 6
9 and 7 and what kind of shirt was it?

10 A. Nick Berry was wearing a sports shirt, a Red Sox
11 sports shirt.

12 Q. And he came out of the -- he was the driver or the
13 passenger?

14 A. He was the passenger.

15 Q. State's 7 and 8, that shirt belonged to who?

16 A. Adam Berry, the driver.

17 Q. Thank you, Mr. Gleaton. If you'd have a seat.

18 A. (Witness complies.)

19 MR. GRAHAM: Please answer any questions Mr. Floyd
20 has. Thank you.

21 CROSS-EXAMINATION

22 BY MR. FLOYD:

23 Q. Mr. Gleaton, before you say Nick Berry said this
24 statement to you, had you informed him of his Miranda
25 rights before that?

1 A. Not at the time, no.

2 MR. FLOYD: I have no further questions.

3 THE COURT: All right. You can step down.

4 (Witness excused.)

5 MR. GRAHAM: The State calls Chris Hall to the stand.

6 (Whereupon, Christopher A. Hall was duly sworn by the
7 Clerk of Court.)

8 THE CLERK: Have a seat, sir. Once you're seated,
9 state your full name; spelling your last, please.

10 THE WITNESS: My name is Christopher A. Hall, H-A-L-L.

11 CHRISTOPHER A. HALL,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q. Mr. Hall, where are you employed and what do you do?

16 A. I am a paramedic with Lexington County EMS.

17 Q. And how long have you been either an EMT or a
18 paramedic?

19 A. I've been in the EMS field since 2001. I've been a
20 paramedic since 2003.

21 Q. May 19, 2014, you would have been a paramedic at that
22 time, correct?

23 A. Yes, sir.

24 Q. And did you respond to a call for service at

25 ■ 4 Dogwood Road in the Pine Ridge area of the county?

1 A. Yes, sir.

2 Q. And can you tell the jury what you saw when you got
3 on-scene?

4 A. When we got on-scene, we saw two gentlemen sitting on
5 the driveway in front of a vehicle with their hands cuffed
6 behind them and a female in a bikini running around very
7 distraught and then there was a person -- body on the
8 porch, and that's as far as I got to see.

9 Q. Understood. And what was your role as a paramedic
10 responding to that call? What did you do?

11 A. Since we had possible multiple patients, I went over
12 towards the gentlemen that were sitting on the driveway to
13 start assessing them to find out if they were hurt or if
14 they had any problems and then my partners went over to the
15 body -- what we later found out was a body laying on the
16 porch.

17 Q. Did you have the opportunity -- which of the two
18 gentlemen did you treat that were on the driveway in front
19 of the Tahoe?

20 A. According to my paperwork, I treated a Mr. Nicholas --
21 Nicholas Berry.

22 Q. Can you describe your treatment to him? What kind of
23 injuries did he have?

24 A. When we got to him, he was covered in blood.

25 According to my paperwork, I wrote it down as the patient

1 appeared to be in distress, scared, excited with dried
2 blood covering the patient's face, neck, arms, lower legs
3 and clothes. So since I saw so much possible blood, I had
4 to find out where the blood came from, if it was his or
5 someone else's, so I believe I used what's called my trauma
6 sheers to cut the clothes off -- his shirt off to see if
7 there's any wounds under the shirt and did not find any.
8 The wounds I did find after looking over his body and
9 touching his body trying to find out where the blood is --
10 or was, I found two lacerations at the base of his right
11 and left pinky.

12 Q. Can you show -- by using your own hands, can you show
13 the jury roughly what you're talking about when you say the
14 base of the pinky?

15 A. Basically the padding and the -- between the padding
16 and the crease of the pinky.

17 Q. And that was the same -- or roughly the same on both
18 hands?

19 A. Yes, sir.

20 Q. What's a laceration?

21 A. A laceration is caused by a sharp object, usually a
22 blade, a razor, broken glass. They can all cause
23 lacerations.

24 Q. What's the difference between a laceration versus a
25 penetration?

1 A. A laceration is -- usually it's a cutting across and
2 a penetration is actually going into.

3 Q. Would you describe Mr. Berry's demeanor?

4 A. As I read it just a little while ago, he was scared,
5 excited, in distress. He was very anxious and looking
6 around to -- at everything that was going on on-scene
7 trying to -- from my point of view trying to figure out
8 what was going on.

9 Q. In addition to your observation, did you have verbal
10 conversations with Mr. Berry?

11 A. Yes, sir. As a part of my assessment, I ask questions
12 that will help me figure out if he is hurt, how he was hurt
13 and what I can do to help him.

14 Q. In your physical examination, other than the two
15 lacerations to the pinkies, did you see any other injuries
16 on his body?

17 A. In my paperwork, no, I did not denote any other
18 injuries.

19 Q. Did he complain of any injuries other than those?

20 A. No, sir.

21 Q. Okay. So during your conversations with him when
22 you're doing your medical assessment, was he forthright?

23 A. No, sir.

24 Q. Can you describe what you mean by that?

25 A. He -- initially when we started talking to him, he

1 would not admit to who he was at least two times prior to
2 finally admitting who he was, he did not admit to his age,
3 and then -- and then he denied knowing how he got hurt.

4 Q. Did you initially ask him any questions regarding the
5 use of alcohol or the use of prescription drugs or the use
6 of illegal drugs?

7 A. Yes, sir. As part of my assessments, yes, sir.

8 Q. What were his answers to those questions at the
9 beginning?

10 A. Initially he kept saying no, I didn't do anything and
11 I don't have anything, I didn't take anything.

12 Q. Did that -- did you -- did you notice anything about
13 him that made you think that he had either been drinking
14 alcohol or had taken some kind of drugs?

15 A. Yes, sir. He had a very strong smell of alcohol
16 about him and then on his breath I smelled alcohol and
17 then because of the way he was acting. You can act scared
18 during a high pressure situation, but he was more agitated
19 and antsy than being scared and so that led me to think
20 maybe he might have had drugs and alcohol. It is not
21 something that I just came by with my assessment. I mean,
22 my opinion is part of my assessment of how to figure out
23 what's going on.

24 Q. Did you -- did you have any question of whether he
25 understood what you were asking him and his ability to

1 converse with you?

2 A. Yes, sir. That is also a part of our assessment. We
3 ask questions to determine if a patient is conscious, alert
4 and oriented times four, and the times four is, is he alert
5 to person, does he know who he is, is he alert to place,
6 where he is, time, what time it is, what month it is, what
7 day it is, and then the fourth one is events, what was
8 going on. If he can answer all those questions, then he's
9 cognizant of anything and everything that's going on.

10 Q. And in your evaluation of him, what was your
11 determination of his conscious, alert and oriented times
12 four?

13 A. He was conscious, alert and oriented times four. He
14 answered all those questions appropriately even when he
15 started lying. That means he knew what he was doing.

16 Q. Ultimately did he make any admissions to you about
17 either alcohol or drugs?

18 A. Yes, sir.

19 Q. What did he tell you?

20 A. What I noted in my paperwork is patient admitted to
21 drinking five shots. I did not write down what those shots
22 were and I don't remember asking what he drank. And then
23 he also said and a few drinks of liquor and he stated that
24 he also smoked some marijuana and took a bar and a half of
25 Xanax.

1 Q. Did you ask any questions about whether the drugs,
2 the Xanax, was prescribed or not?

3 A. Yes, it's part of my assessment if -- if he takes any
4 medications and if he says no, I don't take medications,
5 but since he admitted to taking Xanax I had to ask do you
6 take it for medical reasons or did you take it for some
7 other reason.

8 Q. And what was his response?

9 A. His response was I take it, I needed it.

10 Q. Did he have -- did he tell you whether he had a
11 prescription for it?

12 A. No, he denied having a prescription for Xanax.

13 Q. At some point then in your evaluation, did you ask
14 him about the injuries to his hands?

15 A. Initially the patient said that he didn't know how he
16 got hurt and then --

17 Q. How many times did you have to ask him before he
18 actually told you something?

19 A. About three times. Three times. The initial he did
20 not -- did not know how he got hurt, the second time he
21 said that it happened so fast I don't have a clue what
22 happened, and then the last time he admitted that he got
23 hurt while --

24 Q. And you took notes, I believe, of what -- you recorded
25 down what he said, right?

1 A. Yes, sir.

2 Q. Can you go ahead and read those notes to as what you
3 remember Mr. Berry telling you the third time when you
4 asked about his injuries?

5 A. Yes. The patient stated that he was trying to protect
6 his brother from being attacked by another person. The
7 patient stated that the man was an ex-boyfriend of his
8 brother's girlfriend that was on the scene. The patient
9 stated that nigger just attacked me and my brother, he
10 started whaling on us with a knife. That's how my fingers
11 got stabbed. I was trying to help my bro. That's what it
12 -- that's the way it is. You protect your family.

13 Q. Did you have any interaction with Adam Berry?

14 A. I'm sorry? Say that again.

15 Q. With the other individual that was in the front, did
16 you do any work on him?

17 A. No, sir.

18 Q. Okay.

19 MR. GRAHAM: Thank you, Mr. Hall. Please answer any
20 questions Mr. Floyd may have for you.

21 CROSS-EXAMINATION

22 BY MR. FLOYD:

23 Q. Mr. Hall, basically he said that he was trying to
24 protect his brother; is that correct?

25 A. That's what he stated, yes.

1 MR. FLOYD: Thank you. I have no further questions.

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

3 (Witness excused.)

4 MR. GRAHAM: Your Honor, if we could approach?

5 THE COURT: Sure.

6 (Proceedings held at the bench; not reported.)

7 THE COURT: All right. I've got to take up one
8 matter, so I'm gonna send you-all onto lunch. When
9 you-all come back -- we've got a little more work to do
10 and then we're gonna go to lunch, so you-all be back by
11 1:30, all right?

12 You still can't discuss the case, but try to stay dry
13 and get some lunch.

14 MR. GRAHAM: Your Honor, there is one thing. I would
15 like to -- I'm sorry. I do need to recall Chris Hall for
16 a quick question that I forgot to ask him.

17 THE COURT: When do you want to ask?

18 MR. GRAHAM: Right now.

19 THE COURT: All right. Let's get him before he
20 leaves and as soon as he's done, then I'm gonna let
21 you-all go.

22 (Whereupon, Christopher A. Hall retakes the witness
23 stand.)

24 THE COURT: Mr. Hall, you're still under oath, okay?

25 THE WITNESS: Yes, sir.

1 REDIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q. Mr. Hall, I'm sorry I forgot to ask you, as part of
4 your treatment of people in custody being transported to
5 the sheriff's department, and Nick Berry in particular,
6 what did you do with the personal possessions of Mr. Berry?

7 A. On average if we -- as a normal person, any personal
8 items that I come in contact with I keep with me until I
9 give them back to the patient, whether we're still going to
10 the hospital or not. At this -- during this episode or
11 this call, when we were about to leave the scene I asked
12 the officers -- or an officer that was on-scene to make
13 sure that the patient didn't have any items on him that
14 could possible hurt himself or us with and so they patted
15 him down, they brought out all the personal items that he
16 had, plus a cell phone, and gave them to me so I could take
17 them with me and the patient to the hospital.

18 Q. And did you, in fact, take -- when you transported
19 Mr. Berry to the hospital, which hospital was it?

20 A. We went to Lexington Medical Center.

21 Q. And did you take his phone and other possessions with
22 you?

23 A. Yes.

24 Q. And what, if anything, did you do with his phone and
25 other possessions?

1 A. When we got to the room that we left him at, which
2 was Room 64, he had an officer with him since he was under
3 arrest at that time, so I put all the items -- if I
4 remember correctly, I put them on a little desk that most
5 hospital rooms have that slide around with trays for food,
6 I put it there and I said here's -- here's all his stuff,
7 and I notated in my paperwork Lexington County Sheriff's
8 Department Deputy Smith was given the cell phone and other
9 small personal items of the patient.

10 Q. So your memory is that you took the phone that was
11 taken from the Defendant, along with the personal items you
12 carried to the hospital, left it in the hospital room and
13 Deputy Smith was there?

14 A. Yes, he was in the room with the patient.

15 MR. GRAHAM: Thank you, Mr. Hall.

16 THE COURT: Anything, Mr. Floyd, on that issue?

17 RECROSS EXAMINATION

18 BY MR. FLOYD:

19 Q. You're not a law enforcement officer, are you?

20 A. No, sir.

21 MR. FLOYD: Thank you.

22 THE COURT: Now you can step down.

23 (Witness excused.)

24 THE COURT: Now you-all are free to go to lunch. Be
25 back at 1:30. Don't discuss the case.

1 (Whereupon, the jury is excused for lunch at
2 12:05 PM.)

3 THE COURT: All right. Are we gonna proffer that --
4 continue that Jackson v. Denno real quick?

5 MR GRAHAM: Yes, Your Honor. The State would call
6 Austol Youmans.

7 (Whereupon, Austol Youmans, III, was duly sworn by
8 the Clerk of Court.)

9 THE CLERK: Have a seat, sir. Once you're seated,
10 state your full name; spelling your last.

11 THE WITNESS: My name is Austol Youmans, III.
12 A-U-S-T-O-L Y-O-U-M-A-N-S.

13 AUSTOL YOUMANS, III,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION (In-Camera)

16 BY MR. GRAHAM:

17 Q. Where are you employed, Mr. Youmans?

18 A. Cayce Department of Public Safety.

19 Q. What is a public safety organization? What does that
20 mean?

21 A. We're policemen and firemen.

22 Q. What do you do now for Cayce Public Safety?

23 A. I am the sergeant over the fire division and special
24 operations.

25 Q. And back on May 19, 2014, what was your job

1 responsibility for Cayce?

2 A. I was a patrol sergeant.

3 Q. So that means that you were a police officer at that
4 time?

5 A. Yes, sir.

6 Q. At this time you're over fire?

7 A. Yes.

8 Q. And you do some special operations with the police as
9 well?

10 A. Right.

11 Q. And the jurisdiction of Cayce, does it extend to

12 ■ 4 Dogwood Road in Pine Ridge?

13 A. No, it doesn't.

14 Q. Back on May 19, 2014, did you -- were you at

15 ■ 4 Dogwood Road in Pine Ridge?

16 A. Yes, I was.

17 Q. Were you there as a police officer or were you there
18 for another capacity?

19 A. I was there in another capacity.

20 Q. Can you tell the judge what your capacity was that
21 night?

22 A. That night I was an EMT student. We're required to
23 do ride time and make ten patient contacts as far as
24 learning how to do assessments and doing blood pressures
25 and that type of thing.

1 Q. How many patient assessments did you have to do as
2 part of your EMT training at that time?

3 A. I was required to do ten, but I think I probably did
4 fifteen.

5 Q. How were you dressed that night?

6 A. I was wearing a black golf shirt and green pants.

7 Q. Did you have a gun on?

8 A. No, I didn't.

9 Q. Did you have a badge on?

10 A. Not displayed, no.

11 Q. Did you have handcuffs?

12 A. No.

13 Q. So your purpose there that night -- who did you ride
14 with?

15 A. Lexington County EMS.

16 Q. Do you remember the paramedic or EMTs that you rode
17 with?

18 A. Paramedic Chris Bernard and Paramedic Chris Hall.

19 Q. When you arrived on-scene with Paramedic Hall and
20 Paramedic Bernard, what did you see?

21 A. I saw amongst all the chaos two individuals that
22 were in handcuffs and I went to a patient who was located
23 on the front porch.

24 Q. And is that the same patient that Paramedic Hall was
25 treating?

1 A. Yes.

2 Q. Was that Nick Berry?

3 A. On the front porch?

4 Q. Oh, I'm sorry. You went to the front porch first?

5 A. Yes, I went to the front porch first.

6 Q. When you went up to the front porch, what did you see?

7 A. A deceased male laying on his back.

8 Q. Where did you go next?

9 A. I went down to the two individuals that were in
10 handcuffs. I started doing patient care on one of them, I
11 don't recall his name, by removing his shirt and checking
12 him for injuries and --

13 Q. Do you remember which paramedic was doing -- treating
14 the one that you were doing the assessment on?

15 A. I believe it was Chris Hall.

16 Q. So you did your patient assessment on the same patient
17 that Chris Hall treated?

18 A. Right, I was a student still learning.

19 Q. All right. Can you describe -- do you recognize in
20 the courtroom the person that you did your assessment on?

21 A. He's sitting at the Defendant's table.

22 Q. Do you know his name?

23 A. No.

24 Q. But do you see him in the courtroom?

25 A. Yes.

1 MR. GRAHAM: Okay. So the record would reflect that
2 he's identified the Defendant, Nick Berry.

3 THE COURT: Okay.

4 BY MR. GRAHAM:

5 Q. Would you describe what you did as an assessment on
6 Mr. Berry?

7 A. I asked him general questions, did he take any
8 medications, was he allergic to anything, had he been
9 consuming alcohol or any other narcotics, prescribed or
10 not prescribed.

11 Q. Were you working in your capacity as a police officer
12 or were you working as an EMT student doing medical
13 assessments?

14 A. I was working as an EMT student.

15 Q. So what was his responses to you for the assessment
16 questions you were asking?

17 A. Originally when we were getting his name and his
18 birth date and his age, he provided a name and an age from
19 what I understand later to have been incorrect because
20 shortly thereafter he provided the correct name and age.
21 He admitted to consuming alcohol, smoking marijuana and
22 taking Xanax.

23 Q. Did he admit all of that at the beginning the first
24 time you asked questions?

25 A. No, he didn't.

1 Q. Okay. So describe how the process came about. When
2 you first asked him about alcohol, prescription drugs or
3 illegal drugs, what were his responses?

4 A. His first response to any of those questions when we
5 asked him his name and his birth -- or his age, which
6 later, of course, we found was not the correct information,
7 he had stated he did not consume any alcohol or use any
8 drugs and I guess after sitting in the back of the truck
9 for a little while and realizing that we weren't law
10 enforcement, he admitted that was not his correct name and
11 his correct age and then he admitted at that point yes,
12 I've been drinking, smoked some marijuana and took Xanax.
13 I asked him if he took any medication --

14 Q. What -- let me stop you for a second. Specifically,
15 do you remember what he told you about drinking alcohol?
16 Do you remember how much he drank?

17 A. I don't remember how much he drank. I just asked have
18 you been consuming alcohol.

19 Q. How about prescription drugs? Do you remember what he
20 told you?

21 A. He didn't have any prescription -- he was not
22 prescribed any medications based on his medical history
23 that he had had based on the things that he was -- I'm
24 assuming he was diagnosed with by a doctor and not
25 self-diagnosed, but ADHD, I believe. I don't quite recall

1 any other things, but he did state that he had that issue.
2 So I asked him if he had taken any medications and he said
3 that he had taken Xanax. I asked if he had a prescription,
4 he said no. My next question was why did you take Xanax.

5 Q. And why did you ask that question?

6 A. Based on my experience is that someone either takes
7 medication because they're required to take medication or
8 they use it to get -- to become intoxicated or they take
9 an overabundance of the medication in attempts to harm
10 themselves.

11 Q. So was that an interrogation question or was that a
12 medical assessment question?

13 A. That was a medical assessment question.

14 Q. And when you asked him why he took it, what did he
15 respond?

16 A. So he could relax before he came over.

17 Q. Before -- did he designate who he was?

18 A. He didn't designate who he was. He just was -- he
19 needed to calm down before he came over.

20 Q. He needed to calm down before he came over or did he
21 say I needed to calm down before I came over?

22 A. He said he needed to calm down before he came over
23 as in -- I don't know who he was.

24 Q. So he was talking about some other person coming
25 over?

1 MR. FLOYD: Objection. That's speculation, Your
2 Honor.

3 THE COURT: I agree. Sustained. Rephrase your
4 question.

5 BY MR. GRAHAM:

6 Q. Was he talking about himself coming over or somebody
7 else coming over?

8 A. Someone else.

9 Q. Did you ask any further questions?

10 A. No, I didn't.

11 MR. GRAHAM: Your Honor, that's all the questions
12 we'd have for the hearing.

13 CROSS-EXAMINATION (In-Camera)

14 BY MR. FLOYD:

15 Q. Sergeant Youmans, you were a police officer at the
16 time of this incidence? You were a police officer?

17 A. Yes, sir. I was employed with Cayce Department of
18 Public Safety.

19 Q. And when you're not on the job, are you free of your
20 responsibilities as a police officer then?

21 A. If I'm not inside my jurisdiction, I have no other
22 authority unless I've been asked to assist by a law
23 enforcement agency.

24 Q. What if you did something against your police ethics
25 or got in trouble? Are you okay since you're not in your

1 jurisdiction?

2 A. If I got in trouble, then I would be treated just
3 like anybody else would be.

4 Q. Okay. And any other policeman -- if you get in
5 trouble as a policeman, it doesn't matter whether you're
6 in your jurisdiction or outside of it, does it?

7 A. That's correct.

8 Q. Now did you realize I was provided a summary of your
9 testimony from the solicitor?

10 A. I would assume you would be.

11 Q. And did you realize it has nothing -- it doesn't say
12 anything in there about marijuana?

13 A. I wouldn't know that.

14 Q. It doesn't say anything in there either about he
15 meaning somebody else, does it?

16 A. I don't know. I don't -- I haven't seen the sheet
17 that you're talking about.

18 Q. Well, your words were he said he needed to calm down
19 before he came over; is that correct?

20 A. Yes, sir.

21 Q. And that's all it said?

22 A. Yes, sir.

23 Q. It doesn't indicate or say who he is?

24 A. No, sir.

25 Q. And he could be he, too, him; is that correct?

1 A. It could be.

2 Q. Now were you present the whole time Chris Hall was
3 with him?

4 A. As in the whole time as in from start to finish?

5 Q. Yeah.

6 A. No, sir.

7 Q. Now Chris Hall's already testified as to his
8 conversations with him. Were you present when Chris Hall
9 was having his conversations with him?

10 A. There were times that we were in the back of the truck
11 together, yes.

12 Q. Okay. Did you-all both ask him the same questions?

13 A. We may have. There's -- sometimes if he -- if Chris
14 Hall was talking to him, I may not have been paying
15 attention to what was being said because at one point I
16 did step out of the back of the ambulance and spoke with
17 Doug Bramlett.

18 MR. FLOYD: Thank you. No further questions, Your
19 Honor.

20 MR. GRAHAM: Nothing else, Your Honor, on this.

21 THE COURT: All right.

22 MR. FLOYD: Your Honor, we move to exclude his
23 testimony. I mean, he's a Cayce policeman and -- let me
24 ask him one more question.

25 CONTINUED CROSS-EXAMINATION (In-Camera)

1 BY MR. FLOYD:

2 Q. Mr. Youmans, did you advise him of his Miranda rights?

3 A. No, sir. I was not acting as a police officer.

4 MR. FLOYD: Your Honor, it's our position that if
5 you're a policeman, you're a policeman. The fact that you
6 might not be wearing your uniform that night, doesn't mean
7 you're not a policeman. The fact that you're out of your
8 jurisdiction doesn't mean you're not a policeman and as a
9 policeman he knows he had to give him his Miranda rights
10 before questioning him. This was pretty extensive
11 questioning. This wasn't spur of the moment or excited
12 utterance type stuff. This was an exhaustive interrogation
13 and, therefore, he should have given him his Miranda
14 rights and since he didn't we move that this testimony be
15 excluded. And it's really mainly cumulative to the
16 testimony of Chris Hall, so.

17 THE COURT: All right. Mr. Graham.

18 MR. GRAHAM: Your Honor, there was -- we have another
19 witness, the other paramedic who was there, who's not gonna
20 say that he heard the exact words he was saying, but he did
21 hear a conversation when he was doing his assessment. He
22 would testify if Your Honor needs to hear it that Officer
23 Youmans was there, he was doing a ride-along to give
24 patient assessments, and that the questions that were
25 asked were medical patient assessment questions. He's

1 here if you want to hear that testimony.

2 THE COURT: I mean, the testimony is consistent from
3 the witnesses thus far that the Court's heard. I'm gonna
4 allow it, but he's subject to cross-examination and I
5 think Mr. Floyd should be allowed latitude to ask him did
6 he also train as a police officer and failed to read him
7 his rights. I think that's free game if he wants to go
8 into it, so I don't think we need to call four or five
9 more witnesses to the same facts, but I'll allow this one
10 and I'll allow ample latitude for cross-examination of him.

11 (Witness excused.)

12 THE COURT: All right. Anything else before we go to
13 lunch?

14 MR. GRAHAM: Not from the State, Your Honor.

15 THE COURT: I'll see you-all back here in about an
16 hour.

17 (Whereupon, a luncheon recess was taken.)

18 (Back on the record at 1:29 PM.)

19 BAILIFF: All rise. Court come to order.

20 THE COURT: Okay. You-all be seated.

21 All right. Are we ready to go?

22 MR. GRAHAM: Yes, sir.

23 THE COURT: All right. Bring in the jury, please.

24 (Whereupon, the jury returns to the courtroom at
25 1:31 PM.)

1 THE COURT: All right. Call your witness.

2 MR. EARGLE: Thank you, Your Honor.

3 The State calls Detective Sam Smith.

4 (Whereupon, Samuel Stewart Smith was duly sworn by
5 the Clerk of Court.)

6 THE CLERK: Once you're seated, state your full name;
7 spelling your last, please.

8 THE WITNESS: My name is Detective Samuel Smith.
9 Smith's spelled S-M-I-T-H.

10 SAMUEL STEWART SMITH,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. EARGLE:

14 Q. Detective Smith, where are you employed?

15 A. The Lexington County Sheriff's Department.

16 Q. How long have you been so employed?

17 A. Since October 31, 2011.

18 Q. How long have you been a detective?

19 A. January 4th of this year.

20 Q. Prior to that, what was your job duties?

21 A. Prior to being a detective, I was a patrol supervisor
22 in the South Region and prior to that I was a patrol deputy
23 in the South Region of Lexington County.

24 Q. Let me take you back to May 19th of 2014. Where were
25 you working at that time for the sheriff's department?

1 A. I was in the Lexington County South Region Patrol
2 Division. That's Gaston, Swansea, Pelion, Pine Ridge,
3 South Congaree, Dixiana and Horse's Neck.

4 THE COURT: Slow down a little bit. I didn't hear
5 all that. Mr. Eargle talks slowly. Follow his pace.

6 BY MR. EARGLE:

7 Q. And on that particular date, do you recall being
8 dispatched or responding to a call on Dogwood Drive?

9 A. Yes, sir. I was dispatched to an assisting other
10 agency call.

11 Q. Do you recall what type of call it was?

12 A. The communications center for Lexington County advised
13 that there was a deceased subject at that address.

14 Q. Please tell the jury once you arrived at that location
15 what occurred.

16 A. Once I arrived on-scene, I approached the residence.
17 It appeared that there were two females extremely
18 distraught. I also observed two males that appeared that
19 they could have been detained or handcuffed as I walked
20 past them. I escorted one of the females to the rear
21 residence -- the rear bedroom of the residence because she
22 was extremely upset and I felt it was best at the time to
23 remove at least one of the females from the situation. I
24 also secured the area with crime scene tape in order to
25 maintain the integrity of the scene at that time.

1 Q. Did you have the occasion to interact with any male
2 individuals that were on the scene?

3 A. Not on the scene, sir, no, except for when -- prior
4 to the Defendant's transport to EMS, I advised him of his
5 Miranda rights.

6 Q. When you say the Defendant, who are you referencing?

7 A. Mr. Berry.

8 Q. Would that be Nicholas Berry?

9 A. Yes, sir, that's correct.

10 Q. And would you tell the jury about you Mirandizing him.

11 A. I carry on my person for such an occasion a South
12 Carolina Fraternal Order of Police card that is kept so in
13 all cases when I advise Miranda it is as the following:
14 You have the right to remain silent. Anything that you say
15 can and will be used against you in Court. You have the
16 right to an attorney and to have that attorney present
17 during questioning. If you cannot afford an attorney, an
18 attorney will be provided to you at no cost. You can
19 decide at any time to exercise these rights and not answer
20 any questions or make any statements.

21 And at that time I asked the following question: Do
22 you understand each of these rights I have explained to
23 you, and Mr. Berry advised that he did.

24 Q. Based on your observations of Mr. Berry, was there
25 any doubt in your mind that he understood his rights?

1 A. I believe he understood his rights, sir, yes.

2 Q. Did you ask him any questions?

3 A. Other than if he understood the rights I advised,
4 no, sir, I did not.

5 Q. Just that one question?

6 A. Yes, sir, that's correct.

7 Q. Did that end your interaction with Mr. Berry that
8 evening?

9 A. No, sir. He was transported to the Lexington County
10 Medical Center for medical attention and I proceeded
11 behind the EMS and I secured him as being detained in
12 the investigation until investigators arrived at the
13 hospital.

14 Q. And you said you secured him being detained. Where
15 was he being detained?

16 A. He was being secured in the gurney by medical
17 personnel. I followed behind him and when we got to the
18 hospital, he stayed in the room and I stayed out front to
19 maintain -- make sure that everything was safe, maintain
20 the integrity of the investigation at that time.

21 Q. During the course of time that you were at the
22 hospital with Mr. Berry, did he say anything to you?

23 A. He asked at one point if somebody would be coming
24 up to speak with him and around that time he made the
25 statement to the effect of he was -- he was fighting my

1 brother, I was defending my brother, I came up from
2 behind him and, again, he inquired as to whether or not
3 somebody would be coming to speak with him. I told him
4 investigators should be coming shortly.

5 Q. That was not in a response to a question by you?

6 A. No, sir. I did not ask him any questions other than
7 whether or not he understood his rights.

8 Q. He made that statement voluntarily?

9 A. Yes, sir.

10 Q. Along with Mr. Berry being in the hospital in custody,
11 when EMS -- let me ask you this. Did he get there prior to
12 your arrival to the room or were you at the room awaiting
13 his arrival?

14 A. No, sir. We arrived at the same time. I was behind
15 the ambulance the entire time and when you arrive at
16 Lexington Medical Center there is law enforcement parking
17 spaces that are provided for you for that occasion.

18 Q. And when EMS brought him in, was he handcuffed?

19 A. He was cuffed onto the gurney, yes, sir, I believe.

20 Q. Did EMS to your knowledge leave any of his personal
21 effects in the room?

22 A. Yes, sir, they did. They left them on one of the
23 tables in the room.

24 Q. Do you recall what those personal effects were?

25 A. A cellular telephone and other various items.

1 MR. EARGLE: Thank you, Detective Smith. Please
2 answer any questions Mr. Floyd may have.

3 CROSS-EXAMINATION

4 BY MR. FLOYD:

5 Q. Good afternoon, Detective Smith.

6 A. Yes, sir.

7 Q. Just a couple of questions.

8 A. Okay.

9 Q. When you approached Mr. Berry on the scene, had EMS
10 people already finished with him?

11 A. No, sir. As far as them interacting with him at
12 the same time I was here, he was still being tended to
13 medically while I was speaking with him in the back of the
14 ambulance if that's your question.

15 Q. Now when you got to the hospital, there's no question
16 that his telephone was at the hospital?

17 A. Yes, sir.

18 Q. And you took his telephone or you took possession of
19 his telephone?

20 A. It was in the room with him. I did not take it from
21 him if that's the question.

22 Q. Oh, okay. But did you take possession of it?

23 A. It was in the room while I had, I guess, custody of
24 the room, so I guess you could say that.

25 Q. Okay. What time would that have been?

1 A. I can't say, sir.

2 Q. Do you know what time you arrived on the scene?

3 A. Nighttime. As far as -- is the question the dispatch
4 time to the scene? I'm unaware at this time. I'd have to
5 look at the report.

6 Q. So you don't recall when you arrived on the scene,
7 when you left the scene, when you arrived at the hospital?

8 A. No, sir, I do not.

9 Q. Or when you took the phone?

10 A. No, sir, I do not.

11 Q. And the statement he gave you was something to the
12 effect of his brother was in a fight and he got into it?

13 A. Yes, sir. It was something to the effect of he was
14 fighting my brother, I was defending my brother and came
15 up from behind, but something to that effect, yes, sir.

16 MR. FLOYD: Okay. Thank you. No further questions.

17 THE COURT: Anything on redirect?

18 MR. EARGLE: Just one, Judge.

19 REDIRECT EXAMINATION

20 BY MR. EARGLE:

21 Q. Mr. Floyd asked you about taking possession of the
22 phone and you stated you didn't take physical possession,
23 but because you had security of the room. Is that --
24 you're saying you consider that to be possession?

25 A. Yes, sir. I did not physically remove the phone from

1 his person; however, I had to domain over the room, so I
2 guess you would call it in my custody in that sense.

3 MR. EARGLE: That's all. Thank you.

4 THE COURT: All right. That's it. Sit down -- I
5 mean, you may step down.

6 (Witness excused.)

7 MR. GRAHAM: The State calls Mike Phipps.

8 (Whereupon, Michael Phipps was duly sworn by the
9 Clerk of Court.)

10 THE CLERK: Once you're seated, state your full name;
11 spelling your last.

12 THE WITNESS: Michael Phipps, P-H-I-P-P-S.

13 MICHAEL PHIPPS,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q. Mr. Phipps, where are you employed?

18 A. The Lexington County Sheriff's Department.

19 Q. How long have you been in law enforcement?

20 A. Nineteen years.

21 Q. And in your nineteen years, what various jobs have you
22 held in law enforcement?

23 A. Like most of us, I started out on the road as a
24 deputy, I became a supervisor on the road. After about
25 five years, I transitioned into our Forensic Services Unit,

1 and I've been there ever since.

2 Q. The Forensic Services Unit, what is that?

3 A. Our crime scene unit. It's comprised of various
4 aspects at the sheriff's department, our evidence unit,
5 drug lab, crime scene unit. I was a crime scene
6 investigator for probably about twelve years and then I
7 started transitioning into specializing in computer and
8 cell phone forensics.

9 Q. Back on May 19th of 2014, did you have involvement in
10 this case?

11 A. Yes, sir, I did.

12 Q. Now it was a Pine Ridge case, so how did the sheriff's
13 department become involved?

14 A. We, of course, assist our local jurisdictions when
15 they request it and our assistance was requested to respond
16 to that location and our crime scene unit was to respond to
17 that location and process the scene.

18 Q. And that was your job that night as part of the crime
19 scene unit or the crime scene unit?

20 A. Yes, sir. I was the only one there.

21 Q. Do you remember what time you responded?

22 A. I can refer to my notes. I arrived at 22:05 hours on
23 May 19th of 2014.

24 Q. And was a search warrant obtained for the residence
25 and the vehicle there?

1 A. I was advised it was being obtained, so while I was
2 waiting for the search warrant I started processing what
3 was -- I could view the yard and surrounding areas before
4 we entered the house.

5 Q. And ultimately did the search warrant come?

6 A. Yes, sir, it did.

7 Q. So once the search warrant came, would you describe to
8 the jury what your job was as a crime scene investigator
9 that night.

10 A. Obviously we look at the scene, try to identify any
11 evidence that may be pertinent to identifying what
12 happened, who was involved. That involves taking
13 photographs, collecting -- picking up physical items of
14 evidence. If there's trace evidence, latents, that type
15 of thing, we process for that as well.

16 Q. In addition to collecting evidence, you take
17 photographs as well?

18 A. Yes, sir.

19 Q. Now do you really -- everything that you see and that
20 you collect and you photograph, do you really know the
21 relevance of it?

22 A. No, sir.

23 Q. How do you make that call?

24 A. It's if something looks like it doesn't belong there,
25 then out of an abundance of caution we usually try to

1 document it, either collect it or photograph it, or just
2 photograph it if it's something large we can't move.

3 Q. Let me show you several photographs and ask if you
4 recognize these as being photographs that you took that
5 night during the execution of the search warrant or when
6 you first arrived?

7 A. Yes, sir, these are the series of photos that I took.

8 Q. And do they fairly and accurately describe what you
9 saw that night?

10 A. Yes, sir, they do.

11 Q. And some including items that you collected?

12 A. Yes, sir.

13 MR. GRAHAM: Your Honor, the State would offer that
14 stack of photographs into evidence.

15 MR. FLOYD: We have no objection to these, Your Honor.

16 MR. GRAHAM: I'd ask the witness --

17 THE COURT REPORTER: Excuse me, they haven't been
18 marked.

19 MR. GRAHAM: I'm going to ask him to put them back
20 in order and we'll mark them in order to keep the record
21 straight.

22 THE WITNESS: Numerical order?

23 MR. GRAHAM: Uh-huh.

24 THE COURT REPORTER: 10 through 25.

25 THE COURT: 10 through 25 admitted without objection.

1 (State's Exhibit Numbers 10 through 25, photographs,
2 were marked and admitted into evidence.)

3 MR. FLOYD: I'm sorry, what numbers were those, Judge?

4 THE COURT: 10 through 25 inclusive.

5 BY MR. GRAHAM:

6 Q. Mr. Phipps, let me put State's Number 10 on the
7 overhead. State's Number 10, are you able to see that and
8 explain what's on there?

9 A. Yes. This is the address of the incident, which is
10 ■ 4 Dogwood Drive in Pine Ridge in Lexington County, and
11 this is obviously from the roadway looking in towards the
12 house across the driveway.

13 Q. The individual that's in custody right there, do you
14 recognize that person as being Adam Berry?

15 A. Yes, sir, that is.

16 Q. State's Number 11, what is that?

17 A. That's Mr. Berry a little closer up.

18 Q. Now at his feet in front of the car, do you see those
19 two shirts?

20 A. Yes, sir. Those are some items of clothing that were
21 cut off by EMS prior to my arrival.

22 Q. Let me show you State's Number 12. What is that?

23 A. The same two pieces of clothing that were cut.

24 Q. Now there's a marker beside it, that yellow placard,
25 what is the purpose of that?

1 A. We occasionally put down numbers just to keep track of
2 the items of evidence that we collect so that we can refer
3 to a number in our report. And so obviously we start at
4 number one and that was one of the first items that I came
5 across as I approached the scene from the roadway, so I
6 just started right there with Number 1.

7 Q. Let me show a box that has SLED-sealed tape on it and
8 ask you to open the box and -- first of all, is the box
9 properly sealed and initialled?

10 A. Yes, sir, it is.

11 Q. Okay. Would you cut into the box and see if you
12 recognize the contents?

13 A. (Witness complies.)

14 Q. The contents -- there's a paper bag inside that box?

15 A. Yes, there is.

16 Q. And do you recognize the paper bag and its contents
17 and how?

18 A. Yes, sir. This is the bag that I would have packaged
19 the articles of clothing in. It has my notation here and
20 my initials over the original evidence tape.

21 Q. And when you're talking about the evidence tape,
22 that's the red tape that's on there?

23 A. Yes, sir. Right there.

24 Q. What's the purpose of that?

25 A. It tells us whether someone has gone back into the bag

1 after we've sealed it and turned it in to evidence.

2 Q. So did you collect those two shirts?

3 A. I did.

4 Q. You put them in that bag?

5 A. Yes, sir, I did.

6 Q. And you sealed the bag with evidence tape?

7 A. I did.

8 Q. And your signature and your handwriting is on that
9 bag?

10 A. Yes, sir.

11 Q. What did you do with that bag after you had it sealed?

12 A. Once we get all our evidence items together, we'll
13 turn them in to our evidence unit. We fill out a voucher
14 sheet listing those items and we turn them over to an
15 evidence custodian.

16 Q. And that would either be Candy Kyzer or Beth Holliman?

17 A. Yes, sir.

18 Q. And that's what you did with that bag?

19 A. Yes, sir.

20 MR. GRAHAM: Your Honor, the State would offer that
21 bag into evidence and the contents inside.

22 THE COURT: Any objection to the clothing?

23 MR. FLOYD: No objection.

24 THE COURT: With no objection, it will be
25 State's 26.

1 MR. GRAHAM: And, Your Honor, I'm gonna keep
2 State's 26 and the box that it came in for the SLED
3 people later.

4 (State's Exhibit Number 26, a box with paper bag of
5 clothing, was marked and admitted into evidence.)

6 BY MR. GRAHAM:

7 Q. On your crime scene report, Item Number 2, what was
8 that?

9 A. Item 2 is a wallet containing the ID of Nicholas Berry
10 and that was located on the ground next to the driveway to
11 the left as you face the house from the road.

12 Q. Item Number 3, what was Item Number 3?

13 A. A black ball cap with an LA logo and that was more
14 towards the wood line from where the wallet was found.

15 Q. And let me show you -- so referring back to State's
16 Number 10, can you explain where that picture is in the
17 orientation of the house? And when you say Item Number 3,
18 where are we talking about?

19 A. The left-hand of that driveway, the grassy area.
20 There's a grassy area and then it turns into a wood line.
21 Where you see the power pole, down that line from the
22 roadway as you look down the drive to the left.

23 Q. Looking at State's Number 13, what does that show?

24 A. That's Item 3, the ball cap. And now we have our
25 back to the wood line looking back out towards the road

1 and across the drive and you can see the power pole in the
2 very right-hand margin there.

3 Q. So looking at the house straight on, where was it
4 found?

5 A. If you're standing straight in front of the house,
6 it's to the left, and it's on the left-hand of the driveway
7 as well.

8 Q. Item Number 4 on your crime scene sheet is what?

9 A. It was an item of jewelry, a heart ring with clear
10 stones, and that was recovered from the driveway in front
11 of the vehicle that's in the drive -- one of the two
12 vehicles in the drive.

13 Q. In front of the Tahoe in this picture or another
14 vehicle?

15 A. Another vehicle that's forward of the Tahoe.

16 Q. All right. Crime Scene Number 5, what was that?

17 A. Number 5 was what appeared to be human hair bunched
18 up like it had been pulled out.

19 Q. And where was that found?

20 A. It was from the front walk. So as you're looking
21 there, there's a walkway that runs parallel to the front
22 of the house off of the driveway, so right where you see
23 the -- the white vehicle there and to the right is the
24 walkway.

25 Q. Item Number 6. What was Item Number 6?

1 A. A pistol magazine containing ammunition that was found
2 on the ground in front of the front porch there.

3 Q. So let me show you State's Number 17. What does that
4 show?

5 A. That's the walk -- standing at the walkway going up
6 the steps to the front door.

7 Q. And the placard down here on the ground?

8 A. That would be the magazine. That's Number 6.

9 Q. Looking at State's Number 16, is that the magazine
10 that you collected?

11 A. Yes, sir. It's a close-up of the magazine.

12 Q. Do you remember what kind of a firearm that went to?

13 A. It was a .380 pistol. The manufacturer's name was
14 Diamondback. It was embossed on the magazine.

15 Q. And when you collected that magazine, was that
16 magazine loaded?

17 A. Yes, sir, it was.

18 Q. Let me show you two items and ask if you recognize
19 these?

20 A. Yes, sir, I do.

21 Q. And are those, in fact, the magazine and the rounds
22 that were inside the magazine that we're talking about in
23 Number 6 from your crime scene report?

24 A. Yes, sir.

25 MR. GRAHAM: Your Honor, the State would offer these

1 into evidence.

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: That will be State's 27 and 28 without
4 objection.

5 (State's Exhibit Number 27, a pistol magazine, and
6 State's Exhibit Number 28, bullets, were marked and
7 admitted into evidence.)

8 BY MR. GRAHAM:

9 Q. All right. Again, Mr. Phipps, State's 27 is the
10 magazine and State's 28 are the rounds. There is red
11 evidence tape across here. What's the purpose of that
12 tape?

13 A. Again, it's a tamperproof indicator. My initials are
14 on it and I can look at that and verify that nobody's been
15 in it since I sealed it and turned it in to our evidence
16 unit.

17 Q. So, again, you collected these, you put them in these
18 bags, wrote on the bags, sealed the bags with tape and
19 turned them over to the evidence custodians for the
20 sheriff's department?

21 A. Yes, sir.

22 Q. Going back to State's Number 17 showing the porch,
23 the placard on the ground was the magazine we talked about,
24 Number 6. What was Number 7?

25 A. Number 7 was a screwdriver. It was a Stanley brand

1 screwdriver.

2 Q. Looking at State's Number 18, what does that show?

3 A. A close-up of the same screwdriver.

4 Q. And did you collect that screwdriver?

5 A. Yes, sir, I did.

6 Q. Let me show you another item and ask if you recognize
7 that?

8 A. Yes, sir. This is the screwdriver.

9 Q. And, again, the red evidence tape and your signature?

10 A. Yes, sir.

11 MR. GRAHAM: Your Honor, the State would offer the
12 screwdriver in evidence.

13 MR. FLOYD: No objection.

14 THE COURT: 29 without objection.

15 (State's Exhibit Number 29, a screwdriver, was marked
16 and admitted into evidence.)

17 BY MR. GRAHAM:

18 Q. And the next item, Number 8 on your crime scene
19 report, what was that?

20 A. A Samsung Galaxy cell phone.

21 Q. And where was that found?

22 A. It was recovered from the victim. I wasn't the one
23 that physically removed it from the clothing, but it was
24 brought to my attention that that was recovered and I
25 photographed it there on the porch -- or on the sidewalk.

1 Q. And you collected it?

2 A. Yes, sir.

3 Q. And turned it in the same way you did these other
4 items?

5 A. Yes, sir.

6 Q. Item Number 9, what was that?

7 A. A Diamondback .380 pistol.

8 Q. State's Number 19, does that show where you found
9 that?

10 A. Yes, sir. That's the kitchen counter inside the
11 house.

12 Q. I'd like to show you a box and contents and ask if
13 you recognize those?

14 A. Yes, sir. This would be the pistol box containing
15 the Diamondback pistol.

16 Q. Could you open it and verify the contents?

17 A. Yes, sir.

18 Q. So what -- when you recovered the gun, it had a
19 magazine as well and also six rounds inside the magazine
20 or the chamber?

21 A. Yes, sir. And we separate those when we process it.

22 Q. All right. So when you collected this item, you made
23 it safe?

24 A. Correct. We removed the magazine and removed any
25 ammunition that's in the chamber and bagged it separately.

1 MR. GRAHAM: Your Honor, just for the record there
2 is a pistol lock on the gun rendering it inoperable.

3 THE COURT: Okay.

4 MR. GRAHAM: The State would offer the box and the
5 gun and magazine and the rounds that were in the magazine
6 into evidence.

7 MR. FLOYD: No objection, Your Honor.

8 THE COURT: State's 30, the pistol and ammo, without
9 objection.

10 (State's Exhibit Number 30, a pistol and ammunition,
11 was marked and admitted into evidence.)

12 BY MR. GRAHAM:

13 Q. Item Number 10 on your crime scene report was what?

14 A. Another mass of hair -- what appeared to be human
15 hair that was bunched up as though it had been pulled out,
16 and that was from the floor in the kitchen.

17 Q. Number 11?

18 A. An Acer Aspire laptop computer from the kitchen table.

19 Q. And Number 12?

20 A. Samsung Galaxy Note computer from the same kitchen
21 table.

22 Q. 13?

23 A. An Amazon Kindle Fire from the couch in the den.

24 Q. Number 14?

25 A. A Kyocera cell phone from the dresser in the master

1 bedroom.

2 Q. Number 15?

3 A. An Apple iPhone 4 from the bed in the master bedroom.

4 Q. Item 16?

5 A. A factory pistol case for a Diamondback branded pistol
6 containing a padlock, and it was on the floor in the master
7 bedroom.

8 Q. Looking at State's Number 20, what is that?

9 A. That would be the black pistol case that was on the
10 floor at the edge of the bed in the master bedroom.

11 Q. Let me show you an item and ask if you recognize this?

12 A. Yes, sir. This is a pistol case.

13 Q. That's what you collected?

14 A. Yes, sir.

15 Q. Did you turn this in to evidence as well?

16 A. I did.

17 MR. GRAHAM: The State would offer the pistol box
18 into evidence.

19 MR. FLOYD: No objection.

20 THE COURT: State's 31, a pistol box.

21 (State's Exhibit Number 31, a pistol box, was marked
22 and admitted into evidence.)

23 BY MR. GRAHAM:

24 Q. Item Number 17. What was Item 17?

25 A. That was a pocketknife that was recovered from the

1 glove box of the Tahoe that was in the driveway at the
2 crime scene.

3 Q. Back on State's Number 10, the vehicle there?

4 A. Yes, sir.

5 Q. Looking at State's Number 21, is that the knife you're
6 referring to?

7 A. Yes, sir, it is.

8 Q. And you collected that knife?

9 A. I did.

10 Q. Let me show you an object and ask if you recognize it?

11 A. Yes, sir. This is the knife.

12 Q. And, again, there's tape and you sealed and handed it
13 to your evidence custodians?

14 A. Yes, sir.

15 MR. GRAHAM: The State would offer the knife into
16 evidence, Your Honor.

17 MR. FLOYD: No objection, Your Honor.

18 THE COURT: That will be State's 32 without objection.

19 (State's Exhibit Number 32, a knife, was marked and
20 admitted into evidence.)

21 THE COURT: I need a break. You-all go to the jury
22 room. This is for me. Nobody's done anything wrong. I
23 just need a quick break. You-all step in the jury room.
24 Don't talk about the case and we'll take a few minutes off,
25 okay?

1 (Whereupon, the jury retires to the jury room at
2 2:06 PM.)

3 (Recess taken at 2:06 PM.)

4 (Back on the record at 2:18 PM.)

5 BAILIFF: Please keep your seats. Court will now
6 come to order.

7 (Proceedings held at the bench; not reported.)

8 THE COURT: All right. Bring the jury in, please.

9 (Whereupon, the jury returns to the courtroom at
10 2:22 PM.)

11 THE COURT: All right. Go ahead, Mr. Graham.

12 MR. GRAHAM: Thank you, Your Honor.

13 BY MR. GRAHAM:

14 Q. Those were all the numbered markers of items that you
15 collected; is that correct?

16 A. Yes, sir. It stopped at 17.

17 Q. In addition to those items, did you also go look in
18 a shed I believe at the end of the driveway and find some
19 items in there that you collected as well?

20 A. Yes, sir. It was a shed that was at the rear of the
21 house as you went around the left-hand corner of the house
22 just behind it.

23 Q. Looking at State's Number 22, what do we see?

24 A. It was just full of miscellaneous items piled up. In
25 staring at it, I just took the picture because usually we

1 don't know what's important until we start moving things,
2 so I take a photo first and that would be a photograph of
3 the overall items. Once we started moving things around,
4 there's a black bag you can see in that photo that had some
5 items in it.

6 Q. When you went into there -- let me show you two
7 photographs, State's 24 and 25. Those are photographs of
8 documents; is that correct?

9 A. Yes, sir.

10 Q. Where did you find those?

11 A. Those were in the black bag that was found in the
12 shed.

13 Q. And who -- what names did you find on those items and
14 what are they?

15 A. One of them is an employment request form with the
16 name of Nicholas Berry at the top and the second is a typed
17 letter with a mailing address of Nicholas Berry.

18 Q. So State's 24 on the overhead for the jury to see,
19 that's the letter that you were talking about?

20 A. Yes, sir.

21 Q. And the name on the letter is?

22 A. Nicholas Berry.

23 Q. State's Number 25 is a photograph of a Little Caesars
24 application?

25 A. Yes, sir.

1 Q. And the name on there, again, is Nicholas Berry?

2 A. Yes, sir.

3 Q. In addition to those two items in there --

4 MR. FLOYD: Your Honor, as to Item 23, we renew our
5 earlier objection to that.

6 THE COURT: Okay. On the grounds you placed on the
7 record, your objection's protected, but overruled.

8 MR. FLOYD: Thank you.

9 BY MR. GRAHAM:

10 Q. State's Number 23, what was in the -- what
11 additionally was in the bag?

12 A. This rifle that had been modified. The barrel had
13 been cut back and the stock had been cut off.

14 Q. All right. Did you -- in addition, when you went
15 back to -- before turning in the gun that you found on
16 the kitchen counter, which is State's -- your Evidence
17 Number 9 from the photograph, but the gun, the magazine
18 and the bullets, State's Number 30, what, if anything, did
19 you do to process that and what do I mean by process?

20 A. Once we get back to headquarters -- obviously we don't
21 box things in the field like this, so we have everything in
22 paper bags. We go through a process of repackaging it to
23 meet our protocols as far as how things must be turned in
24 to our evidence unit. In this case, this pistol, thinking
25 there may be a need for doing DNA analysis on that gun

1 itself, I went ahead and swabbed certain areas of the
2 pistol, three areas; the slide, the trigger and the
3 handgrips.

4 MR. GRAHAM: Your Honor, if it's all right with the
5 Court, I'll bring that out so he can explain where he
6 swabbed it.

7 THE COURT: Sure.

8 BY MR. GRAHAM:

9 Q. So looking at the gun itself on State's 30 that has a
10 lock on it so it's inoperable, would you explain where you
11 swabbed and what you mean by swabbing?

12 A. Obviously there could be other processes performed on
13 this pistol, such as a latent examination, so if you're
14 gonna --

15 Q. When you say latent, what's that?

16 A. Latent fingerprints. We're gonna look for
17 fingerprints on it. So being that we're assisting Pine
18 Ridge, this was -- I knew this was probably gonna be sent
19 to SLED for further processing, we wouldn't be doing that
20 in-house, but wanting to protect the DNA that may be on
21 it, I wanted to go ahead and collect that first so there
22 wouldn't be any contamination after the fact. But then
23 you run the risk of -- if you're swabbing something,
24 obviously you could be swabbing over fingerprints and
25 destroying the fingerprints, so there were three areas

1 that I thought would be least likely to have viable
2 fingerprints on them. One area is this textured area here
3 on the handgrips. Being that it's textured, and having
4 processed a lot of items for fingerprints, I know that
5 that's an area that would be very difficult to develop a
6 fingerprint on. The other is the very trigger itself and
7 then the scalloped serrations here on the slide being
8 textured, again, would be very difficult to develop
9 fingerprints on, so I chose those three areas to swab.

10 Q. All right. So when you collected all these items and
11 then when you created this swab, do you touch the items
12 with your bare hands or what do you do?

13 A. No, we're gloved up. Again, we bring these items
14 into our lab, they're still packaged in the original paper
15 packaging from the scene, we lay out some sterile paper,
16 butcher paper that we have on a roll, lay out the items
17 that we're gonna process, and we glove up. We have swabs
18 that are specific for DNA collection, they're sterilized,
19 they're in the sterilized container. We open that, we swab
20 that area and we seal it back and put evidence tape on it
21 so that we can show that it hadn't been tampered with after
22 the collection.

23 Q. So on the scene when you're collecting items, do you
24 wear one pair of gloves and grab everything?

25 A. No, every time we collect something -- and, again, in

1 this instance this would have been -- I would have walked
2 in with a brown paper bag specifically for this one item
3 of evidence. We would have put on gloves, collected it,
4 taken those gloves off and put on the next set of gloves
5 for something else that we're collecting. If it's an item
6 that isn't gonna be processed for latents, isn't DNA or
7 isn't a biohazard, then we may collect it with our bare
8 hands, but other than that we are wearing gloves.

9 Q. So, for instance, why did you collect the gun?

10 A. Obviously there had been an altercation, a fight,
11 and weapons, whether they're -- you know, weapons are in
12 play regardless of whether they were actually used.

13 Someone can say that he threatened me with a gun even
14 though it wasn't ever fired, so we just go ahead and
15 collect it. Not knowing the full story, we collect it to
16 preserve that evidence in case that comes up in trial.

17 Q. And the gun was found -- you said you collected things
18 that weren't in their normal places?

19 A. Correct. This was laying on a kitchen counter.

20 Q. Okay. So you created a swab for touch DNA from that
21 gun, correct?

22 A. Yes, sir.

23 Q. Let me show you an item and ask if you recognize that?

24 A. Yes, sir. That is the white paper packaging of the
25 original swab that I collected.

1 Q. And when you collected the original swab from State's
2 Number 30, how did you package that up and what did you do
3 with it?

4 A. Again, the swab is sterilized by the manufacturer in
5 that paper packaging. We glove up, we open the packaging.
6 It has a little plastic capsule on the end that protects
7 the end of the swab. We open it and we do the swab, put
8 the capsule back together, we place it back in its original
9 packaging, fold that paper over and put evidence tape over
10 it to show that it hasn't been tampered with since.

11 Q. And then what did you do with it?

12 A. It's turned in to our evidence custodian at our
13 evidence unit.

14 Q. At the sheriff's department?

15 A. Yes, sir.

16 Q. There are obviously -- what are these other bags on
17 there, do you know, just from looking at -- not in general,
18 but what are they?

19 A. When things are sent to SLED, they get opened up and
20 they repackage them in their own packaging.

21 MR. GRAHAM: Your Honor, the State would offer the
22 swab which Investigator Phipps described and all the SLED
23 packaging as one item into evidence.

24 MR. FLOYD: No objection.

25 THE COURT: State's 33, which is the swab and the

1 packaging.

2 (State's Exhibit Number 33, a swab and packaging,
3 was marked and admitted into evidence.)

4 BY MR. GRAHAM:

5 Q. Now you didn't do any other processing on any of the
6 items that were collected from the scene itself, correct?

7 A. No, sir.

8 Q. When did you finish up at ■ 4 Dogwood? You responded,
9 I believe, on the 19th.

10 A. Yes, sir. It was late on the 19th, so it carried
11 over into the 20th. I departed the scene at 3:25 in the
12 morning. From there we went back to Pine Ridge PD's
13 offices to meet as a group to discuss what we needed to
14 do from that point.

15 Q. Okay. And did you see Lieutenant Bramlett at the
16 Pine Ridge Police Department?

17 A. Yes, sir.

18 Q. In addition on the 20th, did you also go to the
19 autopsy of Jamie Galloway?

20 A. I did.

21 Q. Where did that happen at?

22 A. At Newberry Hospital.

23 Q. Okay. And who performed the autopsy?

24 A. Dr. Ross.

25 Q. And you were present for the autopsy?

1 A. Yes, sir, I was.

2 Q. As part of the autopsy, does Dr. Ross collect and do
3 you take possession of some of Mr. Galloway's blood to
4 later use for DNA analysis, if necessary?

5 A. Yes, sir. She pulls what's called toxicology and
6 serology kits, two separate kits of biological evidence
7 that she collect from the victim. She packages those,
8 heat-seals them, and then I transport those back to be
9 turned in to our evidence custodian and subsequently
10 submitted to SLED for analysis.

11 Q. Let me show you a manila envelope and ask you to
12 look at that and specifically its contents. And do you
13 recognize the contents as being part of the DNA serology
14 sample that contained blood from Mr. Galloway at the
15 autopsy?

16 A. Yes, sir.

17 MR. GRAHAM: Your Honor, the State would offer that
18 into evidence at this time.

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: No objection. 34.

21 (State's Exhibit Number 34, a serology sample, was
22 marked and admitted into evidence.)

23 BY MR. GRAHAM:

24 Q. Once you left the autopsy of Mr. Galloway, did you
25 then go and turn those items in to the custodian at the

1 sheriff's department?

2 A. Yes, being obviously biological evidence they have to
3 be turned in right away and refrigerated.

4 Q. And those were properly sealed like they should have
5 been when you handed them over?

6 A. Yes, sir.

7 Q. All right. In addition to that, if I asked you what
8 the company Securus was, what is Securus?

9 A. At the sheriff's department we have our jail, which
10 is part of the sheriff's department, the detention center,
11 and within the jail there's a phone system that inmates can
12 use to phone family and friends. Securus is a vendor that
13 we contract with to provide those phone services.

14 Q. As part of that, are those jail calls recorded?

15 A. They are. For security purposes, all out going calls
16 from our detention center are recorded. There's a notice
17 that all parties are put on before a call is initiated that
18 all calls will be recorded and may be monitored.

19 Q. And have you been designated as one of the individuals
20 by the sheriff's department who can go access the Securus
21 system and retrieve those calls?

22 A. Yes, sir.

23 Q. And have you been designated as a custodian of those
24 records that are pulled off the Securus system, the jail
25 calls that are pulled off?

1 A. Yes, sir, I have.

2 Q. As part of that and then part of this case, were you
3 asked to pull off calls between particular dates in 2014?

4 A. Yes, sir, I was.

5 Q. Let me show you a disk and ask if you recognize this
6 disk?

7 A. Yes, sir. I've reviewed the disk. My initials are
8 on it.

9 Q. All right. And those were calls that you pulled from
10 May 20th of 2014 and August 22nd of 2014; is that correct?

11 A. Yes, sir.

12 MR. GRAHAM: Your Honor, the State would offer this
13 for identification.

14 THE COURT: All right. Offered for identification.

15 MR. FLOYD: Just for identification, no objection.

16 THE COURT: Sure. All right. So it will be State's
17 35 for ID purposes.

18 (State's Exhibit Number 35 was marked for
19 identification.)

20 BY MR. GRAHAM:

21 Q. Now, Mr. Phipps, can you explain -- or Investigator
22 Phipps, can you explain how you go about or how you went
23 about identifying jail calls that would be related to
24 Nicholas Berry?

25 A. Inmates are given a PIN number that they have to use

1 in the system. So when they initiate a call, they enter
2 their PIN number and it logs that within the system and we
3 can pull it up either by the PIN number or their name. The
4 interface is a web interface so that I can log into the
5 computer at my desk, go to Securus's website and pull up
6 our county's interface that's given to us to access these
7 calls. By putting in his name or PIN number we can see all
8 the calls generated by that person.

9 Q. And once you created -- so once you identified all of
10 the calls that were made by Nick Berry, what did you do
11 with those calls?

12 A. We click on them to mark them as something that we
13 want to ultimately download. We put all of that collection
14 of calls into a file folder and then we click a link that
15 creates a hyperlink to those files that we can then send
16 to someone and that person has twenty-four hours from that
17 point to download what I created, that grouping of files
18 that I created. And the reason it's twenty-four hours is
19 just a security feature so somebody can't go back and
20 access it later on.

21 Q. And did you do that in this case?

22 A. I did.

23 Q. State's Number 35, does this contain -- what does
24 this contain?

25 A. It contains the calls that I grouped together and

1 created a hyperlink for that were ultimately downloaded
2 and I verified that by going back and I can still see by
3 logging into the Securus's website that original grouping,
4 so I can see those -- I believe it was 89 calls, but that
5 grouping of calls.

6 Q. And then who did you send that to hyperlink to?

7 A. Rhonda Robinson with the solicitor's office.

8 Q. And she made this disk --

9 A. Correct. She --

10 Q. -- from downloading the calls from the link you sent?

11 A. Yes, sir.

12 Q. And the calls -- you've been designated as the records
13 custodian; is that correct?

14 A. Yes, sir.

15 Q. They're kept in the regular course of business made at
16 or near the time of the event and the system records them
17 and keeps them for approximately a year; is that correct?

18 A. Yes. The current contract we have with Securus is to
19 archive all voice communications for one year.

20 Q. So State's 35 you went back and verified what --
21 compared to what you sent?

22 A. Like I said, I can still log in. Even though we can't
23 hear the content today since it's been more than one year,
24 we see the -- the number called, the date and time, the
25 location within the detention center that was called, the

1 duration of the call, and by looking at the list that I
2 created and by looking at the files that are on that disk,
3 they all match.

4 Q. Let me show you another disk and ask if you recognize
5 this?

6 A. Yes, sir, I do.

7 Q. And what is that?

8 A. This is a single voice call from the one disk you're
9 holding. I was asked to isolate one call off of that disk
10 and transfer it to another disk and make it playable in
11 court.

12 Q. So off of State's Number 35 for identification you
13 pulled off one call?

14 A. Yes, sir.

15 Q. And can you tell me what the time and date of that
16 was?

17 A. Yes, sir. This call originated from the detention
18 center on April {sic} 20, 2014, at 3:50 AM, and the call
19 was an outgoing call to 803-413-[REDACTED].

20 Q. Were you able to verify from other Securus records who
21 that phone call was registered to?

22 A. I was.

23 Q. And who was that?

24 A. Let me refer to my notes. Securus's billing records
25 indicate that that number is -- was paid for by Carlee

1 Berry at [REDACTED] Barco Court.

2 Q. Can you spell -- is it Caralee Berry?

3 A. Yes, Caralee. C-A-R-A-L-E-E Berry.

4 Q. So the disk that I'm holding that is the isolated
5 call is exactly what you pulled off of State's 35 for
6 identification?

7 A. Yes, sir, it is.

8 Q. And you didn't change or modify the call in any way?

9 A. No, sir, I did not.

10 MR. GRAHAM: For the moment, Your Honor, the State
11 would continue to mark -- or ask that the new single jail
12 call would be marked for identification at this moment.

13 THE COURT: Okay. So State's 36 will be marked for
14 identification.

15 (State's Exhibit Number 36 was marked for
16 identification.)

17 MR. GRAHAM: Only for the purpose of later voice
18 identification. If there's anything regarding the
19 custodian of the records or keeper of the records, I
20 would ask that we address that now while I have the
21 right witness on the stand. I don't know if he has that
22 objection or not.

23 HE COURT: I don't think he heard you.

24 MR. FLOYD: What was your objection?

25 MR. GRAHAM: If there's any question regarding him

1 being the custodian of the records or any custodian
2 questions about jail calls being pulled out, he's the one
3 to address it to.

4 MR. FLOYD: Okay.

5 MR. GRAHAM: Your Honor, I believe that that is all
6 for Mr. Phipps by the State at this moment. He is subject
7 to recall on some other issues.

8 THE COURT: Okay. Mr. Floyd, any cross-examination
9 of Mr. Phipps?

10 MR. FLOYD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q. Hello, Mr. Phipps.

14 A. How are you doing, sir?

15 Q. Should I call you Mr. Phipps or --

16 A. That's fine.

17 Q. Just some questions on these items that you found.
18 The first question, you mentioned that you found a
19 magazine, an ammunition magazine; is that correct?

20 A. Yes, sir.

21 Q. Now would you tell the jury exactly where that was
22 located?

23 A. The -- which? Make sure we're talking about the same
24 one now.

25 Q. Let's talk about the one that was found outside of the

1 house.

2 A. Okay. That was located -- as you face the house and
3 you're looking at the porch, it was on the ground right at
4 the base of the foundation for the porch, so it was right
5 up against the brick fascia for the porch.

6 Q. And would it have been to the side of the steps?

7 A. Yeah, left -- left side of the steps as you face it.

8 Q. So if you were facing the steps, then it would be to
9 the left side next to the foundation?

10 A. Yes, sir.

11 Q. And that would be right across from where -- was
12 Mr. Galloway's body still there when you got there?

13 A. Yes, sir, it was.

14 Q. It would have been kind of across from where his body
15 was; is that correct?

16 A. Yes, sir.

17 Q. Now -- and I don't want to put words in your mouth
18 here, so if I've got the wrong word tell me. Is this the
19 -- is this that item? Item 6 I think you've got it on
20 here. Is that this item?

21 A. Yes, sir.

22 Q. Okay. Now you also have this -- and I think these
23 were handed to you together, but if you want to look at it
24 to be sure.

25 A. Yes, sir.

1 Q. Were these bullets actually inside this magazine?

2 A. Yes, sir, they were.

3 Q. All right. So this magazine was laying next to the
4 foundation left of the steps across from Mr. Galloway's
5 body with the rounds in it; is that correct?

6 A. Yes, sir.

7 Q. And this would be -- it's about fist size, isn't it?

8 A. Yes, sir.

9 Q. Now this -- I believe it's a Phillips head
10 screwdriver; is that correct?

11 A. Yes, sir, it is.

12 Q. Where did you find it?

13 A. At the -- I believe it was the right foot of the
14 victim.

15 Q. Right next to the victim, wasn't it?

16 A. Yes, sir.

17 Q. Now did you take a picture of it next to the victim?

18 A. Yes, sir.

19 Q. Okay. Would it have been next to his right side?

20 A. I'd have to review the photo. That was my initial
21 recollection. Just one moment, please. Yes, sir. It
22 was his right foot.

23 Q. Now there was also -- and maybe it's all in here.

24 Was this sealed back up by the way? Was the box sealed
25 back up? I don't want to open it if it was.

1 A. It should be open.

2 Q. If you don't mind opening it up. I don't want to mess
3 up anything.

4 A. (Witness complies.)

5 Q. Okay. Thank you.

6 Now what type of a weapon is this? What do you call
7 this?

8 A. It's a semiautomatic pistol.

9 Q. And what -- like an M-380 or what would it be?

10 A. It's a .380 caliber, yes, sir.

11 Q. A .380 caliber?

12 A. Uh-huh.

13 Q. Now is this a .380 caliber magazine?

14 A. Yes, sir.

15 Q. Are these .380 caliber ammunition rounds?

16 A. Yes, sir.

17 Q. Now this pistol was found where?

18 A. The kitchen counter.

19 Q. And that's at ■ 4 Dogwood?

20 A. Yes, sir.

21 Q. Did it have this magazine inside of it?

22 A. Yes, sir, it did.

23 Q. And these rounds that are in here, were they inside
24 of the magazine?

25 A. They were.

1 Q. Okay. So this weapon with all this ammunition and
2 this magazine, that was found inside the residence on a
3 kitchen counter?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. (Nods head.)

7 Q. This magazine, which would have fit that gun with
8 these rounds which would have fit that gun, they were
9 found next to the foundation of the porch to the left of
10 the steps right next to or across from the body of James
11 Galloway; is that correct?

12 A. Yes, sir.

13 Q. And this screwdriver was found to the right side of
14 James Galloway's body?

15 A. Yes, sir.

16 Q. And what did you say this was?

17 A. It's a -- like a manufacturer's case that the pistol
18 would have been shipped in and it's the same brand as the
19 pistol from the kitchen.

20 Q. Okay. Does it have anything inside of it?

21 A. It should not. Maybe a gun lock maybe, but nothing
22 else.

23 Q. Okay. And it would have been appropriate or
24 consistent with these items, these guns and magazines and
25 so forth?

1 A. Yes.

2 Q. And where was this located?

3 A. It was in the master bedroom.

4 Q. And that's at ■ 4 Dogwood?

5 A. Yes, sir.

6 Q. Thank you.

7 The magazine itself, the one that was found outside,
8 was it swabbed for DNA purposes?

9 A. It was packaged and protected for further processing,
10 but it was my understanding that items were gonna be sent
11 to SLED.

12 Q. In other words, you didn't personally process that?

13 A. No, sir.

14 Q. But you packaged it up. So it was still in pristine
15 form for processing if someone wanted to?

16 A. Yes, sir.

17 Q. How long after you arrived on the scene was Mr. Berry
18 transported to the hospital?

19 A. I don't have an exact time. I mean, he was there
20 for a little while initially because when I arrived he
21 was there and the ambulance was there on-scene waiting to
22 transport. I don't have an exact time of when he was
23 transported.

24 MR. GRAHAM: Just for clarification, which Mr. Berry?
25 I didn't know whether you were talking about Nick or Adam.

1 THE COURT: Fair enough. Clarify it.

2 BY MR. FLOYD:

3 Q. Mr. Nick Berry?

4 A. Yes, sir, Nick Berry.

5 Q. Were they transported at different times, if you know?

6 A. I don't know.

7 Q. Okay. Now I want to ask you a couple of things about
8 this Securus system.

9 A. Yes, sir.

10 Q. Securus is an outfit that covers the jail calls; is
11 that correct?

12 A. Yes, sir. They're a vendor that we contract with that
13 supplies the actual hardware, the infrastructure within the
14 jail, that is used to make telephone calls.

15 Q. And then the recipient of those calls has to pay
16 Securus; is that correct?

17 A. Yes, sir, that's correct.

18 Q. And it's kind of a large sum they have to pay, isn't
19 it?

20 A. I've never had an account. I'm not sure.

21 Q. Doesn't the sheriff's department get a cut of that?

22 A. There is -- the contract is a financial agreement
23 where we receive a portion of the call, yes, sir.

24 Q. Are you aware of just how much they charge people to
25 make calls?

1 A. No, sir.

2 Q. Would you be surprised if it's \$5 for a quick call?

3 A. I know that there's different rates depending on
4 whether they run like call by call or where you set up an
5 account and prepay it and then it's a lesser amount.

6 Q. And did you know we lawyers have to pay for them, too?

7 A. I would imagine everybody does.

8 Q. And the sheriff's department gets a cut of it, don't
9 they?

10 A. Yes, sir.

11 Q. Now when someone goes to make a call on this Securus
12 phone system, there's a recording that says that it's
13 subject to being recorded; is that correct?

14 A. Yes, sir.

15 Q. Are you familiar with what it says?

16 A. Yes, sir.

17 Q. Now it doesn't say anything in there, does it, that
18 says it will be used against you in court, everything you
19 say?

20 A. No, sir, it does not say that.

21 Q. And it doesn't give you any kind of Miranda rights,
22 does it?

23 A. No, sir, it does not.

24 Q. So it tells you it's gonna be recorded, but it
25 doesn't tell you that it could be used against you; is

1 that correct?

2 A. That's correct.

3 Q. It doesn't tell you that you might hear this one day
4 in court, does it?

5 A. No, sir.

6 Q. And an inmate has no other option to call his family
7 or friends or lawyer rather than use the Securus system;
8 isn't that correct?

9 A. There -- obviously they can write a letter. There
10 are certain circumstances where they can do face-to-face
11 visits.

12 Q. Well, now the face-to-face visits, you don't get
13 those anymore, do you? Aren't those through a screen?

14 A. I don't work in the detention center, so I'm not
15 familiar with the protocol.

16 Q. Okay. So this is their only option to call someone
17 and it's gonna be recorded? They don't have an option?

18 A. To use the telephone, yes, sir. It's the only option
19 to use the telephone.

20 Q. Well, they're not allowed to use -- have their own
21 cell phones in there, are they?

22 A. No, sir.

23 Q. And there's no landline in there that's not a Securus
24 hookup, is there?

25 A. No, sir.

1 MR. FLOYD: Thank you. No further questions, Your
2 Honor.

3 THE COURT: Anything on redirect?

4 MR. GRAHAM: Not on this issue. He's subject to
5 recall on other matters, Your Honor.

6 THE COURT: Okay. Fair enough. You can step down.

7 (Witness excused.)

8 THE COURT: Is this a good time to take a quick
9 break?

10 MR. GRAHAM: We can. Or we can do a quick witness.

11 THE COURT: Let's do a quick witness. I see who's
12 here.

13 MR. GRAHAM: The State calls Rhonda Robinson.

14 (Whereupon, Rhonda Robinson was duly sworn by the
15 Clerk of Court.)

16 THE CLERK: Once you're seated, state your full name;
17 spelling your last.

18 THE WITNESS: Rhonda Robinson, R-O-B-I-N-S-O-N.

19 RHONDA ROBINSON,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q. Ms. Robinson, where are you employed and what do you
24 do?

25 A. I'm employed at Lexington County Solicitor's Office.

1 I am a victim advocate, as well as a senior paralegal.

2 Q. And in your role as victim advocate and senior
3 paralegal, would you tell the jury some of your job
4 duties?

5 A. As a victim advocate, I am the person that gets in
6 contact with the families from the cases that are assigned
7 to the group that I'm working with. I notify them of
8 court dates, I help them with coordinating coming in and
9 talking to us. And anything that they might need, I'm
10 like the go between person for them and the solicitors.

11 Q. What about as a paralegal?

12 A. As a paralegal, it's anything from creating the files
13 when they first come in from bond court to sitting in on
14 witness interviews, law enforcement interviews, listening
15 to jail calls, putting together trial notebooks and making
16 sure that they know what they need and they're ready to
17 come to court.

18 Q. On this case in particular, did you request
19 Investigator Phipps of the sheriff's department as a
20 custodian of the records to look for jail calls related
21 to this case?

22 A. I did.

23 Q. And in response to your request, did he actually send
24 you a hyperlink containing calls?

25 A. He did.

1 Q. And how was that done?

2 A. I sent an e-mail to Doug Novak, which is over at
3 the sheriff's department. He assigns that e-mail to an
4 investigator that's already dealing with this case. That
5 investigator gets my e-mail saying I need jail calls for
6 this individual from this date to this date, he sends me a
7 link back for those jail calls and I download that link.

8 Q. I'm showing you State's Number 35 for identification.
9 Do you recognize that?

10 A. I do.

11 Q. And how do you recognize it?

12 A. That is my handwriting on the disk.

13 Q. And what does that disk contain?

14 A. It is jail calls for State versus Nick and Adam Berry
15 from 5-20-2014 to 8-20-2014.

16 Q. And those were the calls that you downloaded that was
17 sent by the hyperlink from Mike Phipps?

18 A. They are.

19 Q. And did you modify or change those in any way, shape
20 or form?

21 A. I did not.

22 Q. So the recordings that you pulled are exactly what's
23 on that disk?

24 A. Yes, they are.

25 Q. Referring to State's Number 36, is that Investigator

1 Phipps pulling off a particular call?

2 A. Yes, it is.

3 Q. And that call is the exact same call that was on
4 State's 35 for identification?

5 A. Yes, it is.

6 Q. And has it been modified in any way, shape or form?

7 A. It has not.

8 Q. So you didn't do anything to change any of the calls
9 and what's on here is the call that you were sent by
10 Investigator Phipps?

11 A. That's correct.

12 MR. GRAHAM: That's all the questions, Your Honor.

13 Thank you, Ms. Robinson.

14 THE COURT: Any cross, Mr. Floyd?

15 MR. FLOYD: No questions, Your Honor.

16 THE COURT: Thank you, Ms. Robinson.

17 (Witness excused.)

18 THE COURT: All right. Now let's take a few minutes'
19 break. It's 3:00. We'll take a few minutes and we'll get
20 finished up.

21 I'll tell you-all we're gonna go until about 4:00,
22 finish a little early today, and start back maybe a
23 little early in the morning, so just a heads-up for your
24 afternoon. I'm gonna try to stop somewhere close to 4:00
25 just so you-all know.

1 You can't discuss the case. Step into the jury
2 room.

3 (Whereupon, the jury retires to the jury room at
4 2:59 PM.)

5 (Recess taken at 3:00 PM.)

6 (Back on the record at 3:08 PM.)

7 BAILIFF: All rise. Court will now come to order.

8 THE COURT: All right. You-all be seated.

9 All right. Are you-all ready to go?

10 MR. GRAHAM: The State's ready, Your Honor.

11 THE COURT: Bring them in, please.

12 MR. GRAHAM: Oh, I'm sorry. I do have something,
13 Your Honor. The next witness is Haley Stone. She has
14 two sons with Adam. I want to -- if Mr. Floyd is gonna
15 go into Adam's death or anything like that, I do want to
16 address that outside the presence of the jury.

17 THE COURT: Do you want to talk up here real quick?

18 (Whereupon, the jury returns to the jury room at
19 3:10 PM.)

20 (Proceedings held at the bench; not reported.)

21 THE COURT: All right. Call your witness, please.

22 MR. GRAHAM: The State calls Haley Stone.

23 (Whereupon, Haley Stone was duly sworn by the Clerk
24 of Court.)

25 THE CLERK: Once you're seated, state your full name;

1 spelling your last.

2 THE WITNESS: Haley Stone. Spell my last name?

3 S-T-O-N-E.

4 HALEY STONE,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q. Ms. Stone, I know that you do not want to be here,
9 correct?

10 A. You're exactly right.

11 Q. But you're under subpoena and you are here to tell
12 what you know, right?

13 A. Yes.

14 Q. Can you tell me your relationship to Adam Berry.

15 A. I'm his kids' mother.

16 Q. How many children did you and Adam have?

17 A. Two.

18 Q. And how old are they now?

19 A. Six and three.

20 Q. And how old were they back on May of 2014?

21 A. One was two and I think -- I don't know. That's
22 hard. I have so much on my mind.

23 Q. That's okay.

24 A. I'm really -- I'm lost.

25 Q. That's okay. You have two children with Adam?

1 A. (Nods head.)

2 Q. You've known Adam for how long?

3 A. We were together on and off for eight years.

4 Q. And do you know the Defendant, Nick Berry?

5 A. Yes.

6 Q. And how long have you known Nick?

7 A. The same -- same amount.

8 Q. Their mother's name is what?

9 A. Caralee Berry.

10 Q. And how long have you known her?

11 A. For the same amount of years.

12 Q. Let me ask you to look at State's Number 36 for

13 identification and ask if you recognize that disk?

14 A. Yes.

15 Q. And have you had an opportunity to listen to it?

16 A. I listened to it yesterday.

17 Q. Okay. In fact, there's some initials on there?

18 A. Yeah.

19 Q. That's you, right?

20 A. Yeah, in pink.

21 Q. Do you recognize all three of the voices that are on

22 there?

23 A. Yes. Like said yesterday, I was there when the phone

24 call was arranged.

25 MR. FLOYD: (Standing.)

1 THE COURT: Yes, sir.

2 MR. FLOYD: Your Honor, may we approach?

3 THE COURT: You may. You may.

4 (Proceedings held at the bench; not reported.)

5 BY MR. GRAHAM:

6 Q. Ms. Stone, State's 36, which is currently for
7 identification which has your initials on it, you've
8 listened to the call?

9 A. Yeah, I listened to it.

10 Q. Do you recognize the voices on the call?

11 A. Yes, I do.

12 Q. The first male voice that you hear, the one making
13 the call, who is that?

14 A. Is that the same one you just showed me?

15 Q. Yes, ma'am. It's the same one.

16 A. It was Nick. Yeah, Nick.

17 Q. Nick is talking to a female. Did you recognize the
18 female's voice?

19 A. His mother.

20 Q. Caralee Berry?

21 A. Yes.

22 Q. Later on during the call, there's another male that
23 comes on. Who is the other male?

24 A. That is Adam Berry.

25 Q. Okay. And you recognize all three of their voices?

1 A. Uh-huh. Yeah.

2 Q. Were you actually at the home of Caralee Berry when
3 this call was recorded?

4 A. I was. I remember it like it was yesterday.

5 Q. So you actually remember this call?

6 A. Yeah, right when it started playing.

7 MR. GRAHAM: Your Honor, the State would offer this
8 into evidence at this time.

9 THE COURT: All right. It's submitted subject to
10 a potential redaction before it plays, but it's to be
11 admitted. It's been identified and authenticated by
12 someone who recognizes the voices, so to that extent it
13 is.

14 MR. FLOYD: Thank you, Your Honor. And, of course, I
15 would like to make the argument also on whether or not it
16 should even be admitted because of the Securus system. I
17 understand how you may rule on that, but I'd like to put
18 something on the record.

19 THE COURT: All right. Do you want to do it right
20 now or at the break?

21 MR. FLOYD: We can do it at the break, Your Honor.

22 THE COURT: Okay. Then it's been authenticated, but
23 not admitted yet, so we'll see what his objection is and
24 then we'll get that. Do you want to lay any further
25 foundation?

1 MR. GRAHAM: Yes, when I play it later. Yes, Your
2 Honor.

3 THE COURT: Okay. Very well.

4 BY MR. GRAHAM:

5 Q. Ms. Stone, May 19, 2014, did you end up over at
6 Kaysha Fontenot's house in Pine Ridge?

7 A. Yes, I did.

8 Q. Can you tell the jury how that came about?

9 A. I -- I was texted by Kayla and asked to come hang out.

10 Q. And Kayla would be Kayla Bass?

11 A. Yes, Kayla Bass.

12 Q. And Kayla, what was her relationship with Adam at the
13 time?

14 A. That was his girlfriend.

15 Q. And how did you -- how were you and Adam getting along
16 at the time?

17 A. We got along great, but not together. Not in a
18 relationship together.

19 Q. You did better apart than together?

20 A. Yes, sir. As friends.

21 Q. But you were good friends?

22 A. Yeah.

23 Q. Did you go over there?

24 A. Yeah, I went over there.

25 Q. Did you have any of your children with you and, if so,

- 1 which ones?
- 2 A. I had my youngest, B. [REDACTED].
- 3 Q. And how old was he at the time roughly, a baby?
- 4 A. I believe two.
- 5 Q. Okay. Was he walking?
- 6 A. Yeah.
- 7 Q. Okay. When you got over there, do you remember what
- 8 time it was?
- 9 A. I do not. I know it was still daylight.
- 10 Q. How did you get over there?
- 11 A. In my car.
- 12 Q. Did you and your son drive over there?
- 13 A. (Nods head.)
- 14 Q. When you got there, who all was at the house?
- 15 A. Kaysha, Adam, Nick and Kayla, and kids. There were
- 16 kids.
- 17 Q. Kaysha, did she have children there?
- 18 A. Yes.
- 19 Q. Do you know how many?
- 20 A. Two.
- 21 Q. Kayla was there. Did she have any children with her?
- 22 A. No, she didn't have any.
- 23 Q. And you were there with your son?
- 24 A. Uh-huh.
- 25 Q. And Adam and Nick were there; is that correct?

1 A. Yes.

2 Q. All right. Do you remember what was going on when

3 you showed up?

4 A. They were -- they walked outside, Adam and Kayla, to

5 help me, I guess, get the kids out of the car. They were

6 outside, so I called them and told them I was pulling in.

7 Q. And what's the next thing you remember happening?

8 A. We went inside and they offered me a drink.

9 Q. Did you have a drink?

10 A. No.

11 Q. Why weren't you drinking?

12 A. Because I had my son in the car and I had to drive

13 back home.

14 Q. Were other people drinking?

15 A. Yes.

16 Q. And who all was drinking?

17 A. I seen all of them drink. They were all pretty drunk.

18 Q. Do you know what they were drinking?

19 A. I believe vodka. I'm guessing.

20 Q. How about -- did you see anybody there taking drugs?

21 A. No, I didn't see anyone take drugs.

22 Q. Okay. Did you take any drugs while you were there?

23 A. No.

24 Q. Were any of them acting like they had been taking

25 drugs?

1 A. I mean, they seemed kind of like they were ...

2 Q. I guess let's go through everybody -- well, at any
3 time while you were there did any of those four leave?

4 Did Kaysha leave at any time while you were there?

5 A. Like leave the home?

6 Q. Yes, ma'am.

7 A. Nobody left the home.

8 Q. Did Kayla leave at any time?

9 A. No.

10 Q. How about Nick or Adam?

11 A. No.

12 Q. Okay. So you didn't see any of them take any drugs?

13 A. No.

14 Q. Okay. Do you have any reason to believe that Kaysha
15 took drugs or just that she drank alcohol?

16 A. I -- I don't really know Kaysha like that, so I didn't
17 even speak a word to her really.

18 Q. Okay. How many drinks did you see her take?

19 A. I know I seen her take a shot or two. I mean, I
20 wasn't like -- I'm sorry. Like I kind of blocked most of
21 it out and dealt with it in my own way, so.

22 Q. Kayla the same?

23 A. Yeah, because she offered me drinks and she was like
24 -- she kind of seem like she was Xanax'd out.

25 Q. Did she offer you Xanax?

1 A. No, she seemed like she was Xanax'd out --

2 Q. She seemed like she was Xanax'd out?

3 A. -- because she always was taking Xanax at that point.

4 Q. At some point did you have to help her get dressed
5 into a bathing suit?

6 A. Yeah, in the bathroom.

7 Q. Can you tell the jury about that and why you had to
8 help her?

9 A. Because she, I guess, was stoned and she couldn't
10 even tie it and I don't really know why she wanted me to
11 help her, but she seemed pretty messed up.

12 Q. How about either -- how about Adam? Did you see him
13 drink or did you see him take any drugs?

14 A. I seen him drink, but he -- I didn't see no one take
15 drugs.

16 Q. In your presence?

17 A. Personally I didn't see it.

18 Q. Okay. From your interactions with Adam that night,
19 what was your opinion about his sobriety or how he was
20 acting?

21 A. I mean, he kind of acted like he was drunk. I mean,
22 and -- I mean, we both had done drugs together in the past,
23 so it kind of seemed like he was, but, I mean, I can't --
24 I can't tell you.

25 Q. Sure. I understand. How about Nick? Did you have

1 an opinion on -- did you see him drink?

2 A. I mean, I didn't see Nick drink, but I'm pretty sure
3 he was drunk.

4 Q. Any opinion about him using any type of drugs?

5 A. I'm sure -- if everybody did, I'm sure he probably
6 did, too, as well.

7 Q. Anything about the way he was behaving that made you
8 think that way?

9 A. I guess he behaved like we used to years back when we
10 all done it together.

11 Q. At some point do you remember being outside and
12 hearing either Kayla or Kaysha make a statement about
13 Jamie?

14 A. I didn't hear it outside. I actually seen her answer
15 her house phone where Jamie had called.

16 Q. Okay. At some point after that call, was there a
17 conversation where Nick and Adam's present where Jamie's
18 name was mentioned?

19 A. The only thing I know is that -- I mean, they didn't
20 agree -- they didn't understand why they would have him
21 come over there, but as far as that there was no big deal
22 about it.

23 Q. All right. So was it -- was it announced then by
24 somebody that Jamie was coming over?

25 A. Yeah, I'm pretty sure someone announced it and I know

1 I did after the fact because I was kind of wondering why
2 all -- all the baby mommas and boyfriends and all that was
3 together. It kind of didn't make no sense.

4 Q. What, if anything, did Adam ask after it was announced
5 that Jamie was coming over?

6 A. I believe he asked like why they would be that dumb to
7 bring him around.

8 Q. What was the response that you heard?

9 A. It was -- Kaysha was the only one who knew at the
10 time. I guess she used her littlest son to get him over
11 there in order to see him.

12 Q. Do you know whether Kayla overheard any of the
13 conversations between Kaysha and Jamie like you did?

14 A. She couldn't have heard it, but she was -- I guess
15 she -- Kayla has always been jealous of that relationship
16 between Kaysha and Jamie. She did try to like follow and
17 try to be nosey, but Kayla didn't know until we all knew
18 like.

19 Q. When Nick knew, what was Nick's reaction when he knew
20 Jamie was coming over?

21 A. He was kind of sitting in the chair. He didn't really
22 make a reaction.

23 Q. Okay. They were just sitting at the time, is that
24 what you said?

25 A. Nick was, I believe. Like -- yeah, I think I seen

1 him sitting. I just remember that.

2 Q. But he heard the conversation about Jamie coming?

3 A. After we all had.

4 Q. Okay. After everybody did?

5 A. Uh-huh.

6 Q. Shortly after that, how long was it did Jamie actually
7 show up?

8 A. It wasn't -- I mean, it didn't seem that long. I
9 mean, maybe fifteen minutes at the most.

10 Q. So fifteen minutes later Jamie Galloway shows up?

11 A. Yeah, and it was kind of just hitting dark.

12 Q. Just getting dark?

13 A. Yeah, just hitting.

14 Q. Do you remember what kind of car he came in or who was
15 driving?

16 A. Katie Leavitt was driving, and I remembered that
17 night, but I cannot tell you now.

18 Q. Sure. So Katie Leavitt was driving. Jamie was a
19 passenger in the car?

20 A. Yes.

21 Q. Okay. What happened when Katie Leavitt pulled up with
22 Jamie as a passenger?

23 A. Well, Jamie got out and Kayla immediately wanted to
24 know who was in the vehicle driving. That's how she acts
25 on Xanaxes, and she immediately wanted to go jump on Katie.

1 Q. And what was Jamie doing during that time?

2 A. Trying to talk to Kaysha.

3 Q. Where were Jamie and Kaysha at?

4 A. We all were in the yard and then we did walk inside.

5 I remember them being inside. I remember Jamie seeing Nick

6 and just, I guess, immediately put -- I don't know. He

7 just said so this is how we do.

8 Q. He said what? I'm sorry.

9 A. So this is how we do; meaning like, I guess, he
10 thought that maybe Nick was there for Kaysha.

11 Q. Did Nick say anything back to Jamie?

12 A. Not at all.

13 Q. Was that inside the house or outside?

14 A. That was inside.

15 Q. How long was Jamie inside the house?

16 A. Not long.

17 Q. So had the issue with Katie Leavitt happened outside
18 yet or not yet? Or do you remember the time order?

19 A. Honestly, it's all scrambled. It happened so fast.

20 I just remember the facts and what I saw. I mean ...

21 Q. You remember the first thing that Jamie was trying to
22 do when he got there was talk with Kaysha?

23 A. Yeah, have a conversation. He was there for Kaysha,
24 and Kayla -- I even tried to tell her like he's here for
25 Kaysha, back off, and everything was fine.

1 Q. So what was Kayla doing while Jamie and Kaysha were
2 trying to talk to each other?

3 A. Trying to be nosey, wanting to know what they were
4 talking about, like right up on them.

5 Q. Was she -- what kind of voice was she using? What was
6 her demeanor?

7 A. Sloppy.

8 Q. Okay. Was she quiet or was she loud?

9 A. Loud.

10 Q. Was she in a good mood or in a bad mood?

11 A. In a bad mood. Well, kind of jealous, I guess.
12 Wanting to be, I guess, bad. Wanting to show off.

13 Q. Is this part before anything happens between Kayla
14 and Katie Leavitt time-wise?

15 A. I believe it was before, right before.

16 Q. Did Kayla touch either Kaysha or Jamie while they were
17 trying to talk?

18 A. She -- yeah, she kept getting in Jamie's face, but at
19 that point in time nothing was happening between them. But
20 she -- yeah, she was a little pushy and --

21 Q. Did she put her hands on Jamie?

22 A. Not at that moment.

23 Q. Okay. So Jamie and Kaysha are trying to talk. Where
24 are they at?

25 A. They're right there in front of the porch and then me

1 and Kayla are right here because I'm trying to explain to
2 Kayla like he came here to talk to them, let them talk, but
3 there was no telling her nothing at that moment.

4 Q. So Jamie and Kaysha are trying to talk. Kayla's in
5 the middle of it. Does Kayla stay there or --

6 A. Well, now I'm like in the middle. Like I'm like kind
7 of near -- more near Jamie and Kaysha's over here and Kayla
8 is kind of -- and I'm kind of like up.

9 Q. You're trying to keep Kayla away?

10 A. Yeah.

11 Q. At some point does she get actually physically in
12 between the middle of them?

13 A. She does get with -- not in the middle of them.

14 Q. Does she get in Jamie's face?

15 A. Yeah, after the fight with Katie.

16 Q. Okay. So let's stop for a second. Jamie and Kaysha
17 are talking to each other. Kayla's over there trying to
18 interrupt that conversation and --

19 A. Just being nosey.

20 Q. -- in Jamie's face being nosey. What happens with
21 Katie Leavitt?

22 A. Kayla kept saying well, I'm about to go tell her to
23 get out of the car and Jamie was like no, why do you got
24 to -- basically why do you have to start, she's just a
25 ride to come there. And I believe Katie and Jamie were

1 always good friends, I mean, and I guess she thought there
2 was -- she's always been just overly jealous. She's over
3 dramatized.

4 Q. Are we talking about Kayla?

5 A. Yeah.

6 Q. Okay. So what happened next between Kayla and Katie?

7 A. She, I guess, attempted to beat up Katie, but Katie
8 ended up starting to beat the crap out of her.

9 Q. Okay. And then what, if anything, did Kaysha do?

10 A. Kaysha jumped in it --

11 Q. So Kaysha got into it --

12 A. -- because Kayla was getting beat up.

13 Q. Kaysha got into it with Katie Leavitt?

14 A. Yeah.

15 Q. Okay. Where were they at as far as --

16 A. Kind of near the -- I want to say there was maybe a
17 tree or woods around that side.

18 Q. So is that on the far side of the driveway away from
19 the house?

20 A. Yeah, over like -- the cement was on the left side
21 kind of towards the woods.

22 Q. So away from the house?

23 A. Yeah.

24 Q. What happens when Kaysha and Katie Leavitt are
25 fighting? What's the next thing that happens?

1 A. Kaysha got the best of her because she got her while
2 Kayla and her was still fighting. Kayla gets up and, I
3 guess, walks -- you know, walks off, and then Kaysha, after
4 she's done, I guess, doing what she done, she looked at me
5 and said that's how shit gets done around here.

6 Q. And what happened to Katie Leavitt at that time?

7 A. She immediately got in her car and left.

8 Q. And where is Jamie at and Nick during this?

9 A. I'm guessing watching. I'm guessing in the yard.

10 Q. Okay. So Katie Leavitt leaves. What happens next at
11 the house?

12 A. Well, Jamie immediately gets mad because he's like
13 look what you did to my ride.

14 Q. All right. And who was he mad at?

15 A. Kayla and, I guess, he was kind of mad -- I mean, they
16 kind of both run her off, so at that point he didn't have
17 no transportation back. He was kind of stuck there.

18 Q. All right. So who does Jamie begin to talk to next?
19 Is he talking with Kayla or does he go back talking to
20 Kaysha?

21 A. Let me think. That's gonna take a minute. Give me a
22 minute. Because I remember him talking to me as well, and
23 Adam.

24 Okay. Repeat what you said so I can ...

25 Q. At some point next -- so Katie Leavitt leaves. Jamie

1 said what did you do with my ride?

2 A. Uh-huh.

3 Q. He said that to Kayla, but the next thing that
4 happened is Jamie going to talk with Kaysha again or --
5 because you earlier said there was more of a conversation
6 and that Kayla hadn't put hands on Jamie yet, so I was
7 trying to figure out where we're at.

8 A. Yes, this is actually, I believe, where Jamie was
9 pretty pissed at Kayla and they started arguing.

10 Q. Okay.

11 A. And I guess what he said was -- because, I mean, Kayla
12 was pushing him and, you know, and Jamie isn't gonna hit a
13 female, so he kept saying, you know, like get your girl, to
14 Adam, and stop. And then he looked up at me and he was
15 like you better ask your baby momma, like you don't -- I
16 didn't come here to fight, but if I have to, I will.

17 Q. At some point did Adam try to get between Jamie and
18 Kayla?

19 A. No, because he -- he's not gonna like go and start
20 something.

21 Q. Sure.

22 A. But when, I guess, Jamie -- I mean, he -- he had no
23 choice, but, I mean, to get Kayla off him, so he kind of
24 shoved her and like she fell down and then Adam, being the
25 man he is, is gonna take up for a woman.

1 Q. So Kayla was pushing Jamie and she wouldn't stop.

2 A. And was in his face cussing and just like --

3 Q. And Jamie told Adam to take care of her and eventually
4 it just kept going and Jamie eventually pushed Kayla away
5 from him?

6 A. Yeah.

7 Q. And then Adam stepped in?

8 A. Yeah. Adam was like you're not gonna push my girl
9 and then, you know, that's when they got into it.

10 Q. Where were they at --

11 A. In middle of the yard.

12 Q. -- when Jamie and Adam got into it?

13 A. In the middle of the yard.

14 Q. In the middle of the yard out front?

15 A. Uh-huh.

16 Q. Tell me what happened when they got into it.

17 A. Well, I think -- yeah, Jamie hit Adam first, I do
18 know that. That was kind of just to kind of, you know,
19 let him know again like we don't need this, and they ended
20 up -- I mean, he -- Jamie's like -- like he's -- he's not
21 someone you want to get in a fight with. He knocked Adam's
22 teeth out and there was blood from Adam and --

23 Q. So in the yard when they first start fighting --

24 A. I mean, they were fighting wherever because blood
25 ended up on my car. They ended up over here. Like they

1 were kind of wrestling most of the time.

2 Q. Okay.

3 A. Jamie was just trying to get him to quit and he was
4 not gonna quit after he got his teeth knocked out and it
5 was just like a fistfight.

6 Q. Okay. So it was a fistfight?

7 A. Yeah.

8 Q. Jamie punched Adam in the face and his tooth got
9 knocked out?

10 A. Yeah.

11 Q. It started in the middle of the yard?

12 A. A little to the left.

13 Q. Your car was still in the driveway?

14 A. Yeah.

15 Q. So it went over there, too?

16 A. The left, yeah.

17 Q. Made it to the left. Mainly wrestling?

18 A. Yes, and it went all like around and then ended up
19 like halfway on the porch.

20 Q. Okay. So before we go up the steps and the porch,
21 let me talk about what's going on there. You said Jamie
22 is really not -- he hit him, but he doesn't want to fight?

23 A. He -- yeah, he -- he wasn't trying to -- he's never
24 been the type to just want to ...

25 Q. Okay.

- 1 A. And neither has Adam, but ...
- 2 Q. All right. How many blows did you see Jamie hit
- 3 Adam out the yard?
- 4 A. Well, in the beginning he hit him once to try to stop
- 5 him. I guess he didn't think that Adam was -- Adam was
- 6 gonna fight back.
- 7 Q. So Jamie hit him one time?
- 8 A. And then there was a second time.
- 9 Q. Did Adam -- did Adam hit back then at that time?
- 10 A. Of course.
- 11 Q. So Adam hit Jamie back?
- 12 A. (Nods head.)
- 13 Q. And there then are more blows or there's wrestling at
- 14 that point?
- 15 A. I mean, I really wasn't trying to --
- 16 Q. I understand.
- 17 A. They were really close together. I mean --
- 18 Q. Okay. How many times -- before they go up the steps,
- 19 how many times did you see Jamie punch Adam?
- 20 A. I think just two.
- 21 Q. Okay. How many times did you see Adam punch Jamie?
- 22 A. I believe two. I mean, I didn't -- I wasn't sitting
- 23 there -- I don't want to tell you nothing wrong and I
- 24 didn't sit there and be like --
- 25 Q. I got you.

1 A. You know, I don't like altercations, so.

2 Q. There was a lot of wrestling going on?

3 A. Yeah, and cussing and, you know, being loud and
4 basically not -- trying to -- both not wanting to fight,
5 but ...

6 Q. But fighting. At some point did Jamie try to
7 disengage and go up the steps?

8 A. He was -- he was kind of up the steps because he ended
9 up like punching Adam kind of down the steps.

10 Q. So Jamie went up the steps and then Adam went up the
11 steps after him?

12 A. Yeah. I mean, I can't -- it's not clear to me like
13 that part. I just know where they ended up and ...

14 Q. All right. So they were down below the steps and they
15 went up the steps?

16 A. Yeah, it's like he -- Jamie kind of walked, I guess,
17 back and then -- like backwards and Adam's facing him and
18 they're kind of -- Jamie's not at the top of the steps, but
19 it's kind of -- it's weird.

20 Q. He's going up the steps. He hadn't made it all the
21 way up yet?

22 A. Yeah, and then they continued to fight.

23 Q. Okay. And does -- as they're on the steps, does their
24 fighting -- does Jamie hit Adam, push Adam or somehow Adam
25 falls backwards?

1 A. When he hit him, he did stumble back, I mean, off the
2 porch, yes.

3 Q. Okay. And so he's down back on the sidewalk or in the
4 yard?

5 A. Yeah, I mean, he stumbled back for just a second and
6 then he came back and hit Jamie again.

7 Q. So then Adam went back up the steps back at Jamie
8 again?

9 A. Yeah. And we're trying to like timeline this out, but
10 it all happened so fast. Like there's not really that much
11 like steps in it.

12 Q. I understand. What's Nick Berry doing during this
13 time; do you remember?

14 A. Honestly, I don't know. Like I think -- I was just
15 trying to pay attention to nothing escalating between, you
16 know, them. I had a child on my hip, there's children
17 inside, and basically I'm just trying to tell them, you
18 know, both of you-all's kids are here, but at that point
19 they're focussed, you know, they're heated.

20 Q. Okay. So Adam goes back up the steps to continue to
21 fight with Jamie. What happens up on the porch between the
22 two of them?

23 A. They continued wrestling and they end up in the
24 corner, kind of the back corner over here.

25 Q. So if they go -- if I'm facing the way I am in the

1 courtroom away from the jury box and these are the stairs,
2 where do you say that they go?

3 A. To the back corner.

4 Q. So the back corner is like up the stairs and then to
5 the left?

6 A. To the corner, yeah.

7 Q. Okay. And what happens back in that corner? What do
8 you see?

9 A. Jamie ends up on top of Adam.

10 Q. Okay. Adam -- did you see any more blows up on there
11 or is that wrestling up there?

12 A. I mean, I was down there. I couldn't really -- I
13 didn't really want to watch a fight, so.

14 Q. I understand.

15 A. I know they're fighting still at that moment.

16 Q. Okay. Did you see any exchange of blows up on the
17 porch?

18 A. I'm sure they might have hit each other again maybe.
19 There's probably an exchange between the both of them
20 together. Probably four.

21 Q. Total?

22 A. (Nods head.)

23 Q. From the yard up on the porch a total of four?

24 A. Yeah. Mainly I'm believing like Jamie's on top
25 straddling to try to get him to stop the fight. I mean,

1 they both didn't want to fight.

2 Q. Jamie was trying to get Adam to stop the fight, so he
3 wasn't hitting him at that point, he was just holding him?

4 A. I mean, I'm -- I'm guessing that's why he sat on top
5 of him.

6 Q. Okay. You didn't see Jamie punching Adam while he had
7 Adam down on the ground?

8 A. I mean, yes, I did see him punch him twice and, I
9 mean, they -- Adam probably hit him twice, but that's about
10 the total of it. I mean, I can't -- I don't want to tell
11 you wrong.

12 Q. I understand. No, you say what you remember and what
13 you saw. What happens next? You've got Adam down on the
14 ground and you have Jamie on top of him. Let me ask you
15 this.

16 A. Nick ends up on the porch.

17 Q. Do either of them -- do either of them have any
18 weapons?

19 A. No. I don't -- no. Unh-unh.

20 Q. Did anybody have a knife that you saw?

21 A. I didn't see anybody with anything.

22 Q. Did you see anybody with a screwdriver?

23 A. No.

24 Q. Did you see anybody with a gun?

25 A. No.

1 Q. They were having a fistfight?

2 A. Yes.

3 Q. All right. What's the next thing that happens? What
4 do you see Nick Berry do?

5 A. He runs up there and I guess he's doing what anyone
6 would try to do, is -- I guess he freaked out, but -- it
7 doesn't make it right, but I'm guessing at that point he
8 ends up and jumps in the fight.

9 Q. At any time did Adam -- Adam wasn't -- he wasn't
10 unconscious, he was he still --

11 A. No, Adam felt very well, awake.

12 Q. Okay. At any time did Adam call for help?

13 A. No.

14 Q. Did he ask Nick to come in?

15 A. No.

16 Q. Did he ask for the fight to stop?

17 A. I mean, I don't -- I don't think so.

18 Q. Okay. Nick joins in. What do you -- do you see a
19 knife in Nick's hand?

20 A. No.

21 Q. Okay. What do you see Nick doing?

22 A. Well, they ended up, I guess, getting Jamie facedown.
23 I don't know how, but that's what I remember seeing, and
24 from my view, it happened so fast, it looked like Nick was
25 punching him.

1 Q. Okay. When you say punching him, would you describe
2 for the jury what kind of punching you're talking about?
3 Would you show them?

4 A. Like just like really fast. Like punching him.

5 Q. All right. So Jamie's flat out down on the ground on
6 the porch on his stomach; is that correct?

7 A. I know he's laying down.

8 Q. You know he's laying down. How many times do you see
9 Nick Berry punching Jamie?

10 A. I mean, probably like twenty. I -- I don't know.

11 Q. Okay. Was Adam Berry punching Jamie while Jamie was
12 down on the ground?

13 A. I don't believe so. I seen -- I know at the end Adam
14 did kick him in his head, and he admitted to that. I'd
15 seen that. But it just all happened so fast, I mean. And
16 then after that I seen like -- I watched him gasp for his
17 last breath and I just seen blood everywhere.

18 Q. And so -- and I may have misheard. You said Adam --
19 did you say Adam kicked him one time or did you see Adam
20 kick him?

21 A. After the altercation, yes, I did.

22 Q. Okay. So how -- as you see Nick, what you see he's
23 punching Jamie Galloway twenty times over and over and over
24 again?

25 A. It just -- yeah, it happened so fast.

1 Q. Why did Nick Berry stop punching Jamie Galloway?

2 A. I couldn't answer that for you. I mean, I don't know.

3 Q. Okay. What was Adam doing during that time?

4 A. Like I said, I wasn't really trying to focus on Adam.

5 I had my son and I was like eye view to where I could see

6 Jamie's face and I believed Adam was kind of in the corner.

7 I don't know. In the corner.

8 Q. Was Adam punching Jamie Galloway while Nick Berry was
9 punching him, what you saw as punching him?

10 A. He might have punched one time. I don't -- I don't
11 think he really could move honestly.

12 Q. You saw the blood?

13 A. Yeah, after he gasped for his last breath that's when
14 the blood just went everywhere.

15 Q. What is Nick Berry doing during that time?

16 A. I mean, after all that happened the last thing I see
17 is Adam kick him in the head and then --

18 Q. Adam did what? I'm sorry.

19 A. Adam kicked him in the head.

20 Q. Okay. And then what happened after Adam kicked him in
21 the head?

22 A. I guess they tried to leave.

23 Q. Okay.

24 A. Honestly, like I don't think -- because I was the only
25 one there. I don't think they thought they killed him, so.

1 Q. They tried to get in the car and then tried to leave
2 and then the police showed up?

3 A. Yeah. And actually Kayla was in the vehicle and
4 halfway out and landed in the ditch when the cops pulled
5 up.

6 MR. GRAHAM: Thank you, Haley. Please answer any
7 questions that Mr. Floyd has for you.

8 THE WITNESS: Okay.

9 CROSS-EXAMINATION

10 BY MR. FLOYD:

11 Q. Good afternoon, Ms. Stone.

12 A. Good afternoon. Give me a minute.

13 Q. Do you need some time?

14 A. Yes.

15 Q. Okay. Just take your time and let me know when
16 you're ready. No rush.

17 THE COURT: Do you want some more water?

18 THE WITNESS: No. It's just hard reliving all this,
19 okay?

20 MR. FLOYD: I understand. No rush now. Just tell me
21 when you're ready.

22 THE WITNESS: Okay. You can go ahead and start.

23 BY MR. FLOYD:

24 Q. Now, Ms. Stone, you've known Nick and Adam for how
25 many years?

- 1 A. Over eight years.
- 2 Q. You knew them pretty well?
- 3 A. Yeah.
- 4 Q. Can you tell the jury how Nick felt about Adam?
- 5 A. They were closer than ever. All three of them were
- 6 close.
- 7 Q. And Adam was Nick's older brother, wasn't he?
- 8 A. Uh-huh.
- 9 Q. Did Nick look up to Adam?
- 10 A. Yes, he did.
- 11 Q. Did he worship Adam?
- 12 A. Yes.
- 13 Q. He would do anything for Adam, wouldn't he?
- 14 A. Yeah, he would.
- 15 Q. Now Nick, we see him here today, he was a real small
- 16 kid, wasn't he?
- 17 A. He's always been short.
- 18 Q. Would you be surprised if I told you that he weighed
- 19 less than 115 at the time?
- 20 A. Oh, yeah, I'd believe it.
- 21 Q. How about Jamie? What kind of size did Jamie have?
- 22 A. He wasn't fat, but he -- I mean, he's always been a
- 23 big boy. I mean, he's --
- 24 Q. He was big and strong?
- 25 A. Muscular.

1 Q. Muscular. And I noticed you mentioned earlier that
2 everybody knew he didn't want to fight with Jamie; is that
3 right?

4 A. Do what?

5 Q. He didn't want -- you mentioned earlier everybody knew
6 he didn't want to fight with Jamie?

7 A. Jamie never really wanted to fight, but -- because he
8 knew his strength.

9 Q. Okay. And nobody wanted to fight with him, did they?

10 A. I wouldn't want to fight with him.

11 Q. Or otherwise they wouldn't have been afraid of him,
12 would they?

13 A. Yes. But he wasn't -- he wasn't that kind of person.
14 Neither was Adam.

15 Q. I understand.

16 A. I mean, he didn't go looking for a fight either.

17 Q. I understand. But he could certainly have handled
18 himself and people would have been afraid to fight him?

19 A. Yeah, when he gets pushed to the point, yes, he would.

20 Q. Now I know time's a funny thing with something
21 traumatic like this going on.

22 A. Yeah, because it's a blur.

23 Q. Can you tell us to your best ability how much time
24 that would have passed between the time Jamie arrived and
25 the time Nick and Adam got off the porch?

1 A. I could not tell you that.

2 Q. Okay. That's fair. I just didn't know if you knew.

3 A. Yeah, I wouldn't even want to lie. I cannot tell you
4 that.

5 Q. Now when Jamie first arrived, that was no big deal to
6 anybody, was it?

7 A. No, not -- I mean, everybody was fine besides Kayla at
8 the moment, but, I mean, that's what happens when she's
9 around there.

10 Q. Kayla made it kind of a big deal, but nobody -- the
11 guys didn't care, did they?

12 A. They didn't say anything, no.

13 Q. Now when Jamie got there, did he first go in the house
14 or -- if you remember?

15 A. I already answered that.

16 Q. Okay. Well, did he go in the house first?

17 A. Not right at first.

18 Q. Okay. He at some time went in the house, didn't he?

19 A. Yeah, we all went in the house, I mean.

20 Q. And he had some conversation with Kaysha in the house?

21 A. Yeah, I guess to see his son. He was talking to her
22 and that's why he was there.

23 Q. Okay. And did he and Kaysha go into a room by
24 themselves at one point?

25 A. I mean, he kind of walked -- he walked through the

1 house and -- I guess to see who all was there, to see if
2 anybody was there. I don't know.

3 Q. Do you know whether or not Jamie gave anything to
4 Kaysha?

5 A. No, not at all.

6 Q. Now when the fight started, you're clear on the point
7 that Jamie first hit Adam; is that correct?

8 A. Yes.

9 Q. Now you didn't see any weapon?

10 A. No, no weapons at all.

11 Q. Do you know whether or not Jamie had anything inside
12 of his fist to make his fist more powerful?

13 A. No. He already has a big fist. I don't believe so.

14 Q. Okay. You don't know if --

15 A. I mean, I didn't like look at him and open his fingers
16 and --

17 Q. So you don't know whether he could have had something
18 like this wrapped up inside of his fist to make it a little
19 more potent?

20 A. I mean, I don't know.

21 Q. Now do you think Adam would be the type of person that
22 would ask Nick for help in a fight?

23 A. Adam would not ask anybody for help. He would stand
24 his own ground.

25 Q. He wouldn't have asked anybody for help, would he?

1 A. (Shakes head.)

2 Q. And he wouldn't give up a fight, would he?

3 A. No, not at all.

4 Q. So he's locked into this fight with Jamie and they end
5 up on the porch; is that correct? At some point they end
6 up on the porch?

7 A. Yes. Yeah, I stated that before.

8 Q. And Jamie is on top of Adam on the porch; is that
9 correct?

10 A. Yeah.

11 Q. And they're kind of over -- and I believe your
12 testimony was kind of over to the left edge of the porch,
13 that direction? Would I be right on that if we're standing
14 facing the stairs?

15 A. I mean, yeah. I mean, I don't know. I wasn't laying
16 down there with them, so.

17 Q. I understand. Because it's kind of elevated, isn't
18 it?

19 A. I'm short anyway, so when I'm down there, I'm like --
20 I can see through a little slit.

21 Q. I got you. I understand that.

22 A. Plus I had a baby on my side, so I was kind of looking
23 at my son.

24 Q. I understand. And it was when Jamie was on top of
25 Adam on the porch that Nick jumped in; isn't that true?

1 A. Yeah, he came around. Yes.

2 Q. Okay. Now you saw him striking or hitting Jamie you
3 said about twenty times. Was this something like, I mean,
4 a matter of seconds?

5 A. No, it was like -- I thought he was -- I swear I
6 thought he was just punching him. I mean, it just happened
7 so fast.

8 Q. Okay. I understand. And it was something that could
9 have been over with in a matter of seconds?

10 A. I'm guessing.

11 MR. FLOYD: Excuse me just a minute.

12 THE WITNESS: Okay.

13 MR. FLOYD: Thank you, Ms. Stone. No further
14 questions.

15 THE COURT: Any redirect?

16 MR. GRAHAM: No, Your Honor.

17 THE COURT: You may step down.

18 (Witness excused.)

19 THE COURT: Mr. Graham, is this a good stopping point
20 for your witnesses?

21 MR. GRAHAM: Yes, Your Honor.

22 THE COURT: Is 9:00 suitable for the jury? If we try
23 to start at 9:00 in the morning?

24 All right, attorneys. We've got the vote. They want
25 to start at 9:00.

1 All right. You-all be in the jury room by 9:00. I'll
2 do my best to get you in at 9:00 sharp. I know I was a
3 couple of minutes late and that was Jacob's fault. Don't
4 tell him I said that.

5 All right. You-all put your stuff in the jury room
6 and we'll see you in the morning. Don't discuss the case.

7 (Whereupon, the jury is excused for the day at
8 3:57 PM.)

9 (Off the record discussion.)

10 (Whereupon, the proceedings were concluded for
11 December 13, 2016, at 4:00 PM.)

12 (The following proceedings were held December 14,
13 2016, beginning at 8:57 AM.)

14 BAILIFF: All rise. Court is now in session. The
15 Honorable Eugene C. Griffith, Jr., presiding.

16 THE COURT: All right. Are you ready?

17 MR. GRAHAM: We have a couple of matters we need to
18 take up first prior to the jury coming in, Your Honor.

19 THE COURT: Okay.

20 MR. GRAHAM: It came to our attention last night that
21 there was a sequestration order. The victim's mother in
22 this case, Kathy Polk, has been attending and under the
23 victim's bill of rights she has a right to be here.
24 Apparently she had -- it's my understanding that she had
25 telephone conversations with Connie Griffin, who is also a

1 what she tells us now when we weren't privy to whatever
2 conversation went on between the two of them and I just
3 don't see how that cures the problem of the violation of
4 the sequestration order, but -- so we stand by our motion.

5 THE COURT: Okay. I'm not gonna rule on it yet.
6 We're moving on.

7 MR. GRAHAM: Two other issues before the jury comes
8 out, Your Honor.

9 THE COURT: Okay.

10 MR. GRAHAM: The State's first witness this morning
11 will be Caralee Berry; that is --

12 THE COURT: The mother.

13 MR. GRAHAM: -- Nick's mother and Adam's mother, for
14 two reasons. Really one. When Adam disappeared, they had
15 to develop an alternative DNA standard, so she provided law
16 enforcement and West Columbia Police Department a razor of
17 Adam's, and that's the DNA profile that they developed to
18 match to Adam's body that was discovered in Orangeburg for
19 identification. We're having to prove in the DNA analysis
20 what Adam's DNA was and what Jamie's DNA was to do the
21 analysis, so we have to track that. Mr. Floyd for reasons
22 of strategy does not want to stipulate to that, so we have
23 no choice but to call her. We still have the State's
24 outstanding motion about limiting any information about
25 Adam's reason for not being here, which I don't know that

1 we've accurately -- whether you've come to a final decision
2 on how you want to handle that. That's one issue related
3 to her testimony.

4 The other one is the jail calls that the State had in
5 -- I don't know the numbers -- for identification at the
6 end of yesterday. Since then we've gone back and prepared
7 another copy that is a redacted copy that only has the
8 conversation between Nick Berry and Caralee Berry.

9 Mr. Floyd -- that covers one of Mr. Floyd's
10 objections; that we don't plan on publishing the
11 conversation between Nick and Adam on the jail call. We
12 do plan on publishing the conversation between Nick and
13 his mother, Caralee Berry. My understanding is that
14 Mr. Floyd -- I don't want to have to play it in front of
15 his mother, I didn't want to publish it in front of his
16 mother in front of the jury. It's my understanding that
17 Mr. Floyd at least as far as that argument that he will
18 stipulate that that is her and he would say that it's a
19 fair and accurate representation of the copy they had, and
20 if that is all true I'd like to go ahead and mark it now
21 as an exhibit. I know that he still has a motion against
22 allowing even this in, too, but for the moment I'd at least
23 like to mark it for ID.

24 THE COURT: Okay. And this is the redacted version
25 you want to mark for ID? That's the redacted part?

1 MR. GRAHAM: Yes, it's the jail call --

2 THE COURT: Nick and his mother.

3 MR. GRAHAM: -- just between the Defendant and his
4 mother.

5 THE COURT: All right. Fair enough.

6 All right, Mr. Floyd. Let's hear from you.

7 MR. GRAHAM: But I guess not for ID. This would be
8 in evidence subject to whatever objection he has.

9 THE COURT: Let's get it marked first.

10 MR. GRAHAM: It would be a redacted version of
11 State's 36 for identification, which was the jail call
12 of May 20, 2014, at about 3:50 AM in the morning.

13 That's State's 37, Your Honor.

14 (State's Exhibit Number 37 was marked for
15 identification.)

16 THE COURT: All right. Now, Mr. Floyd, let's hear
17 you on the admissibility of that jail call.

18 MR. FLOYD: Thank you, Your Honor.

19 Mr. Graham is correct in that we have -- we will
20 stipulate that what's on there is a conversation between
21 Mr. Berry and his mother. We stipulate to that portion.
22 We, however, do not feel that the recording itself is
23 admissible. Your Honor, I've done research on it -- I've
24 had a couple people do research on it and nobody can find
25 -- anybody that I've used, nobody can find a South Carolina

1 case on point on whether or not these type calls are
2 admissible.

3 Now I know in a lot of jurisdictions they have been
4 ruled to be admissible, but South Carolina is unique
5 because South Carolina has a specific constitutional
6 provision guaranteeing all individuals the right of
7 privacy, and that's kind of unique in our jurisdiction,
8 and because of that constitutional provision in our South
9 Carolina constitution, we feel that these calls will be an
10 invasion of that privacy.

11 Your Honor, I think it's come out in -- already in
12 testimony that these calls -- the warning they give on
13 these calls is only that the calls will be recorded or
14 monitored. There's no warning at all that these calls may
15 be used against them in a court of law. These calls are
16 forced. The only way that an individual can have contact
17 with his family or friends is through these recorded calls.
18 They don't have any option other -- other than to make
19 calls on this Securus system.

20 Your Honor, to allow them to now use those calls would
21 be a gross invasion of that constitutional right of privacy
22 as guaranteed by the South Carolina Constitution. And,
23 like I say, there's been no South Carolina cases that we're
24 aware of that ever had ruled on this point, so we think
25 it's a novel decision for the Court to make, but I think

1 it's well-founded because all we have to do is rely on
2 that constitutional provision. I think it's Article 1,
3 Section 20, but I'll check my notes in a minute. It's
4 our constitutional right to privacy. I'm pretty sure it's
5 Article 1, Section 20.

6 Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. GRAHAM: Your Honor, it's my understanding that
9 obviously they can write letters back and forth to each
10 other. They can also have visits, I believe, where they
11 still can come to the jail. I don't know whether they're
12 face-to-face visits, but they can talk over the phone.
13 I don't know if those are recorded, but the bottom line is
14 they're notified that their calls are being monitored so
15 what they say they're saying by their choice and that's all
16 the law requires in South Carolina, is that people know
17 they're being recorded, and both of them knew they're being
18 recorded. They don't have to talk.

19 THE COURT: Look up this case in Laurens County that
20 I got appealed on. William Alexander. Find that case.
21 It's a Court of Appeals case. It came out last year.

22 I had this issue appealed in a case that went up to
23 the Court of Appeals, an accessory after the fact to a
24 murder, a trial in Laurens not long ago. Well, two years
25 ago. The kid's name was William Alexander and it got

1 affirmed. I don't know what they addressed. I don't
2 remember whether it was a published or an unpublished
3 opinion, but the issue of the admissibility of jail calls
4 came up and they came in, so let's see if I can find it
5 real quick.

6 MR. GRAHAM: Again, on that issue, Your Honor, the
7 State -- we weren't gonna publish that until later in the
8 day as well.

9 THE COURT: Okay.

10 MR. GRAHAM: The only issue I need to have decided at
11 the moment when Caralee Berry is called is to what level
12 Mr. Floyd is able to go into on the death of Adam Berry.
13 Other than that, the other two things are things that you
14 can consider during the day.

15 MR. FLOYD: Your Honor -- is that all you have,
16 Shawn?

17 MR. GRAHAM: Yes.

18 MR. FLOYD: Your Honor, we have one little issue we
19 want to address to the Court. As you're aware, we had
20 Mr. Sulier under subpoena for all week and we had an order
21 of transport requiring his presence here all week. When
22 we got back to our office last night, we had an e-mail
23 from the Department of Corrections and it said something
24 to the affect of we understand from the guard that you
25 don't need Sulier anymore this week, and that's just not

1 9:33 AM.)

2 THE COURT: All right. We're ready to start now.
3 We did some things preliminarily to hopefully make the
4 case move more quickly. Thank you for your patience.

5 Mr. Graham, call your witness.

6 MR. GRAHAM: The State calls Page Moore {sic}.

7 (Whereupon, Page McCraw was duly sworn by the Clerk
8 of Court.)

9 THE CLERK: Once you're seated, state your full name;
10 spelling your last.

11 THE WITNESS: It's Page McCraw, and Page is spelled
12 P-A-G-E and McCraw is M-C-C-R-A-W.

13 PAGE McCRAW,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q. Sorry about, Investigator McCraw.

18 A. That's okay.

19 Q. Where are you employed?

20 A. I'm employed at West Columbia Police Department.

21 Q. And what do you do there?

22 A. I've been there for going on eleven years. For
23 eight years I was an investigator in major crimes and the
24 -- one year I was on the road, eight years investigator,
25 and then two years I've been in crime scene and evidence.

1 Q. Back in, I believe, the spring of 2015, what was your
2 role?

3 A. I had actually taken on -- transferred from
4 investigations to evidence, so evidence custodian working
5 with Investigator Chuck Bramlett.

6 Q. Chuck Bramlett, that's Lieutenant Doug Bramlett from
7 Pine Ridge's father; isn't that correct?

8 A. That's correct.

9 Q. And Chuck has passed away; is that correct?

10 A. Yes, he did.

11 Q. Back in the spring of 2015, was there a missing
12 persons case out of West Columbia on Adam Berry?

13 A. Yes, sir, there was.

14 Q. As a part of that case, were alternate standards of
15 DNA collected for the purpose of identifying a body found
16 in Orangeburg?

17 A. Yes, sir, we did.

18 Q. And who collected -- what was collected?

19 A. Investigator Bramlett was --

20 MR. FLOYD: Your Honor, I'm gonna object unless she
21 personally collected the evidence.

22 MR. GRAHAM: That's what their case was they were
23 investigating, was a missing persons case. He's gonna
24 have the chance.

25 THE COURT: Okay.

1 All right. Go ahead and answer the question.

2 THE WITNESS: Investigator Bramlett was crime scene.
3 He collected from Ms. Caralee Berry some items for DNA,
4 and I was in the evidence.

5 BY MR. GRAHAM:

6 Q. Was one of those items an orange razor?

7 A. Yes, sir.

8 Q. Do you have paperwork that reflects what happened?

9 A. Yes, sir, I do.

10 Q. And what does the paperwork show?

11 A. It's an evidence sheet that when we collect evidence
12 we write down the items, who the victim was, the case
13 number, we sign our name and then the person that signs it
14 over to us, and actually the location of where we collect
15 that evidence, which it was collected at West Columbia
16 Police Department.

17 Q. Okay. All the handwriting on this document except
18 for a signature that says relinquished by where it says
19 printed name and signed name, all that other handwriting
20 on there, do you recognize that?

21 A. Yes, I do. It's Chuck's.

22 Q. And what was the date that the evidence was obtained
23 from Ms. Berry?

24 A. March 9, 2015.

25 Q. And you said that this reflects that Ms. Berry came to

1 the West Columbia Police Department?

2 A. Yes. Her signature is there and the West Columbia
3 Police Department address is on the paper. It's 200 North
4 12th Street.

5 Q. And what does it show that Ms. Berry turned over to
6 Chuck Bramlett?

7 A. It shows that Item A is Old Spice Sweat Defense
8 deodorant, B is one Bic razor and, C, is a Gillette razor.

9 Q. And these records are kept in the normal course of
10 business of the West Columbia evidence?

11 A. Yes, sir, they are.

12 Q. And those are the records that you maintain now?

13 A. Yes, sir.

14 MR. GRAHAM: The State would offer the document into
15 evidence, Your Honor.

16 THE COURT: Any objection that document?

17 MR. FLOYD: No objection to the document, Your Honor.

18 THE COURT: Okay. That will be marked as Exhibit 38.

19 (State's Exhibit Number 38, a property receipt, was
20 marked and admitted into evidence.)

21 BY MR. GRAHAM:

22 Q. Investigator McCraw, did you also bring -- what's in
23 box?

24 A. It should be -- it's the two razors that Chuck
25 collected.

1 Q. And that's what was sent to SLED to help develop a
2 DNA profile to match to the body found in Orangeburg?

3 A. Yes, sir, along with the deodorant.

4 Q. Now right now it's got all kinds of yellow tape and
5 red tape. What's is that?

6 A. The yellow tape is from SLED. Once we submit it to
7 SLED, they seal it in their own packaging and they'll seal
8 it and I'll initial it when I turn it in to them. The red
9 tape is what West Columbia uses and it's got my name and
10 initials.

11 Q. Okay. So the paperwork shows that Chuck Bramlett
12 collected it from Caralee Berry. After Chuck had it, what
13 did he do with it?

14 A. Chuck places it in an evidence bag, a paper bag, and
15 he'll fill that bag out, he'll seal it with evidence tape
16 and that is what is actually carried to SLED, so that's
17 what is in this box.

18 Q. Okay. The next day on the 20th, once Chuck had it,
19 what did he do with it? You said he put it in a bag and
20 sealed it.

21 A. On March 9th, he seals it in a bag, he drops it into
22 -- he does a supplemental saying that he's logging those
23 items into evidence, he drops them in a drop box. The next
24 morning when I come into work to evidence, I log that in
25 into our evidence.

1 Q. Was it properly sealed like it was supposed to be?

2 A. Yes, sir.

3 Q. Did you recognize that Chuck had sealed it and Chuck's
4 initials are on it?

5 A. He put his initials and the date on it.

6 Q. Okay. And that's what's inside this box?

7 A. Yes, sir.

8 Q. Have you verified that?

9 A. Yes, I did. I verified it on 12-7-2016.

10 Q. Okay.

11 MR. GRAHAM: The State would offer this into evidence
12 at this time, Your Honor.

13 THE COURT: Any objection?

14 MR. FLOYD: Your Honor, I'm not sure they can get it
15 into evidence if she didn't personally observe it, so we
16 would object.

17 THE COURT: All right. We'll take that matter up.

18 You-all step in the jury room. I'm gonna put
19 something on the record and I'll have you back in here
20 in just a minute.

21 (Whereupon, the jury retires to the jury room at
22 9:40 AM.)

23 THE COURT: Mr. Graham.

24 (Proceedings held at the bench; not reported.)

25 (Recess taken at 9:41 AM.)

1 (Back on the record at 9:44 AM.)

2 THE COURT: All right. Bring in the jury, please.

3 (Whereupon, the jury returns to the courtroom at
4 9:45.)

5 THE COURT: All right. Mr. Graham, you may continue.

6 MR. GRAHAM: Thank you, Your Honor. I think the
7 State was offering that into evidence and I think -- my
8 understanding is now Mr. Floyd is consenting to that.

9 MR. FLOYD: That's correct, Your Honor. We withdraw
10 our objection.

11 THE COURT: All right. Without objection.

12 MR. GRAHAM: And that is State's --

13 THE COURT REPORTER: 39.

14 MR. GRAHAM: 39, Your Honor.

15 (State's Exhibit Number 39, a box with razors for
16 DNA, was marked and admitted into evidence.)

17 BY MR. GRAHAM:

18 Q. I would ask you, Investigator McCraw, to go ahead and
19 open that for us.

20 A. (Witness complies.)

21 Q. So when we look inside, what is it -- what is the bag
22 that we see?

23 A. That's our evidence bag that we use at West Columbia
24 that Chuck filled out and then it's also got his red
25 evidence tape along with his initials and date.

1 Q. So the practice is that once an item like this has
2 been collected, it would be put in paper bag, sealed with
3 the red evidence tape and initialled and then turned in to
4 either a custodian or a drop box?

5 A. Correct.

6 Q. In this case turned it in to a drop box?

7 A. Yes, sir.

8 Q. The writing on the outside of the bag is whose
9 handwriting?

10 A. It's Chuck's.

11 Q. And it says that it contains what?

12 A. It says it contains two razors belonging to Adam
13 Berry.

14 Q. Once you received this box, when you came to work the
15 following day, what, if anything, did -- I'm sorry not the
16 box. Once you came into work the following day after the
17 19th I believe it was -- or was it the 9th?

18 A. The 9th.

19 Q. The 9th. After you came in the next day, what, if
20 anything, did you do with this bag?

21 A. I take it and I log it in to our computer and then I
22 tag it, which it has my initials and the date and the
23 description of the item.

24 Q. Okay. At some point did you take it up to SLED?

25 A. I did that afternoon.

1 Q. Do you know who you -- can you describe the process
2 at SLED when you turn items in?

3 A. We take our evidence to SLED and meet with one of
4 four ladies and it was Jennifer Aycock that actually
5 processed my evidence that I brought to her.

6 Q. Okay. So when you took this bag that was sealed --
7 you never went into it at the time, did you?

8 A. No, I did not.

9 Q. So it was sealed like it is sealed today and you took
10 it up to SLED and gave it to Jennifer Aycock?

11 A. That's correct.

12 Q. In the time that you had this in your possession,
13 did you go into this bag, did you manipulate it or change
14 anything inside of it?

15 A. No, I have not.

16 Q. Okay. So it's the way it was when Chuck collected
17 it?

18 A. Correct.

19 Q. You turned it over to them and what did SLED do with
20 it?

21 A. They log it into their system and they place it in
22 this box along with their labels, their lab numbers, and
23 the yellow evidence tape is theirs, I initial and date it,
24 and then they log it into their system.

25 Q. So at SLED when you handed them the bag prior to the

1 bag going into the box and this box being sealed, did the
2 bag ever leave your sight?

3 A. No, it did not.

4 Q. So it was put in this box and then sealed in your
5 presence?

6 A. Yes. That's correct.

7 Q. And you actually initialled it; is that correct?

8 A. Yes, sir.

9 MR. GRAHAM: Please answer any questions that
10 Mr. Floyd has.

11 MR. FLOYD: No questions, Your Honor.

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

13 (Witness excused.)

14 MR. GRAHAM: The State calls Caralee Berry.

15 (Whereupon, Caralee Berry was duly sworn by the
16 Clerk of Court.)

17 THE CLERK: Once you're seated, state your full name;
18 spelling your last for the record, please.

19 THE CLERK: Caralee Berry. Caralee is C-A-R-A-L-E-E.
20 Berry, B-E-R-R-Y.

21 CARALEE BERRY,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q. Good morning, Ms. Berry.

1 A. Good morning.

2 Q. I'm sorry you have to be here today.

3 A. (Nods head.)

4 Q. The reason I called you to the stand was to talk
5 about the razors that you heard about just being testified.
6 When your son, Adam, went missing my understanding was
7 that there was a body found in Orangeburg County in a car
8 and that West Columbia asked you to bring items that might
9 help develop a DNA profile to determine if that was Adam's
10 body which, in fact, it turned out to be Adam's body,
11 correct?

12 A. Correct.

13 Q. Do you remember taking two razors to the West Columbia
14 Police Department and handing them to Investigator Chuck
15 Bramlett?

16 A. As I recall, it was one razor and one deodorant.

17 Q. Let me show you State's Number 38. That's a document
18 that's called receipt of property from West Columbia that
19 Investigator McCraw just testified to showing an Old Spice
20 deodorant, a Bic razor and a Gillette razor and then your
21 signature. Is that your signature?

22 A. That is my signature.

23 Q. So you do remember him giving -- you do remember
24 giving him one razor or two razors or --

25 A. I recall one razor and the deodorant.

1 Q. At least one?

2 A. (Nods head.)

3 Q. Okay.

4 MR. GRAHAM: I don't -- unless Mr. Floyd requires me
5 to, I'm not gonna pull the razors out and show them since
6 they're already in evidence.

7 MR. FLOYD: I don't require that.

8 THE COURT: Okay.

9 MR. GRAHAM: Thank you, Ms. Berry.

10 CROSS-EXAMINATION

11 BY MR. FLOYD:

12 Q. Hello, Ms. Berry.

13 A. Hello.

14 Q. Ms. Berry, did you gather the razors yourself?

15 A. No, sir.

16 Q. And who gathered the razors?

17 A. Christina Peacock.

18 Q. And so you just took what was given to you to West
19 Columbia?

20 A. She collected them and I rode with her to the police
21 department.

22 Q. So you didn't -- you didn't personally collect those
23 items of Adam's personally?

24 A. No, sir.

25 MR. FLOYD: Thank you. No further questions, Your

1 Honor.

2 THE COURT: Mr. Graham.

3 REDIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q. You took those there as your son Adam's -- for them to
6 develop DNA, right?

7 A. Yes, sir. I did not collect them myself though.

8 Q. But you know that those are Adam's razors?

9 A. Personally, no. I was not with him. I did not see
10 him use those -- the deodorant or the razors honestly.

11 Q. Then why did you take them there?

12 A. Christina Peacock and myself went to the West Columbia
13 Police Department to -- for them to swab my mouth and for
14 those items to be given to them for DNA.

15 Q. Was Christina there with you at the time?

16 A. Yes, sir.

17 Q. So she's the one that actually handed the razors to
18 you and then you -- and she was with you?

19 A. Yes, sir.

20 Q. And then she handed them -- she handed them to you,
21 you handed them to Chuck Bramlett?

22 A. Well, they came out to the front area, you know, the
23 doors, and I asked if they wanted her to come back there,
24 they said no, so I got the bags from her in front of them
25 and she -- from my hand to their hand and then I went in

1 the office, there was a male and a female, when they took
2 the razor and the deodorant and they swabbed my mouth.

3 MR. GRAHAM: Thank you, Ms. Berry.

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

5 (Witness excused.)

6 MR. GRAHAM: The State calls Beth Holliman.

7 (Whereupon, Beth Holliman was duly sworn by the
8 clerk of Court.)

9 THE CLERK: Once you're seated, state your full name;
10 spelling your last.

11 THE WITNESS: Margaret Elizabeth Holliman,
12 H-O-L-L-I-M-A-N.

13 MARGARET ELIZABETH HOLLIMAN,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q. Ms. Holliman, where are you employed, ma'am?

18 A. I'm currently employed by the Lexington County
19 Sheriff's Department in the evidence division.

20 Q. And what do you do?

21 A. I'm an evidence custodian.

22 Q. And what is an evidence custodian?

23 A. Evidence custodians are responsible for the care,
24 custody and control of all evidence, found property and
25 seized property that's brought in by the officers or

1 investigators.

2 Q. As part of your -- how many people work there in the
3 evidence control room?

4 A. We have three evidence custodians; a sergeant, myself
5 and Candy Kyzer.

6 Q. As part of your job, you maintain what's turned in,
7 keep track of it and make sure it's not tampered with,
8 correct?

9 A. That's correct.

10 Q. And you also facilitate the transfer of items to go to
11 SLED or other places for processing and testing?

12 A. That's correct.

13 Q. And you retrieve those items and store them until
14 trial; is that correct?

15 A. Yes.

16 MR. GRAHAM: Your Honor, although this will be
17 boring, it goes to the chain of custody of all these
18 items going to SLED.

19 BY MR. GRAHAM:

20 Q. Item Number 77484 is the victim's blood from autopsy.
21 That's what Investigator Phipps testified that he collected
22 in a -- from the autopsy and the serology package from
23 Dr. Ross and he stated he turned that in to the Lexington
24 County Sheriff's Department evidence control. Can you tell
25 the jury what the chain of custody is and how that works

1 once he turns it in?

2 A. Once the officers or investigators turn in evidence,
3 we do verify that the seals are intact and that the
4 appropriate initials are on them. Once that happens, we
5 accept that property and then we store it until it's sent
6 for testing.

7 Q. Okay. Can you tell the jury -- so once that item
8 is turned in, can you or anybody in evidence control
9 manipulate it or change it?

10 A. It is not.

11 Q. Can you tell the jury when this item went to SLED,
12 who received it from Mr. Phipps and how it made its way to
13 SLED?

14 A. Absolutely.

15 All right. PR Number 77484, which is identified as a
16 tube of pulmonary blood for DNA, was obtained from Newberry
17 Hospital by Investigator Phipps. It was recovered from
18 James Galloway at the autopsy. It was turned over to Candy
19 Kyzer on 5-21-2014 at 11:41.

20 Q. And how was it turned over at SLED?

21 A. It was turned over to SLED by Candy Kyzer and it was
22 received by Amy Stephens.

23 Q. Can you explain the process of how items are turned
24 over from your agency to SLED?

25 A. Sure. Once we receive notification that an item needs

1 to be sent to SLED for testing, we then go to our evidence
2 control room wherever that item is stored, pull that item,
3 verify that that is the item that needs to be sent, and
4 then we take it over to SLED. When we get to SLED, we have
5 paperwork that we fill out with SLED indicating what items
6 we're turning in, we verify the seals, seal it in a SLED
7 package, sign the front of the package, initial the seal,
8 and then it's left with SLED.

9 Q. Item 1.1, which is a SLED number, is your 87821. I
10 believe you brought that up with you this morning?

11 A. I did.

12 Q. And that is designated as a victim's known standard
13 that was created at SLED; is that correct?

14 A. It was, yes.

15 Q. There is a portion of the chain -- so the item that
16 we just talked about, 77484, the victim's blood from the
17 autopsy, it goes to SLED, they create what's known as a
18 blood standard that they use in DNA testing, and it's made
19 its way back to you and there is a chain of custody, I
20 believe, from your department on that item; is that
21 correct?

22 A. It is, yes.

23 Q. And would you explain to the jury where and how you
24 got that item or your office got that item and what you did
25 with it?

1 A. Sure. From time to time we take items to SLED and
2 they create an item from that, and that's what happened in
3 this case. Blood is sent over there in a tube like you
4 would if you go to your doctor and have a blood sample
5 taken. It's taken the same way. Once that is done, it
6 goes to SLED and they do whatever process they do and it
7 creates that blood standard. That blood standard came
8 from SLED and it was given to Candy Kyzer. Once that
9 standard is created, it's then a new item of evidence for
10 us, so she's the initial person receiving it.

11 Q. And that is your 87821. So does your evidence show
12 when she got that from SLED and then what happened to it?

13 A. Yes, she received this item from SLED. She signed it
14 in on 9-17-2015 and it appears that it did go back to SLED
15 for an additional testing of some sort.

16 Q. And do you know when she took it to SLED and who she
17 turned it over to?

18 A. It appears 12-7-2016 she took it back to SLED and then
19 it was received by Amy Stephens.

20 Q. Is there any other -- has anybody else from Lexington
21 County touched that?

22 A. No.

23 Q. Okay.

24 MR. GRAHAM: Your Honor, the State would offer the
25 blood standard developed by SLED into evidence.

1 MR. FLOYD: No objection, Your Honor.

2 THE COURT: Without objection, that would be State's
3 40?

4 THE COURT REPORTER: Yes.

5 (State's Exhibit Number 40, a DNA standard, was marked
6 and admitted into evidence.)

7 BY MR. GRAHAM:

8 Q. The next item I want to talk about is your Item 77518,
9 and that is the .380 pistol with the magazine, which is
10 State's Exhibit Number 30, Crime Scene Number 9.

11 Looking at State's Exhibit 30, do you recognize that?

12 A. Yes, I do.

13 Q. Okay. And would you explain the chain of custody on
14 that item from the Lexington County Sheriff's Department's
15 standpoint?

16 A. This item was recovered from CSI Mike Phipps. It
17 was recovered from the kitchen counter. The location is
18 ■ 6 Dogwood Road in the Pine Ridge community. I actually
19 received this item directly from Investigator Phipps on
20 May 22, 2015, at approximately 17:15 hours, which is
21 5:15 in the afternoon.

22 Q. Okay. What, if anything -- who did you get it from
23 and where did it go after you received it in?

24 A. I got it from Mike Phipps and placed it in our gun
25 control room. Our gun room and evidence room in general

1 is built similar to a bank vault, so the security in it is
2 quite extensive. Mike Phipps handed it to me, I then put
3 it in the gun room. Later on, on April 15th of 2015, Candy
4 Kyzer -- I'm sorry, on January 16, 2015, Candy Kyzer took
5 it out of our gun control room and took it to SLED for
6 testing and released it to Doris Yarborough, also known as
7 Dotie.

8 Q. And for each and every one of these items we're gonna
9 discuss, neither your sergeant -- once you-all take it in,
10 you-all don't do anything do it; is that correct?

11 A. Correct.

12 Q. So none of these items have been changed once they
13 were received in, from the time you-all hold them until
14 the time you take them to SLED?

15 A. Correct.

16 Q. And the next item I want to discuss the chain on --

17 MR. FLOYD: Your Honor, may we approach a moment?

18 THE COURT: Sure.

19 (Proceedings held at the bench; not reported.)

20 MR. GRAHAM: For the record, Your Honor, it's my
21 understanding that Mr. Floyd has stipulated to the chain
22 of custody as far as the Lexington County Sheriff's
23 Department and also the chain of custody for SLED. We
24 will call the people who created any items at SLED and we
25 will call any of the analysts who performed any of the

1 examinations.

2 THE COURT: Is that accurate?

3 MR. FLOYD: That's correct, Your Honor.

4 THE COURT: All right. Let me explain that to the
5 jury.

6 What that means is the first person that picks up a
7 piece of evidence, that's the start of the chain. It goes
8 to SLED, that's the end of the chain. There's people in
9 the middle that take it, hand it off, transport it, take
10 it from the front room to the back room, to the lab room.
11 They're agreeing to all of those people in the middle now.
12 That's what they just discussed and so we're gonna cut to
13 the end as to what was done with those items and agree
14 that it got to the right analyst or tester or whatever,
15 chemist, whichever the case may be, they're coming later,
16 but we're good on the chain and getting there to SLED.
17 The stipulation means they agree.

18 MR. FLOYD: Were you finished, Shawn? I just have
19 one question. That's all.

20 CROSS-EXAMINATION

21 BY MR. FLOYD:

22 Q. Ms. Holliman, I don't know if I understood you
23 correctly. Did you say the blood was taken back to SLED
24 December 7th of '16?

25 A. Which sample are you referring to, sir?

1 Q. I think 77484, the victim's blood.

2 A. I'm sorry. It will take me just a minute to get to
3 that one.

4 77484 was taken to SLED for testing on June 6th of
5 2014.

6 Q. Okay. Did I misunderstand that December 7, 2016?

7 A. I don't show a December movement for that item.

8 MR. FLOYD: Okay. Thank you.

9 THE COURT: Anything further, Mr. Graham?

10 MR. GRAHAM: No, Your Honor.

11 THE COURT: Okay. You may step down.

12 (Witness excused.)

13 MR. GRAHAM: The State calls Verona Herrera.

14 (Whereupon, Verona Herrera was duly sworn by the
15 Clerk of Court.)

16 THE CLERK: Have a seat, ma'am. Once you're seated,
17 state your full name; spelling your last, please.

18 THE WITNESS: My name is Verona Herrera,
19 H-E-R-R-E-R-A.

20 VERONA HERRERA,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. Ms. Herrera, where are you employed and what do you
25 do?

1 A. I am a forensic serologist at the State Law
2 Enforcement Division or what we refer to as SLED.

3 Q. And how long have you worked for SLED?

4 A. Approximately eight and a half years.

5 Q. And what is your job at SLED?

6 A. We identify and narrow down areas of testing for DNA
7 and identifying bloody fluids.

8 Q. Let me show you an item that is currently marked as
9 State's Number 40 in evidence and ask you if you recognize
10 it?

11 A. I do. The inter-packaging has my initials and date
12 that I sealed the package and our lab number and the item
13 number on there.

14 Q. Can you explain for the jury what you did in this
15 case?

16 A. Sure. We received a tube of blood similar to what
17 your doctor would take when you're giving blood for a test.
18 We pour a small portion of that blood onto a piece of
19 sterile paper, dry it and label it and then package it up
20 for it to be used in the DNA analysis.

21 Q. Let me show you State's Number 34. Do you recognize
22 that as being the tube of blood that you used to create the
23 standard?

24 A. Yes, sir. This is the tube of blood. Our case
25 number, the item number and my initials on the seal here,

1 as well as on the bag on the inside.

2 Q. So, Ms. Herrera, after you took the tube of blood
3 that's State's 34, what is the purpose of you creating
4 Item -- the SLED Item 1.1, which is State's Number 40?

5 A. Blood in a dried form is easier to store and also the
6 DNA lasts longer that way, so we pour a small portion of
7 that blood so it can be in a stable form for storage.

8 Q. Do you know what you did -- so once you do it and it
9 dries, what do you do with it?

10 A. I package it in a coin envelope in a heat-sealed pouch
11 and in this case, I returned it to our evidence control
12 department to Jennifer Aycock.

13 Q. When it leaves your hands, is it sealed?

14 A. Yes, sir, it is.

15 Q. People along the way can tell whether it's been
16 tampered with or not, correct?

17 A. Yes, sir, they can.

18 Q. Okay.

19 MR. GRAHAM: I believe that's all the questions I
20 have for Ms. Herrera. Thank you, ma'am.

21 THE COURT: All right. Mr. Floyd?

22 MR. FLOYD: No questions, Your Honor.

23 THE COURT: You may step down.

24 (Witness excused.)

25 MR. GRAHAM: The State calls Tom Darnell.

1 (Whereupon, Thomas Edward Darnell was duly sworn by
2 the Clerk of Court.)

3 THE CLERK: Once you're seated, state your full name;
4 spelling your last, please.

5 THE WITNESS: My name is Thomas Edward Darnell,
6 D-A-R-N-E-L-L.

7 THOMAS EDWARD DARNELL,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q. Mr. Darnell, where are you employed, sir?

12 A. I'm employed as a latent print examiner at SLED here
13 in Columbia.

14 Q. How long have you worked for SLED?

15 A. A total of about twenty-four years.

16 Q. How long have you been a latent print examiner?

17 A. Pretty much all that -- all that time.

18 Q. What is that, a latent print examiner?

19 A. A latent print examiner is an individual such as
20 myself who has been through training and so forth to --
21 to allow me to be able to process physical evidence to
22 try and determine if fingerprints are present on items
23 of evidence and -- and if there are prints that are
24 developed, I then compare those prints to known
25 individuals to determine if I can determine who left the

1 print.

2 Q. How many times have you been qualified as an expert
3 in latent print examinations?

4 A. Probably 125 or so times over the entire state and
5 some out-of-state work as well.

6 MR. GRAHAM: Your Honor, at this time the State
7 would offer Mr. Darnell as an expert in latent print
8 examination.

9 THE COURT: Any questions regarding his
10 qualifications?

11 MR. FLOYD: No, Your Honor.

12 THE COURT: All right, folks. Mr. Darnell, Agent
13 Darnell, has been qualified as an expert in the field
14 of latent print examination, which means he can offer
15 opinions in that field, as well as eyewitness testimony.

16 All right.

17 MR. GRAHAM: Thank you, Your Honor.

18 BY MR. GRAHAM:

19 Q. Did you have an opportunity to evaluate several items
20 for latent prints in this case and also to actually create
21 some swabs for DNA analysis?

22 A. Yes, I did.

23 Q. Let's go through what you did. The first item you
24 processed was what is known as SLED's Item Number 6; is
25 that correct?

1 A. Yes, sir.

2 Q. What is SLED Number 6?

3 A. SLED Number 6 was a Diamondback .380 caliber pistol
4 and it also had an empty pistol magazine with it.

5 Q. Let me show you State's Number 30 and ask if you
6 recognize that?

7 A. Yes, I do.

8 Q. How do you recognize that?

9 A. Do you want me to open it up?

10 Q. (Nods head.)

11 A. This is the pistol that I processed. It has my
12 initials, item number and laboratory number that I've
13 written -- actually written on the item of evidence, as
14 well as on the outside of the box itself.

15 Q. When those came to you, it was properly sealed?

16 A. Yes, sir.

17 Q. If it had been tampered with, you would have made note
18 of that in your file?

19 A. That's correct. We have very -- very strict rules on
20 how to deal with anything that might come in unsealed, but
21 in this case it was properly sealed.

22 Q. Can you describe to the jury what, if anything, you
23 did to try to find latent prints on SLED Number 6, that
24 .380 pistol and the empty magazine?

25 A. Yes, sir. I -- as with all evidence, the first thing

1 I do is just do a visual examination. I use lights and
2 magnification, and that's what I did with all of the
3 evidence. I went through two different processes in an
4 attempt to develop prints on the pistol, as well as the
5 magazine.

6 Q. And were you successful?

7 A. I was able to develop signs of there being
8 fingerprints, but there just wasn't enough detail to be
9 able to compare to anything.

10 Q. In addition to that, the next item, that would have
11 been -- the next item you analyzed was SLED Number 8; is
12 that correct?

13 A. Yes, sir.

14 Q. What was that?

15 A. That was the -- it was an empty Diamondback pistol
16 magazine.

17 Q. Let me show you State's Number 27 and ask if you
18 recognize that as being SLED Item 8 that you're discussing?

19 A. Yes, sir, and it has my lab number, item number and
20 initials on the item itself and on the container.

21 Q. And did you process that for latent prints?

22 A. Yes, I did. I went about it --

23 Q. Go ahead and explain to the jury what you did.

24 A. I went about it the same way as with the pistol, a
25 visual, and then I had two separate techniques that I used.

1 And, again, the same result, no value for comparison.

2 Signs of being prints, but there just wasn't enough there
3 to be able to tell whose they might be.

4 Q. So, again, there wasn't anything of value from that;
5 is that correct?

6 A. That's correct.

7 Q. What, if anything, did you do regarding that .380
8 magazine? Again, what did you observe on it, what did you
9 do?

10 A. The magazine came in with three requests. When it
11 came in from the local department, in this case being the
12 sheriff's department, it came in with three requests; DNA
13 blood, DNA touch and latent prints. Prior to me doing any
14 latent processing, I make any necessary swabs in an attempt
15 to collect any evidence that could be analyzed by the DNA
16 department. In this case, there appeared to be some --
17 what we refer to as reddish-brown stains on the magazine,
18 and I collected those with a sterile swab, allowed them
19 to air dry, and then they were packaged properly and
20 transferred to DNA.

21 Q. And the next item you analyzed was what?

22 A. It would have been SLED's Item Number 9. It was the
23 -- actually the -- a case that the -- for the pistol, a
24 Diamondback pistol case.

25 Q. Let me show you State's Number 31 and ask if you

1 recognize that as being the pistol case that you're
2 referring to?

3 A. Yes, sir. And, again, my initials are on the item and
4 on the bag itself.

5 Q. And it was like -- it was properly sealed when you got
6 it and sealed when it left your presence?

7 A. Yes, sir.

8 Q. What were your findings as to that item?

9 A. Once again, no value for comparison. Again, prints
10 were there, but I just couldn't tell whose they were.

11 Q. Meaning they weren't good enough to use as
12 comparisons?

13 A. Right. When I do a comparison, I have to have a
14 certain level of quality, a certain level of clarity to be
15 able to make a comparison, and it just did not exist, so
16 all I can say is that there were prints, but they were of
17 no value for comparison. They could be anyone's.

18 Q. In addition to looking for latent prints on SLED
19 Number 9, which was the Diamondback pistol case, did you
20 also create a touch DNA swab for that item?

21 A. I did. I swabbed the -- the handle of the case. Any
22 time we get evidence in that has more than one request,
23 such as in this case I had a DNA request and I had a latent
24 request, so I've got to determine, you know, which area am
25 I gonna swab. I don't want to swab the entire case because

1 I want to have a chance to get prints, too. So in this
2 case with this particular item, the logical place seemed
3 like to swab the handle of the case, so that's what I did.

4 Q. And the next item that you processed was what?

5 A. It would have been a Phillips -- one Stanley Phillips
6 head screwdriver.

7 Q. So looking at State's Number 29, do you recognize
8 that?

9 A. Yes, I do. This is the screwdriver that I received,
10 Item 10, with my initials.

11 Q. And did you process the screwdriver for latent prints?

12 A. I did.

13 Q. And what, if anything, did you find?

14 A. No value for comparison.

15 Q. Did you do any other further examinations as far as
16 creating any swabs on that item?

17 A. Yes, sir. There also appeared to be reddish-brown
18 stains on the handle of the screwdriver and I was able to
19 swab certain areas of the handle, again, with a sterile
20 swab and then they were sent to DNA.

21 Q. The next item you analyzed, what was that?

22 A. It was a Northwest trail knife as I have it listed
23 here.

24 Q. Let me show you State's Number 32 and ask if you
25 recognize that?

1 A. Yes, sir. This appears to be the knife with my
2 initials and item number and lab number.

3 Q. And did you process that item for latent prints?

4 A. I did, and with the same result. That it was, again,
5 no value for comparison.

6 Q. And did you create any swabs from the knife?

7 A. I did. The same thing as the -- with the
8 reddish-brown stains were collected from the knife.

9 Q. How many reddish-brown stains were there on the knife
10 that you collected?

11 A. I swabbed some from the knife blade and also from the
12 handle itself.

13 Q. The next item that you looked at were -- was what?
14 Items 12 -- SLED items 12, 13, 14, 15, 16 and 17?

15 A. Yes, sir.

16 Q. What were those?

17 A. Items 12 through 17 were cartridges and/or cartridge
18 cases that were submitted together. A total of six it
19 appears.

20 Q. Let me show you an item and ask -- these came out of
21 what had previously been in State's Number 30 and let me
22 ask if you recognize those?

23 A. Yes, and actually I -- I misspoke. These are actually
24 cartridges, these aren't cartridge cases. These are
25 unfired bullets, if you will, and these are the ones that

1 I examined on that date. Again, with my initials and item
2 numbers.

3 Q. What, if anything, did you do with the bullets that
4 came from the gun?

5 A. I swabbed the headstamps of those cartridges in an
6 attempt to collect any touch DNA that might be present
7 and/or blood and I also processed each of those for latent
8 prints, fingerprints, and there was no fingerprint evidence
9 observed.

10 Q. In addition to those unfired cartridge cases, did you
11 also look at other unfired cartridge cases from another
12 magazine?

13 A. Yes, sir. There were my Items 18 through 23.

14 Q. Let me show you State's Number 28 and ask if you
15 recognize those as being the same items?

16 A. Yes, sir. These appear to be the same ones that I
17 processed. It has my initials and item number.

18 Q. What were your findings as to those bullets?

19 A. I swabbed the headstamps of those as well for any
20 touch DNA or blood that might be present and I processed
21 each of those for fingerprints and there were no
22 fingerprint evidence observed.

23 Q. So if I understand correctly, Mr. Darnell, with
24 everything you processed you found no useable latent
25 prints that you could compare against anybody; is that

1 correct?

2 A. That would be correct.

3 Q. And you created multiple swabs for DNA?

4 A. Yes, sir.

5 Q. Okay. You created 8.1, which was a swab from a
6 reddish-brown stain on a pistol magazine?

7 A. Yes, sir.

8 Q. You created 9.1, which is the touch DNA swab from the
9 pistol case handle?

10 A. Yes, sir.

11 Q. You created 10.1, which was reddish-brown stains on a
12 screwdriver?

13 A. Yes, sir.

14 Q. You created 11.1, which was from reddish-brown stains
15 on the handle and the blade of the knife?

16 A. Yes, sir.

17 Q. You created one swab from the six bullets that were
18 in the magazine that was inside the pistol?

19 A. Yes, sir.

20 Q. And you created Item 24, which was a touch DNA swab
21 from the unfired cartridge cases that were in the other
22 magazine; is that correct?

23 A. Yes, sir.

24 Q. Let me show you an item and ask if you recognize this
25 as containing all six of those swabs that you created?

1 A. Yes, sir. This -- this appears to be the -- actually
2 this may not be -- actually -- okay. I see. My pouch is
3 -- the pouch that I put all the envelopes in is actually
4 inside of this pouch, it's folded up inside here, and I've
5 got each item number listed. They were individually
6 packaged and sealed in little small -- what we call coin
7 envelopes with evidence tape placed on the outside, proper
8 markings, dated, initialled, sealed up and then transferred
9 to our evidence control department who will then distribute
10 to the proper department.

11 Q. So when all of the -- all of these items, you created
12 them and you sealed them and when they left your presence
13 they were sealed so that they couldn't be tampered with; is
14 that correct?

15 A. That's correct. In fact, our evidence control
16 department won't even take it if it's not sealed.

17 MR. GRAHAM: The State would offer these six swabs
18 into evidence, Your Honor.

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: The six swabs will be admitted as 40?

21 THE COURT REPORTER: 41.

22 THE COURT: State's 41.

23 (State's Exhibit Number 41, swabs, was marked and
24 admitted into evidence.)

25 MR. GRAHAM: Your Honor, that's all the questions I

1 have for Mr. Darnell. Thank you.

2 MR. FLOYD: No questions, Your Honor.

3 THE COURT: You can step down.

4 (Witness excused.)

5 THE COURT: Let's take about a ten minute break or
6 a little better. You-all step in the jury room. If you
7 need to step outside, you can. We'll take a few minutes
8 and have you-all back in here.

9 (Whereupon, the jury retires to the jury room at
10 10:29 AM.)

11 THE COURT: We'll stand at ease.

12 (Recess taken at 10:29 AM.)

13 (Back on the record at 10:42 AM.)

14 BAILIFF: Please keep your seats. The Court will
15 now come to order.

16 THE COURT: Okay. Be seated.

17 All right. Did you-all resolve that issue?

18 MR. GRAHAM: I'm still waiting on an answer, Your
19 Honor.

20 THE COURT: All right.

21 MR. GRAHAM: He says he can't stipulate to it, Your
22 Honor. I can do one more witness and then --

23 THE COURT: We'll have an early lunch?

24 MR. GRAHAM: I mean, we can skip to Kathy Polk after
25 that and Tonya Griffin. Tonya Griffin would have been the

1 one that she traded the text with. That would be our next
2 witness. And we'll push on as far as we can.

3 THE COURT: Okay.

4 All right. Bring in the jury in.

5 MR. GRAHAM: I do have a question. It's already in
6 evidence, so is it a weight -- I mean, it's already
7 admitted, so it's just a weight issue?

8 And the jury is walking in, Your Honor.

9 THE COURT: I'll answer that later.

10 (Whereupon, the jury returns to the courtroom at
11 10:44 AM.)

12 MR. GRAHAM: The State calls Jaclynn McKay, Your
13 Honor.

14 (Whereupon, Jaclynn McKay was duly sworn by the
15 Clerk of Court.)

16 THE CLERK: Once you're seated, state your full name;
17 spelling your last, please.

18 THE WITNESS: My name is Jaclynn McKay. First name's
19 spelled J-A-C-L-Y-N-N. Last name, M-C-K-A-Y.

20 JACLYNN MCKAY,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. Ms. McKay, where are you employed?

25 A. I am currently employed at SLED.

1 Q. And how long have you worked for SLED?

2 A. I've worked for SLED for almost two years.

3 Q. In what capacity are you employed at SLED?

4 A. At SLED I work as a forensic serologist in the DNA
5 casework department.

6 Q. And what is a forensic serologist?

7 A. A forensic serologist works to detect or identify body
8 fluids, such as blood, semen and saliva. We analyze items
9 of evidence submitted to the DNA casework department for
10 these biological fluids. We perform visual, chemical and
11 microscopic examinations in order to find them. If they
12 are detected, we then take cuttings or swabs and forward
13 them to the DNA section for further analysis. I write
14 reports based on my findings and participate in the
15 technical review process of my fellow serologists' reports
16 and testify on my findings, if needed.

17 Q. What is your background and education as far as
18 serology?

19 A. I have a bachelor's of science degree in forensic
20 science with minors in both chemistry and biology
21 from the Virginia Commonwealth University.

22 Q. And what kind of on-the-job training have you received
23 as far as performing serological examinations?

24 A. Upon my employment at SLED, I participated in their
25 six month in-house training program. This training program

1 was administered under a court-qualified forensic
2 serologist. As part of this training program, I learned
3 about the laboratory's policies and procedures, I shadowed
4 my fellow serologists, I performed analyses on training
5 samples, I performed supervised casework and the training
6 program culminated in a five-part competency test that
7 included a written exam, oral exam, report writing, a mock
8 court trial and performing analyses on a mock case. Once
9 I passed this competency test, I was deemed competent to
10 perform independent casework in the field of forensic
11 serology.

12 Q. And, in fact, did you perform independent casework on
13 this case?

14 A. Yes, sir, I did.

15 MR. GRAHAM: Your Honor, the State would offer
16 Ms. McKay as an expert in forensic serology.

17 THE COURT: Any voir dire on her qualifications?

18 MR. FLOYD: No questions, Your Honor.

19 THE COURT: No questions. She's qualified as an
20 expert in the field of forensic serology.

21 BY MR. GRAHAM:

22 Q. Ms. McKay, let me show you what's been marked as
23 State's Number 26 for ID. Do you recognize that bag?

24 A. I do recognize it. It has the lab number, as well as
25 my initials and the items numbers and the dates that I

1 processed these items.

2 Q. When you received that item at SLED, was it properly
3 sealed?

4 A. When I received this, it was in a box and the box was
5 properly sealed and I have no documentation that there was
6 any tampering of evidence.

7 Q. What, if anything, did you do as far as the
8 examination of those two shirts? I believe one shirt's
9 red and one shirt's blue; is that correct?

10 A. That is correct. I opened the bag and I visually
11 looked at both of the shirts for potential blood stains.
12 When I found areas of interest, I tested them with a
13 three-part chemical test. A positive for this test would
14 result in almost an immediate pink color change and then
15 I took cuttings from both of the shirts and forwarded
16 them to the DNA section for further testing.

17 Q. Would you describe -- did you -- were you able to
18 process the shirts? There's different types. You're
19 looking for blood, but you're also looking potentially
20 for ownership. Would you explain to the jury what the
21 difference is?

22 A. So for ownership, when there's a request for ownership
23 on the T-shirts, we scrape the areas that are really close
24 to the skin in order to try to find DNA from the person
25 that was specifically wearing the shirt. As far as blood,

1 we look for areas of possible bloodstaining present.

2 Q. Were you able to do anything to confirm ownership on
3 these two shirts?

4 A. No, I was not. Due to the significant amount of
5 possible bloodstaining present, I was unable to confirm
6 any ownership.

7 Q. As far as the bloodstaining, what was the purpose of
8 your analysis? What were you trying to find? What did
9 you do?

10 A. I was trying to find -- to capture multiple bleeders
11 in this case, so I took cuttings on opposing sides of each
12 of the shirts. I tried to look for staining that was thick
13 and would possibly yield a good DNA profile and I tried to
14 find stains that were outlying and had a very strong color
15 change in the chemical test that I performed and I took two
16 cuttings from each of the shirts and forwarded those to the
17 DNA section.

18 Q. Specifically let's talk about the blue shirt, which
19 was SLED Number 26. You said you took two cuttings from
20 that shirt?

21 A. Yes, sir.

22 Q. Can you tell me where the cuttings were located on the
23 shirt?

24 A. On the blue shirt, I took one cutting from the
25 exterior left chest area of the shirt and I took a second

1 cutting from the exterior middle lower rear of the shirt.

2 Q. Looking at State's 6, 7, 8 and 9, do you recognize
3 those?

4 A. Yes, I do. In the photos, I have my initials, the
5 lab number and the item number in each photo.

6 MR. GRAHAM: Your Honor, if I could ask the witness
7 to step down from the stand?

8 THE COURT: Yes.

9 MR. GRAHAM: And bring your report with you, please.

10 THE WITNESS: Okay.

11 (Whereupon, the witness steps down from the stand.)

12 BY MR. GRAHAM:

13 Q. So the blue shirt, which is shown in State's 6 and 7,
14 correct?

15 A. (Nods head.)

16 Q. That's SLED Item 26?

17 A. Correct.

18 Q. You created 26.1 and 26.2, which were cuttings from
19 this shirt, correct?

20 THE COURT REPORTER: You're gonna have to speak up,
21 please?

22 MR. GRAHAM: Please stand over here and speak up
23 loudly for her.

24 BY MR. GRAHAM:

25 Q. 26.1 came from where on the shirt?

1 A. 26.1 came from about right here.

2 Q. So that is on the chest area of the front?

3 A. Yes.

4 Q. Okay. Did you perform a serological examination on
5 that to determine the presence of blood?

6 A. I performed a three-part chemical test for blood.

7 Q. And what was your finding on 26.1, the cutting from
8 that part of the shirt?

9 A. I got a positive test result.

10 Q. 26.2, that is a cutting from where?

11 A. The exterior middle lower rear of the shirt.

12 Q. So looking at State's Number 7?

13 A. So approximately right here.

14 Q. Did you perform an examination on that cutting?

15 A. That is correct. I performed the same three-part
16 chemical test on that cutting as well and it yielded a
17 positive result.

18 Q. For blood?

19 A. Yes, for possible blood.

20 Q. Looking at State's 8 and 9, that is the red shirt,
21 SLED Item 27; is that correct?

22 A. That is correct.

23 Q. All right. And you, again, created two cuttings from
24 this shirt as well?

25 A. That is correct.

1 Q. Would you tell the jury where you created 27.1 from?

2 A. 27.1 came from approximately here.

3 Q. And did you perform a serological test on that to
4 determine if there was possible blood present?

5 A. Yes, I performed the same three-part chemical test for
6 possible blood and it was positive.

7 Q. 27.2 is a cutting from the back of the shirt. Would
8 that be shown on State's Number 8?

9 A. And that cutting was taken right here.

10 Q. And what was your finding as far as that on your
11 examination of that?

12 A. The test result was positive for possible blood.

13 Q. Ms. McKay, if you'd have a seat back on the stand.

14 A. (Witness complies.)

15 Q. Let me show you an item and ask if you recognize
16 this?

17 A. I do recognize this item. My name is written here,
18 it has the SLED unique lab number and container, my
19 initials are here and date when I sealed it, and this is
20 my handwriting on the coin envelopes.

21 Q. All right. So does that contain the four cuttings
22 that we just discussed, 26.1, 26.2, and cuttings from the
23 blue shirt, 27.1 and 27.2?

24 A. Yes.

25 Q. So you created cuttings, you put them in those coin

1 envelopes, sealed the envelopes, sealed them in a plastic
2 bag, initialled across it and sent it onto DNA; is that
3 correct?

4 A. That is correct.

5 MR. GRAHAM: The State would offer this into evidence,
6 Your Honor.

7 MR. FLOYD: No objection, Your Honor.

8 THE COURT: That would be 42?

9 THE COURT REPORTER: Yes.

10 THE COURT: State's 42 admitted without objection.

11 (State's Exhibit Number 42, cuttings from shirt, was
12 marked and admitted into evidence.)

13 MR. GRAHAM: Thank you, Ms. McKay. Please answer any
14 questions Mr. Floyd has for you.

15 MR. FLOYD: No questions.

16 (Witness excused.)

17 MR. GRAHAM: I beg the Court's indulgence, Your
18 Honor.

19 Your Honor, may we approach?

20 THE COURT: Uh-huh.

21 (Proceedings held at the bench; not reported.)

22 MR. GRAHAM: The State calls Donna Money.

23 (Whereupon, Donna Money was duly sworn by the
24 Clerk of Court.)

25 THE CLERK: Once you're seated, state your full name;

1 spelling your last.

2 THE WITNESS: Donna Money. Last name M-O-N-E-Y.

3 DONNA MONEY,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. Ms. Money, where are you employed?

8 A. I'm currently employed at SLED.

9 Q. And how long have you worked for SLED?

10 A. Approximately four years.

11 Q. And what are your job duties with SLED?

12 A. I'm an analyst in the DNA casework department.

13 Q. And what does your job entail as a DNA caseworker?

14 A. As an analyst in this department, I perform forensic
15 DNA analyses on submitted evidence items and known
16 standards and then conduct comparisons between the profiles
17 developed from these items.

18 Q. And have you been qualified as an expert in South
19 Carolina before in DNA -- forensic DNA?

20 A. Yes.

21 Q. How many times?

22 A. Approximately ten times between state and Federal
23 court.

24 MR. GRAHAM: Your Honor, the State would offer
25 Ms. Money as an expert in the field of DNA -- forensic

1 DNA casework analysis.

2 MR. FLOYD: No questions, Your Honor.

3 THE COURT: No questions on voir dire. She's
4 qualified as an expert in forensic DNA analysis.

5 BY MR. GRAHAM:

6 Q. Ms. Money, did you perform examinations on this test
7 -- I mean, in this case?

8 A. Yes.

9 Q. What did you do?

10 A. I performed DNA analysis on submitted evidence items
11 and two standards.

12 Q. All right. The first item that you analyzed was
13 what? Did you do swabs that came to you from Tom Darnell?

14 A. Yes.

15 Q. Okay. And that would be your numbers 8.1, which is a
16 swab from a pistol magazine; 10.1, swabs from a screwdriver
17 handle; 11.1, swabs from a knife blade handle. You did
18 serological examinations on those items; is that correct?

19 A. Yes.

20 Q. All right. Let me show you State's Number 41 and ask
21 if you recognize that package as containing those three
22 items?

23 A. Yes, this package contains those three items. My
24 initials and the date that I sealed it are here and then my
25 initials and the date on the internal package are present

1 as well.

2 Q. All right. So, particularly, each one, Item 8.1 was a
3 swab from the pistol magazine that was found on the ground
4 outside. What was your serological examination findings on
5 that?

6 A. I performed a presumptive test for blood on this item
7 and my result was it was positive for possible blood.

8 Q. Item 10.1 was a swab of reddish-brown stains on a
9 screwdriver handle. Did you also perform serological
10 examinations on that item?

11 A. Yes, I performed the same type of test as the swabs
12 from the pistol magazine and my result was also positive
13 for possible blood.

14 Q. Item 11.1 was swabs from the handle on a knife blade
15 of a knife. Did you perform serological examinations on
16 that?

17 A. Yes.

18 Q. What were your findings?

19 A. My results from this test were also positive for
20 possible blood.

21 Q. Let me show you several items and ask if you recognize
22 these items. Item -- State's Number 40, which is SLED 1.1,
23 do you recognize that item?

24 A. Yes. My initials and date are present on the outside
25 of this pouch, and then the envelope inside, my initials

1 and date are present where I entered it and sealed it as
2 well.

3 Q. And were you able to develop -- what is Item 1.1?

4 A. SLED Item 1.1 is a dry blood standard from James
5 Galloway.

6 Q. And were you able to develop a full DNA profile?

7 A. Yes.

8 Q. When I say a DNA profile or a full DNA profile, would
9 you explain to the jury what that is?

10 A. A DNA profile is a collection or a combination of a
11 person's DNA types and it is individual to each person
12 except for identical twins, and that is the information we
13 use to conduct comparisons between a known standard from
14 an individual and an item of evidence.

15 Q. And what's the difference between a full and partial?

16 A. So we look at fifteen locations and then a gender
17 location and if one of those locations does not have enough
18 information present, then we deem the profile a partial.

19 Q. And you were able to develop a full DNA profile from
20 the blood standard of the victim in this case?

21 A. Yes.

22 Q. In addition to that, did you also have Item 2.1 from
23 another lab case, L1503281, that you also had developed a
24 DNA profile from?

25 A. I received that evidence months prior for a separate

1 case and I performed DNA analysis on that item at that
2 time. During my analysis for this case, I just pulled the
3 data developed from that -- that separate case and then
4 compared it.

5 Q. Okay. State's Number 39. Do you recognize that as
6 being one of the razors that you developed the alternate
7 profile for Adam Berry?

8 A. Yes. My initials and date are present where I applied
9 the SLED evidence tape on the outside.

10 Q. And were you able to develop a partial or a full DNA
11 profile on that?

12 A. I was able to develop a full profile.

13 Q. So you have a full profile of Jamie Galloway, a full
14 profile of Adam Berry; is that correct?

15 A. Correct.

16 Q. Particularly on this case, did you also look at SLED
17 Number 7, which was State's Number 33, which is a swab
18 created by crime scene investigator Mike Phipps with the
19 sheriff's department from a .380 pistol? And let me show
20 you State's 33 and ask you if that's that item?

21 A. Yes. Again, my initials and date are present on the
22 pouch and also my initials and date are present on the
23 actual swab packaging as well.

24 Q. Were you able to develop a profile off of that?

25 A. I was not.

1 Q. What does that mean when you can't develop a profile?

2 A. When we are unable to develop a profile, it could be
3 because of a handful of reasons; either there was not
4 enough DNA present for us to detect or it's possible that
5 there was no DNA present.

6 Q. So from the swab that was created here, no DNA was
7 developed so you have no opinion as to who, if anyone,
8 handled that gun; is that correct?

9 A. That's correct.

10 Q. Item 8.1 was a swab from the magazine found outside,
11 9.1 was a swab from the case handle, 10.1 was a screwdriver
12 handle, 11.1 was a swab from the knife blade handle.
13 Looking at State's 41, do you recognize those items as
14 being in there?

15 A. Yes. As mentioned before, my dates and initials are
16 on the packaging and also it is marked by Tom Darnell as
17 containing 8.1, 9.1, 10.1 and 11.1.

18 Q. In addition, does that same package in front of you
19 also contain SLED's 24, which were the touch DNA swabs that
20 Mr. Darnell created from the bullets that were inside the
21 magazine inside the pistol?

22 A. That's correct.

23 Q. And SLED 25, which is the swab he created from the
24 cartridges found on the ground?

25 A. Yes.

1 Q. All right. Were you able to develop any profiles from
2 those? And we'll start with 8.1, which is a swab of the
3 pistol magazine found outside. You had previously
4 testified that you performed a serological analysis and
5 that it was positive -- or the reddish-brown stain on the
6 pistol magazine was positive for the presence of blood?

7 A. Yes, it was positive for the presence of possible
8 blood, and once I had forwarded that sample to DNA, I was
9 able to develop a full single profile.

10 Q. And what was your findings when you compared your
11 known standards of Jamie Galloway and the alternate known
12 standard of Adam Berry to your findings on the swab of the
13 pistol magazine?

14 A. If the profile developed from the razor is that of
15 Adam Berry, then the profile developed from SLED Item 8.1,
16 the pistol magazine, matched the profile of Adam Berry.

17 Q. So the DNA profile that you developed from the pistol
18 magazine on the ground matched the alternate for Adam
19 Berry?

20 A. Correct.

21 Q. 9.1, the swab of the pistol case handle, were you able
22 to develop any DNA from that?

23 A. I was unable to develop a profile from that item.

24 Q. Item 10.1, which is a swab from the screwdriver
25 handle, you performed an examination -- a serological

1 examination on that that was also positive for the presence
2 of blood; is that correct?

3 A. Yes, it was positive for the presence of possible
4 blood.

5 Q. And what, if anything, was your finding on that?

6 A. The profile developed from that item was actually a
7 mixture; meaning that two or more individuals' DNA was
8 present. Based on the data developed, it was determined
9 that there was a major contributor and then a minor
10 contributor to this mixture. And major contributor just
11 means an individual was contributing more DNA than other
12 individuals that may have come in contact with that item.
13 The profile of the major contributor matched that of the
14 profile of James Galloway.

15 Q. And that was what was collected from the reddish-brown
16 mixture, correct?

17 A. Correct.

18 Q. Now it tested positive for blood; is that correct?

19 A. It tested positive for possible blood.

20 Q. You said it was Jamie Galloway and an unknown person?

21 A. No, Jamie Galloway was the major contributor. The
22 minor contributor profile was insufficient for
23 interpretation, so I cannot make any conclusive statement
24 as to whose DNA that is.

25 Q. So even if I gave you a sample of mine, you couldn't

1 say whether it was or was not?

2 A. That's correct.

3 Q. 11.1 was swabs from the knife blade and the handle.
4 Reddish-brown stains from the knife blade and handle,
5 correct?

6 A. Correct.

7 Q. Serologically you stated that that was presumptive
8 for blood; is that correct?

9 A. Yes, possible blood.

10 Q. As far as DNA findings, what, if anything, did you
11 find?

12 A. Again, the profile developed from this item was a
13 mixture of at least two individuals. Again, there was a
14 major contributor and a minor contributor. The partial
15 profile of the major contributor matched that of the DNA
16 profile of James Galloway.

17 Q. All right. So the major contributor from the swabs
18 of the reddish-brown stain that presumptively was blood
19 was Jamie Galloway?

20 A. That's correct.

21 Q. The minor contributor, if that's the right word, were
22 you able to prepare -- was it of a sufficient quality
23 enough standard for you to compare that to the alternate
24 known standard for Adam?

25 A. Yes. The profile of the minor contributor, there was

1 enough data present for me to conduct a comparison. After
2 comparing that to the alternate known standard profile for
3 Adam Berry, it was determined that Adam Berry was excluded
4 as a possible minor contributor to this item.

5 Q. All right. So on the knife blade and the knife
6 handle, you found Jamie's DNA and you can say that Adam's
7 was not on there, correct?

8 A. His profile was excluded as a possible contributor.

9 Q. 24, SLED 24, which were the swabs from the headstamps
10 from the bullets in the gun, what, if anything, were you
11 able to tell as far as developing a DNA profile?

12 A. No profile was developed.

13 Q. The swabs that Tom Darnell created from the cartridge
14 cases out of the magazine on the ground, what, if anything,
15 were you able to determine as far as the DNA?

16 A. No DNA profile was developed.

17 Q. 26.1 and 26.2, which were the cuttings taken from the
18 blue shirt, 26.1 was from the exterior left chest area of
19 the blue shirt, what, if anything, were you able to
20 determine as far as DNA?

21 A. A single source profile was developed from SLED Item
22 26.1 and that profile matched that of James Galloway.

23 Q. 26.2 was a cutting from the blue shirt from the
24 exterior middle lower rear of the shirt. Were you able to
25 determine anything as far as the DNA analysis on that item?

1 A. Yes. Again, I was able to develop a full single
2 source profile on SLED Item 26.2, and that profile matched
3 that of the alternate known profile of Adam Berry.

4 Q. 27.1 was a cutting from the exterior right bottom
5 front of a red shirt. Were you able to develop a DNA
6 profile from that?

7 A. Yes, and that one matched that of James Galloway.

8 Q. Finally, 27.2 was a cutting from the exterior middle
9 rear of a red shirt. What, if any, findings did you have
10 as far as DNA analysis?

11 A. I was also able to develop a full profile from that
12 as well and it, too, matched that of the profile of James
13 Galloway.

14 MR. GRAHAM: Thank you, Ms. Money. Please answer
15 any questions that Mr. Floyd has.

16 MR. FLOYD: Thank you, Mr. Graham.

17 CROSS-EXAMINATION

18 BY MR. FLOYD:

19 Q. Ms. Money, you don't actually collect the samples
20 yourself, do you?

21 A. I do not.

22 Q. So you only have to deal with what's being provided to
23 you by other law enforcement agencies as far as samples?

24 A. That's correct.

25 Q. So, for example, in your report you mentioned that

1 assuming the orange and silver razor belongs to Adam Berry,
2 then it's Adam Berry's standard; is that correct?

3 A. That's correct.

4 Q. And if it really weren't Adam Berry's razor, that
5 would be inaccurate, wouldn't it? It wouldn't be Adam
6 Berry's standard, would it?

7 A. If I was informed that it belonged to another
8 individual, then it would be an alternate known standard
9 for that individual.

10 Q. Okay. Now you mentioned -- you never did mention
11 Nick Berry, did you?

12 A. I was never given a standard for that individual.

13 Q. In fact, didn't you ask for one?

14 A. I did.

15 Q. But you never were given one?

16 A. I did not receive one.

17 Q. So you have no DNA to put Nick Berry in this scene at
18 all, do you?

19 A. I never received a standard, so, thusly, no
20 comparisons could be made.

21 Q. Now there was a pistol magazine, and that was your
22 8.1, and you found blood on that magazine and you put it
23 to the -- what you knew to be the -- what you felt to be
24 the Adam Berry standard; is that correct? According to
25 your standard, that would have belonged to Adam Berry; is

1 that correct?

2 A. It tested positive for possible blood and, yes, the
3 profile developed from that item matched that of the
4 alternate known standard for Adam Berry.

5 Q. Okay. And the screwdriver -- these items, too, you
6 didn't collect and they were provided to you by other law
7 enforcement agencies, weren't they?

8 A. Yes, I just received swabs from Tom Darnell. He was
9 the individual that received the actual full item.

10 Q. Okay. And the screwdriver handle, you found some
11 possible blood on that with that swab?

12 A. Yes, on that swab.

13 Q. And who did -- whose profile did the blood on the
14 screwdriver compare to?

15 A. The major contributor from the mixture developed
16 from that swab from the screwdriver matched that of James
17 Galloway.

18 Q. Now as to 11.1, the knife blade and handle, do your
19 swabs tell whether or not it was the blade or the handle?

20 A. No, I cannot tell that.

21 Q. So some of the swabs -- you don't know whether it was
22 the blade or the handle, but you found a profile for James
23 Galloway; is that correct?

24 A. That's correct.

25 Q. But you cannot testify as to whether that was from the

1 blade or the handle?

2 A. I cannot.

3 MR. FLOYD: Thank you. I have no further questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. Ms. Money, aren't you aware that the swabs that Tom
8 Darnell created from the knife, that he dipped a single
9 swab into the handle and then took that same swab and
10 dipped into the blade; isn't that your understanding?

11 A. I was not present during his collection of the sample
12 and the swabs themselves are not marked as to the exact
13 location from where Swab A was taken versus Swab B, so I
14 just go based off of the description that he puts on his
15 envelope.

16 Q. So what was his description on those envelopes? How
17 many swabs were there; one or two?

18 A. There were two present.

19 Q. And how were both of them labeled?

20 A. The envelope was just labeled swabs from knife blade
21 slash handle.

22 Q. And they were together in the same bag?

23 A. Yes.

24 Q. If he was gonna collect it from different places, one
25 was from the swab and one was from the handle, what would

1 be the proper procedure at SLED as to how they should have
2 been packaged?

3 A. Typically they'd be packaged separately.

4 MR. GRAHAM: Thank you, Ms. Money.

5 MR. FLOYD: No further questions.

6 THE COURT: Okay. You can step down.

7 (Witness excused.)

8 THE COURT: All right, Mr. Eargle.

9 MR. EARGLE: The State calls Kathy Polk.

10 (Whereupon, Kathy Polk was duly sworn by the Clerk
11 of Court.)

12 THE CLERK: Once you're seated, state your full name;
13 spelling your last.

14 THE WITNESS: Kathy Polk, P-O-L-K.

15 KATHY POLK,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. EARGLE:

19 Q. Good morning, Ms. Polk.

20 A. Good morning.

21 Q. Do you know James Galloway?

22 A. Yes.

23 Q. Who was he?

24 A. He was my son.

25 Q. Ms. Polk, let me take you to Mother's Day, I believe

1 it was May 11th, of 2014. Where were you on that day?

2 A. I was at home.

3 Q. And where is home, ma'am?

4 A. In South Congaree.

5 Q. And who was at your home with you that day?

6 A. My grandson, J.G..

7 Q. Would that be Jamie's son?

8 A. Yes, oldest.

9 Q. You call him J.G.?

10 A. Yes.

11 Q. Who is the mother of J.G.?

12 A. Kayla Bass.

13 Q. Was anyone else with you that afternoon?

14 A. Jamie and his friend Dustin stopped by after work.

15 Q. When Jamie stopped by, did he stop by to see you?

16 A. To see me and to see his son.

17 Q. And was he gonna stay there with you?

18 A. No, he was just gonna stop by and when he got ready

19 to go, his son was crying wanting to go, but wouldn't --

20 Q. Go ahead, ma'am.

21 A. And so I called his mother, Kayla, because that's the

22 agreement, we always touch base, and I said J.G. wants to

23 go with his dad, you know, over to my daughter's house,

24 Alicia, and she wanted to talk to him and she pitched a fit

25 because he was raising cane at her about them being drunk

1 and on Xanaxes driving around with his son.

2 Q. And "them" being who; do you know?

3 A. Adam, Nick and Kayla.

4 Q. So if I'm understanding you correctly, Jamie comes
5 over, he sees his son, J.G.

6 A. Uh-huh.

7 Q. And Jamie gets ready to leave and J.G. is
8 crying and wants to go with his dad?

9 A. Wanted to go with him, yeah.

10 Q. And you in turn called Kayla Bass --

11 A. Yes.

12 Q. -- to see if it's okay with her being that J.G.
13 is -- that's his mom?

14 A. Mother, yeah.

15 Q. And her response to you what was?

16 A. No, way. Let me talk to Jamie.

17 Q. Okay. Did you have an occasion that afternoon to see
18 Kayla Bass?

19 A. Oh, yes. They -- they came to pick J.G. up.

20 Q. "They" being?

21 A. Nick, Adam and Kayla.

22 Q. Came to pick --

23 A. J.G. up at my house.

24 Q. When you say J.G., you're referring to?

25 A. J.G.

1 Q. J.G. Okay. And you have -- there's Kayla
2 Bass --

3 A. Nick Berry and Adam Berry.

4 Q. -- Nick Berry and Adam Berry? Can you tell the jury
5 what you observed when they came to your house?

6 A. When they pulled up, my son Jamie went out there and
7 went to the driver's side where Adam was and he told him,
8 he said, this is the second time I've warned you about
9 riding around, you know, drunk and messed up with my son in
10 the car, and after -- after he said that, Nick got out of
11 the passenger side and came around and walked up to Jamie
12 and said don't be disrespecting my brother. Well,
13 instantly Jamie knocked him out -- knocked him to the
14 ground.

15 Q. So Jamie --

16 A. Punched.

17 Q. -- confronted Adam? Are Adam, Nick and Kayla in the
18 vehicle?

19 A. Yes, at the time.

20 Q. What type of vehicle was it, ma'am?

21 A. It was that -- that Bronco or -- Adam's vehicle, the
22 Bronco or Blazer or whatever it was.

23 Q. A dark colored sport utility vehicle?

24 A. Yes.

25 Q. And who did you say was driving?

- 1 A. Adam.
- 2 Q. And Jamie confronts Adam at the --
- 3 A. Driver's door.
- 4 Q. -- driver's door?
- 5 A. Uh-huh.
- 6 Q. So Adam never got out of the vehicle?
- 7 A. No.
- 8 Q. Did Jamie attack Adam?
- 9 A. No, he just verbally warned him.
- 10 Q. He was concerned about the safety of his son --
- 11 A. His son, yes.
- 12 Q. -- leaving with them --
- 13 A. Uh-huh.
- 14 Q. -- in the vehicle?
- 15 A. That was the second warning that he gave them.
- 16 Q. And where was Kayla Bass?
- 17 A. In the passenger front seat.
- 18 Q. And where was Nick?
- 19 A. In the back seat.
- 20 Q. Was he in the back passenger side or the back driver's
- 21 side; do you recall?
- 22 A. I think passenger side.
- 23 Q. And after Jamie confronts verbally his concerns to
- 24 Adam, Nick gets out?
- 25 A. Comes around the back of the truck and approaches

1 Jamie and says don't be disrespecting my brother.

2 Q. And as a result of that, Jamie --

3 A. Jamie.

4 Q. -- punched Nick?

5 A. Punched him to the ground.

6 Q. Knocked him down?

7 A. Knocked him down.

8 Q. What happened then?

9 A. Then I ran out there and got in between them and while
10 I was telling Jamie to get back, let it go, I seen Nick
11 come back around to the passenger side of his truck and
12 came running towards Jamie with a knife with the blade out
13 and I looked at him and I said put that knife away.

14 Q. And what did Nick do?

15 A. He put it away.

16 Q. Did he stay there, did he get back in the vehicle?

17 A. No, he stood there because by then Kayla was on the
18 phone with 9-1-1 asking me for my address so they could
19 come pick my son up and I just ignored her and that's when
20 Nick said we don't need no cops, I got Jamie, we don't need
21 no cops.

22 Q. Okay. So Nick -- could you describe the knife that
23 Nick had?

24 A. I would say it was a single blade, probably about that
25 long. I'm thinking the handle was like brownish looking.

1 I'm not sure. I -- I actually only saw -- like he -- he
2 was holding it like this and I only saw about that much of
3 the blade.

4 Q. Okay. Did Nick, Adam and Kayla leave?

5 A. Yeah, after that.

6 Q. Did they take J.G. with them?

7 A. Yes.

8 Q. After that happened on Mother's Day, May the 11th,
9 did you have an occasion to see Adam and Nick and Kayla at
10 your house again?

11 A. Yes. It was probably seven or eight days later after
12 that incident they brought -- were bringing J.G. back to
13 me.

14 Q. They were bringing J.G. --

15 A. Yeah, back to me. Yeah.

16 Q. To visit, to stay?

17 A. To spend the night, yeah.

18 Q. To spend the night.

19 A. And they all came in and I don't know why I said it,
20 but I looked at them and said, you know, I apologize for
21 the way Jamie acted trying to be polite.

22 Q. Yes, ma'am.

23 A. Well, when I did, Nick said oh, I'm not worried about
24 it, I got Jamie. That was his exact words. And I was
25 like well, you know, if you want him, I can call him here

1 now.

2 Q. Did they drop J.G. off?

3 A. Yes.

4 MR. EARGLE: Thank you, Ms. Polk. Please answer any
5 questions Mr. Floyd may have.

6 THE WITNESS: Okay.

7 CROSS-EXAMINATION

8 BY MR. FLOYD:

9 Q. Now Ms. Polk --

10 A. Yes.

11 Q. -- was Jamie allowed to see his son unsupervised?

12 A. Yes.

13 Q. But it was always over at your house?

14 A. He was either at my house or with my daughter.

15 Q. That's what I mean. He had to have another adult
16 present, didn't he?

17 A. No, he didn't have to have an adult present.

18 Q. Why did you have to call Kayla for permission for
19 Jamie to take him?

20 A. Out of respect to her. She asked me any time he's
21 involved to call.

22 Q. Okay. Now how big of a guy was Jamie?

23 A. About five-ten, 230.

24 Q. A lot bigger than Nick Berry?

25 A. Oh, yeah.

1 Q. And so when Nick gets out of the car, Jamie hits him
2 in the face, doesn't he?

3 A. Yeah.

4 Q. Knocks him on the ground?

5 A. Yes.

6 Q. A five-ten, 200-pound guy knocks this five-two,
7 110-pound guy in the face?

8 A. Yes, sir.

9 Q. With his fist?

10 A. Yes, sir.

11 Q. You're saying Nick gets back up --

12 A. Yes.

13 Q. -- and at that point Nick has a knife?

14 A. Yeah.

15 Q. But as soon as you say put the knife away, he puts
16 the knife away; is that correct?

17 A. He sure did.

18 Q. He never touched Jamie with a knife, did he?

19 A. No.

20 Q. Okay. Now do you know an individual by the name of
21 Mike Sulier?

22 A. Yes, I do.

23 Q. Was he a good friend of Jamie's?

24 A. He was like a brother to Jamie.

25 Q. And --

1 MR. GRAHAM: Your Honor, the State would object to
2 this line of questioning for the reasons we previously
3 put on the record.

4 THE COURT: The objection is noted and overruled.
5 It will be allowed.

6 BY MR. FLOYD:

7 Q. And did you know that Adam Berry got killed?

8 A. Yes.

9 Q. Do you know who murdered him?

10 A. Yes.

11 Q. Was that Mike Sulier?

12 A. Yes.

13 Q. On the morning that Mike Sulier murdered Adam Berry,
14 didn't he call you and tell you he knew where Adam Berry
15 was and he was going to meet up with him?

16 A. No.

17 Q. He didn't call you?

18 A. No.

19 Q. Did he call you afterwards?

20 A. Mike called me like three days before Adam Berry was
21 killed.

22 MR. GRAHAM: Your Honor, I'd object to the relevance
23 at this point.

24 THE COURT: I'll allow it. Go ahead. Overruled.

25 BY MR. FLOYD:

1 Q. Did he tell you he was gonna get up with Adam Berry?

2 A. He -- in so many words. He said he had visual
3 contact.

4 Q. He was in visual contact with him?

5 A. Yes, they were talking.

6 Q. Okay. And then he was -- Adam Berry was shot; is
7 that correct?

8 A. Yes. From what I hear, yeah.

9 Q. And driven to Orangeburg and the car set on fire; is
10 that correct?

11 A. That's what I was told, yeah.

12 Q. Do you recall about when that was? If you don't
13 recall, that's okay.

14 A. I couldn't tell you.

15 Q. Have you received any Facebook messages from Mike
16 Sulier in the last few months?

17 A. Yes.

18 Q. And did he text you the autopsy photos of Adam Berry?

19 A. He certainly did.

20 MR. GRAHAM: Your Honor, can we approach?

21 THE COURT: Uh-huh.

22 (Proceedings held at the bench; not reported.)

23 MR. FLOYD: Thank you. No further questions,
24 Ms. Polk.

25 THE COURT: Anything on redirect, Mr. Eargle?

1 MR. EARGLE: No, sir, Your Honor.

2 THE COURT: All right. You may step down, ma'am.

3 (Witness excused.)

4 MR. GRAHAM: Your Honor, if we can approach regarding
5 the next witness?

6 THE COURT: Sure.

7 (Proceedings held at the bench; not reported.)

8 MR. EARGLE: The State calls Tonya Griffin.

9 (Whereupon, Tonya Sue Griffin was duly sworn by the
10 Clerk of Court.)

11 THE CLERK: Once you're seated, state your full name;
12 spelling your last, please.

13 THE WITNESS: Tonya Sue Griffin, G-R-I-F-F-I-N.

14 TONYA SUE GRIFFIN,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. EARGLE:

18 Q. Good morning, Ms. Griffin.

19 A. Good morning.

20 Q. How are you doing today?

21 A. It could be better.

22 Q. Yes, ma'am. Do you know Kayla Bass?

23 A. She's my daughter.

24 Q. She's your daughter. Do you know Jamie Galloway?

25 A. He was what I considered my son.

1 Q. Did they have a child together?

2 A. Yes, sir. They have a handsome six-year-old.

3 Q. And what's his name?

4 A. J.G.

5 Q. Ms. Griffin, let me take you to Mother's Day, May
6 the 11th, of 2014.

7 A. Yes, sir.

8 Q. Do you recall where you were that day?

9 A. I was at home.

10 Q. And did you have an occasion to see Kayla?

11 A. Yes, sir. I was sitting on my front porch and Kayla
12 and Adam and Nick came to my house, Kayla came up on the
13 porch and told me that there was an altercation between
14 Jamie and Adam and that Nick had gotten out of the car
15 and approached Jamie.

16 MR. FLOYD: Your Honor, I'm gonna object to hearsay.

17 THE COURT: That's sustained as to hearsay.

18 BY MR. EARGLE:

19 Q. During your conversation with Kayla, what, if
20 anything, did she do?

21 A. Sir?

22 Q. As a result of your conversation with Kayla, what,
23 if anything, does she do?

24 A. She -- I mean, she just came up to me and, like I
25 said, was -- told me what had happened before they got

1 there. I explained to her that if that situation had
2 happened, that Jamie at that time did have an ankle
3 bracelet on. If they felt that they -- something was
4 wrong, to go to the police department and make a report
5 and let them handle it. And during that conversation,
6 Nick Berry sat there -- stood there and said --

7 MR. FLOYD: Your Honor, I object to the hearsay.

8 THE COURT: All right.

9 THE WITNESS: Nick Berry said that --

10 THE COURT: Hang on. You can't testify as to what
11 somebody else said. You can testify as to what you did.

12 And, Mr. Eargle, just rephrase your question again
13 so you can guide her to -- I'm not sure she answered your
14 first question.

15 BY MR. EARGLE:

16 Q. Do you know if Kayla called law enforcement?

17 A. Kayla was walking back toward the car to find out
18 which department; would it be South Congaree or Pine
19 Ridge.

20 Q. And where was Nick?

21 A. He was on my front porch.

22 Q. And where was Adam?

23 A. He was on the sidewalk with James in front of my
24 front porch.

25 Q. Where was J.G. ?

1 A. J.G. was beside of Adam at that point in
2 time.

3 MR. EARGLE: Your Honor, may we approach?

4 THE COURT: Uh-huh.

5 (Proceedings held at the bench; not reported.)

6 THE COURT: I need to put something on the record.
7 You-all step into the jury room. You can't discuss the
8 case. I'll get you back in here in just -- shortly.

9 (Whereupon, the jury retires to the jury room at
10 11:38 AM.)

11 THE COURT: All right. Let's ask the question now.
12 Go ahead.

13 EXAMINATION (In-Camera)

14 BY MR. EARGLE:

15 Q. All right. When Nick was standing there with Kayla
16 and you had knowledge that there had been an altercation
17 and you advised Kayla to call law enforcement, what did
18 Nick -- what did you hear Nick say?

19 A. Nick said the mother fucker won't need law
20 enforcement. The next time I see him the mother fucker
21 won't be breathing. I told him then he would not talk
22 about my son that way and he definitely would not talk
23 about my son in front of his son that way and that he
24 could get off my porch and he could get out of my yard,
25 and that's what they did. And I haven't seen him until

1 today -- until today sitting in the courtroom.

2 MR. EARGLE: Thank you, ma'am.

3 THE COURT: All right. Mr. Floyd, you -- you made
4 an objection claiming to be hearsay on that. I'll be
5 glad to hear you.

6 MR. FLOYD: That's correct, Your Honor. It's
7 definitely hearsay.

8 THE COURT: Is that not a statement against interest
9 under 804(b), Subpart 3?

10 MR. FLOYD: Your Honor, we think that's just -- it
11 would just really be boasting. It's not really a
12 statement.

13 THE COURT: What do you think, Mr. Eargle?

14 MR. EARGLE: Judge, under 801, the first step, I
15 don't believe it is hearsay under 801(d)(1), but if it
16 does qualify as hearsay, it definitely falls under
17 804(b)(3), a statement against interest. It shouldn't be
18 admissible.

19 MR. GRAHAM: Judge, if I could -- if that's hearsay,
20 how do we ever get statements of defendants in? That's
21 not hearsay. When a defendant who's on trial makes a
22 statement to anybody -- for law enforcement, we have to
23 have a Miranda hearing if they're under interrogation,
24 but it still comes in. If they're not law enforcement,
25 anybody can get up and say what a defendant said if it's

1 relevant. This is an expression of malice. It goes to
2 the heart and it's central to the case and it's very
3 relevant and it's admissible and there's nothing that
4 Mr. Floyd can cite that says it's not. He's trying to use
5 the argument saying that Adam Berry should be -- I mean,
6 that Mike Sulier should be able to get up here and repeat
7 what Adam Berry said, which is double hearsay, but we
8 can't do it when the law is clear that the person on
9 trial, the statement should come in? I don't understand
10 -- I don't understand.

11 MR. FLOYD: Your Honor, first of all, this is not a
12 statement made at the time of the incident for which he's
13 on trial. This was an alleged statement that he made
14 weeks before.

15 THE COURT: One week before, right?

16 THE WITNESS: One week.

17 THE COURT: One week before. The 11th versus 19th;
18 is that right?

19 MR. EARGLE: The same day he made the statements that
20 Ms. Polk just testified to.

21 MR. FLOYD: A week or so ago -- a week or so earlier.

22 THE COURT: A week prior.

23 MR. FLOYD: Yeah, a week prior. So it's not a
24 statement made about the incident itself and we just don't
25 see where it's relevant.

1 THE COURT: All right. I think it's allowed.

2 MR. FLOYD: The fact that he felt anger for him
3 because of that incident one week earlier, doesn't mean
4 he still felt that way toward him a week later.

5 THE COURT: I think it's admissible. I think it's
6 not hearsay because Mr. Berry is here, so I'll allow it.
7 I'll note your objection for the record.

8 MR. FLOYD: Thank you, Your Honor.

9 MR. EARGLE: Thank you, Your Honor.

10 THE COURT: All right. Proceed on.

11 (Whereupon, the jury returns to the courtroom at
12 11:48 AM.)

13 THE COURT: All right, Eargle.

14 MR. EARGLE: Thank you, Your Honor.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. EARGLE:

17 Q. Ms. Griffin, after you advised Kayla that she should
18 call law enforcement, what did you hear Nick Berry say?

19 A. Nick Berry --

20 THE COURT: And your objection's noted on the
21 record.

22 MR. FLOYD: Thank you, Your Honor.

23 A. -- Nick Berry said there's no reason to call the
24 law. The next time I see the mother fucker, the mother
25 fucker's gonna be dead. He won't be breathing.

1 MR. EARGLE: Thank you, ma'am. Answer any questions
2 Mr. Floyd may have.

3 CROSS-EXAMINATION

4 BY MR. FLOYD:

5 Q. Ms. Griffin, did you have a conversation with
6 Ms. Polk last night?

7 A. Yes, I did.

8 Q. And did she tell you about evidence she had heard in
9 the courtroom?

10 A. No, she didn't.

11 Q. She didn't mention anything to you about any evidence?

12 A. No evidence whatsoever.

13 Q. Now you were close to Jamie. You thought of him as
14 your son?

15 A. (Nods head.)

16 Q. Now is he a lot bigger than Nick Berry?

17 A. Yes, he was.

18 Q. Now when Nick Berry said this to you that day, did you
19 think it was a real threat?

20 A. I honestly do.

21 Q. So you called the police, did you?

22 A. No, I -- I advised them to call the police and let
23 the police handle it and he said that the police would not
24 have to handle it because next time he seen him he would
25 be dead.

1 Q. Well, did you call the police and -- tell them Nick
2 Berry threatened to kill Jimmy Galloway?

3 A. No, sir, I didn't.

4 Q. Because you didn't think it was a real threat, did
5 you?

6 A. Yes, I did think it was a real threat.

7 Q. So you called the police, I guess?

8 A. No, I -- no, I didn't.

9 Q. Okay. Did you tell Nick -- I mean, I'm sorry. Did
10 you tell Jamie?

11 A. I don't think I seen Jamie within that week.

12 Q. Did you tell his mother?

13 A. I'm not sure about that, if I did or not.

14 Q. So you never told anybody about this threat until.
15 You mentioned it to law enforcement after Jamie was killed;
16 is that correct?

17 A. Yes, sir.

18 Q. And when you talked with law enforcement after Jamie
19 was killed, you didn't use the words, and I'll use your
20 words, mother fucker, did you?

21 A. Yes, I did.

22 Q. Did you give a statement? You wrote a statement,
23 didn't you?

24 A. I -- I'm not sure if I put those exact cuss words in
25 there, but ...

1 Q. Would you like to look at your statement?

2 A. That's fine.

3 Q. (Handing.)

4 A. I think this is the statement that I wrote that night
5 at the hospital that my daughter had tried to explain, but
6 she was pretty much intoxicated.

7 Q. Now you -- did you look at the second page?

8 A. No, sir.

9 Q. Look at the second page. That's where you mention it.

10 A. Okay. Can I read my statement?

11 Q. Certainly.

12 THE COURT: No, no, no. You want her to read it? I
13 thought maybe she was gonna read it to herself.

14 THE DEFENDANT: Can I read it out loud or no?

15 BY MR. FLOYD:

16 Q. What do you say in there? What's the words you used?

17 A. That he told me that I -- he hoped that I didn't have
18 any feelings for Jamie because the next time he seen him he
19 wouldn't be breathing.

20 Q. You don't use the term -- the "MF" term in there, do
21 you?

22 A. I -- I certainly didn't, no, because --

23 Q. That's something you just came up with for court
24 today?

25 A. No, sir. Those are the words he said.

1 Q. But you didn't say anything about them here, did you?

2 A. No, I didn't write those words down.

3 Q. And you never told anybody about what you -- this
4 supposed threat, did you?

5 A. No, sir.

6 Q. And you spoke with Ms. Polk last night; is that
7 correct?

8 A. We -- we texted. We didn't --

9 Q. You texted?

10 A. Yes, sir.

11 Q. Okay. And she spoke with your daughter last night?

12 A. As far as I know they had a conversation.

13 Q. Okay. It was about what had been heard in the
14 courtroom; is that correct?

15 A. No.

16 Q. It wasn't?

17 A. Not that I know of.

18 Q. Okay.

19 MR. FLOYD: Thank you. I have no further questions.

20 THE COURT: Any redirect?

21 MR. EARGLE: Yes, sir, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. EARGLE:

24 Q. Ms. Griffin, on your statement to law enforcement on

25 May the 20th, did you quote what Nick Berry said before you

1 on Mother's Day?

2 A. What do you mean?

3 Q. Did you quote him in what you wrote?

4 A. No, I didn't put any quotation marks or anything. Is
5 that what you're saying?

6 Q. Yes, ma'am.

7 A. No, sir.

8 Q. And that what you told law enforcement in this
9 statement and what you're telling this jury today and
10 what you heard from Nick Berry that night, though it may
11 not have used the same vocabulary, expressed to you his
12 thoughts concerning Jamie Galloway?

13 A. Yes.

14 Q. Is that correct?

15 A. Yes, sir.

16 Q. And what were those?

17 A. His thoughts was he was gonna get revenge on Jamie
18 and he was gonna take Jamie out. He wanted Jamie dead.

19 Q. And what you're telling this jury today, is that the
20 truth?

21 A. Yes, sir. Yes.

22 MR. EARGLE: Thank you.

23 RECROSS EXAMINATION

24 BY MR. FLOYD:

25 Q. How many policemen did you warn that he was going to

1 kill Jamie?

2 A. I didn't warn any of them.

3 Q. You didn't tell anybody, did you?

4 A. No, I -- like I said, my daughter went --

5 Q. You knew he was just a little kid mouthing off,
6 didn't you?

7 A. Sir?

8 Q. You knew he was just a little kid mouthing off?

9 A. No. I seen -- I seen the devil in him the first time
10 I ever laid eyes on him.

11 Q. And so you didn't even warn Jamie, did you?

12 A. Like I said, I didn't see Jamie within that week.

13 Q. Well, now if you thought that was a real threat, you
14 could have got in touch with Jamie, couldn't you?

15 A. No, I didn't have --

16 Q. You couldn't get in touch with Jamie?

17 A. Not Jamie personally. I did not have Jamie's cell
18 phone number or anything like, no, sir.

19 MR. EARGLE: Your Honor, this has been asked and
20 answered.

21 THE COURT: That question hasn't.

22 BY MR. FLOYD:

23 Q. Did you -- did you have his mother's telephone number?

24 A. Yes, sir.

25 Q. Did you call her?

1 A. No, sir, I didn't.

2 MR. FLOYD: Thank you. No further questions.

3 THE COURT: All right. Now you may step down.

4 MR. EARGLE: Judge, I apologize. I didn't hear that
5 last part.

6 THE COURT: Yeah, the question was about phone
7 numbers and calls and that hadn't been --

8 MR. GRAHAM: May we approach, Your Honor?

9 THE COURT: Yes, you may.

10 (Proceedings held at the bench; not reported.)

11 (Witness excused.)

12 THE COURT: All right. We're gonna take a lunch
13 break and let you-all go until 1:15.

14 I'm gonna pick the foreperson. Tell me your name.

15 JUROR: Sommer.

16 THE COURT: Sommer. And last name?

17 JUROR: Cagle.

18 THE COURT: Hagle?

19 JUROR: Cagle.

20 THE COURT: Will you be the foreperson?

21 JUROR: Sure. Yes, sir.

22 THE COURT: Okay. Now the main thing you're gonna
23 do for Mr. Mills is to be the last person coming out of
24 the jury room and make sure there's nobody left in the
25 bathroom and everybody's in here. That's about your

1 responsibilities in the meantime.

2 Now this is important. We're still taking testimony,
3 we're still hearing evidence. You-all are not allowed to
4 discuss the case in any fashion among one another even on
5 breaks. I kind of caught wind of that. I don't know what
6 was being discussed, but you can't do it because there's
7 more witnesses coming, we don't have all the parts it
8 takes to decide on whether it's the case or not, there's
9 more to it. But it's important, it's part of your oath.
10 You need to follow the instructions of the Court and my
11 instructions are to not discuss the case until you get all
12 of the testimony, all the evidence in the record and my
13 instructions on the law because I haven't told you what
14 the law is; that the law says this, this and this. I
15 haven't given it to you yet, and that's important.

16 So don't discuss the case. You can talk about the
17 weather, you can talk about Mr. Mills, you can talk about
18 him, whatever you like, but not about the case.

19 All right. You-all go to lunch and be back about
20 1:15.

21 (Whereupon, the jury was excused for lunch at
22 11:58 AM.)

23 THE COURT: All right. We'll be at ease until 1:15.

24 MR. GRAHAM: Yes, sir.

25 MR. FLOYD: Thank you, Judge.

1 MR. GRAHAM: For the record, Your Honor, I know that
2 Dr. Ross was planned to be our last witness. She's under
3 subpoena in Sumter. She was scheduled to testify at 2:00.
4 I haven't checked that this morning to see where they're
5 at on that and what time she can be here, so we may end up
6 getting to the point where we're done but her and have to
7 wait on her schedule.

8 THE COURT: Well, I have a little to-do in Newberry
9 tonight. Ms. Bowers, the outgoing Clerk of Court, she's
10 worked there for more than forty years, her retirement
11 to-do is tonight at 5:00 to 7:00, and I've got to make an
12 appearance. I don't have to be there at 5:00, but I need
13 to make an appearance. So if we finish close on that,
14 that doesn't hurt my feelings a bit because I need to go
15 tell Ms. Bowers how much I've enjoyed her.

16 So that's my -- that's my only obligation this
17 afternoon late.

18 (Whereupon, a luncheon recess taken at 12:00 PM.)

19 BAILIFF: All rise. Court's now in session.

20 THE COURT: Thank you. You-all be seated.

21 All right. I've got the original disk. I briefly
22 listened to the redacted second interview. That's far
23 enough -- it's redacted far enough in my opinion to when
24 he's alert.

25 Was Mr. Floyd able to listen to it also?

1 MR. GRAHAM: We did not. We gave it to Your Honor
2 because you told us where to cut it.

3 THE COURT: Okay. That's where I -- I'm comfortable
4 where it's cut that he's alert and talking in the second
5 half of the interview, so I'm good with that. I did not
6 listen to the first one when you took out the references
7 to the convictions.

8 MR. GRAHAM: What we did in the first one, Your
9 Honor, is we didn't have the right software to make it
10 continuous, so we have two different files that's gonna
11 play. It stops right before the shoplifting and we'll
12 have to start another file that picks up right after it.

13 THE COURT: Okay.

14 Mr. Floyd, are you gonna -- do you want to listen to
15 that second interview?

16 MR. FLOYD: No, Your Honor. If you've listened to
17 it, I'm --

18 THE COURT: I'm comfortable that he's alert and
19 talking very much, so he had been awakened.

20 All right. Are we ready?

21 MR. GRAHAM: Can we go ahead and just mark those on
22 the record, what you've got, Judge?

23 THE COURT: All right. We're gonna do that.

24 (State's Exhibit Number 43, redacted interview Part 1,
25 and State's Exhibit Number 44, redacted interview Part 2,

1 were marked for identification.)

2 MR. GRAHAM: And, Your Honor, do you mind saying that
3 both of those will now be in evidence subject to whatever
4 objections he had originally? The only reason I say that
5 is because Doug Bramlett, who put Court's Exhibit 1 in that
6 had all those interviews, has not gone back and listened --
7 he's listened to the ten minute one, the second interview,
8 but he's not gone back and listened to the whole interview
9 again for him to authenticate it. If we need to do that,
10 it will take an hour for him to go listen to it.

11 THE COURT: Okay.

12 All right, Mr. Floyd. Those two interviews now have
13 been redacted at the Court's direction. Would you like to
14 place your objection on the record now?

15 MR. FLOYD: Yes, Your Honor. We still have an
16 objection as to the -- whether or not he was cognizant to
17 make the statements at that time and that he was -- for
18 several reasons. One, it's our position that the Miranda
19 warnings were insufficient and, secondly, through the
20 consumption of alcohol and drugs he was not in his right
21 state of mind and, therefore, should not have been given --
22 not have been questioned at that time and the statements
23 would be inadmissible.

24 THE COURT: Okay. And the Court having reviewed
25 the testimony in Jackson v. Denno, as well as reviewed

1 and listened to the second redacted statement, as well
2 as I heard the unredacted first statement but now the
3 references to the convictions or prior bad act has been
4 removed and redacted, I find they're admissible subject
5 to the objections under the terms of Jackson v. Denno.

6 Anything else?

7 All right. Go get them.

8 (Whereupon, the jury returns to the courtroom at
9 1:27 PM.)

10 THE COURT: All right, Ms. Cagle. You're in the
11 right seat. Thank you very much.

12 All right. We're ready to continue.

13 Mr. Eargle.

14 MR. EARGLE: Yes, sir, Your Honor.

15 The State calls Lieutenant Doug Bramlett.

16 (Whereupon, Charles Douglas Bramlett, III, was duly
17 sworn by the Clerk of Court.)

18 THE CLERK: Once you're seated, state your full name;
19 spelling your last.

20 THE WITNESS: Charles Douglas Bramlett, III.

21 B-R-A-M-L-E-T-T.

22 CHARLES DOUGLAS BRAMLETT, III,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. EARGLE:

1 Q. Lieutenant Bramlett, where are you currently employed?

2 A. I'm currently employed with the Cayce Department of
3 Public Safety.

4 Q. And prior to there, what is your work history?

5 A. I started out -- I joined the United States Air
6 Force. I was a security forces member assigned to the
7 presidential airlift. I was actually responsible for the
8 security of Air Force One, so that's what my duties were
9 for eight years in the Air Force. After that I decided to
10 settle down and became a civilian police officer here. I
11 worked for the City of Cayce in the Department of Public
12 Safety for approximately six or seven years. I then went
13 to the town of Pine Ridge for a year and a half to work
14 with the chief there to help him build the department back
15 up and after that I was recruited to go to the Attorney
16 General's office as a Medicaid fraud investigator before
17 coming back here to Cayce.

18 Q. On May 19th of 2014, where were you employed?

19 A. I was employed with the Town of Pine Ridge Police
20 Department.

21 Q. And what were your job duties?

22 A. My title was patrol lieutenant. It was a small
23 department. As lieutenant, I oversaw eight part-time
24 employees. I was also responsible for overseeing the
25 NCIC program, victims advocate and investigations as a

1 well.

2 Q. Were you on call or on duty that night?

3 A. I was on call. The chief and I used to alternate
4 on-call weeks, but he had actually been involved in a
5 pretty bad wreck and had neck surgery, so he was out and I
6 was permanently on call. So the night of this incident on
7 May 19th, I was actually at home while Officer Gleaton was
8 out working that night.

9 Q. And were you called to [REDACTED] 4 Dogwood Drive?

10 A. That is correct. At some point when Officer Gleaton
11 initially responded to the scene, he called me on my
12 personal cell phone and asked me to respond out. He needed
13 to me to come out.

14 Q. And once you got on the scene, what did you decide --
15 what type of scene did you have?

16 A. When I arrived on the scene, EMS was still there.
17 Nicholas Berry was in the ambulance. Adam Berry was still
18 sitting on the parking lot -- or the driveway. The scene
19 had been secured by Lexington County. Being that we are
20 such a small department, we routinely get the assistance
21 of Lexington County. Seeing as how the incident did occur
22 in the town of Pine Ridge, it was our jurisdiction and we
23 did want to investigate the case, but as small a department
24 as we were I didn't feel that I could adequately handle
25 the case on my own, so with Lexington County being there

1 I went ahead and requested their assistance. Lexington
2 County major crimes division came out and crime scene came
3 out to assist me, so we from that point on merged into a
4 joint investigation and worked together on it.

5 Q. Did you have an opportunity at some point that night
6 to interact with Nick Berry?

7 A. Yes, I did. Once I got on-scene and realized that
8 the crime scene had been secured and that crime scene was
9 there to begin processing the scene and that I did not
10 have to do that since they were there, myself and Detective
11 Todd Garrick from Lexington County Sheriff's Department
12 went to the hospital to meet with Nicholas Berry and Adam
13 Berry.

14 Q. Did you, in fact, meet Mr. Nick Berry?

15 A. I did.

16 Q. Prior to speaking with Nick Berry, did you advise him
17 of his Miranda rights?

18 A. I did. I advised him that I wanted to record our
19 conversation and then I activated the recording and then
20 advised him of his Miranda rights and then spoke once,
21 stepped back out to meet with his brother and then came
22 back in and spoke again with Nicholas Berry.

23 Q. How did you advise him of his Miranda rights?

24 A. I read a Miranda rights card that I had when I worked
25 at the town of Pine Ridge.

1 Q. Did he indicate to you that he understood those
2 rights?

3 A. Yes, sir, he did.

4 Q. What was your assessment of his mental state when he
5 waived those rights?

6 A. In fact, he was alert, he was responsive, he was
7 talking with me. He actually made a comment about how he
8 would rather go ahead and talk to me then than me have to
9 come back and talk to him later on. He said something to
10 the effect of him not -- knowing that police didn't like
11 to have to do that, so he was willing to talk with me then
12 and to go ahead and meet with me.

13 Q. Did he freely and voluntarily waive those rights?

14 A. Yes, sir, he did.

15 Q. Did he do it knowingly and intelligently?

16 A. Yes, sir.

17 Q. Did he, in fact, speak with you --

18 A. Yes, he did.

19 Q. -- and Investigator Todd Garrick?

20 A. Yes, sir.

21 Q. Did you-all threaten him?

22 A. No, sir.

23 Q. Did you promise him anything to talk to you?

24 A. No, sir. I don't have that authority.

25 Q. Did you-all coerce him in any way?

1 A. No, sir. He was on the bed. We were -- I was
2 sitting on the chair close to the door and Detective
3 Garrick was standing by the door, so we weren't even that
4 close to him to have threatened or coerced or ...

5 Q. I'll just set this exhibit here if it's okay with
6 you. I'm gonna hand you what's been marked -- bear with
7 me just a second.

8 A. Yes, sir.

9 THE COURT: Those are parts of Court's Exhibit 1 that
10 have been broken out.

11 BY MR. EARGLE:

12 Q. I'm gonna hand you what's been marked as State's
13 Exhibits 43 and 44.

14 THE COURT: Correct.

15 Q. Do you recognize these?

16 A. Yes, I do.

17 Q. And what are they?

18 A. This first disk is the first interview. Like I
19 stated, we interviewed him approximately an hour the first
20 time, we stepped out to meet with Adam Berry, and I came
21 back in. So this first disk is going to be the first
22 interview and the second disk is the second interview.

23 Q. Have you had an opportunity to listen to these disks?

24 A. As was stated, I just listened to this one since the
25 portions have been redacted. This one I have not as yet,

1 but --

2 Q. Prior to did you?

3 A. -- prior to I reviewed the original that that was
4 pulled from, yes, sir.

5 Q. Okay. And they both -- do they accurately and truly
6 represent the recording you made of your interview with
7 Nick Berry at the hospital, Lexington Medical Center?

8 A. Yes, sir.

9 MR. EARGLE: At that time, Your Honor, we'd move to
10 Exhibits 43 and 44 into evidence.

11 THE COURT: And subject to our pre-trial hearing and
12 our hearing moments ago, they're admitted subject to the
13 objections noted on the record.

14 MR. FLOYD: Thank you, Your Honor.

15 MR. EARGLE: Thank you, Your Honor.

16 (State's Exhibit Number 43 and 44, parts 1 and 2 of
17 a redacted interview, were admitted into evidence.)

18 MR. EARGLE: Your Honor, at this time the State would
19 the request to publish these to the jury.

20 THE COURT: Okay.

21 All right, folks. During Monday afternoon I got to
22 listen to these to make certain they were done pursuant
23 to the Jackson v. Denno rule, which means they were
24 voluntarily given. I made those findings. You-all have
25 got to listen to those same things in these interviews.

1 The first interview is right at an hour, so listen
2 carefully. What we'll probably do is listen to that and
3 then probably take a break and come back and listen to
4 the other one because that's a long stretch.

5 Now if you-all want to go thirty minutes and take
6 a break and we'll stop, we can do that, too, because
7 sometimes you need to stretch your legs and walk around,
8 so if you need that let Mr. Mills know and what we can do
9 is hit pause and come right back to it, okay?

10 Ms. Robinson is gonna take care of the computer for
11 us.

12 (Whereupon, State's Exhibit 43 was played in open
13 court beginning 1:37 PM.)

14 THE COURT: Do you-all want to take a break and then
15 come back in? You can't discuss the case.

16 FOREPERSON: Huh?

17 THE COURT: You can't discuss the case.

18 (Whereupon, the jury retires to the jury room at
19 2:40 PM.)

20 THE COURT: All right. We'll stand at ease for about
21 ten minutes.

22 (Recess taken at 2:40 PM.)

23 (Back on the record at 2:50 PM.)

24 BAILIFF: All rise.

25 THE COURT: All right. What you got?

1 MR. GRAHAM: Briefly before the jury comes back in,
2 Your Honor, Mr. Floyd informed me that Christy Peacock,
3 she would have been the individual that actually collected
4 the razors from Adam Berry who gave them to Caralee Berry
5 and went up there, is actually present in the courtroom.
6 I've conferred with Mr. Floyd about whether we need to
7 call her to finalize that chain and prove that and he said
8 that he didn't have any objection for us not calling her
9 and we didn't need to do that.

10 THE COURT: We're just gonna leave it as is?

11 MR. FLOYD: That's correct, Your Honor. We did plan
12 to have her here. She wasn't able to make it in here this
13 morning.

14 THE COURT: Okay. Fair enough.

15 All right. Bring in the jury, please.

16 MR. GRAHAM: Your Honor, I guess since they're coming
17 in now, can you announce that to the jury about that?

18 THE COURT: Yeah, the first part of the thing? Do
19 you have an objection, Mr. Floyd, with me explaining that,
20 about the part I cut out?

21 MR. FLOYD: That's fine.

22 (Proceedings held at the bench; not reported.)

23 (Whereupon, the jury returns to the courtroom at
24 2:52 PM.)

25 THE COURT: All right. We're ready to hear part two

1 of the interview. It's gonna start in the middle. Early
2 on, the part that I listened to, during the interview the
3 young man sounded asleep because he had been waiting for
4 his brother's interview to be completed and so I wanted
5 him to be alert and talking and so it's gonna begin in
6 the middle, but that's just an unnecessary part of the
7 interview so I just had the parties agree to reduce it
8 and this is much shorter than the first one.

9 All right.

10 (Whereupon, State's Exhibit Number 44 was played in
11 open court beginning at 2:53 PM.)

12 BY MR. EARGLE:

13 Q. Lieutenant Bramlett, with the Court's permission,
14 would you step down and demonstrate what Nick Berry or how
15 Nick Berry described his stabbing motion?

16 A. When he was demonstrating how he stabbed?

17 Q. Yes.

18 A. When we discussed it, he talked about stabbing in the
19 side over and over, but when he demonstrated it, it was up
20 and down motions like this. I'm sorry, ma'am.

21 Q. An up and down motion --

22 A. Yes, sir. That's why I questioned him about the
23 difference in his statement and his motions.

24 Q. -- he was describing as a stab to the side?

25 A. I'm sorry?

1 Q. An up and down stabbing motion as to what he was
2 describing as a stab to the victim's side?

3 A. Correct. When he was explaining to me, he pointed
4 to his side, I don't remember which side, but when he
5 demonstrated the actual stabbing motion it was an up and
6 down motion was his demonstration.

7 (Whereupon, the witness returns to the witness stand.)

8 Q. All right. And while you were at the hospital, I
9 believe you stated earlier that his brother, Adam Berry,
10 was also there being treated?

11 A. Yes, sir.

12 Q. Did you observe Adam Berry?

13 A. I did.

14 Q. Did you observe any stab wounds to Adam Berry's chest?

15 A. No, sir.

16 Q. Any stab wounds to Adam Berry's face?

17 A. No, sir.

18 Q. Do you know whether or not Adam Berry was released
19 from the hospital that night?

20 A. He was, yes, sir.

21 Q. Do you know the type of wounds Adam Berry sustained
22 that night?

23 A. He had a swollen lip, he was missing a tooth and he
24 did have one stab wound, but it was on his hand, on his
25 right hand.

1 Q. Did you take photos of Nick Berry and his brother,
2 Adam Berry, that night?

3 A. I did.

4 Q. Was that -- just for edification, was that the
5 clicking noise we heard during part of the video?

6 A. The clicking and beeping, yes, sir.

7 Q. Okay. You were taking it with a digital camera?

8 A. Yes, sir.

9 MR. FLOYD: No objection to the photos, Your Honor.

10 THE COURT: Very well.

11 MR. EARGLE: Your Honor, I have 7 photos. It's my
12 understanding without objection they're entered into
13 evidence.

14 Your Honor, if I could have the witness to step -- I
15 apologize.

16 THE COURT: All right. So, Stacy, what numbers are
17 those?

18 THE COURT REPORTER: 45 through 52.

19 THE COURT: 45 through 52 admitted without objection
20 and the witness may step down.

21 MR. EARGLE: Thank you Your Honor.

22 (State's Exhibit Number 45 through 52, photographs,
23 were marked and admitted into evidence.)

24 BY MR. EARGLE:

25 Q. Do you recognize this photo?

1 A. Yes, that's a photo of Adam Berry at the hospital.

2 THE COURT: And identify them by exhibit number, too,
3 please, Mr. Eargle.

4 MR. EARGLE: Yes, sir. This is State's 45.

5 With the Court's permission, can I hand them to the
6 jury?

7 THE COURT: Sure.

8 And just so you-all know, when you get into the jury
9 room, you-all will have those photos back there and you
10 will be able to look at them all you want. So they're not
11 -- you don't need to commit them to memory. They'll be in
12 evidence and for your review as long as you'd like.

13 BY MR. EARGLE:

14 Q. State's Exhibit 46, do you recognize that photo?

15 A. That's the open palms of Adam Berry.

16 Q. Do you see any wounds visible --

17 A. No, sir.

18 Q. -- on the palms?

19 A. No, sir. Not on those sides of his hands, no, sir.

20 Q. State's 47.

21 A. That is the right hand of Adam Berry where the
22 laceration was on his hand.

23 Q. A laceration?

24 A. Or a stab.

25 Q. Do you know if it's a stab or a laceration?

1 A. Am I able to discuss what we discussed when I was in
2 there with him?

3 Q. (Nods head.)

4 A. Based on my investigation, I believe it was a stab
5 wound.

6 Q. On the previous photo of Adam's hand -- you took a
7 photo of the underside, right?

8 A. Correct.

9 Q. Was there any visible wounds coming out from the
10 underside?

11 A. From the underside? From the palm?

12 Q. From the palm?

13 A. No.

14 Q. State's 48.

15 A. That is Nicholas Berry on the night at the hospital
16 when I was conducting the interview.

17 Q. State's 49.

18 A. That is Nicholas Berry's right hand showing the
19 laceration to his pinky.

20 Q. State's 50.

21 A. That's a different angle, the same laceration, the
22 same right hand of Nicholas Berry.

23 Q. So that's basically just the other, 49 --

24 A. From the corner from the outside.

25 Q. -- a wraparound?

1 A. Correct.

2 Q. State's 51.

3 A. That's Nicholas Berry's left hand with the laceration
4 on the pinky.

5 Q. And State's 52.

6 A. That is both of Nicholas Berry's hands opened up to
7 view the palms of the hands.

8 Q. Thank you, Lieutenant. You can have a seat.

9 A. (Witness complies.)

10 Q. Also while you were at the hospital, were there any
11 of Nick's personal effects in the room with him?

12 A. When I arrived at the emergency room, the officer
13 was sitting outside the room securing it just to make sure
14 he didn't leave, nobody went in there, nothing occurred.
15 You know how we have -- at the ER you have those tables
16 that roll back and forth across, EMS had placed his cell
17 phone there on the table, the cell phone was inside of a
18 bag, a biohazard bag, a little clear biohazard bag with
19 the orange markings and stuff on it. Based on the nature
20 of the investigation that we were doing, at the time I
21 seized the cell phone that belonged -- that was in
22 Nicholas' possession when EMS transported it. I seized
23 that for evidence.

24 MR. EARGLE: Can I approach, Your Honor?

25 THE COURT: You may.

1 MR. EARGLE: Mark this, please.

2 (State's Exhibit Number 53 was marked for
3 identification.)

4 BY MR. EARGLE:

5 Q. Do you recognize what's been marked as State's
6 Exhibit 53?

7 A. Yes, sir, I do. It is the ZTE cell phone that was
8 taken that night still in the biohazard bag and has my
9 handwriting on it, Nicholas Berry taken at the ER, and my
10 name in my handwriting.

11 Q. So you took the phone from the ER?

12 A. Yes, sir.

13 Q. And do you recall where you took it?

14 A. After we finished that second interview with Nicholas
15 Berry, I then went back in and we did a follow-up interview
16 with Adam Berry. It maintained in my possession at the
17 time and after the interviews were concluded, I returned
18 back to the Pine Ridge Police Department where we -- all
19 the investigators got together, all the ones that had been
20 there at the crime scene -- or on the scene and the ones
21 that were doing other interviews, we all met back up and
22 so that's how I transferred custody of the cell phone to
23 the crime scene investigator, Detective Phipps.

24 MR. EARGLE: At this time, Your Honor, the State
25 would move to enter State's 53 into evidence.

1 THE COURT: 53's the phone?

2 MR. FLOYD: Objection, Your Honor. He didn't have a
3 search warrant for that phone -- or he didn't say he had
4 one.

5 MR. EARGLE: Your Honor, he just seized the phone,
6 not the contents therefrom.

7 MR. FLOYD: Well, how could he seize the contents
8 -- how could he seize the phone from somebody in the
9 hospital? There wouldn't be any reason to seize the
10 phone, Your Honor. They didn't allege he hit him with
11 the phone.

12 BY MR. EARGLE:

13 Q. Was he under arrest at the time you seized the phone?

14 A. At the time we left the hospital, we did not have
15 enough evidence at that point to make any charges against
16 Adam Berry and he was released. Nicholas Berry, based on
17 our information after the interviews before we left the
18 hospital, Nicholas Berry was placed under arrest and
19 transported to Lexington County Detention Center for the
20 charge of murder.

21 Q. Was this phone then seize searched incident to
22 arrest?

23 A. Correct. It was all at the same time.

24 MR. FLOYD: They can't seize the phone from somebody
25 just because they can arrest them.

1 THE COURT: All right. We'll put this on the record
2 then and it's a good time for us to have a little break.

3 You-all step in the jury room. You can't discuss the
4 case.

5 (Whereupon, the jury retires to the jury room at
6 3:25 PM.)

7 THE COURT: All right. Mr. Floyd, the issue with
8 the phone is they can't seize it incident to the arrest?

9 MR. FLOYD: No, Your Honor. Not unless there's
10 evidence it was involved in a crime. They -- a search
11 incident to arrest, for example, of a vehicle, that's
12 one thing and they can take things from that vehicle
13 that could be evidence of a crime, but this is a --
14 supposedly a murder case. There's no allegation that
15 the phone was used in connection with the murder of the
16 victim, so they have no basis to seize -- to seize that
17 phone. Just like they can't go in the house and search
18 the house without a search warrant, and I think they got
19 a search warrant for the house.

20 THE COURT: Well, I'm not aware of whether they got
21 a search to extract the phone data or not, but -- that's
22 not been testified to yet, but the phone itself was in the
23 possession --

24 MR. FLOYD: I don't believe they can seize it without
25 a search warrant -- without a warrant that allows them to

1 seize it.

2 MR. EARGLE: Obviously I disagree, Judge. He was
3 placed under arrest, it was in his possession, they seized
4 it and subsequent to that -- I know this hasn't come in as
5 far as the search warrant being secured to go into the
6 phone to get the data off of it, but it was seize search
7 incident to the arrest of Nicholas Berry.

8 THE COURT: I thought everything on his person; they
9 could collect his clothes, his shoes, his belt, his comb,
10 whatever, and place him under arrest. If he was placed
11 under arrest, they could collect everything he got and
12 then proceed on with the appropriate search warrants,
13 pull the data off the phone, for instance, but --

14 MR. FLOYD: Well, Your Honor, they got a search
15 warrant for the house. They didn't get a search warrant
16 for his person.

17 THE COURT: For his person?

18 MR. FLOYD: For his person or for any of his
19 possessions that he had on his person, so I don't know
20 when they -- how they're saying it can magically
21 transform a failure to get a search warrant there and say
22 well, we decided to arrest so we can seize anything he's
23 got on him. They had no basis to seize the personal
24 property.

25 THE COURT: I thought that the officer here testified

1 they had enough evidence from the interviews of other
2 witnesses, the brother's statement and other eyewitnesses
3 at the scene, to have probable cause to place him under
4 arrest while he's sitting in the ER. I thought that's
5 what he just said; did he not? Did I miss that?

6 MR. FLOYD: I think he said that. I think he said
7 that, but that doesn't give him a right to seize the
8 phone, Judge.

9 THE COURT: Why not?

10 MR. FLOYD: The phone's -- the phone's not in his
11 possession at that point in time, it's just there in the
12 hospital room.

13 THE COURT: Well, that's constructive possession.
14 He has possession. That's his phone. I mean, it was
15 separated from him where he couldn't operate it and call
16 anybody in the ambulance, I think, or somewhere along in
17 there and then it was -- the EMTs transported him and his
18 belongings to the hospital and he was placed under arrest.
19 They can take what he's got with him.

20 MR. FLOYD: Your Honor, we would -- we would
21 respectfully disagree with you. I don't believe they can
22 take his phone just because they arrest him for murder.

23 THE COURT: I think they can.

24 MR. EARGLE: Then I'll be quiet.

25 THE COURT: All right. I think they can and they

1 did. The contents and the data in the phone, that's not
2 what I'm ruling on, but the phone itself I'm gonna admit
3 it subject to the objection.

4 MR. EARGLE: Thank you, Your Honor. I'll be quiet
5 then.

6 MR. FLOYD: Your Honor, may I ask a question or two
7 about it?

8 THE COURT: Oh, yeah. Come on.

9 EXAMINATION (In-Camera)

10 BY MR. FLOYD:

11 Q. Detective Bramlett, didn't you place him in
12 investigative detention? Isn't that what you said in
13 your report?

14 A. Did I? He was placed in investigative detention
15 there at the -- at the house and then while he was
16 transported they did maintain security over him there at
17 the hospital. Yes, sir.

18 Q. And did you get an arrest warrant for him?

19 A. I did.

20 Q. When did you get an arrest warrant for him?

21 A. Within twenty-four hours as required.

22 Q. Did you have an arrest warrant for him when you took
23 him from the hospital?

24 A. No, sir.

25 Q. So when you seized the phone, you did not have an

1 arrest warrant for him then?

2 A. No, sir.

3 MR. FLOYD: Thank you.

4 THE COURT: Isn't the testimony also that he was
5 handcuffed to the bed where he couldn't leave?

6 MR. EARGLE: Sir?

7 THE COURT: There was testimony that the young man
8 was handcuffed one hand to the bed, I think. Maybe both
9 hands.

10 MR. EARGLE: Yes, and there's photograph in there
11 also.

12 THE COURT: I thought I heard that. I could hear
13 the thing clanging around during the interview.

14 MR. FLOYD: Yeah, he was handcuffed to the bed,
15 Judge. That's true.

16 THE COURT: Okay. So he was not free to go.

17 MR. FLOYD: Right. I think he -- he called it
18 investigative detention, but he didn't have an arrest
19 warrant for him yet, so our theory is that he cannot
20 seize his personal property until he got an arrest
21 warrant.

22 MR. EARGLE: I don't think they're required to have
23 an arrest warrant.

24 MR. FLOYD: The crime was not committed in his
25 presence, so I think he needs an arrest warrant.

1 MR. EARGLE: It was freshly committed.

2 MR. FLOYD: It wasn't committed in his presence.

3 MR. EARGLE: It was freshly committed and he was
4 immediately put into investigative detention and taken
5 to the hospital. They established probable cause for an
6 arrest, so I don't think they need an arrest warrant. And
7 regardless if he had been left with his phone, if they had
8 taken him to booking, it would have been seized by law
9 enforcement then as well.

10 MR. FLOYD: And it would have been placed in his
11 personal property, not in evidence.

12 MR. GRAHAM: Personal property is free to anybody
13 who wants to go grab it that's law enforcement.

14 THE COURT: I'm letting the phone in. I understand
15 that the sequence of events is he was detained, placed in
16 investigative detention on-scene, placed in the back of
17 the ambulance, he was interviewed partially out there on
18 the scene, he was transported to the hospital. And was
19 I mistaken there was a police officer that rode in the
20 ambulance with him and another car followed? Am I wrong
21 on that?

22 MR. EARGLE: The police officer followed the
23 ambulance to the hospital.

24 THE COURT: And then there was a parking place right
25 there adjacent to the emergency room door --

1 MR. EARGLE: Yes.

2 THE COURT: -- for some -- those purposes. I don't
3 remember the officer's name, but I remember him saying
4 that.

5 MR. EARGLE: Detective Sam Smith, Your Honor.

6 THE COURT: It seems clear to me the phone is part
7 of him, he was placed under arrest, it comes in.

8 MR. FLOYD: Your Honor, if he was placed under
9 arrest -- normal situation, they place him under arrest,
10 take him into booking and booking does take his clothes,
11 his shoes, his phone, his billfold, and they put it in his
12 personal property. Now if law enforcement wanted to make
13 all of that evidence, they have to get a warrant, then
14 they have to serve the warrant and then they can remove
15 those items and place them into evidence for processing.
16 That was never done. So they don't automatically get the
17 right to process your personal property simply because
18 they arrest you.

19 THE COURT: Right. And we've not reached that issue
20 here. They've taken the phone. After he's placed --
21 after he's done, he's placed under arrest and the phone's
22 coming in. The data on the phone I've not yet heard any
23 testimony about. I thought Mr. Eargle represented to me
24 that there was a search warrant for the extraction of
25 the data on the phone. I thought he represented that to

1 the Court. I've not heard testimony to that effect. If
2 that's the case, then --

3 MR. FLOYD: Well, that's a problem because if they
4 had not illegally seized it to start with, then they
5 could not have processed it later, and that's the problem.
6 I think they did issue a warrant months, months, months
7 later. I'd have to look at it again to be sure, but the
8 problem is they weren't supposed to have the phone to
9 start with, it was an illegal seizure of the phone when
10 they tried to take it at the time of his arrest rather
11 than put it in his personal property that he maintained
12 at the jail because if it had been done like that, then
13 his family could have gone and got his personal property
14 and it would not have been available for them to process.

15 THE COURT: Maybe so, but based upon what's been
16 presented to the Court, I think that phone was lawfully
17 taken and in the possession of law enforcement. I want
18 to make certain because this is an issue for you, that
19 you've got a sufficient record on this issue. I think
20 there's a basis to let the phone in, and that's gonna be
21 my ruling, but I want you to make the record you want
22 the way the facts are laid out. I hear your argument.
23 I don't agree with it, but I hear it and I understand it.

24 So have you made the record you want on that issue
25 as far as the detention, no arrest warrant, phone taken

1 in, arrest warrant gotten within twenty-four hours as I
2 understood Detective Bramlett said that was the sequence
3 of events?

4 MR. FLOYD: I think so. I guess just to clarify,
5 if I could clarify a couple of questions with Detective
6 Bramlett.

7 THE COURT: Sure. I want to be good on that issues.

8 EXAMINATION (In-Camera)

9 BY MR. FLOYD:

10 Q. And, Detective Bramlett, I want to make sure I
11 understand something. What time would you say it was
12 that you actually took possession of the phone?

13 A. During the first interview, I remember us talking
14 about it being like a quarter to midnight, so it was
15 sometime on the 20th. I mean, I would have to estimate.
16 Sometime --

17 Q. Well, the interview took about an hour and
18 twenty minutes -- I mean, an hour and one minute.

19 A. But then we went to interview Adam.

20 Q. You interviewed Adam and then came back.

21 A. And then went back to Adam again. I don't remember
22 how long each one of those were, so.

23 Q. Let's say it was two hours total.

24 A. Maybe. Yes, sir.

25 Q. Did you seize it at that time before you left for

1 the jail?

2 A. Before we left the hospital, yes, sir.

3 Q. Okay. And so it was just in his possession or was
4 it in his control before then?

5 A. It was in the room on the table that was in the room
6 there.

7 Q. Okay. Did you place it there?

8 A. No, sir, the ambulance did -- or EMS workers.

9 Q. And did you have him handcuffed at that time?

10 A. Yes, sir.

11 Q. Both hands to the bed or how did you --

12 A. I believe based on the pictures, it was the right
13 hand to the bed and his left hand was free.

14 Q. Okay. Now when were you able to secure an arrest
15 warrant?

16 A. I think I met with the judge at 7:00, 8:00 that
17 morning on the 20th.

18 Q. Okay. So some five hours or so after you left to go
19 to the jail from the hospital; would that be correct?

20 A. Yes, sir.

21 Q. Did you at that time get a search warrant to seize
22 the phone?

23 A. No, sir.

24 Q. Okay. Did you discuss that issue with the judge at
25 that time, if you recall?

1 A. No, sir.

2 Q. And what was the arrest warrant for?

3 A. One warrant was for murder, one warrant was for
4 possession of weapon during commission of a violent crime.

5 Q. And did you serve those warrants on the Defendant?

6 A. I did. Well, it wasn't immediately. It was at that
7 point we then went to the autopsy, so it was after the
8 autopsy I went back and served them on him at the jail.

9 Q. What did you do with the phones when you got back to
10 the detention center originally?

11 A. I didn't transport him to the detention center,
12 Detective Smith did. I immediately left the hospital,
13 went back to the Pine Ridge Police Department where I met
14 with Detective Phipps and gave him custody of the cell
15 phone.

16 Q. So you took the cell phone back to Pine Ridge?

17 A. Yes, sir.

18 Q. All right. So you seized the cell phone and you
19 returned it -- you took it back to Pine Ridge that night?

20 A. Yes, sir.

21 Q. And that was before the arrest warrant was issued;
22 is that correct?

23 A. Yes, sir.

24 Q. You turned it over to whom?

25 A. Detective Phipps.

1 Q. And then you didn't see it anymore after that?

2 A. No, sir.

3 MR. FLOYD: Thank you. No further questions on that
4 point.

5 THE COURT: Okay. The phone will be admitted as
6 State's 53 subject to the objection. The record was made,
7 so it's in.

8 (State's Exhibit Number 53, a cell phone, was
9 admitted into evidence.)

10 THE COURT: Let's take a few minutes' break and then
11 come back in here.

12 (Recess taken at 3:38 PM.)

13 (Back on the record at 3:46 PM.)

14 BAILIFF: Please keep your seats. Court will now
15 come to order.

16 THE COURT: All right. Are we ready for the jury?

17 MR. EARGLE: Yes, sir, Your Honor.

18 THE COURT: Bring them in, please.

19 (Whereupon, the jury returns to the courtroom at
20 3:47 PM.)

21 THE COURT: All right. Go ahead.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. EARGLE:

24 Q. Once you seized the phone of Nick Berry, what did you
25 do with it?

1 A. We met back up at the Pine Ridge Police Department.
2 Nicholas Berry was transported to Lexington County
3 Detention Center where he was charged with murder and
4 possession of a weapon during the commission of a violent
5 crime. I then went back to the Pine Ridge Police
6 Department where all the detectives involved in the case
7 had met back up. It was at that point that I transferred
8 custody of the cell phone to the crime scene detective.
9 It didn't make any sense for him to have all of the
10 evidence minus the phone that I had seized, so we did
11 transfer it to him so that the Lexington County Sheriff's
12 Department could maintain all the evidence associated with
13 this case.

14 Q. So you gave the phone to Detective Mike Phipps?

15 A. Mike Phipps, yes, sir.

16 Q. During your interview with Nick Berry, if I heard it
17 correctly, he mentioned the term "gat". Are you familiar
18 with that term?

19 A. That's a term that -- well, at least now being back
20 in the case in Lexington, our gang members use that term
21 referring to a gun.

22 Q. So a gat is a gun -- it's slang for a gun?

23 A. Yes, sir.

24 Q. As chief investigating officer in this case,
25 Lieutenant Bramlett, have you had an opportunity to look

1 at statements from the different witnesses in this case?

2 A. Yes, sir.

3 Q. In particular, have you had the opportunity to review
4 statements given by Kayla Bass?

5 A. I have.

6 Q. After reviewing those statements, what is your opinion
7 of her?

8 MR. FLOYD: Your Honor, I -- I don't know where he's
9 going with that, but I don't know how somebody can express
10 an opinion --

11 THE COURT: I don't want to pit witnesses. Tell me
12 your question -- tell me your question one more time.

13 MR. EARGLE: Just as the chief investigating officer
14 he --

15 THE COURT: Reviewed the --

16 MR. EARGLE: -- reviews witness statements and part
17 of that determines -- can we come up, Your Honor?

18 THE COURT: Yes.

19 (Proceedings held at the bench; not reported.)

20 THE COURT: That sounds like a fair question.

21 BY MR. EARGLE:

22 Q. Have you had the opportunity to review statements from
23 Kayla Bass?

24 A. I have. Yes, sir.

25 Q. What, if any, opinion do you have after reviewing her

1 statements as to their consistency or inconsistency?

2 A. I know that initially when I was interviewing Adam
3 and Nick at the hospital detectives from Lexington County
4 Sheriff's Department interviewed her and took a statement.
5 The next day while I was at the autopsy and serving the
6 arrest warrants at the jail, Lexington County took another
7 statement of her. Since then I know of another statement
8 that she has written where she actually wrote it for me and
9 each time -- after reviewing her statement, she noticed
10 that -- or I noticed that each time there are things that
11 are added to the statements or things that have changed
12 within the statements. So, you know, with everybody else
13 a lot of the things stayed consistent, but with her every
14 time I've spoken with her or have reviewed her statements
15 there are sections or portions of her statements that have
16 consistently changed. So I think it would be difficult and
17 I can't -- from her -- from her statement --

18 Q. You've answered the question.

19 A. Yes, sir.

20 MR. EARGLE: Please answer any questions Mr. Floyd
21 may have. Thank you.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q. Detective Bramlett --

25 A. Yes, sir. Mr. Floyd, how are you doing today?

1 Q. Very good. How about you, sir?

2 A. Good.

3 Q. You took a picture of Adam Berry. Didn't Adam Berry
4 lose a tooth in this situation? Had a tooth knocked out?

5 A. Yes, sir.

6 Q. Did you take a picture of the tooth that was knocked
7 out?

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

9 Q. Or of him with his mouth open to show the jury which
10 tooth was knocked out?

11 A. No, sir, I didn't.

12 Q. Okay. Do you know what kind of medical treatment was
13 provided to Nick Berry before you spoke with him?

14 A. No, sir.

15 Q. Do you know whether or not they gave him any type of
16 medication?

17 A. No, sir.

18 Q. You certainly saw stitches; did you not?

19 A. Yes, sir.

20 Q. Were you aware that he suffered a cut tendon in his
21 hand?

22 A. No, sir.

23 Q. And do you know what effect a cut -- a severed tendon
24 would have on a person's ability to grip?

25 A. Yes, sir.

1 Q. Would it effect the ability to grip as far as you
2 know?

3 A. Approximately six months ago I cut mine and while I
4 still don't have feeling in most of my thumb, I don't have
5 problems at least with my hand gripping. I'm able to grip
6 no problem, but I still can't feel the -- I can't feel the
7 top of my thumb.

8 Q. And do you know how it would -- he had a different
9 part of -- he had a different tendon cut. Were you aware
10 of that?

11 A. Probably a different finger, yes, sir.

12 Q. And so do you have any idea how it would have affected
13 his abilities?

14 A. No, sir.

15 Q. Did you speak to any of the doctors about that?

16 A. I did not, no, sir.

17 Q. Detective Bramlett, you -- you took his phone?

18 A. Yes, sir.

19 Q. Did you have a warrant to seize that phone?

20 A. No, sir, not that night. It was seized incident to
21 arrest.

22 Q. Well, you didn't get an arrest warrant until seven or
23 eight hours later?

24 A. Yes, sir. When a crime's freshly committed, we place
25 the individual under arrest, transport them to county and

1 place a hold on them and then we're required to have an
2 actual arrest warrant served on a person within twenty-four
3 hours of that time, and I don't remember what time. It
4 was later on that after -- that midday to that afternoon
5 when I served the arrest warrants on him.

6 Q. So if you wanted to --

7 MR. EARGLE: Your Honor?

8 THE COURT: Yes, sir.

9 MR. EARGLE: I object at this point. This is a
10 legal matter. Your Honor's already ruled on it. I'm not
11 sure what he's gonna garner anymore from Lieutenant
12 Bramlett.

13 THE COURT: Well, I haven't heard his question. Let
14 me hear his question. I understand we don't want him to
15 give legal opinions and I think Mr. Floyd is aware he's not
16 able to do that, but he ask can answer one question. Let
17 me hear it.

18 BY MR. FLOYD:

19 Q. I think you were saying you hold them until you get
20 the arrest warrants seized on him --

21 A. Yes, sir.

22 Q. -- or served on him? I'm sorry.

23 A. Yes, sir.

24 Q. And in the mean -- while you're waiting to get that
25 arrest warrant served on him, did you get a search warrant

1 for his phone?

2 A. It wasn't in that timeframe, no, sir. The -- we
3 got a search warrant on May 23rd for the contents of the
4 phone.

5 Q. May 23rd?

6 A. Yes, sir.

7 MR. EARGLE: Your Honor, I object. He's still making
8 legal arguments before the jury.

9 THE COURT: No, he's not. It's the steps he took.
10 That's fine.

11 BY MR. FLOYD:

12 Q. Now between the first interview that we heard and the
13 second interview that we heard, I think you went out to
14 speak with Adam; is that correct?

15 A. Yes, sir.

16 Q. Now when you came back to that second interview with
17 Nick, wasn't he asleep at that time?

18 A. Yes, sir.

19 Q. And you had to wake him up; did you not?

20 A. Yes, sir.

21 Q. He was very groggy for a while there; is that correct?

22 A. Yes, sir.

23 Q. Is that why the judge didn't let us play part of
24 that --

25 A. That's my understanding.

1 Q. -- the beginning of that; is that correct?

2 A. That's my understanding, yes, sir.

3 Q. And did you advise him of his rights before you
4 started that second interview?

5 A. No, sir.

6 MR. FLOYD: Thank you. I have no further questions.

7 THE COURT: Any redirect?

8 MR. EARGLE: No, sir. Thank you, Your Honor.

9 THE COURT: Okay.

10 All right. You may step down.

11 (Witness excused.)

12 MR. GRAHAM: The State calls Candy Kyzer.

13 (Whereupon, Candy Kyzer was duly sworn by the Clerk
14 of Court.)

15 THE CLERK: Once you're seated, state your name;
16 spelling your last.

17 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

18 CANDY KYZER,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. And, Ms. Kyzer, if you would remind the jury where
23 you're employed and what do you do?

24 A. I'm employed with the Lexington County Sheriff's
25 Department as an evidence custodian.

1 Q. Let me show you what's been marked as State's
2 Number 53, which is a ZTE cell phone that was taken from
3 Mr. Berry incident to arrest. It's in a manila gold
4 envelope which bears a PR Number of 77515. Do you
5 recognize that item?

6 A. I do.

7 Q. And would you explain to the jury what the chain of
8 custody was on this item?

9 A. I received the cell phone from crime scene
10 investigator Mike Phipps on -- or actually I didn't
11 receive it. My -- the other evidence custodian in the
12 case, Beth Holliman, received it on May 22, 2014, that
13 afternoon, and then from there what we do is we place it
14 in our cell phone file in our office until it's needed
15 for court or for testing purposes. On May the 27th,
16 Mike Phipps came back over and wanted to sign that cell
17 phone back out, so my coworker, Beth Holliman, signed it
18 out to him on May 27th at 15:46. On June the 17th of 2014,
19 Mike Phipps brought the cell phone back and I signed it
20 back in and placed it, once again, in our cell phone file.
21 On July 25th of 2016, crime scene investigator Phipps came
22 back over and wanted to sign it back out again, so my
23 coworker, Beth Holliman, signed it out to him at 15:51 on
24 July 25th of 2016, and then on July 26, 2016, at
25 15:34 hours, he brought it back and she signed it back in.

1 Q. And that's the movement of the cell phone that we're
2 discussing?

3 A. Yes.

4 Q. While it's in the possession of the sheriff's
5 department, in your custody or in your -- in Beth
6 Holliman's or the sergeant, you-all don't go into the
7 phone or do anything, do you?

8 A. No, sir.

9 MR. GRAHAM: Thank you. Please answer any questions
10 Mr. Floyd has for you.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q. What type of phone is this, Ms. Kyzer?

14 A. It's a ZTE cell phone.

15 Q. CTE? It's a Kyocera?

16 A. No, sir.

17 Q. You called it a CTE?

18 A. ZTE. Z, as in zebra.

19 Q. ZTE?

20 A. Yes.

21 Q. The only authority you show to have it as seized is
22 pursuant to arrest, is that what you have? Do you have
23 warrants in your office?

24 A. We just get the cell phone in evidence.

25 Q. Okay. So all you're telling us is it was brought

1 into the evidence room at some point, went out to
2 Detective Phipps. When was the first time it went out
3 to him?

4 A. The first time it went out to him was May 27th of
5 2014.

6 Q. And then it came back when?

7 A. It came back on June 17th of 2014.

8 Q. And when was it next picked up?

9 A. It was next picked up on July 25th of 2016.

10 Q. And returned?

11 A. And then returned on July 26th of 2016.

12 Q. The same phone?

13 A. Yes, sir.

14 MR. FLOYD: Thank you. No further questions.

15 MR. GRAHAM: Nothing else, Your Honor.

16 THE COURT: Okay. You may step down.

17 (Witness excused.)

18 MR. GRAHAM: The State calls Justin Moore.

19 (Whereupon, Justin Moore was duly sworn by the
20 Clerk of Court.)

21 THE CLERK: Once you're seated, state your full name;
22 spelling your last.

23 THE WITNESS: My name is Justin Kyle Moore.

24 JUSTIN KYLE MOORE,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q. Justin, how old are you?

4 A. I'm twenty-five.

5 Q. Twenty-five. Are you working right now?

6 A. Not right now, but, yeah, I work.

7 Q. Where do you work at?

8 A. At Palmetto Industrial Construction.

9 Q. Do you -- do you know Nick Berry?

10 A. Yeah.

11 Q. How long have you known Nick?

12 A. About nine years.

13 Q. How did you know him?

14 A. Well, it was less than that. But through his brother.

15 Me and Adam were best friends.

16 Q. And you knew him as Adam's younger brother?

17 A. Uh-huh.

18 Q. Did you communicate with him on Facebook?

19 A. Yes, sir.

20 Q. With Nick?

21 A. Uh-huh.

22 Q. Let me show you a document.

23 MR. FLOYD: Your Honor, may we approach?

24 THE COURT: Yeah.

25 (Proceedings held at the bench; not reported.)

1 BY MR. GRAHAM:

2 Q. Mr. Moore, let me show you a document and ask if you
3 recognize the contents of that document?

4 A. Yes, sir.

5 Q. Is that a Facebook conversation that you had between
6 you yourself and Nick Berry on May 19, 2004 {sic}?

7 A. Uh-huh.

8 Q. It shows what he said and what you said?

9 A. Uh-huh.

10 Q. And is that accurate?

11 A. Uh-huh. Yes, sir.

12 MR. GRAHAM: Your Honor, the State would mark this
13 for identification at this moment.

14 THE COURT: That would be State's 54 for ID purposes.
15 (State's Exhibit Number 54 was marked for
16 identification.)

17 MR. GRAHAM: And that's all the questions that we
18 have for Mr. Moore, but he's subject to recall, Your
19 Honor.

20 THE COURT: Okay. Any cross for him yet, Mr. Floyd,
21 or do you want to wait?

22 MR. FLOYD: Not at this point, Your Honor.

23 THE COURT: Okay. You may step down.

24 (Witness excused.)

25 MR. GRAHAM: The State calls Mike Phipps.

1 THE CLERK: He's still under oath, Your Honor?

2 THE COURT: Yes, he is.

3 Detective Phipps, you're still under oath.

4 THE WITNESS: Yes, sir.

5 MICHAEL PHIPPS,

6 having been previously sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q. Mr. Phipps, briefly, where are you employed again?
10 If you'd remind the jury.

11 A. The Lexington County Sheriff's Department.

12 Q. And as a crime scene investigator?

13 A. Yes, sir.

14 Q. Let me show you State's Number 53 and ask if you
15 recognize that?

16 A. Yes, sir, I do.

17 Q. And what do you recognize that as?

18 A. It's a ZTE cell phone that was first presented to me
19 by Investigator Bramlett at the Pine Ridge town meeting
20 area the night of the incident. It was turned over to me
21 at that point in time.

22 Q. Okay. It has evidence tape and seal on that. Is
23 that you?

24 A. Yes, those are my initials, my writing.

25 Q. When you first got it, what did you do with it?

1 A. It was secured back at our evidence unit or our crime
2 scene unit. In our lab, we have evidence lockers. Later
3 that day I had to go to the autopsy, so it sat in our lab
4 for that period of time. Subsequent to returning back,
5 it was packaged and turned in to one of our evidence
6 custodians.

7 Q. At some point later was a search warrant obtained to
8 go into the contents of the phone itself?

9 A. Yes, sir.

10 Q. And did you get this phone out of evidence from the
11 evidence custodians in an attempt to perform the cell phone
12 extraction pursuant to that search warrant?

13 A. I did. The first search warrant that was provided, I
14 signed it back out -- or signed it out and the search of
15 the phone wasn't successful because the phone had a pattern
16 lock on it, so we weren't --

17 Q. What is -- I'm sorry. Go ahead.

18 A. A pattern lock meaning, you know, you have to swipe a
19 certain pattern on it to get access to it. The forensics
20 tools that we had at that time required us to go in and
21 change a setting within the operating system that allows a
22 forensic tool to communicate with the phone and without
23 having that physical access to the menu of the phone we
24 weren't able to extract data from it.

25 Q. When you say an extraction, what is cell phone

1 extraction?

2 A. We use a tool from Cellebrite and it's a forensic tool
3 designed -- meaning it's designed to interface with the
4 phone and pull off data from that phone without changing
5 the data or changing any settings on the phone. That data
6 is then processed in another application and a report's
7 generated with all that you would normally find on a phone;
8 the photographs, text messages, call content as far as
9 dates and times that calls were made, third-party
10 applications such as Facebook, Chat, Messenger. Just
11 anything that someone would virtually have on a phone.

12 Q. So you got the phone out of evidence, you tried --
13 you got a search warrant, you tried to go into it, the
14 first one failed and you returned it to evidence; is that
15 correct?

16 A. Yes, sir.

17 Q. Did you change any of the data on there?

18 A. No, sir. I couldn't get into it to change it.

19 Q. You couldn't get into it?

20 A. (Shakes head.)

21 Q. Later on in, I think, July of 2016, was another search
22 warrant obtained to do it again?

23 A. Yes, sir. In reviewing for this case and preparing
24 for the case, Cellebrite expanded their capabilities in
25 accessing certain model phones, so I was asked to take a

1 look at the phone to see if anything had changed over time
2 and Cellebrite was indicating that they had a process that
3 could interface with the phone at that point and bypass the
4 pattern lock on the phone and it was at that point that I
5 recommended that they obtain another search warrant to
6 attempt that extraction.

7 Q. And was another search warrant obtained?

8 A. Yes, sir.

9 Q. And did you get that phone again out of evidence and
10 attempt again to go into the phone?

11 A. Yes, I did.

12 Q. And were you successful at this time?

13 A. Yes, we were.

14 Q. And were you able to perform an extraction?

15 A. Yes.

16 Q. Let me show you -- well, let me ask you some
17 questions. Were you able to determine any ownership
18 information from the phone extraction?

19 A. Yes, sir. The Cellebrite also reports out various
20 accounts that are on the phone. In this instance, there
21 was a Facebook, Twitter, a Google Plus and Yahoo account
22 that were all identified by the name of Nick Berry or
23 variations of that.

24 Q. And did you also have an opportunity to go in and look
25 at Facebook messages or Facebook instant messages?

1 A. Yes, sir.

2 Q. Let me somehow a document and ask if you recognize
3 that document.

4 A. Yes, sir. This is a compilation from the original
5 report showing specific Facebook contact between the
6 operator of the phone and the people listed here by name.

7 Q. And is this showing particular Facebook messages that
8 you deemed relevant in this case?

9 A. Yes, sir.

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

12 MR. FLOYD: Your Honor, I object. Do you want me to
13 put it on the record here or --

14 THE COURT: Do you want to --

15 (Proceedings held at the bench; not reported.)

16 THE COURT: All right. We've got to put something on
17 the record. Step in the jury room and we'll have you back
18 in here. Remember you can't discuss the case.

19 (Whereupon, the jury retires to the jury room at
20 4:14 PM.)

21 MR. FLOYD: Your Honor, they've now provided me a
22 certified copy of the search warrant and we'd still object
23 because there is no what we consider to be a legally
24 sufficient return on the warrant. The return says due to
25 the exhaustive amount of information that may be stored

1 in the devices seized and the necessary amount of time
2 required to complete a search of these devices, the
3 results of any forensic analysis will be maintained by law
4 enforcement for any subsequent legal proceeding, and I'll
5 pass it over so you can see what we're talking about. Is
6 it okay if I pass it up, Judge?

7 And it's been a while since I've looked at search
8 warrant law, but I believe there's got to be a full and
9 complete return, I want to say within days, maybe as many
10 as ten --

11 MR. GRAHAM: Ten days.

12 MR. FLOYD: -- from execution. That was within the
13 ten day time period, but it's not a -- we would not
14 consider that to be a legally sufficient completed return
15 and accordingly would make anything seized invalid and
16 inadmissible.

17 THE COURT: All right. Here's how I read it, it's
18 slightly different, but the cell phone was searched and
19 the search was an extraction of the data, not actually
20 physical evidence, it's data that's electronically
21 transmitted. It's basically a series of zeros and ones
22 as I understand it. That's what a digitally-encoded
23 phone is, it's a computer, and all of it is in the binary
24 system zeros and ones because I took the computer forensic
25 class. Data off a cell phone would be a sufficient return

1 in my opinion and an analysis of the data would be what
2 they did with it. It's like we got a gun and then it's
3 analyzed for fingerprints. Data off the phone is data off
4 the phone and this says that, but it says there's a lot of
5 data and it hasn't been analyzed.

6 So I think the return is sufficient. It's
7 information, and I'm using it as a synonym for data, so I
8 think that search warrant is sufficient to say they got
9 the data off the cell phone, which is the only thing on
10 the search itself.

11 MR. GRAHAM: Your Honor, I think -- for the record,
12 I would have -- these are both, I think, certified true
13 copies of the search warrant; the first attempt and then
14 the second would be the extraction. If I could just make
15 these court exhibits.

16 THE COURT: Okay.

17 (Court's Exhibit Numbers 3 and 4 were marked for
18 identification.)

19 MR. GRAHAM: Are there any other objections as to
20 publishing it that we should take up now?

21 THE COURT: As far as any other objection, I'm gonna
22 allow it subject to that search warrant, the data off the
23 cell phone. Would you want to put any more bases for your
24 objection to entering -- allowing it to be entered into
25 evidence?

1 MR. FLOYD: No. Of course, Your Honor, we don't --
2 we have our initial objection as to the seizure of the
3 phone itself --

4 THE COURT: Right.

5 MR. FLOYD: -- and we certainly renew that objection.
6 And then it's our position, too, that the return is
7 inadequate and for that basis, too, we would move that
8 any data retrieved would be inadmissible.

9 THE COURT: Okay.

10 All right. So the record's complete as to that
11 issue. I will allow further testimony on this issue.

12 Are you ready for the jury to come back in?

13 MR. GRAHAM: Yes, sir.

14 THE COURT: All right. Bring them in, please.

15 (Whereupon, the jury returns to the courtroom at
16 4:21 PM.)

17 THE COURT: All right.

18 BY MR. GRAHAM:

19 Q. Mr. Phipps, we had left off with me showing you a
20 document and asking if you recognize that. Do you
21 recognize that document?

22 A. Yes, sir, I believe.

23 Q. Does that contain Facebook conversations between the
24 phone attributed to Mr. Berry and the accounts attributed
25 to Mr. Berry and other individuals?

1 A. Yes, sir, it does.

2 Q. And that was deemed relevant to this case?

3 A. Yes, sir.

4 MR. GRAHAM: The State would offer this into evidence,
5 Your Honor.

6 THE COURT: Subject to your objection placed on the
7 record?

8 MR. FLOYD: Subject to my objection, Your Honor.

9 THE COURT: And that's 54?

10 THE COURT REPORTER: 55. I already marked something
11 54.

12 MR. GRAHAM: There was an ID 54. This will be a
13 different number.

14 (State's Exhibit Number 55, Facebook messages, was
15 marked and admitted into evidence.)

16 BY MR. GRAHAM:

17 Q. Mr. Phipps, let me show you State's 54 for
18 identification and ask if you recognize that?

19 A. Yes, sir, I do.

20 Q. That's what Justin Moore, who was up on the stand just
21 prior to you, was saying that that was a fair and accurate
22 conversation that he had. You heard him say that?

23 A. Yes, sir.

24 Q. Is 54, what's been marked for ID, that Facebook
25 conversation there between the phone attributed to

1 Mr. Berry and Justin Moore, is that also actually included
2 in the document, State's 55, that we're about to publish?

3 A. It is.

4 MR. GRAHAM: Your Honor, the State would ask to
5 publish this at this time.

6 THE COURT: Okay. You may.

7 BY MR. GRAHAM:

8 Q. Mr. Phipps, I don't know if it would be easier for
9 you to come down here to whether you have --

10 A. I have a copy here if you'd like me to read from that
11 or I can come down.

12 Q. All right. That's fine.

13 Looking at the first page there's a Number 1 in the
14 upper left corner under the word "Facebook".

15 A. Yes, sir.

16 Q. What is that? What's the Number 1 talk about? What
17 does that mean?

18 A. When the forensic tool grabs these Facebook chats, it
19 just arbitrarily starts numbering them. So this happened
20 to be the first one that was captured and it's a reference
21 so that we can refer back to it by number.

22 Q. The specific message that you pulled out of here,
23 what was the date and time of that message?

24 A. May 19, 2014, at 6:37 PM.

25 Q. Now it says in parentheses UTC minus four. What does

1 that mean?

2 A. It's just showing that that's already a corrected
3 time for our local time zone and so a lot of items on a
4 cell phone are tracked in UTC time, which is a universal
5 time coordinate, and it's just letting us know that that's
6 corrected and we can realize that that's actually our local
7 time that's being displayed.

8 Q. So the 6:37:14 was 6:37:14 in Lexington County on
9 May 19, 2014?

10 A. Yes, sir.

11 Q. All right. Here it says the name Nick Berry. Does
12 that designate that this message was sent from the phone
13 and the account attributed to Nick Berry?

14 A. Using a Facebook account that's been tagged as Nick
15 Berry's.

16 Q. What was the message that was sent?

17 A. It reads, hell nah, I'm chillin' with females right
18 now, but you got .22 rounds.

19 Q. Moving onto Number 2, who were the individuals
20 involved in this conversation? Nick Berry and who?

21 A. Justin Moore.

22 MR. FLOYD: Objection, Your Honor, as the phone is
23 registered to Nick Berry, they don't know it's Nick
24 Berry's, so I ask that it be clear on that.

25 THE COURT: All right. He'll be subject to

1 cross-examination, but this was retrieved off the cell
2 phone, the ZTE.

3 BY MR. GRAHAM:

4 Q. This was the phone that was taken from Mr. Berry and
5 then, again, I'll ask, Mr. Phipps, when you went through
6 the phone were you able to find any identifiers in the
7 ownership information of the phone that connected any of
8 the accounts or the information to an individual named
9 Nick or Nicholas Berry?

10 A. Yes, sir. Specifically, in his contact list the
11 person he has listed as "mom" had a phone number of
12 803-413-██████, which is also the number that the Securus
13 billing information shows is Caralee Berry. Additionally,
14 there's Facebook, Twitter, Google Plus and Yahoo accounts
15 all with name of Nick Berry.

16 Q. So Nick Berry -- where it says Nick Berry right there
17 on the screen on State's 55, did you write that in or is
18 that how the Cellebrite pulls the report?

19 A. It finds that information as part of that chat series
20 of chat messages.

21 Q. Not something you typed in?

22 A. No, sir.

23 Q. Going through the conversation with this, if you'll
24 tell me starting on May 19, 2014, 5:35:58 from this account
25 attributed to Nick Berry by the Cellebrite, what does he

1 say?

2 A. Hey, bro, you got .22 rounds.

3 Q. Would you just continue to read the date and time and
4 who's the person sending it and then the message?

5 A. Okay. And that was an outgoing message by Nick Berry.

6 The next one is an incoming from Justin Moore on the
7 19th at 5:37. Hell, nah. I might got a homie that do
8 though.

9 Q. The next statement?

10 A. The next one is outgoing by Nick at 5:38? Near
11 Lexington question mark. Justin Moore responds oh, nah
12 at 5:38 PM.

13 Nick Berry sends another one at 5:39. Damn, I'm
14 trying just to get -- get front em so I can get something
15 solved and pay em after shit happen ya know.

16 Incoming from Justin Moore at 5:40. Man, you don't
17 need no gun to solve nothing -- nothing pimpin'.

18 Then Justin Moore also responds at 5:41. Let them
19 niggas talk all the shit they want. None of em shit. I
20 seen Collin the other day and the nigga got hush mouth and
21 -- I have no idea -- want fight unless he got eight niggas
22 with him. They all bitches and you better than that bro.

23 Nick responds at 5:42. Not him. I'm talking about
24 Jamie Galloway.

25 Justin Moore comes back at 5:46 with why he beefin'

1 with you.

2 Nick responds at 6:00. He snuck me when I was talking
3 to my bro.

4 Justin Moore comes back at 6:47. Why he do that shit.

5 And then Nick's final response, he a pussy at 7:21 PM.

6 Q. We'll just skip it. They can read it.

7 Flipping a page, going to Contact Number 5 I think is
8 the next one. Or Conversation Number 5 -- or 3.

9 Who is designated that the conversation between --
10 Number 3 is between?

11 A. Nick Berry and Josh Moore.

12 Q. And then outgoing Facebook messages identified from
13 who?

14 A. Outgoing from Nick at 5:19 on the 19th. You got .22
15 rounds.

16 Q. The next conversation labeled Number 4?

17 A. Between Nick Berry and Carey Lynn Wangness.

18 Q. And the date and time of that and who's sending it?

19 A. May 19th at 5:18 is an outgoing by Nick Berry. Aye,
20 I got a question for ya.

21 And then at 5:19, you got .22 rounds.

22 Q. The next one is Conversation 13.

23 A. It's Nick Berry and Preston Wade on the 19th at
24 3:00 PM. You know where .22 rounds at outgoing from Nick
25 to Preston.

1 Q. And the time on that?

2 A. 3:00 PM.

3 Q. Conversation 14.

4 A. Nick Berry and a Jamie Leroy and it's at 5-11, on
5 April {sic} 11th at 4:07. Aye bro, need a burner ASAP.

6 Q. Mr. Phipps, in your experience in law enforcement,
7 what is a burner?

8 A. A burner is something that you don't want traced back
9 to you; that you're probably gonna use one time and get rid
10 of.

11 Q. Do you know whether -- what kind of item it can apply
12 to?

13 A. Usually a weapon of some type or sometimes a phone.

14 Q. Continuing on, that was sent by who?

15 A. That was sent by Jamie -- I mean, that was sent by
16 Nick to Jamie.

17 Q. The next entry under 14?

18 A. Is another outgoing message from Nick to Jamie at
19 1:04 PM. You got .22 rounds.

20 Q. And then later on that same day?

21 A. At 1:08 he, again, says I need em; Nick saying to
22 Jamie. And then, again, at 1:10, oh, we are, but I want
23 them bullets. Got something to handle.

24 Q. The conversation identified as 17?

25 A. That's between Russell Derosia and Nick Berry. On

1 April 11, 2014, at 4:45 PM.

2 Q. April or May?

3 A. I'm sorry. May 11th. Need a burner ASAP. That's
4 outgoing Nick Berry to Russell.

5 Q. The next entry on 5-19?

6 A. 5-19 at 2:53, chillin'. You got .22 rounds question
7 mark.

8 And then another outgoing at 2:54 PM. Fuck, man. I
9 can't find any.

10 Q. Conversation 18.

11 A. That's between Cassey Argoe and Nick Berry May 19th
12 5:32 PM. Aye, bro. You got .22 rounds question mark.

13 Q. Conversation 22.

14 A. Between Nick Berry and a Brice Horton, again, on the
15 19th at 5:33:45. Nick sends outgoing, Aye, you got .22
16 R-P-I-N-D-S. He then follows that up with just sending
17 "rounds" for, I believe, a correction.

18 Brice responds back at 5:34 PM. Nah, don't even
19 have --

20 Q. Stop -- stop right there. On here we just have the
21 ones sent by Nick Berry. If you'll skip down to that 5-19
22 at 5:35.

23 A. Okay. At 5:35 PM, damn, I need some. No places have
24 any.

25 Q. Mr. Phipps, when you were on the stand earlier, you

1 had talked about the Securus system and pulling off phone
2 calls; is that correct?

3 A. Yes, sir.

4 Q. And I believe -- let me make sure.

5 MR. GRAHAM: State's 37 I believe is in evidence,
6 Your Honor. If we could verify that.

7 THE COURT REPORTER: I thought it was marked for ID.

8 MR. GRAHAM: Just marked for ID?

9 THE COURT: It seemed like some other people
10 identified -- Haley Stone identified she listened to it.
11 Is that same one?

12 MR. GRAHAM: It's the -- one of the first half of
13 that conversation.

14 THE COURT: Right. And then Haley Stone then
15 testified about it. That's when it was marked.

16 MR. GRAHAM: She's already -- it's already been
17 marked. I guess at this point what this is, is a jail
18 recording that's been discussed earlier in testimony with
19 Mr. Phipps and Ms. Robinson and Haley Stone identifying
20 the voices on there and what we are now introducing is the
21 portion of the conversation between the Defendant, Nick
22 Berry, and his mother, Caralee Berry, and my understanding
23 is that instead of having to play it for her earlier that's
24 also been stipulated that this is her voice and so at this
25 time we'd offer it into evidence.

1 THE COURT: And Mr. Floyd has placed an objection
2 on the record --

3 MR. FLOYD: That's correct.

4 THE COURT: -- outlining that -- his objection, the
5 objection was overruled, and it's admitted now and the
6 portion of it which is between Nick Berry, the Defendant,
7 and his mother can be published.

8 (State's Exhibit Number 37, a redacted jail call,
9 was admitted into evidence.)

10 MR. GRAHAM: Okay. Now that this is in evidence,
11 Your Honor, the State will publish this. State's 37.

12 (Whereupon, State's Exhibit Number 37 was played in
13 open court.)

14 MR. GRAHAM: No further questions for this witness,
15 Your Honor.

16 THE COURT: Mr. Floyd.

17 CROSS-EXAMINATION

18 BY MR. FLOYD:

19 Q. Detective Phipps, you don't know who was sending
20 those messages, do you?

21 A. No, sir.

22 Q. You just know they come from a phone registered to
23 Nick?

24 A. Yes, sir.

25 Q. Or at least according to the records was registered?

1 A. Yes, sir.

2 Q. And now a burner can be a phone, can't it?

3 A. Yes, sir.

4 Q. Have you ever heard of any other terms it could be
5 used for?

6 A. In my experience, mainly weapons and phones, yes, sir.

7 Q. Are you familiar with all the terms the kids use
8 today?

9 A. No, sir, not at all.

10 MR. FLOYD: Okay. Thank you. I have no further
11 questions, Your Honor.

12 THE COURT: You may step down.

13 (Witness excused.)

14 MR. GRAHAM: The State calls Janice Ross.

15 (Whereupon, Janice Edwards Ross was duly sworn by
16 the Clerk of Court.)

17 THE CLERK: Once you're seated, Doctor, state your
18 full; name spelling your last.

19 THE WITNESS: Janice Edwards Ross, R-O-S-S.

20 JANICE EDWARDS ROSS,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. Dr. Ross, what do you do for a living?

25 A. I'm a forensic pathologist and a hospital pathologist.

1 Q. What is a hospital pathologist?

2 A. First of all, I've been through four years of college
3 and four years of medical school and five plus years
4 training in pathology. There are three disciplines in
5 pathology. One is surgical pathology where we look at
6 tissue under the microscope to diagnose things like
7 cancers. That's part of the hospital work. The other part
8 of hospital work is looking at -- using the laboratory
9 blood work to help diagnose diseases. And then forensic
10 pathology is further training in autopsies and
11 documentation of patterns of injury, collecting special
12 fluids for the court of law and to identify a cause of
13 death and a manner of death.

14 Q. What extra training do you have to have or experience
15 to go from being a hospital pathologist to a forensic
16 pathologist?

17 A. It's another year plus of training and then for each
18 discipline you have to take a national board certification.

19 Q. And are you Board-certified as a forensic pathologist?

20 A. Yes.

21 Q. How many autopsies have you performed for forensic
22 purposes?

23 A. Over 11,000.

24 Q. How many times have you been qualified as an expert
25 in forensic pathology?

1 A. In South Carolina, over two hundred.

2 MR. GRAHAM: Your Honor, the State would offer
3 Dr. Janice Ross as an expert in the field of forensic
4 pathology.

5 THE COURT: Any voir dire, Mr. Floyd?

6 MR. FLOYD: No, Your Honor.

7 THE COURT: Folks, Dr. Ross is a practicing forensic
8 pathologist. She can offer opinions in the field of
9 forensic pathology and that's why she's being presented
10 for your consideration today.

11 MR. GRAHAM: Thank you, Your Honor.

12 BY MR. GRAHAM:

13 Q. Dr. Ross, did you have an opportunity to perform an
14 autopsy on Jamie Galloway?

15 A. Yes.

16 Q. In general terms and, specifically, would you describe
17 the process of performing an autopsy?

18 A. Yes. We do the autopsies in the morgue at Newberry
19 County Memorial Hospital. The patients are brought to us
20 within a body bag. We identify the patient, we do an
21 inventory of the clothing, take photographs of the clothed
22 body and then take the clothes off and take photographs
23 further of the external body before we do the internal
24 examination.

25 Q. Once you do the external examination, what is the

1 internal examination? What does that mean?

2 A. We look at all the organs in the chest and abdominal
3 cavity and we look at the brain.

4 Q. And in Jamie Galloway's case, did you do both an
5 external and internal examination of him?

6 A. Yes.

7 Q. What was Mr. Galloway's approximate height and weight?

8 A. We measured him at five feet seven and a half inches.
9 And we don't have a scale in the morgue, but we estimated
10 his weight is about 170 pounds.

11 Q. Let me show you a diagram and some photographs and
12 ask if you recognize these, if they're accurate, and if
13 they would assist you in your testimony with the jury?

14 A. Yes, they would.

15 MR. GRAHAM: Your Honor, the State would offer the
16 diagram and photographs into evidence.

17 MR. FLOYD: Are these the ones you showed me, Shawn?

18 MR. GRAHAM: (Nods head.)

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: All right. The diagram will be 56 and
21 the photos will be however many there are to number. How
22 many is it? Three, four?

23 THE COURT REPORTER: Four photographs.

24 THE COURT: Four photographs, 57 to 60, are admitted
25 without objection, as well as the diagram, which is 56.

1 (State's Exhibit Number 56, a diagram, and State's
2 Exhibit Numbers 57 through 60, photographs, were marked
3 and admitted into evidence.)

4 BY MR. GRAHAM:

5 Q. Dr. Ross, when you did your physical examination of
6 Jamie Galloway, did you find any defensive wounds?

7 A. No.

8 Q. What is a defensive wound?

9 A. Just as it sounds. If you see something dangerous
10 coming at you, you usually put your arms up or your hands
11 up to prevent whatever the injury is coming at you, so we
12 look for injuries on the hands and the forearms.

13 Q. Did you find any types of cuts or abrasions or
14 injuries on the hands or forearms of Mr. Jamie Galloway?

15 A. No, I did not.

16 Q. How about abrasions on other parts of Mr. Galloway's
17 body?

18 A. He had some bruises on the forehead and he had a
19 bruise, abrasion, over the right knee, but there was no
20 pattern to them.

21 Q. In addition to that, were there any other bruises or
22 abrasions that you saw or just those two?

23 A. Just those injuries.

24 Q. In addition to that, did you find several stab wounds?

25 A. Yes.

1 Q. And does State's Number 56 accurately -- this is a
2 diagram you prepared?

3 A. Yes, it's a -- it comes from a diagram that I did at
4 the time of the autopsy.

5 Q. How many different stab wounds did you find on
6 Mr. Galloway's body?

7 A. A total of twenty-five.

8 MR. GRAHAM: Your Honor, the State would publish the
9 diagram, which is State's 56 at this time.

10 THE COURT: It's admitted without objection.

11 BY MR. GRAHAM:

12 Q. And, Dr. Ross, if you wouldn't mind stepping down.
13 You might need your report, too. Maybe not.

14 A. (Witness complies.)

15 Q. Now the numbers are there and they've been added for
16 descriptive purposes, but you were unable to tell, I
17 assume, the order in which these blows were struck?

18 A. That's correct. These are just -- the numbers are
19 just for organization.

20 Q. All right. Let me show you two different items.
21 State's Number 29, which was a screwdriver which was
22 collected on the scene. You had that, I believe, during
23 the autopsy, as well as State's 32, which was a knife that
24 was collected from the crime scene. Do you recognize
25 those?

1 A. Yes.

2 Q. Okay. Of those, was -- did you find any evidence
3 that the screwdriver had been used in any of these wounds
4 on Mr. Galloway?

5 A. No, I did not.

6 Q. State's 32, the knife, were you able to make a
7 determination -- do you have an opinion as an expert in
8 the field of forensic pathology whether that knife is
9 consistent with the wounds that you found on Mr. Galloway's
10 body?

11 A. Yes, this knife could have made these wounds.

12 Q. How many of these injuries were on the front of
13 Mr. Galloway's body?

14 A. There was just one. It's not shown here. There's
15 one wound in the left upper arm.

16 Q. So we're -- designated as Number 25 on this chart?

17 A. Yes.

18 Q. I'm showing you State's 57. Is that the wound you're
19 talking about?

20 A. Yes.

21 Q. Looking at State's Number 57, what can you tell the
22 jury about that wound?

23 A. Well, this is the left upper arm and this is the
24 armpit. You can see the stab wound here, which looks kind
25 of curved, but it's because the knife was twisted.

1 Q. Were you able to determine -- was it a single edge
2 or a double edge from this wound? Can you tell?

3 A. It looks like a single edge wound. Because it was
4 twisted, it's difficult, but this looks like a blunt edge.
5 When we talk about knives, a single edge or a double edge,
6 it means -- a single edge means that one edge is somewhat
7 blunted and the other one is sharp.

8 Q. Were you able to determine how deep that wound
9 penetrated?

10 A. It didn't. It just went down to the bone. It didn't
11 move. It didn't cut any vessels.

12 Q. But it went to the bone?

13 A. (Nods head.)

14 Q. State's Number 55 {sic}, that is designated as Wound
15 Number 3. So if we're looking at State's 56, the chart,
16 would you show the jury where that is?

17 A. It's just below the -- the right ear.

18 Q. And the photo above, would you describe that wound
19 to the jury, please?

20 A. This wound just went in and hit the skull. It did
21 not lacerate or cut any blood vessels. The blunt edge is
22 this way towards the back of the head and the sharp edge
23 is towards the front.

24 Q. State's 57 is showing -- let me publish it to the
25 jury. State's 57. There are three wounds that are